

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable R. Markley Dennis, Jr.
Circuit Court Judge
Case No.: 2011-CP-10-9200

RECEIVED

APR 04 2016

SC Court of Appeals

Appellate Case No. 2015-001920

Mother Doe A.....Appellant,

v.

The Citadel.....Respondent.

And

Case No.: 2013-CP-10-6330

John Doe 201 and Jane Doe 201.....Appellants,

v.

The Citadel.....Respondent.

APPELLANTS' RECORD ON APPEAL
Volume I of III

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2011 CP-10-9200

FILED

Mother Doe A

The Citadel

2015 FEB -2 PM 3:17

PLAINTIFF(S)

JULIE J. ARMSTRONG
CLERK OF COURT

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (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. ☐ See Page 2 for additional information.
- ☐ **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 (formal order to follow) ☒ Statement of Judgment by the Court: Defendant's Renewed Motion for Summary Judgment, filed on 1/26/2015, is GRANTED; formal order to follow.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

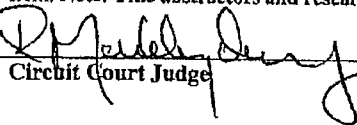
INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.


Circuit Court Judge

2060

Judge Code

1/27/2015

Date

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

MOTHER DOE A,

Plaintiff,

v.

THE CITADEL,

Defendant.

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

CASE NO.: 2011-CP-10-9200

FILED
2015 MAY 29 PM 3:03
JULIE J. ARMSTRONG
CLERK OF COURT

**[PROPOSED] ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT**

This matter came before the Court on the Notice of Motion and Renewed Motion of the Defendant The Citadel, The Military College of South Carolina ("Defendant" or "Citadel") for Summary Judgment ("Renewed Motion for Summary Judgment") under Rule 56 of the South Carolina Rules of Civil Procedure.

Plaintiff commenced this action on December 14, 2011 in her own right, alleging that she sustained injuries resulting from the sexual abuse of her son by Louis ReVille ("ReVille"). On December 12, 2013, Plaintiff filed an Amended Complaint, asserting claims under the following legal theories: (a) gross negligence/failure to warn; (b) negligent hiring, retention and supervision; (c) the Jessica Horton Act, S.C. Code § 59-154-10; (d) civil conspiracy; (e) S.C. Code § 63-7-310; (f) intentional infliction of emotional distress/outrage; and (g) loss of services.

On May 2, 2014, The Citadel filed its original Notice of Motion and Motion for Summary Judgment, ("Initial Motion for Summary Judgment") asserting that the Court should enter judgment against Plaintiff in this matter (and against plaintiffs in other related cases) for various reasons. On September 19 and 22, 2014, the parties submitted memoranda in support of and in opposition to The Citadel's Initial Motion for Summary Judgment (some of which incorporated and referenced memoranda filed in related lawsuits). The Court conducted oral

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argument, and on September 24, 2014, by Form 4 Order, it indicated it would deny The Citadel's Initial Motion for Summary Judgment, with a "[f]ormal order to follow." The Court formally denied The Citadel's Initial Motion for Summary Judgment on December 1, 2014.

The issues addressed herein have been thoroughly briefed by the parties in connection with The Citadel's initial Motion for Summary Judgment, and the Court conducted oral argument on January 26 and 27, 2015. After considering the parties' arguments, relevant case law, and the detailed record, taking the evidence in the light most favorable to the Plaintiff, this Court hereby GRANTS Defendant's Renewed Motion for Summary Judgment.¹

INTRODUCTION

On April 23, 2007, the father of a camper at The Citadel's summer camp ("Camper Doe") reported to The Citadel that a counselor had engaged in sexual misconduct with his son at the camp five years earlier. Camper Doe's father was referred to The Citadel's in-house counsel, Mark Brandenburg, with whom he spoke by telephone. During that conversation, Camper Doe's father said that on one occasion during the camp, a counselor named "Skip" invited his son, then a minor, into his room and the two of them watched pornography and masturbated while Camper Doe was in "Skip's" room. Attorney Brandenburg later spoke with Camper Doe by telephone. Camper Doe reported that "Skip" had invited him into his room and showed him pornography and convinced him to masturbate while in the room. By reviewing camp records, Brandenburg was able to identify "Skip" as Skip ReVille. Brandenburg contacted ReVille, who had been

¹ The findings in this Order apply only to claims by parents of ReVille's downstream victims and do not impact any existing or potential claims by victims of ReVille's abuse, including the claims asserted in the following cases: John Doe Camper v. The Citadel, C/A No. 2012-CP-10-1860; John Doe 2 v. The Citadel, C/A No. 2012-CP-10-1858; Mother Doe 2, on behalf of, John Doe 3 v. The Citadel, C/A No. 2012-CP-10-1859; Camper Doe 6 v. The Citadel, C/A No. 013-CP-10-5247; and John Doe, a minor, by his Guardian Ad Litem, John Roe v. The Citadel, C/A No. 2013-CP-10-4770; John Doe 201 and Jane Doe 201 v. The Citadel et al., C/A No. 2013-CP-10-10330; John Doe A v. The Citadel, C/A No. 2014-CP-10-1476; and John Doe 4 v. The Citadel, C/A No. 2014-CP-10-6995.

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working as a part-time tutor at The Citadel's Writing Center. ReVille denied Camper Doe's allegations.

Brandenburg continued his investigation on July 1, 2007, when he met with Camper Doe, then nineteen years old, and his parents in Texas. Following that interview, there ensued discussions among Brandenburg, Camper Doe, and the South Carolina State Insurance Reserve Fund about possible settlement of Camper Doe's potential claims against The Citadel. However, at some point that summer, Mr. Brandenburg and Camper Doe fell out of touch with one another. Brandenburg attempted to contact potential witnesses who may have been present during the incident that Camper Doe reported; however, he did not contact any who corroborated Camper Doe's complaint. The Citadel's investigation ended without the complaint being reported to law enforcement authorities.

In October 2011, multiple incidents of sexual misconduct by ReVille came to light. ReVille was arrested and confessed to abusing many boys over a period of years. Charges were filed against ReVille in Charleston, Berkeley, and Dorchester counties. On June 13, 2012, ReVille pleaded guilty to numerous criminal charges involving sexual misconduct and was sentenced to fifty years in prison.

ReVille abused Plaintiff's son in 2007 and 2008. She alleges that The Citadel negligently failed to adequately investigate Camper Doe's complaint and negligently failed to report the complaint to law enforcement authorities, which would have prevented ReVille from abusing her son.² She further alleges that The Citadel deliberately covered up Camper Doe's complaint in order to protect The Citadel's reputation. She seeks to recover what she terms loss of services of her son, which includes loss of companionship and wounded feelings. Plaintiff has not submitted evidence of pecuniary loss for medical expenses or loss of services. For the reasons that follow, this Court must grant The Citadel's Renewed Motion for Summary Judgment.

² Plaintiff's son has filed a separate action, which is not subject to the instant Motion.

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ANALYSIS

A. Plaintiff's Outrage Claim Fails for Several Reasons

1. The South Carolina Tort Claims Act Bars Plaintiffs' Outrage Claim

The South Carolina Tort Claims Act ("Act") "establish[es] limitation[s] on an exemption to the liability of the state [and] . . . must be liberally construed in favor of limiting the liability of the state." See S.C. Code Ann. § 15-78-20(f). Plaintiff does not dispute that the Act applies to The Citadel and governs her claims in this case. The Act states that a "loss" "does not include the intentional infliction of emotional harm." See S.C. Code § 15-78-30(f). The Act also provides that a governmental entity may not be held liable for "employee conduct outside the scope of his official duties or which constitutes actual fraud, *actual malice*, [or] *intent to harm*." See S.C. Code § 15-78-60(17) (emphasis added). These provisions bar claims for intentional infliction of emotional distress. See *Newman v. South Carolina Dep't of Employment and Workforce*, 2010 WL 4791932, at *2 (D.S.C. Sept. 22, 2010), *report and rec. adopted*, 2010 WL 4666360 (D.S.C. Nov. 18, 2010); *Ward v. City of N. Myrtle Beach*, 457 F. Supp. 2d 625, 646-47 (D.S.C. 2006) ("[T]he South Carolina Tort Claims Act excludes the intentional infliction of emotional harm from the definition of 'loss' for which a government may be liable under the Tort Claims Act."); *Harkness v. City of Anderson*, 2005 WL 2777574, at 4 (D.S.C. Oct. 25, 2005) ("Defendants argue they are immune from suit pursuant to the South Carolina Tort Claims Act . . . on the claim of outrage, otherwise known as intentional infliction of emotional distress. [Citation omitted.] The court agrees."); *Trask v. Beaufort Cty.*, 392 S.C. 560, 573, 709 S.E.2d 536, 543 (Ct. App. 2011) ("Under the Tort Claims Act, a coroner is immune from suit for 'the intentional infliction of emotional harm.'"); *accord Lindquist v. Tanner*, 2012 WL 3839237, at *4 (D.S.C. April 12, 2012) ("Plaintiff concedes that her claim for 'intentional' infliction of emotional distress against the County Recreation Commission is barred by the South Carolina Tort Claims Act."), *report and rec. adopted in part*, 2012 WL 3839235 (D.S.C. Sept. 4, 2012). Plaintiff's

outrage claim is barred by the Act.

2. Plaintiff's Outrage Claim is Barred Because No Conduct Was Directed Toward Plaintiff

The South Carolina Supreme Court has held that an outrage claim cannot succeed where Defendant's conduct was not specifically and knowingly directed at Plaintiff:

The law limits claims of intentional infliction of emotional distress to egregious conduct toward a plaintiff proximately caused by a defendant. *Christensen v. Superior Court*, 54 Cal.3d 868, 820 P.2d 181, 2 Cal.Rptr.2d 79 (1991). It is not enough that the conduct is intentional and outrageous. It must be conduct directed at the plaintiff, or occur in the presence of a plaintiff of whom the defendant is aware. *Id.* at 903, 820 P.2d at 202, 2 Cal.Rptr. at 100; see also W. Keeton, D. Dobbs, R. Keeton & D. Owen, *Prosser and Keeton on Torts* § 12 (1984 & Supp. 1988) (hereinafter *Prosser & Keeton*). There is no evidence that respondents targeted appellants to be harmed by their allegedly tortious acts.

The harm suffered by appellants arose only indirectly from respondents' publishing allegedly false information about Bodie. There are situations when plaintiffs may recover for intentional infliction of emotional distress for harm they suffer as the result of acts which have injured another. The Restatement (Second) of Torts § 46(2) (1965) provides:

§ 46. Outrageous Conduct Causing Severe Emotional Distress

(2) Where such conduct is directed at a third person, the actor is subject to liability if he intentionally or recklessly causes severe emotional distress

- (a) to a member of such person's immediate family who is present at the time, whether or not such distress results in bodily harm, or
- (b) to any other person who is present at the time, if such distress results in bodily harm.

As a matter of policy, courts have limited such recovery "to the most extreme cases of violent attack, where there is some especial likelihood of fright or shock." *Prosser & Keeton* § 8. See, e.g., *Courtney v. Courtney*, 186 W.Va. 597, 413 S.E.2d 418 (1991) (assault on mother in son's presence stated cause of action for intentional infliction of emotional distress by son).

There being no evidence that respondents physically attacked Bodie in the presence of appellants, we must hold that appellants do not possess a cause of

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action for intentional infliction of emotional distress arising under section 46(2). See *Upchurch v. New York Times, Inc.*, 314 S.C. 531, 536-37, 431 S.E.2d 558, 561-62 (1993) (emphasis added); *Roberts v. Simmons*, 2014 WL 7005250, at *6 (D.S.C. Dec. 11, 2014) ("The undersigned recommends dismissal of this claim. As a preliminary matter, it is not clear that Defendant's alleged conduct was directed at the Plaintiff."); *Fulghum v. Wise Seats, Inc.*, 2012 WL 1032594, at *4 (D.S.C. Mar. 27, 2012) ("Here, the conduct upon which Plaintiff bases his claim . . . is not tortious conduct that was specifically directed towards Plaintiff.").

The South Carolina Court of Appeals held in an unpublished decision that the parents of a minor sexual abuse victim could not sue a school for outrage, because there was no evidence that the school's alleged conduct was directed at the particular plaintiff. See *Doe v. Rojas*, 2007 WL 8327520, at *4 (Ct. App. April 26, 2007) ("[T]he record contains no evidence that the School District, in failing to take any preemptive action to prevent the abuse, targeted or directed any of its conduct towards the Does. Further, no evidence suggests the School District's actions after discovering Rojas' misconduct was directed towards the Does.").

Plaintiff has not proffered any evidence that The Citadel directed its actions against her directly. There is no evidence that The Citadel knew ReVille was abusing Plaintiff's son or had any contact whatsoever with her son or with her. Plaintiff was not present during any of the alleged acts of abuse and did not witness any abuse. Under such circumstances, Plaintiff cannot succeed on an outrage claim against The Citadel.

B. Plaintiff's Negligence (and Conspiracy) Claims Fail Because She Has Not Shown Any Recoverable Damages

1. Plaintiff May Not Recover Emotional Distress Damages in Her Negligence Claim

South Carolina law once appeared to permit recovery for negligently inflicted emotional distress. In *Padgett v. Colonial Wholesale Distrib. Co.*, 232 S.C. 593, 604, 103 S.E.2d 265, 270 (1958), a negligently operated truck struck the plaintiff's home, allegedly causing fright, exposure to the cold, weight loss, fever and a skin condition. The Court considered whether

damages might be "recoverable for shock, fright and emotional upset when there is no physical impact." Ultimately, the Court concluded that the question of whether the shock caused physical injury was properly submitted to the jury. *See id.*, 232 S.C. at 607-08, 103 S.E.2d at 272. In reaching that conclusion, the Court metaphysically connected physical and psychic harms:

"The interdependence of the mind and body is in many respects so close that it is impossible to distinguish their respective influence upon each other. It must be conceded that a nervous shock or paroxysm, or a disturbance of the nervous system, is distinct from mental anguish, and falls within the physiological, rather than the psychological, branch of the human organism."

See id., 232 S.C. at 605, 103 S.E.2d at 271 (citations omitted).

Subsequently, the Court cited *Padgett* stating that "[w]e have recognized the rule that there is no liability for emotional distress without a showing that the distress inflicted is extreme or severe." *See Rhodes v. Security Fin. Corp. of Landrum*, 268 S.C. 300, 302, 233 S.E.2d 105, 106 (1977). The Court observed that "[w]hile there is testimony that appellant was emotionally upset from the attempt to collect the forged note, there is no showing that the attempts by respondent's agents to collect were unreasonable or abusive, nor that appellant's emotional upset was other than transient and trivial." *See id.* With *Rhodes*, the Court began to limit recovery for negligent infliction of emotional distress.

The Court next stated in *Hudson v. Zenith Engraving Co.*, 273 S.C. 766, 770, 259 S.E.2d 812, 813 (1979), that "[i]n order to prevail in a tortious action in which the sole damages alleged are those of mental anguish, plaintiff must show that the conduct on the part of defendant was extreme and outrageous, causing distress that is of an extreme or severe nature." The Court later quoted the language from *Hudson* and *Rhodes* and recognized the tort of *intentional* infliction of emotional distress. *See Ford v. Hutson*, 276 S.C. 157, 276 S.E.2d 776 (1981).

Importantly, the Supreme Court in *Dooley v. Richland Hosp.*, 283 S.C. 372, 322 S.E.2d 669 (1984), rejected an invitation to recognize a general tort of negligent infliction of emotional distress because the plaintiff failed to show any physical injury supporting her claim. The Court

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stated that one criticism of permitting a tort for negligent infliction of emotional distress is "that it will allow for fraudulent claims" and that "[o]ne method of eliminating this danger has been to require some type of physical injury in addition to any claimed emotional injury." *See id.*, 283 S.C. at 375, 322 S.E.2d at 671. Later that year, the Court refused to permit the recovery of emotional distress damages in a legal malpractice claim, despite a litany of claimed "physical" manifestations of the distress. *See Caddel v. Gates*, 284 S.C. 481, 327 S.E.2d 351 (1984).

In *Kinard v. Augusta Sash & Door Co.*, 286 S.C. 579, 336 S.E.2d 465 (1985), the Supreme Court recognized the tort of negligent infliction of emotional distress, but restricted it to very limited circumstances. Importantly, the Supreme Court limited it to claims by a bystander who observes an accident that actually causes death or serious physical injury:

- (a) the negligence of the defendant must cause death or serious physical injury to another;
- (b) the plaintiff bystander must be in close proximity to the accident;
- (c) the plaintiff and the victim must be closely related;
- (d) the plaintiff must contemporaneously perceive the accident; and
- (e) the emotional distress must both manifest itself by physical symptoms capable of objective diagnosis and be established by expert testimony.

See id., 286 S.C. at 582, 336 S.E.2d at 465.

The modern rule of the Supreme Court has been to recognize emotional distress damages in three circumstances: (a) when accompanied by physical trauma; (b) outrage; and (c) negligent infliction in a "bystander" situation. The Court has refused to extend liability for emotional distress beyond these limited circumstances:

- In *Hansson v. Scalise Bldrs. of S.C.*, 374 S.C. 352, 358-59, 650 S.E.2d 68, 72 (2007), the Court held in the context of an outrage claim: "Under the heightened standard of proof for emotional distress claims emphasized in *Ford*, a party cannot establish a prima facie claim for damages resulting from a defendant's tortious conduct with mere bald assertions. To permit a plaintiff to legitimately state a cause of action by simply alleging, 'I suffered emotional

distress' would be irreconcilable with this Court's development of the law in this area. In the words of Justice Littlejohn, the court must look for something 'more' — in the form of third party witness testimony and other corroborating evidence — in order to make a prima facie showing of 'severe' emotional distress."

- In *Babb v. Lee Cty. Landfill SC, LLC*, 405 S.C. 129, 141, 747 S.E.2d 468, 474 (2013), the Court refused to allow a claim for emotional distress damages flowing from trespass and nuisance in the form of odors from a landfill.

A case almost directly on point with the present case (a sexual abuse case arising under the Act) is *Doe v. Greenville County School District*, 375 S.C. 63, 651 S.E.2d 305 (2007). There, the Court refused to extend the negligent infliction of emotional distress damages to encompass a claim by parents stemming from sexual activity between their daughter and a school teacher, stating: "[b]ecause South Carolina courts have limited the recognition of negligent infliction of emotional distress claims in circumstances such as the one presented in this case to bystander liability, Mr. and Mrs. Doe have not stated a claim which is cognizable under South Carolina law."

To the extent she seeks to recover in negligence for emotional distress, Plaintiff's claims are not within any cause of action for emotional distress recognized by the Supreme Court. She does not claim that The Citadel caused any physical impact to her or that she was a bystander observing her son's abuse. Plaintiff seeks the "stealth recognition of an entirely new tort" for negligent infliction of emotional distress in the absence of any physical impact or the death or serious injury of a bystander, based solely on the *knowledge* that Plaintiff's son was abused. No contemporary South Carolina authority recognizes such a claim.

2. Plaintiff's Recoverable Damages Are Limited to Medical Expenses for Injuries to Plaintiff's Son and Loss of Services, Neither of Which Are Supported By a Scintilla of Evidence

The Supreme Court has concluded that, in cases such as this, a parent's potential damages are extremely limited. In *Doe v. Greenville County School District*, 375 S.C. 63, 651 S.E.2d 305 (2007), cited *supra*, a student's parents sued a school district, alleging that a teacher was

PMB/9

involved in a sexual relationship with their daughter. The parents further alleged that the school had prior complaints and warnings regarding the teacher's inappropriate interest in young girls and should have known about this relationship. The trial court granted the school district's motion to dismiss. On appeal, the Supreme Court affirmed in part and reversed in part. The Court first concluded, as discussed in the preceding section, that the *parents* could *not* assert a claim for negligently inflicted emotional distress. *See id.*, 375 S.C. at 68, 651 S.E.2d 307 (emphasis added).

Next, the Court analyzed the plaintiffs' loss of filial consortium claim and expressly held that South Carolina law does not recognize such a claim. Specifically, the Court held that "our common law only allowed a parent to maintain an action for the loss of a child's services and earning capacity. These common law claims did not include the intangible losses of aid, companionship, and society which have traditionally defined loss of consortium claims. Accordingly, in absence of some action from the legislature, this Court has no authority upon which it could rely in finding that South Carolina law recognizes claims for loss of filial consortium." *See id.*, 375 S.C. at 69-70, 651 S.E.2d at 308. The Court held that the plaintiffs could state a claim to seek recovery for their daughter's medical expenses. *See id.*, 375 S.C. at 71-72, 651 S.E.2d at 309.

Justice Pleicones argued in dissent that the South Carolina common law has long permitted recovery for loss of companionship of a child. *See Webb v. Southern Ry. Co.*, 104 S.C. 89, 88 S.E. 297 (1916). While he agreed with the majority that no claim existed for negligent infliction of emotional distress, he argued that the Tort Claims Act preserves the common law claim for loss of parental consortium. While this Court finds Justice Pleicones' reasoning persuasive, it is compelled to follow the mandate of the majority of the Supreme Court.

Following the *Greenville County School District* case, a parent may recover two forms of damages for injury to a child: (a) medical expenses the parent paid for the care of the child; and

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(b) the loss of the child's services as a result of the injury. *See Wright v. Colleton County School District*, 301 S.C. 282, 391 S.E.2d 564 (1990) (holding that medical expenses and lost services may be recoverable losses under the South Carolina Tort Claims Act). Plaintiff has not presented evidence of either type of damage. At their core, Plaintiffs' claimed damages are all for harm to Plaintiff's familial relationship with her son. These are loss of consortium damages that are precluded by the Supreme Court's holding in *Greenville County School District*. For this reason, The Citadel is entitled to summary judgment as to all of Plaintiff's negligence-based claims.

C. Plaintiff's Conspiracy Claim Fails Because There Is No Evidence of Special Damages and Because That Claim Is Barred by the Act

To succeed on her civil conspiracy claim, Plaintiff must show special damages attributable to the alleged conspiracy, meaning damages *different* from the damages she seeks in her other claims:

[C]ivil conspiracy requires that the plaintiff claim special damages. In this case, the Gordons' amended complaint fails to allege any special damages incurred as a result of any conspiracy. They allege the same damages as they do under the other causes of action. This is insufficient to establish special damages. *See Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 117, 682 S.E.2d 871, 875 (Ct. App. 2009) ("If a plaintiff merely repeats the damages from another claim instead of specifically listing special damages as part of their civil conspiracy claim, their conspiracy claim should be dismissed."). Accordingly, we conclude the circuit did not err in granting a directed verdict.

See Gordon v. Busbee, 397 S.C. 119, 136, 723 S.E.2d 822, 831-32 (Ct. App. 2011). Plaintiff has not presented any evidence of special damages in support of her conspiracy cause of action. Instead, Plaintiff seeks to recover the same damages as her other causes of action. For this reason, The Citadel is entitled to summary judgment as to Plaintiff's civil conspiracy count.

Moreover, Plaintiff's conspiracy claim is barred by the Act, which prohibits claims arising out of "employee conduct outside the scope of his official duties or which constitutes actual fraud, *actual malice*, [or] *intent to harm*." *See* S.C. Code § 15-78-60(17) (emphasis

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added). A conspiracy claim, by its very nature, requires as an element an intention to harm the Plaintiff. See *Vaught v. Waites*, 300 S.C. 201, 208, 387 S.E.2d 91, 95 (Ct. App. 1989) ("Civil conspiracy consists of three elements: (1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, (3) which causes him special damage."). As a result, for this additional reason, Plaintiff's conspiracy claim fails.

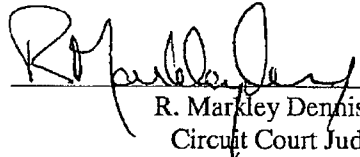
CONCLUSION

For the reasons discussed above, the Court grants Defendant The Citadel's Renewed Motion for Summary Judgment and hereby enters summary judgment against Plaintiff on all of her claims in this lawsuit.

AND IT IS SO ORDERED!

Dated: May 26, 2015
Charleston, South Carolina

BY THE COURT:



R. Markley Dennis, Jr.
Circuit Court Judge

pmot/12

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT

) Civil Action No.: 2011-CP-10-9200

) :
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PLAINTIFF'S MOTION TO
ALTER OR AMEND

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FILED
2015 JUN 15 PM 3:13
JULIE J. ARMSTRONG
CLERK OF COURT

The Plaintiff, Mother Doe A, moves the Court pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, to alter, amend or vacate its May 29, 2015 Order granting summary judgment in favor of the Defendant, The Citadel, as to each of the seven causes of action alleged in the amended complaint. The Plaintiff received written notice of entry of the order on June 4, 2015. This motion incorporates the facts set forth in Plaintiff's initial Memorandum in Opposition to Defendant's Motion for Summary Judgment, filed on September 22, 2014. Viewing the facts in the light most favorable to the Plaintiff, reconsideration of the Court's May 26, 2015 Order is proper based upon the following grounds:

- (1) The Order at pages 1 and 2 recites the procedural history of the case but omits reference to the certain relevant facts, including:
- (a) That the defendant's amended motion for summary judgment was taken up on January 26, 2015, after the parties had selected a jury in preparation for trial;

- (b) That the plaintiff dropped the causes of action alleged pursuant to the Jessica Horton Act, S.C. Code § 59-154-10, and the Reporting Statute, S.C. Code § 63-7-310;
 - (c) That various cases were consolidated for discovery and that The Citadel filed a motion for summary judgment on March 6, 2014 in several of the consolidated cases, to which this Plaintiff responded with a memorandum in opposition, followed by a reply brief submitted after the motions were heard by the Court on April 18, 2014. The reply brief, filed on April 25, 2014, addressed the issues of “specific threat of harm” and other factual disputes concerning the duty owed by the Citadel. The Court later denied The Citadel’s motion for summary judgment in its entirety;
 - (d) That on May 2, 2014, The Citadel filed a summary judgment motion in the present case, which the Court denied by form order on September 24, 2014, after hearing arguments solely on the issue of loss of services. The formal written order was entered on December 1, 2014.
- (2) At footnote 1 on page 2, the Order includes a scrivener’s error that the civil action of John Doe 201 and Jane Doe 201 v. The Citadel et al., No. 2013-CP-10-10330, is among the cases *unaffected* by the order as to Mother Doe A. The parties stipulate that the rationale of the Mother Doe A order applies to the intangible injuries and tangible costs also incurred by the Doe 201 parents for treating their child.
- (3) At pages 2 and 3, the Order recites the basic facts of the claims but fails to note that The Citadel actively concealed ReVille’s known record of abusing children, and facilitated

ReVille's ability to obtain access to the children he sought to abuse, conduct which is undisputed.

- (4) At page 4, the Order notes the definition of "loss" in S.C. Code § 15-78-30(f) excludes "the intentional infliction of emotional harm," but fails to note that the same provision specifically includes "pain and suffering, mental anguish, and any other element of actual damages recoverable in actions for negligence," and that Mother Doe A (and the Doe 201 parents in their action) alleges negligence claims pursuing damages within that definition.
- (5) The Order fails to apply the exception within the South Carolina Tort Claims Act permitting claims of outrage when based on reckless conduct, as distinguished from "intentional" conduct. See e.g., Bass v. S. Carolina Dep't of Soc. Servs., 742 S.E.2d 667, 672 (Ct. App. 2013), reh'g denied (May 21, 2013) (intentional infliction of emotional distress claim permitted based on reckless, rather than intentional, conduct by DSS); Davis v. Richland Cnty., No. 4:12-CV-3429-RMG, 2014 WL 3805802, at *3 (D.S.C. July 30, 2014) ("A plaintiff can state a claim for infliction of emotional distress [or outrage] by alleging that the defendant acted recklessly, rather than intentionally.").
- (6) At pages 6 through 9, the Order errs in applying to the amended complaint criteria for negligent infliction of emotional distress claims, when the amended complaint alleges no claim for negligent infliction of emotional distress. Instead, the five causes of action which remain include: gross negligence (failure to warn); negligent hiring, retention, and supervision; civil conspiracy; outrage; and loss of services to recover intangible injuries and the costs and expenses incurred in treating her child (and fully applicable to the intangible and tangible costs incurred by the Doe 201 parents).
- (7) Beginning on page 9, the Order errs by:

- (a) Misapprehending the scope of damages within the common law claim of a parent's loss of services claim. In particular, the order improperly restricts the claim to claims for only medical expenses, and excludes claims for intangible injury;
- (b) Overlooking the Plaintiff's testimony regarding her incurred (as the Doe 201 parent also incurred) costs for medical expenses. See Exhibit 32, Mother Doe A Deposition at pages 105, 106, 108, 112, 114, 115, 174; Exhibit 1, the trial designations from the Deposition of Chet Williams, the mental health professional who treated Mother Doe A's son.
- (c) Improperly applying the 1712 Reception Statute, S.C. Code § 14-1-50, which adopts the English common law until altered by the legislature, by confusing the common law loss of services claim with the separate and distinct common law (and now statutory, in S.C. Code § 15-75-20) loss of consortium claim based on an incorrect interpretation of dicta in Doe v. Greenville County School District, 651 S.E.2d 305 (2007), a loss of consortium case. See e.g., Medlin v. United States, 244 F.Supp. 403, 411 (D.S.C. 1965); Webb v. Southern Railway, 88 S.E. 297 (1916) (mother's claim when her son was injured included her intangible injuries); Villepigue v. Shular, 1849 WL 2667, 34 S.C.L. 462, 3 Strob. 462 (Ct. App. 1849) (setting forth rationale for using loss of services fiction for a parent's intangible as well as tangible injuries when a child is harmed, loss of services being presumed); Dobson v Cothran, 16 S.E. 679 (1891).

- (8) The Order fails to consider that S.C. Code §15-78-70(c) permits conspiracy claims against Citadel officials even though the statute requires that only The Citadel be named as a party defendant. See Flateau v. Harrelson, 584 S.E.2d 413, 418 (Ct. App. 2003) (“When a plaintiff claims an employee of a state agency acted negligently in the performance of his job, the South Carolina Tort Claims Act requires a plaintiff to sue the agency for which the employee works, rather than suing the employee directly.” (quoting Faile v. S.C. Dep’t of Juvenile Justice, 350 S.C. 315, 321 n. 1, 566 S.E.2d 536, 539 n. 1 (2002)). A conspiracy claim that alleges actual malice or intent to harm falls outside the scope of immunity under the Tort Claims Act. See Pridgen v. Ward, 705 S.E.2d 58, 64 (Ct. App. 2010); DeCecco v. Univ. of S. Carolina, 918 F. Supp. 2d 471, 500 (D.S.C. 2013) (school officials immune from suit individually because no evidence they lost immunity by acting with “actual fraud, actual malice, intent to harm, or a crime involving moral turpitude”); Smith v. Ozmint, 394 F.Supp.2d 787, 792 (D.S.C. 2005) (state employee can be held personally liable for some intentional torts committed within the scope of his employment); DiLorenzo v. S. Carolina Dep’t of Corr., No. 2:10-CV-02356-RMG, 2010 WL 5389994, at *3 (D.S.C. Dec. 22, 2010) (intentional infliction of emotional distress claim not subject to dismissal where plaintiff alleged intent to harm within her claim for intentional infliction of emotional distress). Construed in the light most favorable to the Plaintiff, the facts support the reasonable inference that Brandenburg, Rosa, Trez, and Garrott knowingly conspired with ReVille to conceal his sexual interest in children, enabled his future employment around children, and insulated ReVille from law enforcement, knowing that other children would be sexually abused by ReVille, and therefore acted with an intent to harm future victims like the Plaintiff and

her child. The conspiracy claim is not barred by the immunity provisions of the Tort Claims Act.

- (9) The Order fails to consider the import of S.C. Code § 15-3-555 in construing claims to “a person” by failing to acknowledge that such claims are not limited to only the person directly abused.

Accordingly, for the above-stated reasons, the Court should alter, amend or vacate its May 29, 2015 Order, and find the evidence and arguments presented raise genuine issues of material fact for trial. Should the Court grant Plaintiff’s request to alter or amend, Plaintiff further moves pursuant to Rule 42(a), SCRPC, to consolidate for trial the instant matter with the related action filed by Plaintiff’s son, captioned John Doe A v. The Citadel, C/A No. 2014-CP-10-1476.

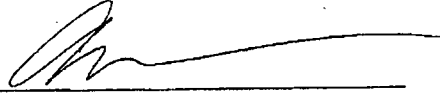
CONCLUSION

Based upon the grounds articulated herein, the Court should: (1) alter or amend its May 29, 2015 Order granting the Defendant’s Renewed Motion for Summary Judgment; (2) reverse the grant of summary judgment as to Mother Doe A and the resulting effect on the Doe 201 claim pursuant to stipulation; and (3) consolidate the Mother Doe A claim for trial with the related action filed by her son, John Doe A.

--Signature Page to Follow--

Respectfully submitted,

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Attorneys for the Plaintiff Mother Doe A

June 17, 2015
Charleston, South Carolina

CERTIFICATE OF SERVICE

11-CP-10-9200

I certify that on this date a copy of the forgoing document was served on each party or counsel of record by mailing or hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 15th day of June, 2015

Mary K. Thordarson

FILED

2015 JUN 15 PM 3:13

JULIE J. ARMSTRONG
CLERK OF COURT

BY _____

IN THE COURT OF COMMON PLEAS
Case No. 2011-CP-10-9200

Plaintiff,

Defendant.

ORDER

FILED
2015 AUG -6 PM 12:51
JULIE J. ARMS, CLERK OF COURT

AND IT IS SO ORDERED!


R. MARKLEY DENNIS, JR.
Presiding Judge

August 3, 2015

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
Mother Doe A, <i>et. al.</i> ,	)	
	)	
Plaintiff,	)	
v.	)	Case No. 11-CP-10-9200
	)	
The Citadel,	)	
	)	
Defendant.	)	

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on January 26th and 27th, 2015, before The Honorable R. Markley Dennis in Courtroom 4C of the Charleston County, 100 Broad Street, Charleston, South Carolina; attended by counsel as follows:

APPEARANCES:

Gregg Meyers, Esq.
 Chip Sloan, Esq.
 Kristen Fehsenfeld, Esq.
 Appearing for Mother Doe A

Dawes Cooke, Esq.
 Randall Stoney, Esq.
 Chris Kovatch, Esq.

ALSO ATTENDING:

Mullins McLeod, Esq.
 Mark Brandenburg, Esq.

Rutledge Young, Esq.
 The Citadel Board of Visitors

Deborah Garrison
Circuit Court Reporter – 9th Judicial Circuit
 P O Box 901
 Johns Island, South Carolina 29457
dgarrison@secourts.org

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John P. Constantine	70	144
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Jane Babb	14	154
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1 JANUARY 26, 2015 9:00 A.M.

2 (PANEL STAUTORILY QUALIFIED)

3 THE COURT: Let me tell you my game
4 plan. I will ask individual *voir dire*:

5 Homosexuality. I'll do that in an
6 individual *voir dire*.

7 Sex abuse, having been abused sexually or
8 ever been involved in that, that's going to
9 be an individual question.

10 Those are just some examples and we can
11 talk about those after the general ones. I'm
12 basically taking those things -- which I
13 don't find objectionable, but if you have any
14 specific ones, let me know. I'll be happy to
15 ask. Is there anything specific before we
16 start the qualification, gentlemen?

17 DAWES COOKE: Your Honor, we did
18 submit some proposed *voir dire*. It's got the
19 witnesses on it.

20 THE COURT: All right, I haven't
21 seen it. If you have that, I'll be happy to
22 ---

23 DAWES COOKE: All right.

24 GREGG MEYERS: I'm just trying to
25 clarify, Your Honor, ---

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1 THE COURT: What I have from y'all
2 is the plaintiff's proposed jury question-
3 naire.

4 GREGG MEYERS: That's what I was
5 trying to clarify, Your Honor.

6 THE COURT: And it lists witnesses
7 and other things, which I've utilized to get
8 my general questions from there. I assume
9 that is your proposed voir dire.

10 GREGG MEYERS: Yes, sir.

11 THE COURT: But you have one that
12 you ---

13 DAWES COOKE: What we've done is
14 we've cleaned it up.

15 THE COURT: That's fine. I will
16 be happy to look at it. That's precisely
17 what I need.

18 DAWES COOKE: (Tenders), ---

19 THE COURT: Thanks, Dawes. Are
20 there any overlaps on your witnesses?

21 GREGG MEYERS: I think there are.

22 THE COURT: Let me tell you what
23 my gameplan is, folks, so that you all will
24 be privy to it. Obviously we're going to
25 generally qualify. Then once we generally

1 qualify, we have a room -- we have Courtroom
2 4B where we are going to put them. I'm
3 guessing that it is probably going to take us
4 close to 12:00. My thought is to go ahead
5 and take lunch and then have them come back.

6 We will have the list. The list, as
7 we've talked about in our general
8 discussions, will be a random list. We will
9 take them in an order, and I am going to
10 bring them in one at a time. Once we ask
11 those questions -- once I ask those
12 questions, if you want, -- after I've covered
13 some, if I don't cover something you want to
14 cover, go ahead and ask it.

15 I will tell you, as I have done in death
16 penalty cases, I'm not going to require the
17 witness to answer that question but I'm going
18 to afford you the opportunity if you want.
19 It's not going to be your question -- I'm
20 taking your questions and I'm going to ask
21 those questions. But if I don't cover an
22 area that you want to go into a little bit
23 more in depth, then that's fine. I'll afford
24 you that opportunity.

25 After we have completed that voir

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1 dire of that witness (sic), I'm going to ask
2 the plaintiff what do they wish to do. Then
3 I'm going to ask the defendant, 'what do you
4 wish to do?' We will strike as we go.

5 We will bring that person that is
6 stricken and I'll tell them to call back
7 after six tonight. If there -- if they are
8 included, I'll tell them that they need to
9 report tomorrow -- we have something in the
10 morning? I'm going to tell them to report at
11 9:45. Okay?

12 So hopefully -- you know, I don't
13 know what it is going to look like. The good
14 thing about it, with the numbers that we have
15 that stuck around, that were willing to do
16 it, I think we will have enough to get our
17 jury without any question.

18 DAWES COOKE: Did you say that you
19 were going to pick twenty-eight? I think
20 you'd mentioned that number.

21 THE COURT: What I am going to do
22 is I'm going to pick three alternates, out of
23 an abundance of caution. So that will be a
24 total of three, nine, -- well, seventeen
25 strikes. So there will be twenty-nine from

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1 twelve, and then there will be ---

2 CLERK, DON MICHELE: Fifteen and
3 eight will be twenty-three.

4 THE COURT: Thirty-five -- thirty-
5 two --- a total of thirty-two persons.

6 DAWES COOKE: So we still each get
7 our four and then one for the alternates?

8 THE COURT: Yeah, but we -- in
9 theory, we could go through the first fifteen
10 and be finished.

11 DAWES COOKE: (Affirmative nod),
12 right.

13 THE COURT: I mean, that's -- it
14 just depends.

15 GREGG MEYERS: I am sure that
16 will happen, Your Honor.

17 THE COURT: I'm positive it'll
18 happen! I'll tell you this, and we were
19 talking about it coming up. I don't believe
20 that I could ask for or that y'all could ask
21 for a better panel of people from which to
22 pick this type of case. I really don't. I
23 mean, I was amazed at both the ages, the
24 maturity and the jobs of the people that were
25 willing to stick around for two weeks.

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1 That's incredible.

2 I know you all have said and
3 intimated three (weeks) but, folks, we are
4 going to get this case done in two weeks.
5 I can promise you that.

6 GREGG MEYERS: I wonder if I
7 could just clarify, ---

8 THE COURT: Sure.

9 GREGG MEYERS: Since this is a
10 little out of the normal, I just want to make
11 sure that I am not treading in the wrong
12 area.

13 THE COURT: Sure.

14 GREGG MEYERS: My understanding
15 of what you have just explained is that
16 you're working from the questionnaire, for
17 example, that we submitted.

18 THE COURT: Yeah.

19 GREGG MEYERS: You may not hit
20 every subject on that questionnaire, but I'm
21 at liberty to at least make an attempt to
22 make an inquiry; if you don't think it is
23 appropriate, you'll ---

24 THE COURT: I'll stop you. For
25 instance --- if you want to look at it, I've

1 highlighted my file copy. You'll have an
2 idea but that doesn't mean that it is not
3 going (to be) asked. For instance, number
4 eight, "Has any member experienced a family
5 tragedy?" I am not sure what you are talking
6 about in that regard. Whether it's in
7 connection with -- I would probably ask if
8 you've had a son or had a child that's had a
9 serious injury or problem. That would be
10 something that would be -- but we're going to
11 ask -- do you still want to find out the
12 number of parents or do you all have that
13 information already?

14 GREGG MEYERS: Well, we have some
15 indication about that but I'd still like to
16 know ---

17 THE COURT: I am going to ask them
18 in general, that everybody -- 'if you're a
19 parent, stand up.' I'm not going to make
20 that any -- whether or not that would affect
21 them, just to say 'how old are your children'
22 and, uh, 'how many do you have?'

23 GREGG MEYERS: Thank you.

24 DAWES COOKE: I know I'm slow on the
25 uptake but -- so we'll have the list of the

1 whole thirty-two ---

2 THE COURT: Yeah, in the order in
3 which they will be. I mean, we're not going
4 to -- the main problem that you have in a
5 capital case, I don't -- I've done it before
6 and now that I don't sequester, I may start
7 considering doing it this way again.

8 My first capital case, although we
9 had -- Steven John got a mistrial at the end
10 of the guilt phase, but that wasn't -- the
11 problem was -- imagine this, they acquitted
12 his codefendant. I did something that I will
13 never do again and that's try codefendants in
14 a capital case. There were *Bruton* issues,
15 unbelievable *Bruton* issues. That's why we
16 talked about *Bruton* issues at our meeting in
17 Columbia, about how do you really correct a
18 problem, redact it, so that you -- using
19 neutral pronouns. How do you do that so that
20 it doesn't really implicate somebody? So the
21 best thing to do is never to try them
22 together. But, anyway.

23 We got through the first part. We
24 got back and -- Steven John was co-counsel to
25 Ms. West, who was a public defender, and I

1 think still is, over in Horry County. And,
2 uh, he said, 'Judge, I hate to do this but
3 there's a juror that we -- when we came, my
4 client, Mr. Huggins' sister recognized that
5 juror as have gone to class with them. If we
6 had known that, we would have excused them.'

7 I said, 'that's baloney.' Why would
8 you want to excuse someone who knew your
9 client's family?

10 'Nope, we would have and we had a
11 strike.' We had a case that 'had we known
12 it' and 'we had a strike', then you have to
13 declare a mistrial. So I did. But, anyway.

14 In that case, we struck as we went
15 and we sequestered them.

16 It shouldn't be a problem with this
17 because there is really no real concern about
18 that.

19 So, yeah, they'll be in the order.
20 I have redrawn, in a criminal case we do the
21 pool so that we can redraw. This one, I am
22 not. It's drawn at random and we will strike
23 as we go. Okay?

24 RANDALL STONEY: Your Honor, we
25 tendered our *voir dire* and, unfortunately,

1 that may be our only copy.

2 THE COURT: I will give it back to
3 you and I won't write on it either.

4 DAWES COOKE: I've got another copy.

5 RANDALL STONEY: The reason was
6 that we took the -- we sanitized it.

7 THE COURT: Okay. I appreciate
8 you doing that. Give me just a second,
9 (sidebar with clerk).

10 Folks, let's do this so that we
11 don't have to draw but once. We're going to
12 draw the panel. They are going to be on a
13 random strike list. So -- because if I
14 excuse somebody for cause, that juror will be
15 stricken in the order in which they appear.
16 Do you waive the demand for -- and I'm
17 talking about general qualification now. Do
18 you waive the right to have it redrawn so
19 that we can -- for instance, if there are ten
20 people that are excused in the general, then
21 we would draw a random -- they may be in a
22 different order. Do you all -- just to
23 expedite it, will you go with it as it is?

24 DAWES COOKE: Yes.

25 GREGG MEYERS: Yes, sir.

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1 THE COURT: All right, we will
2 just make that notation that I make my strike
3 for cause and that list then will be the
4 record.

5 GREGG MEYERS: Your Honor, we saw
6 on the list -- I saw only a few people that
7 attended The Citadel.

8 THE COURT: Yeah.

9 GREGG MEYERS: We do want to
10 assert cause, a strike against anybody who
11 attended The Citadel as an undergraduate, not
12 for graduate purposes.

13 THE COURT: All right.

14 GREGG MEYERS: I don't know if
15 this is the time that you would ask that
16 question.

17 THE COURT: I will be happy to
18 excuse that person. Listen, I'm going to err
19 on the side of caution here, I assure you.
20 If you want them excused, I am going to
21 excuse them.

22 Frankly, I will tell you this. I
23 was talking to my brothers and sisters at the
24 convention about this case and I just -- I
25 just posed the question to them, and some of

1 them are Citadel people too, several of them
2 are. They said, 'Hummm, I don't know. It
3 may be offensive to me.' I said 'yeah, that
4 would be my feeling', that there is -- there
5 really is -- that sword cuts both ways.

6 GREGG MEYERS: We agree. We just
7 thought those passions might be used in a way
8 that ---

9 THE COURT: There is no need to do
10 that, (affirmative nod). There is no need to
11 put that person in that dilemma, I don't
12 think.

13 If you object to it, I'll let you
14 put that on the record, your basis for the
15 objection.

16 DAWES COOKE: I just heard the tail-
17 end of it. This was?

18 THE COURT: Anybody that is an
19 undergraduate of The Citadel, is a graduate
20 -- not graduate school but undergraduate, as
21 I understood it.

22 GREGG MEYERS: Yes.

23 THE COURT: Then they wish them to
24 be removed.

25 DAWES COOKE: Well, you know, we

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1 talked about that pretrial. I would think
2 that you would ask them, you know, if they
3 could be ---

4 THE COURT: I appreciate it. I am
5 not going to put them -- whether you're
6 related or -- I mean, your first cousin. I
7 mean, I just -- out of an abundance of
8 caution, but you can put your objection on
9 the record. Hopefully there won't be that
10 many. I know that one that worked for them
11 was a "no." She won't be there. I will
12 definitely excuse any person who ---

13 GREGG MEYERS: Yes, that was the
14 other person that we felt was in an unusual
15 posture. I thought that if she was employed
16 by The Citadel ---

17 THE COURT: Yeah, I would
18 definitely not have her; just as I don't have
19 anybody that is employed with the law firm.

20 GREGG MEYERS: Yeah.

21 THE COURT: I mean, I -- even not
22 a lawyer. I am not going to do that.

23 Are we ready? As far as you all
24 know?

25 DAWES COOKE: I think so.

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1 GREGG MEYERS: As I will ever be.

2 THE COURT: (Sidebar with law
3 clerk). Listen, my clerk is asking me about
4 victims. Anybody that is going to testify --
5 I am not going to say 'this is a victim', but
6 anybody that is going to testify needs to be
7 disclosed. I mean, I'm not going to -- I
8 don't want to know their status or what
9 they're going to testify to. We have all the
10 names of everybody who is going to testify?

11 Let me also finish while y'all are
12 talking with Chip -- after we get our jury,
13 then we will go through the Motions *in*
14 *limine*. I appreciate everybody briefing
15 those. We will incorporate all the briefs
16 and reply briefs. I think I -- I don't think
17 that's going to take a lot of time because
18 I've gone through it. I spent yesterday
19 morning and yesterday evening, until about
20 7:30 last night, reading and doing additional
21 research on my part to help me. I think I am
22 pretty much comfortable with what I am going
23 to do with each one. I would anticipate,
24 depending on the jury, that hopefully we
25 would be finished before 5:00 o'clock. I'm

1 willing to stay as long as necessary.

2 GREGG MEYERS: We are going to
3 have to add some names.

4 THE COURT: All right, give me
5 some names.

6 MR. SLOAN: There are some page/
7 line designations for Camper Doe.

8 THE COURT: I just want the names.

9 GREGG MEYERS: Can we come up and
10 do these with Your Honor, more descriptive?

11 THE COURT: Yes.

12 (OFF RECORD BENCH CONFERENCE)

13 RANDALL STONEY: There is something
14 that I am unclear about. Anonymous
15 designations will no longer be used? We will
16 use the individual's name?

17 THE COURT: Nope, it just
18 means that -- the style of the case will stay
19 as it is. What you are going to do is -- the
20 person is going to testify and they're not
21 going to tell you 'my name is Camper Doe.'
22 They are going to give their name.

23 RANDALL STONEY: All right.

24 THE COURT: So when they take the
25 stand to testify, they're going to have to

1 identify themselves.

2 RANDALL STONEY: So my next
3 question then is regard to the witnesses.
4 When you ask/inquire of the jury, you will
5 likewise have to identify them by their
6 actual names?

7 THE COURT: That is what I just
8 did. I just got the names of the people.
9 I am going to give additional names. You are
10 not going to -- I am not going to tell you
11 whether they are victims or who they are.
12 But they're going to be people whose names
13 are going to be given, because those people
14 are going to identify themselves when they
15 testify. I think that I answered your
16 question.

17 RANDALL STONEY: You did. Thank
18 you.

19 GREGG MEYERS: Your Honor, may I?

20 THE COURT: Sure.

21 DAWES COOKE: I'm sorry that I
22 wasn't clear about this, but we may not have
23 given these names (tendering).

24 THE COURT: I understand. I've
25 got a list. Anything that you haven't filed

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1 until this morning, that's fine. I am going
2 to give the name. I'm not going to just say
3 "Camper Doe."

4 RANDALL STONEY: That's fine. You
5 know, we have worked real hard to ---

6 THE COURT: That's fine. Thank
7 you, appreciate that.

8 RANDALL STONEY: Yes, sir.

9 DAWES COOKE: These go with the
10 Motions, (tendering).

11 THE COURT: Is that what you sent
12 online?

13 DAWES COOKE: Yes.

14 THE COURT: I've got it. If you
15 have filed the original -- I'm assuming that
16 everything that's been sent to me online has
17 been originally filed.

18 DAWES COOKE: Yes, sir.

19 THE COURT: Very good.

20 DAWES COOKE: Some not until this
21 morning.

22 THE COURT: I've copied all of it.
23 I've read them all.

24 DAWES COOKE: There were some that
25 we didn't file until this morning, that's

1 what I am saying.

2 THE COURT: Anything that hasn't
3 been sent online -- because if it's been sent
4 online, I've got it.

5 DAWES COOKE: I think it was sent
6 this morning.

7 THE COURT: I haven't seen it yet,
8 but that's fine. That helps me. Thank you,
9 Dawes.

10 DAWES COOKE: Thank you.

11 THE COURT: By the way, let me
12 tell you ---

13 CLERK DON MICHELE: Here are the
14 random strike lists.

15 THE COURT: Thank you. --- all
16 that when I walked in -- which news source
17 was it?

18 LAW CLERK: ABC.

19 THE COURT: ABC, (affirmative
20 nod), gave me a submission wanting to bring a
21 camera. It's captioned Skip ReVille. I
22 said, it's not going to be a Skip ReVille
23 trial. If they want to come here -- in
24 fact, they inquired first if this was a
25 criminal case. I said no, that it is not a

1 criminal case. It's a civil case. Nobody --
2 somebody -- that was somebody that called
3 last week. But this one isn't. I will
4 approve a camera but I've told them that they
5 can't come during the jury part. So there
6 may be one here tomorrow.

7 DAWES COOKE: Even my kids asked me
8 what is going to happen to Skip ReVille in
9 this trial.

10 THE COURT: Well, one of the
11 things -- the afternoon session that I went
12 to -- Mr. Stoney, I saw you at the
13 convention. The morning session was a good
14 thing, any of y'all that went to the civil
15 presentation, there was a trial much as we
16 did here several years ago when a jury from
17 Hanahan and a jury, I think from Charleston,
18 to show the difference, went through a trial.
19 They had little buttons and we were marking
20 -- well, that's what they did.

21 Well, somebody -- and y'all excuse
22 my cynicism, but maybe y'all can help me
23 understand how this was beneficial to a trial
24 judge to sit through, first of all, watching
25 them instruct on how to work the little

1 clickers. Then the instruction of what they
2 told the jurors, some of whom didn't follow
3 the instructions at all.

4 The first juror -- and then they
5 critiqued the opening statement. The first
6 person who was -- it was an unfair/bad faith
7 against an insurance company, failure to pay.
8 He said -- when they asked 'any comments?'
9 He said, 'Yeah, I like the plaintiff's
10 attorney because, I tell you what, I had one
11 of those cases and, boy, he was right on as
12 to what they needed to do. We did the same
13 thing.' I thought, well, 'this is real
14 helpful.' He wouldn't even be on the jury in
15 the first place.

16 They see only a portion of it,
17 because I think it went through Saturday --
18 but how does seeing the first third of a case
19 -- how does that help me? Maybe I am missing
20 something. But, anyway.

21 The second part was a gentleman that
22 talked about a case -- I've seen it a couple
23 of years ago. It's a fantastic -- I'd love
24 to get it -- you talk about something that
25 would be great to show to them? It doesn't

1 take that long but it really does sort of
2 help them to understand how frustrated we are
3 with what we have to deal with; not being
4 able to talk or to tell anybody about it. It
5 established going around the country talking
6 about how we as judges and lawyers need to
7 spend more time at what he called "pre-
8 instruction", to give them an overview of
9 what to do. I've been trying to do that.

10 I may bore y'all some more but, uh,
11 -- please free to do that, if you need to, in
12 your opening statements because he said that
13 studies are showing that jurors are very
14 appreciative and it helps tremendously.

15 I think most people come here with a
16 desire/want to do what is right. I really
17 do. Now that we have gotten this part --
18 maybe I am naïve and Pollyanna in my thoughts
19 about that, but I truly believe it. I think
20 whatever we do to help them is a good thing.

21 CLERK DON MICHELE: The jury is
22 outside.

23 THE COURT: Okay, let's bring them
24 in.

25 (JURY PANEL IN @ 11:53 A.M.)

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1

2

(OFF RECORD BENCH CONFERENCE WITH CLERK)

3

4

THE COURT: Okay, so twenty-seven
is off. That's number seventeen?

5

6

CLERK: Correct, it was a possible
yesterday but he's a "no" now.

7

8

9

10

11

THE COURT: Number seventeen on
your list, I am going to excuse that. So
number seventeen on your list (Juror Number
27), I am going to excuse that juror because
he was a "no".

12

13

CLERK DON MICHELE: And I think
it's the same for number fifteen.

14

15

16

17

18

19

20

THE COURT: My list is on my desk.
CLERK DON MICHELE: Gentlemen, on
your list, number nineteen -- they were
"possibles." There were four that said that
they were not sure and in the end ---

21

22

23

THE COURT: So seventeen and
nineteen?

24

25

COURT REPORTER: Are we talking
about juror numbers or the numbers on the
list?

CLERK DON MICHELE: The numbers
on the list, not the juror numbers.

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1 THE COURT: All right, so those
2 need to be removed.

3 {JUROR NUMBER 27 EXCUSED}

4 {JUROR NUMBER 15 EXCUSED}

5 CLERK DON MICHELE: So you want
6 us to take those off?

7 THE COURT: Yes.

8 CLERK DON MICHELE: Do you want
9 us to go ahead and call the names?

10 THE COURT: Yes.

11 CLERK DON MICHELE: Is Juror
12 Number 17, Darrin Bizal, or Juror Number 19
13 (sic), Deontes Backman, in the courtroom?

14 JUROR NUMBER 15: Yeah, right here.

15 CLERK DON MICHELE: Step over
16 here, please.

17 JUROR NUMBER 27: (Raises hand)

18 CLERK DON MICHELE: (Sidebar with
19 jurors).

20 THE COURT: Just for your
21 information, we are not calling people out.
22 Those are people that said "maybe", or "not",
23 and they were inadvertently placed on the
24 list that we drew. So that's why that was
25 done. We are not kicking anybody else out, I

1 promise you.

2 Ladies and gentlemen, thank you very
3 much. I appreciate it. It went well this
4 morning. I confess that every time that we
5 deal with a case that is not your typical
6 case, and this is not your typical case, and
7 we are dealing with a multi-week case, maybe
8 it's unnecessary but I fret a little bit
9 about that. I know that it is disruptive to
10 be on a jury and I -- I worry about whether
11 or not we're going to have enough people to
12 be able to work, be able to get a jury.

13 I will tell you that I said, coming
14 upstairs, 'wow, what a great panel.' I thank
15 you for that, and I mean it sincerely.

16 This is the second qualification and
17 now I will tell you what the case is -- a
18 little bit about it. It is a case entitled
19 Mother Doe A versus The Citadel. I am sure
20 that you can say, 'yeah, well, I have an idea
21 what that means.'

22 We allow, in situations where there
23 are some very private allegations, private
24 situations, a party to proceed as "Doe."
25 When the person testifies, you will have a

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1 chance to -- they will not say 'I am Mother
2 Doe.' They will give you their name. But
3 that's the style -- we are allowed to bring a
4 case in that fashion.

5 This case involves allegations --
6 what I am going to share with you is what is
7 alleged. It is not evidence. Evidence is
8 what you will hear through the trial of the
9 case. But The Citadel is accused of
10 basically having in their employ or having
11 had involvement with a person who allegedly
12 sexually abused and molested a child of
13 Mother Doe. That child has brought the suit
14 and Mother Doe has brought the case in this
15 case.

16 I share that with you only to tell
17 you a little bit of what the case -- there
18 are multiple causes of action. It is a
19 negligence case, primarily, where it is
20 alleged that The Citadel didn't do what it
21 is supposed to do or should have done when it
22 had certain knowledge; that basically as a
23 result of that, Mother Doe and the child
24 suffered injury or damage. That is what we
25 are here about, to decide that.

1 I will tell you right off from the
2 start that this type of action is very
3 appropriate and our law, in our courts in
4 this state -- not only in this state but in
5 every state in the United States. Persons
6 who are alleged to have suffered injury or
7 damage because of another's carelessness have
8 a right to bring that and have that matter
9 resolved in the court.

10 And if they prove the essential
11 elements required of them, that is that the
12 party against whom the claim is made did
13 something and -- and this applies to the
14 various causes of action that may be
15 involved: there is a tort of outrage, that
16 the conduct was outrageous and that 'that
17 conduct caused me injury or damage.'

18 I'll define for you at the
19 appropriate time -- as I told you, at the end
20 of the trial -- what each cause of action,
21 what elements are required to be established
22 by the preponderance of the evidence or the
23 greater weight of the evidence. That, ladies
24 and gentlemen, is the standard that you will
25 typically be applying. That standard is

1 really -- it is a probability standard, is it
2 more likely so than not?

3 If in going through the evidence
4 your answer to each one of those elements is
5 'yes, I think that is most probably
6 established', then you would be instructed to
7 return a verdict which is fair, just and
8 reasonable to compensate the plaintiff for
9 the damage which they have established.

10 Likewise, if your answer in going
11 through it as to any of the elements is,
12 'well, I am not -- it could be, it might be',
13 that's not sufficient because that doesn't
14 meet that standard.

15 The plaintiff has the burden of
16 proving.

17 The defendant has nothing to prove,
18 disprove, explain; no responsibility
19 whatsoever with respect to the cause of
20 action that is brought against it.

21 If that is your conclusion at the
22 end, that the plaintiff has failed to meet
23 the burden of proof, then therefore the
24 defendant is entitled to a verdict.

25 That's the essence of what we will

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1 be doing. We will be trying this case. At
2 the end, I will give you instruction as to
3 the various causes of action and you will be
4 instructed to make your decision on whether
5 to not you believe that the plaintiff has met
6 his burden of proof or her burden of proof in
7 this case.

8 Now, having said that, there are
9 some questions that I need to ask you a
10 little bit. First of all, are there any
11 members of the jury panel who were graduates
12 of The Citadel, undergraduates, or who are
13 employed with The Citadel? If so, please
14 stand?

15 JUROR NUMBER 358: I am a graduate.
16 I am not employed by them.

17 THE COURT: Of The Citadel?

18 JUROR NUMBER 358: Yes.

19 THE COURT: Undergraduate?

20 JUROR NUMBER 358: (Affirmative
21 nod).

22 THE COURT: Your name and number?

23 JUROR NUMBER 358: Robert Scott,
24 375 (sic).

25 THE COURT: All right, Mr. Scott.

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1 And you are?

2 JUROR NUMBER 147: I am Stephen
3 Goenner, Juror Number 147. I am a graduate
4 of The Citadel.

5 THE COURT: Very well. Gentlemen,
6 I appreciate it. The next questions that I
7 will be asking you, whether or not you could
8 be fair and impartial, I am not going to put
9 you in that dilemma. I am going to excuse
10 you from participating in this dispute. I
11 ask you to call the number after six tonight.
12 Your numbers, again?

13 JUROR NUMBER 358: Three seventy-five
14 (sic).

15 THE COURT: All right.

16 JUROR NUMBER 147: One forty-seven.

17 CLERK DON MICHELE: And Juror
18 375, the name?

19 JUROR NUMBER 358: Robert Scott.

20 CLERK DON MICHELLE: Robert Scott
21 is Juror Number 358.

22 THE COURT: Thank you.

23 (JUROR NUMBER 358 EXCUSED)

24 (JUROR NUMBER 147 EXCUSED)

25 THE COURT: All right.

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1 JUROR NUMBER 252: Your Honor, ---

2 THE COURT: Yes, 'ma'am?

3 JUROR NUMBER 252: I am not a
4 graduate of The Citadel, but I got my MBA at
5 The Citadel.

6 THE COURT: You didn't go to
7 undergraduate school there?

8 JUROR NUMBER 252: (No verbal
9 response).

10 THE COURT: Would that affect or
11 influence you in this dispute?

12 JUROR NUMBER 252: No.

13 THE COURT: Will you be able to
14 have that knowledge, obviously, but fairly
15 and impartially analyze the evidence and
16 decide what you believe to be the true facts
17 and then fairly and impartially apply the law
18 to those facts?

19 JUROR NUMBER 252: Yes.

20 THE COURT: And your decision then
21 would be based on the evidence and the law
22 and fair to both sides?

23 JUROR NUMBER 252: Yes, sir.

24 THE COURT: Your number, please?

25 JUROR NUMBER 252: I'm 252.

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1 THE COURT: Thank you, 252 will
2 remain.

3 (PHONE RINGING IN COURTROOM)

4 THE COURT: Phones, if you have
5 them, turn them off please. Which was the
6 other one? That was 252.

7 COURT REPORTER: Juror Number 147
8 and Juror Number 358, excused.

9 THE COURT: Thank you. Okay,
10 number one (on list). Number one (Juror
11 Number 358) is excused by the Court.

12 Number twenty-two on the list (Juror
13 Number 147) was excused by the Court.

14 (JUROR NUMBER 147 EXCUSED)

15 (JUROR NUMBER 358 EXCUSED)

16 THE COURT: Okay. All right. Are
17 there any others? (No response). There
18 appear to be none.

19 I am going to ask the attorneys now
20 to identify themselves. We will start with
21 the attorneys representing Mother Doe. If
22 you would, identify yourself and the party --
23 obviously you're representing Mother Doe.
24 You don't have to ---

25 GREGG MEYERS: Thank you. Ladies

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1 and gentlemen, my name is Gregg Meyers. I
2 worked for a long time in Charleston and for
3 the last few years I've been working out of
4 St. Paul, Minnesota, with a law firm called
5 Jeff Anderson & Associates.

6 CHIP SLOAN: My name is Chip Sloan.
7 I work for Pierce HERNs Sloan & Wilson here
8 in Charleston.

9 THE COURT: Are there any -- oh,
10 I'm sorry.

11 KRISTEN FEHSENFELD: My name is
12 Kris Fehsenfeld. I work at Pierce HERNs
13 Sloan & Wilson.

14 THE COURT: Your last name?

15 KRISTEN FEHSENFELD: Fehsenfeld.

16 THE COURT: Thank you. Are there
17 any members of the jury panel related by
18 blood or marriage, have any business dealings
19 with, socially or casually acquainted with,
20 ever been represented by any of the attorneys
21 or their law firms? If so, please stand.
22 (No response). Thank you, there appear to be
23 none.

24 THE COURT: I would ask now that
25 the attorneys for The Citadel identify them-

1 selves.

2 DAWES COOKE: My name is Dawes
3 Cooke. I am with the law firm of Barnwell
4 Whaley Patterson & Helms.

5 This is Ms. Mason, a paralegal in
6 our firm.

7 I will let the other attorneys
8 introduce themselves.

9 I guess Mr. Brandenburg will be
10 introduced later?

11 THE COURT: You will be introduced
12 as -- he will be introduced. He is not an
13 attorney representing ---

14 DAWES COOKE: Not the attorney.

15 THE COURT: I mean, he is an
16 attorney but he's not representing The
17 Citadel.

18 DAWES COOKE: Correct.

19 THE COURT: Yes, sir?

20 RANDALL STONEY: Thank you, Your
21 Honor. Ladies and gentlemen, my name is Ran
22 Stoney. I work for Barnwell Whaley Patterson
23 & Helms also, and represent The Citadel.
24 Thank you.

25 THE COURT: Thank you. Are there

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1 any members -- I'm sorry. Go ahead.

2 CHRIS KOVATCH: Good afternoon.

3 My name is Chris Kovatch and I am with
4 Barnwell Whaley also.

5 THE COURT: Thank you, Mr.
6 Kovatch.

7 RUTLEDGE YOUNG: Lastly, Your
8 Honor, my name is Rutledge Young. I work
9 with the law firm of Duffy & Young.

10 THE COURT: Thank you. Are there
11 any members of the jury panel related by
12 blood or marriage, have any business dealings
13 with, socially or casually acquainted with,
14 have been represented by any of the attorneys
15 or their law firms? If so, please stand.
16 Yes?

17 JUROR NUMBER 279: My father was
18 Robert Patterson of Barnwell Whaley.

19 THE COURT: Your number, please.

20 JUROR NUMBER 279: I don't know my
21 number. Patricia Mulligan.

22 THE COURT: Would that affect or
23 influence you in this matter?

24 JUROR NUMBER 279: Uh, ---

25 THE COURT: Thank you. I'm not

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1 going to put you in that position. I had the
2 privilege of practicing law, what a great
3 practitioner, what a great friend of the
4 court. Thank you very much.

5 THE COURT: Number fifty-nine (on
6 the list) is excused.

7 COURT REPORTER: On the list, Juror
8 Number 279.

9 THE COURT: On the list, (affirma-
10 tive nod).

11 (JUROR NUMBER 279 EXCUSED)

12 THE COURT: Okay. Yes?

13 JUROR NUMBER 385: I believe that
14 I was involved in a mediation with Mr. Cooke.

15 THE COURT: Would that affect you
16 in any way?

17 JUROR NUMBER 385: I don't believe
18 so.

19 THE COURT: And I thank you for
20 your answer but the question is, could you
21 set that aside and make a commitment to the
22 parties that it would not influence your
23 decision on the facts and the law?

24 JUROR NUMBER 385: Okay,
25 (affirmative nod).

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1 THE COURT: And would you base
2 your decision on the evidence and the law and
3 would it be fair to both sides?

4 JUROR NUMBER 385: Yes.

5 THE COURT: Your number, please?

6 JUROR NUMBER 385: Number 385.

7 THE COURT: Juror Number 385 will
8 remain. Yes, ma'am?

9 JUROR NUMBER 364: My name is Pam
10 Sheff. Larry Duffy was my divorce attorney.

11 THE COURT: Would that -- but
12 that's a different.

13 JUROR NUMBER 364: That was
14 different.

15 THE COURT: That is not the same.
16 But the fact that Larry Duffy was your
17 divorce attorney, would that influence you in
18 this case?

19 JUROR NUMBER 364: No, sir.

20 THE COURT: Will you base your
21 decision on the evidence and the law and will
22 it be fair to both sides?

23 JUROR NUMBER 364: I will be fair to
24 both sides.

25 THE COURT: Thank you. Your

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1 number again?

2 JUROR NUMBER 364: Three sixty-
3 four.

4 THE COURT: Thank you, ma'am.
5 Yes?

6 JUROR NUMBER 175: I am Shirley
7 Hendrix. I am Number 175. I have a social
8 friend in Mr. Duffy.

9 THE COURT: Would that affect you
10 in any way?

11 JUROR NUMBER 175: I don't think
12 so.

13 THE COURT: And would you -- well,
14 I appreciate that response but can you make a
15 commitment to both sides that it would not
16 influence your decision?

17 JUROR NUMBER 175: I can.

18 THE COURT: And would you base
19 your decision on the evidence and the law and
20 would it be fair to both sides?

21 JUROR NUMBER 175: Yes.

22 THE COURT: Thank you so much.
23 Are there any others? (No response). Thank
24 you, there appear to be none.

25 I am going to identify a number of

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1 persons, ladies and gentlemen. There are
2 many, so bear with me. If you are related by
3 blood or marriage to any of these
4 individuals, have any business dealings with
5 them, are socially or casually acquainted
6 with any of them, you need to stand and share
7 that information with the court:

8 The Citadel President, who is
9 General John Rosa.

10 Mark Brandenburg, who is an attorney
11 for The Citadel.

12 Colonel Joseph Trez

13 Jenny Garrott

14 Colonel John Lackey

15 Major William Bates

16 Chris Fudge

17 Dennis Carpenter

18 Chris Poston

19 Patrick Reid

20 Hunter Reid

21 O.C. Evans

22 Anna Bronke

23 Theresa Beacham

24 Gly Cowlshaw

25 Amy Huddeck

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1 Brendan Diffley
2 Clay Maynor
3 Jimmy Millar
4 Joe Hulsey
5 Reverend Samuel Joyner
6 Luke Jones
7 Janet Warren
8 Gary Margolis
9 Ann Franke
10 Greg McCrary
11 Louis ReVille
12 Carrie ReVille
13 Anna Bronke-Lutz
14 Jennifer Shield
15 Patrick Kinnard
16 William Fletcher
17 Carol Shakeshaft
18 Elizabeth Ralston
19 Katherine Emerick
20 Brandon Diffley
21 Joe Hulsey
22 Gus Burnham
23 Tucker Burnham
24 Marcus Colvin
25 Louis ReVille, which I think I've

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1 already said.

2 Lori Penland .

3 Any of those? Yes, sir?

4 JUROR NUMBER 112: Juror Number
5 112, General John Rosa is a family friend.

6 THE COURT: Would that influence
7 you in this case?

8 JUROR NUMBER 112: No, sir.

9 THE COURT: If General Rosa
10 testifies, will you be able to consider his
11 testimony the same as any witness?

12 JUROR NUMBER 112: Yes, sir.

13 THE COURT: And will you base your
14 decision on the evidence and the law and will
15 that decision be fair to both sides?

16 JUROR NUMBER 112: Yes, sir.

17 THE COURT: Again, your number?

18 JUROR NUMBER 112: One twelve
19 (112).

20 THE COURT: Thank you, sir. You
21 may be seated. Yes?

22 JUROR NUMBER 106: General Rosa was
23 one of my directors for my ---

24 THE COURT: Would that affect or
25 influence you, ma'am?

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1 JUROR NUMBER No.

2 THE COURT: If he testifies will
3 you be able to consider his testimony the
4 same as any witness?

5 JUROR NUMBER 106: Yes, sir.

6 THE COURT: And will you base your
7 decision on the evidence and the law and will
8 that decision be fair to both sides?

9 JUROR NUMBER 106: Yes, sir.

10 THE COURT: Your name and number?

11 JUROR NUMBER 106: One-o-six
12 (106).

13 THE COURT: Thank you. Are there
14 others? (No response), thank you. There
15 appear to be none.

16 Has any member of the jury panel or
17 any member of your family ever attended,
18 worked for, donated money to or otherwise
19 participated in the Summer Camp Programs,
20 Sports Camp Programs or programs affiliated
21 with The Citadel. If so, please stand?

22 JUROR: Would you re-ask that
23 question?

24 THE COURT: Yes. If you or any
25 member of your family has ever participated

1 in, supported, contributed money to, worked
2 for, attended any of the summer camps that
3 The Citadel has sponsored over the years.
4 Yes, ma'am?

5 JUROR NUMBER 385: I have three
6 nephews that attended The Citadel summer camp
7 programs, various times.

8 THE COURT: Would that affect or
9 influence you in this case?

10 JUROR NUMBER 385: No, sir.

11 THE COURT: If you heard testimony
12 concerning persons attending that camp, would
13 that influence or affect how you viewed that
14 testimony?

15 JUROR NUMBER 385: No, sir.

16 THE COURT: Would you base your
17 decision on the evidence and the law and
18 would it be fair to both sides?

19 JUROR NUMBER 385: Yes, sir.

20 THE COURT: Your number again?

21 JUROR NUMBER 385: Three eighty-
22 five (385).

23 THE COURT: Yes, ma'am?

24 JUROR NUMBER 14: My father was a
25 1966 graduate of The Citadel and is an active

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1 member of the alumni association.

2 THE COURT: Would that affect or
3 influence you in any way, ma'am?

4 JUROR NUMBER 14: No.

5 THE COURT: Would you base your
6 decision on the evidence and the law and
7 would it be fair to both sides?

8 JUROR NUMBER 14: Yes.

9 THE COURT: Your number again?

10 JUROR NUMBER 14: Fourteen (14).

11 THE COURT: Thank you. Yes, sir?

12 JUROR NUMBER 258: Clifton McDonald,
13 258.

14 THE COURT: Yes, sir?

15 JUROR NUMBER 258: I went to the
16 summer camp a long time ago.

17 THE COURT: You attended?

18 JUROR NUMBER 258: Yes, sir.

19 THE COURT: Would that affect or
20 influence you in this particular case?

21 JUROR NUMBER 258: No, sir.

22 THE COURT: Will you be able to
23 apply your experiences fairly and impartially
24 in analyzing any testimony concerning anyone
25 attending that camp, ---

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1 JUROR NUMBER 258: Yes.

2 THE COURT: --- should you hear
3 such testimony.

4 JUROR NUMBER 258: Yes, sir.

5 THE COURT: Would you base your
6 decision on the evidence and the law and
7 would it be fair to both sides?

8 JUROR NUMBER 258: It will.

9 THE COURT: Thank you, sir, you
10 may be seated. Yes, ma'am?

11 CHIP SLOAN: I'm sorry, Your Honor.
12 I need that juror number one more time.

13 THE COURT: Two fifty-eight (258).

14 JUROR NUMBER 148: Juror 148.
15 My little brother attended summer camp at The
16 Citadel for years.

17 THE COURT: Would that affect you
18 in any way, ma'am?

19 JUROR NUMBER 148: No.

20 THE COURT: If there is testimony
21 about attending that camp at any time, would
22 that influence or affect you unnecessarily or
23 unduly?

24 JUROR NUMBER 148: No, sir.

25 THE COURT: Would you base your

1 decision on the evidence and the law and
2 would it be fair to both sides?

3 JUROR NUMBER 148: Yes, sir.

4 THE COURT: Your number again?

5 JUROR NUMBER 148: One forty-eight
6 (148).

7 THE COURT: Thank you. Yes,
8 ma'am?

9 JUROR NUMBER 299: Yes, Your Honor.
10 My brother-in-law and my nephew attended a
11 couple of summer camps at The Citadel.

12 THE COURT: Will that affect you
13 in any way?

14 JUROR NUMBER 299: No, Your Honor.

15 THE COURT: Would you base your
16 decision on the evidence and the law and
17 would it be fair to both sides?

18 JUROR NUMBER 299: Yes, Your
19 Honor.

20 THE COURT: Your number again?

21 JUROR NUMBER 299: Two ninety-nine
22 (299).

23 THE COURT: Thank you. Are there
24 others? (No response), thank you. There
25 appear to be none.

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1 Are there any members of the jury
2 panel -- I know that I asked you about Louis
3 -- familiar with Louis "Skip" ReVille? If
4 so, please stand. (No response). Thank you,
5 there appear to be none.

6 Has any member of the jury panel
7 undergone Darkness to Light training or
8 completed other training regarding prevention
9 of child sexual abuse? If so, please stand.
10 Okay, we will start here and work our way
11 back.

12 JUROR NUMBER 237: My name is
13 Cynthia Sunde. I don't know the number. I'm
14 sorry. It was through my church, Darkness to
15 Light training.

16 THE COURT: Would that influence
17 you in this case?

18 JUROR NUMBER 237: (Negative
19 gesture).

20 THE COURT: Would you apply your
21 knowledge gleaned from that course, from your
22 study, fairly and impartially in analyzing
23 the evidence?

24 JUROR NUMBER 237: I would.

25 THE COURT: Would you base your

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1 decision on the evidence and the law and
2 would it be fair to both sides?

3 JUROR NUMBER 237: Yes.

4 THE COURT: And do we have her
5 number?

6 LAW CLERK: Two thirty-seven
7 (237).

8 THE COURT: Juror Number 237.
9 Thank you.

10 JUROR NUMBER 446: Hannah
11 Yaldaparast, Juror Number 446. I did the
12 Darkness to Light training through
13 Patterson's Academy, their summer camp.

14 THE COURT: Would that affect you
15 in any way in this case?

16 JUROR NUMBER 445: (Negative
17 gesture).

18 THE COURT: Would you be able to
19 apply your knowledge and experience fairly
20 and impartially in analyzing the evidence?

21 JUROR NUMBER 446: Yes, sir.

22 THE COURT: Would you base your
23 decision on the evidence and the law ---

24 JUROR NUMBER 446: Yes, sir.

25 THE COURT: --- and would that

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1 decision be fair and impartial to both sides?

2 JUROR NUMBER 446: Yes, sir.

3 THE COURT: Your number again?

4 JUROR NUMBER 446: Four four six
5 (446).

6 THE COURT: Thank you. Yes,
7 ma'am?

8 JUROR NUMBER 106: Annette
9 Dunmeyer. I did training for Darkness to
10 Light. Number 106.

11 THE COURT: Would that affect you
12 in this case?

13 JUROR NUMBER 106: It may.

14 THE COURT: Thank you, ma'am.
15 Your number again?

16 JUROR NUMBER 106: One-zero-six
17 (106).

18 THE COURT: Thank you, ma'am.
19 That's number thirty-one on the list. Number
20 thirty-one on the list is excused by the
21 court. Thank you, ma'am. Call the number
22 after six tonight.

23 (JUROR NUMBER 106 EXCUSED)

24 THE COURT: Okay. Yes, ma'am?

25 JUROR NUMBER 43: Number 43, Marlo

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1 Burgess. I've done Darkness training.

2 THE COURT: Will that affect you,
3 ma'am?

4 JUROR NUMBER 43: No.

5 THE COURT: Will you be able to
6 apply your knowledge and experience fairly
7 and impartially in analyzing the evidence?

8 JUROR NUMBER 43: Yes, sir.

9 THE COURT: Would you base your
10 decision on the evidence and the law and
11 would it be fair to both sides?

12 JUROR NUMBER 43: Yes, sir.

13 THE COURT: Your number?

14 JUROR NUMBER 43: Forty-three (43).

15 THE COURT: Yes, ma'am?

16 JUROR NUMBER 175: Shirley
17 Hendricks, Number 175. I've had Darkness to
18 Light training working with school programs.

19 THE COURT: Thank you. Would that
20 affect you in any way?

21 JUROR NUMBER 175: Yes, sir.

22 THE COURT: It would?

23 JUROR NUMBER 175: It would.

24 THE COURT: Thank you, ma'am.

25 Your number again?

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1 JUROR NUMBER 175: One seventy-
2 five (175).

3 THE COURT: Juror Number 175 --
4 and that is number sixty (on our list) is
5 excused by the court. Thank you, ma'am.
6 Call the number after six tonight.

7 (JUROR NUMBER 175 EXCUSED)

8 THE COURT: Yes, sir?

9 JUROR NUMBER 144: Chris Gilbert,
10 Number 144. I've not gone through Darkness
11 to Light but similar programs with the Boy
12 Scouts of America.

13 THE COURT: Would that affect you
14 in any way, sir?

15 JUROR NUMBER 144: No, sir.

16 THE COURT: And will you be able
17 to apply your knowledge and experience gained
18 through that fairly and impartially in
19 analyzing the evidence?

20 JUROR NUMBER 144: Yes, sir.

21 THE COURT: Will you base your
22 decision on the evidence and the law and will
23 that decision be fair to both sides, sir?

24 JUROR NUMBER 144: (Affirmative
25 nod), it will.

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1 THE COURT: Again, your number?

2 JUROR NUMBER 144: One forty-four
3 (144).

4 THE COURT: Yes?

5 JUROR NUMBER 325: George
6 Rauton, 325. I'm associated with the
7 Charleston Exchange Club, Coastal Fair, which
8 is a major contributor to the Darkness to
9 Light. I've seen a lot of their films. It
10 would not affect me.

11 THE COURT: It would not affect
12 you?

13 JUROR NUMBER 325: No, sir.

14 THE COURT: Would you apply your
15 knowledge and experience fairly and
16 impartially, sir?

17 JUROR NUMBER 325: Yes.

18 THE COURT: Would you base your
19 decision on the evidence and the law and
20 would it be fair to both sides?

21 JUROR NUMBER 325: Yes, Your Honor.

22 THE COURT: Your number again?

23 JUROR NUMBER 325: Three twenty-
24 five (325).

25 THE COURT: Thank you so much.

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1 You may be seated. Yes, ma'am?

2 JUROR NUMBER 385: May I go back
3 one question?

4 THE COURT: Sure.

5 JUROR NUMBER 385: That question
6 was are you familiar with Louis ReVille?

7 THE COURT: Yes.

8 JUROR NUMBER 385: Is that what you
9 said?

10 THE COURT: Yes.

11 JUROR NUMBER 385: I am.

12 THE COURT: I am going to ask you
13 to come forward and I'll -- I'll come down
14 there. Attorneys may approach as well.

15 SIDEBAR:

16 THE COURT: Right here with
17 this lovely lady (court reporter).

18 COURT REPORTER: Please give
19 me your number.

20 JUROR NUMBER 385: Three
21 eighty-five (385).

22 THE COURT: Yes, ma'am, how
23 are you familiar with Mr. ReVille?

24 JUROR NUMBER 385: I think
25 that he was an employee of the First Baptist

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1 church school where my daughter attended.

2 THE COURT: Okay.

3 JUROR NUMBER 385: Other than
4 that, I don't know who he is.

5 THE COURT: Would that affect
6 you ---

7 JUROR NUMBER 385: I don't
8 know.

9 THE COURT: I am going to
10 excuse you.

11 JUROR NUMBER 385: Okay.

12 THE COURT: Is that one of the
13 places that he worked?

14 GREGG MEYERS: Yes, Your
15 Honor, it's possible.

16 THE COURT: Do you think that
17 would affect you?

18 JUROR NUMBER 385: It could.
19 I don't know that it would, but I can
20 understand ---

21 THE COURT: Okay. Out of an
22 abundance of caution -- your number?

23 JUROR NUMBER 385: Three
24 eighty-five (385).

25 THE COURT: Thank you so much.

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1 (SIDEBAR CONCLUDED)

2 THE COURT: Juror Number 385 will
3 be excused from participation in this excuse.

4 CLERK DON MICHELE: Number twelve
5 on the list.

6 THE COURT: Number twelve is
7 excused by the court.

8 (JUROR NUMBER 385 EXCUSED)

9 THE COURT: Yes, ma'am?

10 JUROR NUMBER 95: My name is Lile
11 Dixon, Number 95, and I am a Spanish
12 interpreter for Child Protective Services and
13 Adult Protective Services.

14 THE COURT: Would that affect you?

15 JUROR NUMBER 95: It involves the
16 Darkness to Light training, yes.

17 THE COURT: But in your dealing
18 with that in your dealings as an interpreter,
19 you obviously interpret in a number of
20 situations from time to time. Is that
21 correct?

22 JUROR NUMBER 95: Yes, sir.

23 THE COURT: Would you apply your
24 experiences fairly and impartially ---

25 JUROR NUMBER 95: Yes.

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1 THE COURT: Will you base your
2 decision on the evidence and the law and will
3 that decision be fair to both sides?

4 JUROR NUMBER 95: Yes.

5 THE COURT: Number 95 will remain.
6 Thank you, ma'am. Any others? (No
7 response).

8 All right. How are we going to do
9 this one? If any member of the jury panel is
10 a parent, I need for you to stand and --
11 let's start with the first row and work our
12 way back. Just tell me your children and
13 their ages, and give me your name and number.
14 We'll start -- and those at the back, you can
15 just wait and we will do it a row at a time
16 and that way you won't have to stand so long.
17 First row first.

18 JUROR NUMBER 341: Tamera Roman,
19 Number 341. Three children: ages twenty-
20 five, twenty-six and twenty-seven.

21 THE COURT: Thank you.

22 JUROR NUMBER 237: Cynthia Sunde,
23 Juror Number 237. One child, nineteen.

24 JUROR NUMBER 344: Brenda Roscher,
25 Number 344. I have two daughters, thirty and

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1 thirty-four.

2 JUROR NUMBER 31: Joseph Boyd,
3 Juror Number 31. I have two daughters, one
4 forty-three and one thirty-three.

5 JUROR NUMBER 407: Juror 407. I
6 have two and four step-, so I have six, ages
7 twenty-one to thirty-two.

8 THE COURT: Second row?

9 JUROR NUMBER 252: My number is
10 252. I have two boys: twenty-one, twenty-
11 four.

12 JUROR NUMBER 364: My number is
13 364. I have one son who is thirty-one.

14 JUROR NUMBER 111: Juror Number
15 111. Three sons: thirty, thirty-five and
16 forty-five.

17 JUROR NUMBER 95: Juror Number 95.
18 I have two sons and a daughter: forty-one,
19 thirty-seven and twenty-six.

20 JUROR NUMBER 258: Juror Number
21 258. Three sons: twenty-seven, twenty-four
22 and seventeen.

23 JUROR NUMBER 425: Juror Number
24 425. I have three children and four
25 grandchildren: Sons, thirty-four and thirty.

1 Daughter, twenty-eight. I have three
2 grandsons: five, three and one. One
3 granddaughter, who is one.

4 JUROR NUMBER 325: I have two
5 children, two grandchildren and two great-
6 grandchildren. The ages of my children are
7 fifty-one and fifty-eight.

8 COURT REPORTER: Your number, sir?

9 THE COURT: Your number?

10 JUROR NUMBER 325: Three twenty-
11 five (325).

12 JUROR NUMBER 45: Juror Number 45,
13 one daughter two years old.

14 THE COURT: Next row, please.

15 JUROR NUMBER 330: My son is
16 thirty.

17 COURT REPORTER: Her number?

18 THE COURT: Number, please?

19 JUROR NUMBER 330: Three thirty
20 (330).

21 JUROR NUMBER 376: Number 376, I
22 have a twenty-three year old son.

23 JUROR NUMBER 391: I am Juror 391.
24 I have twin girls who are thirty-six and a
25 son who is twenty-nine.

1 JUROR NUMBER 192: I don't know my
2 juror number, but I'm Michael Hunt, H-u-n-t.
3 I have four children. I have a three-year-
4 old daughter, a five-year-old son, a twelve-
5 year-old daughter and a sixteen-year-old
6 stepdaughter.

7 JUROR NUMBER 43: Juror Number 43,
8 Marlo Burgess. I have a five-year-old son
9 and an eleven-year-old son.

10 JUROR NUMBER 199: Juror 199,
11 Harold Jarrett. Two children, a daughter
12 forty-nine and a son forty-seven; two grand-
13 daughters, one seventeen and one sixteen.

14 THE COURT: Next row.

15 JUROR NUMBER 144: Chris Gilbert,
16 Number 144. I have two sons, twenty-four and
17 seventeen, and a daughter who is nineteen.

18 JUROR NUMBER 16: Barry Baird,
19 Number 16. I have two sons; one eight, one
20 ten.

21 JUROR NUMBER 188: Scott Howell,
22 Juror Number 188. I have two daughters;
23 twenty-four and nineteen.

24 JUROR NUMBER 315: I am Cassandra
25 Poinsett. I am Juror 315. I have four

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1 children. I've got three girls. My oldest
2 daughter is thirty-four, I have one thirty-
3 two, my son today turned twenty-seven and my
4 youngest daughter is twenty-three.

5 JUROR NUMBER 100: My name is
6 Angelia Drayton and my number is 100. I have
7 four kids. I have two boys, one twenty-seven
8 and one thirty-four. I have two girls, one
9 twenty-one and one is twenty-nine.

10 JUROR NUMBER 17: Ellen Baldino,
11 Number 17. I have one son, age two.

12 JUROR NUMBER 91: Terri Delatour-
13 DuPavillion. I am Number 91. I have a
14 twenty-one year old daughter.

15 JUROR NUMBER 200: Mark Jeffcoat,
16 Juror Number 200. I have two children, a son
17 thirty-one, a daughter twenty-eight and a
18 two-year-old grandson.

19 THE COURT: Yes?

20 JUROR NUMBER 299: Katie O'Neill,
21 Juror 299. I have one daughter, she is
22 sixteen months old.

23 JUROR NUMBER 247: Denise
24 Maksimowitz, Number 247. I have two
25 children, a daughter who is forty-three,

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1 a son who is thirty-nine; and five
2 grandchildren: twenty-one, thirteen, nine,
3 seven, and -- (pause).

4 THE COURT: Thank you very much,
5 ladies and gentlemen. Congratulations to all
6 of you as well.

7 Are there any members of the jury
8 panel or any member of your family who have
9 participated in any activity, program or had
10 any involvement with the following agencies
11 or institutions:

12 Pinewood Preparatory School
13 Coastal Christian Preparatory
14 Eastbridge Presbyterian Church
15 Velocity Sports Performance
16 Bishop England High School
17 Rawlins Middle School for Arts
18 Moultrie Middle School and
19 Mt. Pleasant Recreational Department

20 JUROR NUMBER 70: John Constantine,
21 Number 70. I graduated Bishop England.

22 THE COURT: If you heard testimony
23 concerning that school, of anyone, would you
24 be able to -- would that unduly influence
25 you, sir?

1 JUROR NUMBER 70: No, Your Honor.

2 THE COURT: Would you base your
3 decision on the evidence and the law and
4 would it be fair to both sides?

5 JUROR NUMBER 70: Yes, sir.

6 THE COURT: Will you base your
7 decision on the evidence and the law ---

8 JUROR NUMBER 70: Uh, -- yes, sir.

9 THE COURT: Sorry, I just asked
10 you that. Thank you. You will be fair to
11 both sides?

12 JUROR NUMBER 70: Yes, sir.

13 THE COURT: Your number again?

14 JUROR NUMBER 70: Seventy (70).

15 THE COURT: Yes, sir?

16 JUROR NUMBER 325: George Rauton,
17 325. My daughter was a teacher at Pinewood,
18 Pinewood Preparatory, a few years. She is
19 not now.

20 THE COURT: Would that affect or
21 influence you in this dispute?

22 JUROR NUMBER 325: No, Your Honor.

23 THE COURT: If there is testimony
24 concerning Pinewood, would that unduly
25 influence you at all?

1 JUROR NUMBER 325: Yes, Your Honor.

2 THE COURT: It would unduly
3 influence you?

4 JUROR NUMBER 325: Oh -- no, sir.

5 THE COURT: You would be able to
6 consider that testimony the same as any
7 testimony?

8 JUROR NUMBER 325: Yes, sir.

9 THE COURT: And you'd base your
10 decision on the evidence and the law, and it
11 would be fair to both sides?

12 JUROR NUMBER 325: Yes, Your Honor.

13 THE COURT: Thank you, sir. You
14 may be seated. Yes, ma'am?

15 JUROR NUMBER 364: Number 364. My
16 son went to Moultrie Middle School and also
17 participated in a lot of the activities with
18 the Mt. Pleasant Recreational Department.

19 THE COURT: Would that influence
20 you in this case?

21 JUROR NUMBER 364: No, sir.

22 THE COURT: If you heard testimony
23 concerning someone's involvement with any of
24 those programs or that school, would that
25 affect you unduly?

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1 JUROR NUMBER 364: No, sir.

2 THE COURT: Would you base your
3 decision on the evidence and the law and will
4 it be fair to both sides?

5 JUROR NUMBER 364: Yes, sir.

6 THE COURT: Your number again?

7 JUROR NUMBER 364: Three-six-four
8 (364).

9 THE COURT: Thank you. Yes,
10 ma'am?

11 JUROR NUMBER 252: Number 252.
12 Both of my sons also graduated from Moultrie
13 and participated in recreational ---

14 THE COURT: Would that affect you
15 in any -- unduly?

16 JUROR NUMBER 252: No, sir.

17 THE COURT: Will you be able to
18 base your decision on the evidence and the
19 law ---

20 JUROR NUMBER 252: (Affirmative
21 nod).

22 THE COURT: --- and will it be
23 fair to both sides?

24 JUROR NUMBER 252: Yes, sir.

25 THE COURT: Yes, ma'am?

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1 JUROR NUMBER 413: Number 413. I
2 have two uncles that attended and graduated
3 from Bishop England.

4 THE COURT: Would that affect you
5 in any way?

6 JUROR NUMBER 413: No, sir.

7 THE COURT: Would any testimony
8 about Bishop England, you could consider that
9 the same as any other evidence?

10 JUROR NUMBER 413: Yes, sir.

11 THE COURT: And you would base
12 your decision on the evidence and the law and
13 it would be fair to both sides?

14 JUROR NUMBER 413: Yes, sir.

15 THE COURT: Yes, sir?

16 JUROR NUMBER 188: Scott Howell,
17 188. My twenty-four year old daughter
18 attended kindergarten at Pinewood.

19 THE COURT: Okay. Would that
20 affect you in any way, sir?

21 JUROR NUMBER 188: No, Your Honor.

22 THE COURT: And would you base
23 your decision on the evidence and the law and
24 would it be fair to both sides?

25 JUROR NUMBER 188: Yes, sir, Your

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1 Honor.

2 THE COURT: Your number again?

3 JUROR NUMBER 188: One eighty-
4 eight (188).

5 THE COURT: Thank you, sir. Yes?

6 JUROR NUMBER 293: I was a student
7 at Moultrie Middle School and was active in
8 sports with the MPRD.

9 THE COURT: Okay. Would that
10 affect you in any way, sir?

11 JUROR NUMBER 293: No, sir.

12 THE COURT: And if there was
13 testimony concerning that, would you be able
14 to consider that testimony the same as any
15 testimony?

16 JUROR NUMBER 293: Yes, sir.

17 THE COURT: Would you base your
18 decision on the evidence and the law and it
19 would be fair to both sides?

20 JUROR NUMBER 293: Yes, sir.

21 THE COURT: Your number again?

22 JUROR NUMBER 293: Two-nine-three
23 (293).

24 THE COURT: Thank you. Yes,
25 ma'am?

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1 JUROR NUMBER 280: I am Caroline
2 Mullis. I believe that my number is 280.
3 I also went to Moultrie Middle School and
4 played recreational sports with Mt. Pleasant.

5 THE COURT: Would that affect you
6 in any way?

7 JUROR NUMBER 280: No, sir.

8 THE COURT: Would you base your
9 decision on the applicable law and be fair to
10 both sides?

11 JUROR NUMBER 280: Yes, sir.

12 THE COURT: Thank you. Yes,
13 ma'am?

14 JUROR NUMBER 84: Lawanda Davis,
15 Number 84. I graduated from Bishop England
16 High School.

17 THE COURT: Would that influence
18 or affect you in this case?

19 JUROR NUMBER 84: No, sir.

20 THE COURT: And if you heard
21 testimony concerning something involving that
22 school, would you be able to evaluate that
23 testimony fairly and impartially?

24 JUROR NUMBER 84: Yes, sir.

25 THE COURT: Thank you. Yes,

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1 ma'am?

2 JUROR NUMBER 247: Denise
3 Maksimowitz, and I believe that my two
4 grandsons played soccer with Mt. Pleasant
5 Recreational.

6 THE COURT: Would that affect or
7 influence you in any way?

8 JUROR NUMBER 247: No.

9 THE COURT: Would you base your
10 decision on the evidence and the law and
11 would it be fair to both sides?

12 JUROR NUMBER 247: Yes.

13 THE COURT: Are there others? (No
14 response). Thank you. There appear to be
15 none.

16 Has any member of the jury panel
17 even been employed as a counselor at an
18 overnight summer camp? If so, please stand.
19 Yes?

20 JUROR NUMBER 43: I was -- Juror
21 Number 43, Marlo Burgess. In college I
22 worked at Camp St. Christopher.

23 THE COURT: All right. Would you
24 be able to apply that experience fairly and
25 impartially if you heard testimony concerning

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1 overnight camps? .

2 JUROR NUMBER 43: Yes, sir.

3 THE COURT: Would you base your
4 decision on the evidence and the law and
5 would it be fair to both sides?

6 JUROR NUMBER 43: Yes.

7 THE COURT: Your number again?

8 JUROR NUMBER 43: Forty-three (43).

9 THE COURT: Thank you. Yes, sir?

10 JUROR NUMBER 112: Juror 112. A
11 volunteer counselor for Special Olympics
12 (phonetic).

13 THE COURT: Would that affect or
14 influence your decision?

15 JUROR NUMBER 112: No, sir.

16 THE COURT: Would you be able to
17 apply your experiences in that capacity
18 fairly and impartially in analyzing the
19 evidence?

20 JUROR NUMBER 112: Yes, sir.

21 THE COURT: Would you base your
22 decision on the evidence and the law and
23 would it be fair to both sides?

24 JUROR NUMBER 112: Yes, sir.

25 THE COURT: Thank you. Yes, sir?

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1 JUROR NUMBER 144: Chris Gilbert,
2 Juror 144. In my much younger days, Your
3 Honor, I served as a camp counselor for two
4 different camps in St. Louis-- or outside St.
5 Louis, Missouri.

6 THE COURT: Would you be able to
7 apply that experience gleaned in that
8 capacity fairly and impartially?

9 JUROR NUMBER 144: Yes, sir.

10 THE COURT: Would you base your
11 decision on the evidence and the law and
12 would it be fair to both sides?

13 JUROR NUMBER 144: Yes, sir.

14 THE COURT: Thank you so much.
15 You may be seated. Are there others? (No
16 response). There appear to be none.

17 Is there any member of the jury
18 panel who have read articles, watched TV
19 programs, had any discussion or any knowledge
20 about the arrest, investigation or conviction
21 of Louis "Skip" ReVille? If so, please stand
22 -- (number of jurors respond by standing).

23 All right, we will bring you forward
24 one at a time and let you discuss it with us.
25 Attorneys may approach.

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1 BAILIFF: Juror Number 14.

2 SIDEBAR:

3 THE COURT: Yes, sir?

4 JUROR NUMBER 14: I ---

5 COURT REPORTER: May I have
6 your number for the record?

7 JUROR NUMBER 14: My name is
8 Jane Babb and I am Juror Number 14.

9 COURT REPORTER: Thank you.

10 THE COURT: If you could just
11 slide over here and face this way.

12 JUROR NUMBER 14: Okay. All I
13 know is what I saw in news articles and I
14 recognized the name. That's all.

15 THE COURT: Would that affect
16 you?

17 JUROR NUMBER 14: No.

18 THE COURT: You would be able
19 to consider only the testimony and to apply
20 it fairly and impartially to the facts that
21 you hear?

22 JUROR NUMBER 14: Yes.

23 THE COURT: Any other
24 questions? (No verbal response from
25 counsel).

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1 (SIDEBAR ENDED)

2 THE COURT: Juror Number 14 will
3 remain.

4 SIDEBAR:

5 THE COURT: Y'all can ask any
6 other questions that you need to when we get
7 them on individual voir dire. Your name and
8 number, please?

9 JUROR NUMBER 382: Martha
10 Rachel Sneed, Number 382.

11 THE COURT: What do you know?

12 JUROR NUMBER 382: I just
13 remember seeing it all over the news.

14 THE COURT: Would that affect
15 you in this case?

16 JUROR NUMBER 382: No, sir.

17 THE COURT: Would you be
18 unduly influenced by anything you saw on the
19 news?

20 JUROR NUMBER 382: No, sir.

21 THE COURT: Would you base
22 your decision on the evidence and the law and
23 would it be fair to both sides?

24 JUROR NUMBER 382: Yes, sir.

25 (SIDEBAR CONCLUDED)

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1 THE COURT: Thank you.

2 GREGG MEYERS: What was that
3 juror's name?

4 THE COURT: Number 382.

5 COURT REPORTER: Martha Rachel
6 Sneed.

7 THE COURT: Okay. Juror Number
8 382 will remain.

9 SIDEBAR:

10 THE COURT: Your name and
11 number, please?

12 JUROR NUMBER 292: Janet
13 Newham, Number 292.

14 THE COURT: All right. What
15 do you know?

16 JUROR NUMBER 292: Nothing
17 specific, general news items in the paper.

18 THE COURT: Would that affect
19 you in this case?

20 JUROR NUMBER 292: No, sir.

21 THE COURT: Would you make
22 your decision based on the evidence and the
23 law, ---

24 JUROR NUMBER 292: (Affirmative
25 nod).

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1 THE COURT: --- and it would
2 be fair to both sides?

3 JUROR NUMBER 292: Yes, sir.

4 THE COURT: Thank you.

5 (SIDEBAR CONCLUDED)

6 THE COURT: Number 292 will
7 remain.

8 SIDEBAR:

9 THE COURT: Yes, sir, your
10 name and number?

11 JUROR NUMBER 31: Joe Boyd,
12 Number 31.

13 THE COURT: Okay. What do you
14 know about Mr. ReVille?

15 JUROR NUMBER 31: Not much. I
16 heard some news reports when he was arrested.

17 THE COURT: If you heard some
18 testimony about allegations of sexual abuse,
19 would that unduly influence you?

20 JUROR NUMBER 31: No, sir.

21 THE COURT: You would base
22 your decision on the evidence and the law
23 considering both sides?

24 JUROR NUMBER 31: Oh, yes.

25 THE COURT: And your decision

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1 would be fair and impartial to both sides?

2 JUROR NUMBER 31: It would.

3 THE COURT: Thank you, sir.

4 (SIDEBAR CONCLUDED)

5 THE COURT: Number 31 will

6 remain.

7 SIDEBAR:

8 THE COURT: Your name and

9 number?

10 Juror number 112: Bret Epps,

11 Number 112.

12 THE COURT: What information

13 do you have?

14 JUROR NUMBER 112: Just heard

15 the news reports. I don't know the results.

16 THE COURT: Do you remember
17 anything specifically about the allegations?

18 JUROR NUMBER 112: Yes, that
19 there was sexual molestations that went on at
20 The Citadel that were not taken care of or
21 were inappropriately handled and that some-
22 body was responsible for it.

23 THE COURT: Would that
24 influence you in this case?

25 JUROR NUMBER 112: I don't

1 think so.

2 THE COURT: Out of an
3 abundance of caution, because you used the
4 term "inappropriately handled", I am going
5 to excuse you from participation in this
6 dispute.

7 (SIDEBAR CONCLUDED)

8 THE COURT: Number 112 will be
9 excused from participation. Call the number
10 after six tonight, sir. Thank you.

11 (JUROR NUMBER 112 EXCUSED)

12 THE COURT: Okay.

13 SIDEBAR:

14 THE COURT: Your name and
15 number?

16 JUROR NUMBER 344: Number 344,
17 Brenda Roscher.

18 THE COURT: What do you know?

19 JUROR NUMBER 344: Honestly,
20 I've heard enough that I don't know that I
21 can be impartial.

22 THE COURT: I appreciate that.
23 That's exactly why we ask these questions. I
24 admire you for being forthright. That's why
25 I admire this system so much and you're a

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1 classic example of it. Thank you for that.

2 (SIDEBAR CONCLUDED)

3 THE COURT: Number 344 is excused.

4 Call the number after six tonight.

5 (JUROR NUMBER 344 EXCUSED)

6 THE COURT: Thank you.

7 SIDEBAR:

8 THE COURT: Your name and
9 number, sir?

10 JUROR NUMBER 425: Wayne Wells,
11 425.

12 THE COURT: Yes, sir, Mr.
13 Wells. What do you know?

14 JUROR NUMBER 425: I don't
15 remember a lot. I know I heard some news
16 reports and read some articles.

17 THE COURT: Would it affect or
18 influence you in this case?

19 JUROR NUMBER 425: No.

20 THE COURT: Would you be able
21 to set aside what you've heard and make your
22 decision based on the evidence presented in
23 this trial, ---

24 JUROR NUMBER 425: Yes, sir.

25 THE COURT: --- and not be

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1 influenced by what you may have heard before?

2 JUROR NUMBER 425: Yes, sir.

3 THE COURT: You can make that
4 commitment?

5 JUROR NUMBER 425: Yes, sir.

6 THE COURT: So your decision
7 would be based on the evidence and the law
8 and would be fair to both sides?

9 JUROR NUMBER 425: Yes, sir.

10 THE COURT: Thank you very
11 much.

12 (SIDEBAR CONCLUDED)

13 THE COURT: Number 425 will
14 remain.

15 RANDALL STONEY: What was his name?

16 COURT REPORTER: Mr. Wayne Wells,
17 425.

18 SIDEBAR:

19 THE COURT: Yes, ma'am, your
20 name?

21 JUROR NUMBER 267: Suzanne
22 Mesznereltrich.

23 THE COURT: What is your
24 number?

25 JUROR NUMBER 267: Number 267.

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1 THE COURT: How do you know
2 Mr. ReVille?

3 JUROR NUMBER 267: I don't.
4 I just recall the name from news reports.

5 THE COURT: Would that affect
6 you in any way?

7 JUROR NUMBER 267: This isn't
8 that trial, is it? This is not a criminal
9 case, you said?

10 THE COURT: No, but the fact
11 that he was convicted, would you be able to
12 evaluate the evidence fairly and impartially
13 in this case and base your decision on what
14 you hear in this case?

15 JUROR NUMBER 267: I would.

16 THE COURT: So you would not
17 be influenced by what you heard in that case?

18 JUROR NUMBER 267: No.

19 THE COURT: And you would base
20 your decision on the evidence and the law and
21 that decision would be fair to both sides?

22 JUROR NUMBER 267: Yes, sir.

23 THE COURT: You can make that
24 commitment to both sides, that what you may
25 have heard would not unduly influence you in

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1 this case?

2 JUROR NUMBER 267: I can.

3 (SIDEBAR CONCLUDED)

4 THE COURT: Juror Number 267 will
5 remain. Thank you.

6 SIDEBAR:

7 THE COURT: Let's trade
8 places.

9 JUROR NUMBER 159: Okay.

10 THE COURT: Your name and
11 number, sir?

12 JUROR NUMBER 159: Fred Guthier.

13 THE COURT: What knowledge or
14 information do you have?

15 JUROR NUMBER 159: I remember
16 reading an article or articles in the Post &
17 Courier of allegations of sexual harassment.

18 THE COURT: Would that affect
19 or influence you in any way in this case?

20 JUROR NUMBER 159: No.

21 THE COURT: Would you be able
22 to set that aside and not use -- not be
23 influenced by anything that you heard or read
24 in that case but make a decision on the
25 evidence and the law that you hear in this

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1 case?

2 JUROR NUMBER 159: (Affirmative
3 nod), I can make my decision based on the
4 evidence and the law.

5 THE COURT: In this case?

6 JUROR NUMBER 159: Yes, sir.

7 THE COURT: And you can make
8 that commitment to both sides?

9 JUROR NUMBER 159: Yes.

10 THE COURT: Number 159?

11 JUROR NUMBER 159: That's
12 right.

13 (SIDEBAR CONCLUDED)

14 THE COURT: Number 159 will
15 remain.

16 SIDEBAR:

17 THE COURT: Come on up. Thank
18 you. Your name, please?

19 JUROR NUMBER 111: I'm Leah
20 Edwards.

21 THE COURT: Okay, Ms. Edwards,
22 what do you know?

23 JUROR NUMBER 111: I read
24 about it in the paper and saw some reports on
25 the news, television.

1 THE COURT: Would that affect
2 or influence you?

3 JUROR NUMBER 111: Probably
4 not.

5 THE COURT: Do you recall
6 anything specific?

7 JUROR NUMBER 111: Yes, sir,
8 the name, Skip ReVille, and something to do
9 with The Citadel, some improprieties with
10 students -- or campers or something to do
11 with The Citadel that was not quite --
12 proper. I just recall following it.

13 THE COURT: You followed it,
14 why?

15 JUROR NUMBER 111: It was
16 just there on the news. I saw it however
17 many times it was on there.

18 THE COURT: Do you believe
19 that would influence you in this case?

20 JUROR NUMBER 111: Hummm --
21 (pause).

22 THE COURT: I've learned over
23 the years that when someone says "hummm", that
24 tells me something. I appreciate that.
25 Thank you. That's fine, I appreciate your

1 candor.

2 (SIDEBAR CONCLUDED)

3 THE COURT: Number 111 will be
4 excused from participation in this case.
5 Please call the number after six tonight.

6 (JUROR NUMBER 111 EXCUSED)

7 THE COURT: Okay.

8 SIDEBAR:

9 THE COURT: Your name and
10 number?

11 JUROR NUMBER 247: Denise
12 Maksimowitz, I'm Juror Number 247.

13 THE COURT: Yes, ma'am, what
14 do you remember?

15 JUROR NUMBER 247: I remember
16 when it was on the news that he was arrested,
17 kinda what went on then. I believe that he
18 was found guilty or that he cooperated and
19 that was on the news also, that he gave
20 evidence against himself, and I believe that
21 he was given a sentence.

22 THE COURT: Okay. Would any
23 of that influence you in this dispute?

24 JUROR NUMBER 247: I don't
25 believe so, no.

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1 THE COURT: I appreciate that
2 but can you make a commitment to both sides
3 that you will not be influenced by any
4 decision of his guilt or sentence?

5 JUROR NUMBER 247: Yes.

6 THE COURT: And you could
7 consider the testimony in this case fairly
8 and impartially and evaluate it fairly and
9 impartially?

10 Juror number 247: Yes.

11 THE COURT: Thank you.

12 (SIDEBAR CONCLUDED)

13 THE COURT: Number 247 will
14 remain. Thank you. Y'all can ask follow-up
15 questions during voir dire.

16 SIDEBAR:

17 THE COURT: Your name and
18 number?

19 JUROR NUMBER 95: Number 95.

20 THE COURT: Yes, ma'am, what
21 do you remember?

22 JUROR NUMBER 95: I remember
23 that he was charged with molestation of some
24 children at The Citadel, a number of --
25 sorry, I've got a frog in my throat.

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1 THE COURT: That's okay.

2 JUROR NUMBER 95: I think it
3 was at the school where he was teaching in
4 Summerville also, or something related to
5 that. That's all that I can remember.

6 THE COURT: Would that affect
7 you?

8 JUROR NUMBER 95: No.

9 THE COURT: You would be able
10 to set that aside and be able to make a
11 decision based on what you hear in this case?

12 JUROR NUMBER 95: Yes, sir.

13 THE COURT: And not be
14 influenced by what you've heard or read about
15 Mr. ReVille's involvement on any criminal
16 side?

17 JUROR NUMBER 95: Correct.

18 THE COURT: You would not be
19 influenced by that?

20 JUROR NUMBER 95: No.

21 THE COURT: And your decision
22 would be fair to both sides?

23 JUROR NUMBER 95: Yes.

24 THE COURT: Thank you.

25 (SIDEBAR CONCLUDED)

1 THE COURT: Number 95 will remain.

2 SIDEBAR:

3 THE COURT: How are you, sir?

4 JUROR NUMBER 192: I'm well.

5 Yourself?

6 THE COURT: Your name and
7 number, please.

8 JUROR NUMBER 192: Michael Hunt
9 is my name. I don't know my juror number.
10 Sorry.

11 THE COURT: That's all right.
12 We will help you.

13 COURT REPORTER: Number 192.

14 THE COURT: You are Number
15 192.

16 THE COURT: Okay. Tell me
17 what you know.

18 JUROR NUMBER 192: I don't
19 recall specifics. I recall that a couple of
20 years it was on TV about this man. I don't
21 watch a whole lot of news, but I came up just
22 to say that I've heard the name; but I don't
23 recall specifics.

24 THE COURT: Sure. So you
25 don't remember any specifics?

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1 JUROR NUMBER 192: I'm sorry,
2 I do not. No, sir.

3 THE COURT: So would you be
4 influenced by what you've heard?

5 JUROR NUMBER 192: I don't even
6 remember what I've heard, to be fair.

7 THE COURT: Very well. So you
8 can make the commitment that that would not
9 influence you?

10 JUROR NUMBER 192: Yes, sir.

11 THE COURT: Would you base
12 your decision on the evidence and the law?

13 JUROR NUMBER 192: Absolutely.

14 THE COURT: And it would be
15 fair to both sides?

16 JUROR NUMBER 192: Absolutely.

17 THE COURT: Thank you, sir.

18 (SIDEBAR CONCLUDED)

19 THE COURT: Number 192 will
20 remain. Thank you.

21 SIDEBAR:

22 JUROR NUMBER 199: Juror 199,
23 Harold Jarrett.

24 THE COURT: Thank you, Mr.
25 Jarrett. What do you know about this?

1 JUROR NUMBER 199: I don't
2 remember a whole lot. I am casually aware of
3 it through the television news, and that's
4 about all. But I -- I've heard about it, but
5 that's all.

6 THE COURT: Sure. Would that
7 affect you in any way?

8 JUROR NUMBER 199: No, sir.

9 THE COURT: Would you be able
10 to make a decision based on the evidence in
11 this case and not be influenced by what
12 you've heard?

13 JUROR NUMBER 199: Yes, sir.

14 THE COURT: You can make that
15 commitment to both sides?

16 JUROR NUMBER 199: Yes, sir.

17 THE COURT: Thank you, sir.

18 (SIDEBAR CONCLUDED)

19 THE COURT: Number 199 will
20 remain. Thank you, sir.

21 SIDEBAR:

22 THE COURT: Hi.

23 JUROR NUMBER 43: Hey. Number
24 43, Marlo Burgess.

25 THE COURT: Thank you, Ms.

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1 Burgess. What do you know?

2 JUROR NUMBER 43: Just heard it
3 on the news.

4 THE COURT: Do you remember
5 particulars?

6 JUROR NUMBER 43: No.

7 THE COURT: Would that affect
8 you in ---

9 JUROR NUMBER 43: No.

10 THE COURT: Will you be able
11 to make a commitment that it will not
12 influence you in evaluating the evidence in
13 this case?

14 JUROR NUMBER 43: Yes, sir.

15 THE COURT: Would you base
16 your decision on the evidence and the law in
17 this case?

18 JUROR NUMBER 43: Yes.

19 THE COURT: And your decision
20 would be fair to both sides?

21 JUROR NUMBER 43: Yes.

22 THE COURT: Thank you so much.

23 (SIDEBAR CONCLUDED)

24 THE COURT: Juror Number 43 will
25 remain.

1 SIDEBAR:

2 JUROR NUMBER 144: Last, but not
3 least.

4 THE COURT: Oh, for sure.
5 Your number?

6 JUROR NUMBER 144: Chris
7 Gilbert, Number 144.

8 THE COURT: Yes, sir. What do
9 you recall?

10 JUROR NUMBER 144: Whatever I
11 read was a few years back and I recall the
12 name in a very general sense.

13 THE COURT: Would that affect
14 you in deciding this case?

15 JUROR NUMBER 144: No, sir.

16 THE COURT: You can set that
17 aside and decide this case based on the
18 evidence in this case?

19 JUROR NUMBER 144: Absolutely.

20 THE COURT: You can evaluate
21 the evidence in this case and not be
22 influenced by what you may have seen or read
23 in the news?

24 JUROR NUMBER 144: Yes, sir.

25 THE COURT: Would you base

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1 your decision on the evidence and the law and
2 would it be fair to both sides?

3 JUROR NUMBER 144: I can,
4 (affirmative nod).

5 THE COURT: Your number again?

6 JUROR NUMBER 144: Number 144.

7 (SIDEBAR CONCLUDED)

8 THE COURT: Number 144 will
9 remain. Thank you. Are there any others?
10 (No response). Thank you. There is no
11 response.

12 Are there any members of the jury
13 panel that ---

14 BAILIFF: Your Honor, we have
15 one juror who stepped to the restroom.

16 THE COURT: Okay, sure. Let's
17 wait for just a second. Is there anybody
18 else that needs to take a break? If you do,
19 feel free to do so. We are getting close to
20 finishing the qualification. I am cognizant
21 of the hour. You didn't know that you'd be
22 starting a diet today. I promise we won't be
23 much longer.

24 (JURORS RETURN TO COURTROOM)

25 THE COURT: Okay, do we have them

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1 all?

2 BAILIFF: Yes, sir.

3 THE COURT: The next question,
4 ladies and gentlemen, is has any member of
5 the jury panel ever brought a suit, made a
6 claim or had one made against them. It
7 doesn't have to have been tried in this
8 court; it could have been tried in any court.
9 If you have ever done that, please stand.
10 Yes, sir?

11 JUROR NUMBER 32: Tim Brunner. My
12 number is fifty-two (sic).

13 THE COURT: What was it?

14 JUROR NUMBER 32: I was a party in a
15 civil lawsuit.

16 THE COURT: Against?

17 JUROR NUMBER 32: (No verbal
18 response).

19 THE COURT: What was the nature of
20 the suit?

21 JUROR NUMBER 32: Can I speak to you
22 in private?

23 THE COURT: Was it an automobile
24 accident?

25 JUROR NUMBER 32: No, sir.

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1 THE COURT: Yes, please come
2 forward. I tell you what. If you will hold
3 on just a second, we will come back to you.

4 JUROR NUMBER 32: Okay.

5 THE COURT: Yes, sir?

6 JUROR NUMBER 325: George Rauton,
7 325. I had brought suit against an insurance
8 company when I was in business and we had a
9 fire.

10 THE COURT: Has that matter been
11 resolved?

12 JUROR NUMBER 325: Yes, sir.

13 THE COURT: You brought the claim?

14 JUROR NUMBER 325: Yes, sir.

15 THE COURT: Would that affect or
16 influence you in this dispute?

17 JUROR NUMBER 325: No, sir.

18 THE COURT: Thank you, sir. You
19 may be seated. Yes, ma'am?

20 JUROR NUMBER 366: I had a claim
21 against auto insurance.

22 THE COURT: Has that been
23 resolved, ma'am?

24 JUROR NUMBER 366: Yes, it's been
25 resolved.

1 THE COURT: And you brought the
2 claim?

3 JUROR NUMBER 366: (Affirmative nod).

4 THE COURT: Would that affect you
5 in this dispute?

6 JUROR NUMBER 366: No.

7 THE COURT: Your number, please?

8 JUROR NUMBER 366: Three sixty-six
9 (366).

10 THE COURT: Your name?

11 JUROR NUMBER 366: Annabell
12 Simmons.

13 THE COURT: Ms. Simmons, thank
14 you. Yes, ma'am?

15 JUROR NUMBER 267: We had a
16 workman's claim related to construction.

17 THE COURT: Construction?

18 JUROR NUMBER 267: Yes.

19 THE COURT: Has it been resolved?

20 JUROR NUMBER 267: Yes, sir.

21 THE COURT: You brought the claim?

22 JUROR NUMBER 267: No, my husband
23 did.

24 THE COURT: Would that affect or
25 influence you in any way?

1 JUROR NUMBER 267: Not at all.

2 COURT REPORTER: Her number again,

3 Judge?

4 THE COURT: Your number?

5 JUROR NUMBER 267: Two sixty-seven

6 (267).

7 COURT REPORTER: Thank you.

8 THE COURT: Yes, ma'am?

9 JUROR NUMBER 315: It's in

10 reference to an auto claim that I haven't --

11 it's an automobile claim but it hasn't been

12 ---

13 THE COURT: It is still pending?

14 JUROR NUMBER 315: Yes.

15 THE COURT: Would that affect you

16 in any way?

17 JUROR NUMBER 315: No.

18 THE COURT: Yes, sir?

19 JUROR NUMBER 192: I guess that I

20 was a defendant in a federal case, a national

21 business complex litigation. It wouldn't

22 affect me.

23 THE COURT: Has it been resolved?

24 JUROR NUMBER 192: Oh, yeah.

25 THE COURT: And it would not

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1 influence you?

2 JUROR NUMBER 192: No, sir.

3 THE COURT: Thank you, Mr. Hunt.

4 Yes.

5 JUROR NUMBER 95: I had a case for
6 -- it was, I guess, a products claim.

7 THE COURT: Has it been resolved?

8 JUROR NUMBER 95: Yes.

9 THE COURT: Would that affect or
10 influence you?

11 JUROR NUMBER 95: No, no.

12 THE COURT: All right, thank you.

13 All right, now you may come forward, ---

14 COURT REPORTER: Her number, Judge?

15 THE COURT: Your number?

16 CLERK DON MICHELE: The last one
17 was Juror Number 95.

18 COURT REPORTER: Thank you.

19 THE COURT: Juror 32 may come
20 forward, the attorneys may approach.

21 SIDEBAR:

22 THE COURT: Your name and
23 number, please?

24 JUROR NUMBER 32: Tim
25 Brummer, Number 32.

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1 THE COURT: All right. What
2 is your situation?

3 JUROR NUMBER 32: I was a
4 police officer and there were two civil suits
5 filed against me.

6 THE COURT: What were the
7 allegation?

8 JUROR NUMBER 32: I -- for use
9 of excessive force.

10 THE COURT: Assault type?

11 JUROR NUMBER 32: Yes, sir.

12 THE COURT: Has that been
13 resolved?

14 JUROR NUMBER 32: Yes, sir.

15 THE COURT: Would that affect
16 or influence you?

17 JUROR NUMBER 32: No, sir.

18 THE COURT: And in this
19 dispute there may be some -- not specifically
20 but there could be some carryover such as
21 assault(s) at some point, or that type of
22 thing. Would that unduly influence you?

23 JUROR NUMBER 32: No, sir.

24 THE COURT: Would you base
25 your decision on the evidence and the law and

1 would it be fair to both sides?

2 JUROR NUMBER 32: Yes, sir.

3 THE COURT: You would be able
4 to apply your experiences fairly and
5 impartially?

6 JUROR NUMBER 32: Yes, sir.

7 THE COURT: Thank you very
8 much.

9 (SIDEBAR CONCLUDED)

10 THE COURT: Number 32 will remain.
11 Thank you, sir. All right. Are there any
12 others? (No verbal response). Thank you,
13 there appear to be done.

14 Are there any members of the jury
15 panel that any specialized specific training
16 in investigative techniques, or that is part
17 of your job, have been trained to conduct
18 investigations? If so, please stand.

19 JUROR NUMBER 32: Juror Number 32,
20 the same reason.

21 THE COURT: You were a police
22 officer?

23 JUROR NUMBER 32: Yes.

24 THE COURT: And would you apply
25 your experience and knowledge in investiga-

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1 tions fairly and impartially?

2 JUROR NUMBER 32: Yes, sir.

3 THE COURT: Would you base your
4 decision on the evidence and the law and
5 would it be fair to both sides?

6 JUROR NUMBER 32: Yes, sir.

7 THE COURT: Your number again, for
8 the record?

9 JUROR NUMBER 32: Thirty-two (32).

10 THE COURT: Are there any others?
11 (No response). Thank you. There appear to
12 be none.

13 Are there any members of the jury
14 panel who have any specialized training in
15 legal -- and I know you've had some, so you
16 don't have to respond to that one again.

17 JUROR NUMBER 32: (Affirmative nod).

18 THE COURT: Yes, ma'am?

19 JUROR NUMBER 267: I am retired
20 general counsel.

21 THE COURT: Would you apply your
22 knowledge of the law fairly and impartially?

23 JUROR NUMBER 267: Yes, sir.

24 THE COURT: Would you accept the
25 law as I give it to you and set aside your

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1 belief of what the law is or should be?

2 JUROR NUMBER 267: Yes, sir.

3 THE COURT: Will you base your
4 decision on the evidence and the law and will
5 it be fair to both sides?

6 JUROR NUMBER 267: Yes, it will.

7 THE COURT: Your number again?

8 JUROR NUMBER 267: I'm 267.

9 THE COURT: Thank you. Yes?

10 JUROR NUMBER 299: Juror 299, Katie
11 O'Neill. I'm an attorney.

12 THE COURT: Would you apply your
13 knowledge of the law fairly and impartially?

14 JUROR NUMBER 299: Yes, Your Honor.

15 THE COURT: Will you accept the
16 law as I give it to you and set aside your
17 belief as to what the law is or should be?

18 JUROR NUMBER 299: Yes, sir, Your
19 Honor.

20 THE COURT: And will you be fair
21 and impartial in deciding the case for both
22 sides?

23 JUROR NUMBER 299: Yes, Your Honor.

24 THE COURT: Any others? (No
25 response). Thank you. There appear to be

1 none.

2 Has any member of the jury panel
3 ever worked for a company or an agency where
4 your responsibility was to draft or be
5 involved in developing written policies and
6 procedures for that company? If so, please
7 stand. Yes?

8 JUROR NUMBER 341: Tamaera Roman,
9 Number 341. I worked with welfare and the
10 child support enforcement department, and
11 also -- initiated, developed standard
12 operating procedures, standards, policies,
13 quality, like that.

14 THE COURT: Okay. Would you apply
15 your knowledge fairly and impartially in
16 analyzing the evidence in this case?

17 JUROR NUMBER 341: Yes.

18 THE COURT: And if there was
19 testimony concerning policy procedures, would
20 you be unduly influenced by your experiences;
21 or, can you fairly and impartially apply
22 those experiences?

23 JUROR NUMBER 341: (Affirmative
24 nod), -- yes.

25 THE COURT: You could fairly and

1 impartially?

2 JUROR NUMBER 341: Yes.

3 THE COURT: Thank you, you may be
4 seated. Yes?

5 JUROR NUMBER 292: Janice
6 Newham, Juror Number 292. When I senior vice
7 president with the Charleston Metro Chamber
8 of Commerce, that was part of my role.

9 THE COURT: Similarly, would that
10 influence or affect you in this dispute?

11 JUROR NUMBER 292: No, sir.

12 THE COURT: You could fairly and
13 impartially apply that knowledge?

14 JUROR NUMBER 292: Yes.

15 THE COURT: Thank you.

16 JUROR NUMBER 31: Joe Boyd, Juror
17 Number 31. I was a safety director
18 overseeing standard operating procedures for
19 our safety of the whole corporation.

20 THE COURT: Would that affect you
21 in this dispute?

22 JUROR NUMBER 31: No.

23 THE COURT: Would you be able to
24 apply that knowledge fairly and impartially
25 in analyzing ---

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1 JUROR NUMBER 31: Yes, sir.

2 THE COURT: Thank you. Yes,
3 ma'am?

4 JUROR NUMBER 252: Number 252. I
5 was a hospital administrator for MUSC.

6 THE COURT: And you developed
7 policy in connection with that?

8 JUROR NUMBER 252: (Affirmative nod).

9 THE COURT: Would that affect you
10 in any way?

11 JUROR NUMBER 252: No, sir.

12 THE COURT: And would you be able
13 to apply your experiences fairly and
14 impartially?

15 JUROR NUMBER 252: Yes.

16 THE COURT: Thank you, you may
17 have a seat. Yes?

18 JUROR NUMBER 228: Chad Lavenhousez,
19 228. I am the chief pharmacist, so I do make
20 service line policies for the pharmacy.

21 THE COURT: Would that affect you
22 in this case?

23 JUROR NUMBER 228: No, sir.

24 THE COURT: Would you apply your
25 experiences fairly and impartially?

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1 JUROR NUMBER 228: Yes.

2 THE COURT: Thank you, you may be
3 seated. Yes, sir?

4 JUROR NUMBER 188: Scott Howell,
5 188. In my current capacity, I draft policy.

6 THE COURT: Would that affect you
7 in this case?

8 JUROR NUMBER 188: No.

9 THE COURT: You would be able to
10 apply that experience fairly and impartially?

11 JUROR NUMBER 188: Absolutely.

12 THE COURT: Thank you, sir. You
13 may take your seat. Yes, sir?

14 JUROR NUMBER 16: Barry Baird,
15 Juror Number 16. I am a division director of
16 pharmacy for ACA, and I develop policy around
17 medications.

18 THE COURT: Would that affect you
19 in this case?

20 JUROR NUMBER 16: No, sir.

21 THE COURT: Would you be able to
22 apply your experience and knowledge fairly
23 and impartially?

24 JUROR NUMBER 16: Yes, sir.

25 THE COURT: Thank you, sir; you

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1 may be seated. Yes, ma'am?

2 JUROR NUMBER 267: I was general
3 counsel for a public company and I developed
4 policy and drafted documents.

5 THE COURT: Would that affect you
6 in this dispute?

7 JUROR NUMBER 267: No, sir.

8 THE COURT: Can you apply that
9 experience fairly and impartially?

10 JUROR NUMBER 167: Yes, sir.

11 THE COURT: Thank you, ma'am.
12 Yes, ma'am?

13 JUROR NUMBER 364: I was a nurse
14 manager at MUSC and in that role developed
15 policy.

16 THE COURT: Would that affect you
17 in this dispute?

18 JUROR NUMBER 364: No, sir.

19 THE COURT: Would you be able to
20 apply your experience fairly and impartially?

21 JUROR NUMBER 364: Yes, sir.

22 THE COURT: Thank you very much.
23 You may be seated. Are there others? (No
24 response) Thank you. There appear to be
25 none.

1 Based on what you have heard thus
2 far about this dispute, is there anything
3 about your life's experiences, something that
4 may have happened to you, a family member, a
5 close personal friend, some philosophy that
6 you may have, some strong feelings that you
7 may have that would affect or influence your
8 ability to fairly and impartially analyze the
9 evidence in this case? (No response).

10 That is to evaluate the evidence at
11 the appropriate time and decide what you
12 believe to be the facts? (No response).

13 Is there anything in your past that
14 would affect you or influence your ability to
15 do that? If so, please stand.

16 Yes, ma'am, come on forward.
17 Attorneys may approach.

18 SIDEBAR:

19 JUROR NUMBER 407: I was
20 wondering when you were going to get to that
21 question.

22 THE COURT: It's a process.

23 JUROR NUMBER 407: I am Mary
24 Toomiremayo, Juror 407. I am currently being
25 treated for breast cancer, so I'm on a lot of

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1 prescriptions, pain medications, and my mind
2 is not as clear as I'd like for it to be for
3 this. I don't think I could concentrate on
4 the testimony.

5 THE COURT: Sure. Your
6 number, again?

7 JUROR NUMBER 407: Number 407.

8 THE COURT: Thank you.

9 (SIDEBAR CONCLUDED)

10 THE COURT: Number 407 will be
11 excused from participation in this dispute.

12 (JUROR NUMBER 407 EXCUSED)

13 THE COURT: Have a great day.
14 Call the number after six tonight. Okay, we
15 have another one. You may come forward.

16 SIDEBAR:

17 THE COURT: Yes? Your
18 number?

19 JUROR NUMBER 341: I'm 341.

20 THE COURT: Yes, ma'am?

21 JUROR NUMBER 341: Your Honor,
22 I was raped and there is no way I can be
23 impartial.

24 THE COURT: I understand.
25 There is no way that we would want to put you

1 through that. What is your jury number?

2 JUROR NUMBER 341: Three
3 forty-one (341).

4 THE COURT: That's why I asked
5 it that way in follow up. I appreciate and
6 I thank you for coming forward.

7 (SIDEBAR CONCLUDED)

8 THE COURT: Juror Number 341 is
9 excused. Call the number after six tonight.
10 Thank you.

11 (JUROR NUMBER 341 EXCUSED)

12 THE COURT: Any others?
13 Gentlemen, are there any questions of a
14 specific nature that you'd ---

15 RANDALL STONEY: Can you give us
16 just a second?

17 THE COURT: Certainly. Take your
18 time.

19 (OFF RECORD SIDEBAR AMONG COUNSEL)

20 RANDALL STONEY: Your Honor, we
21 think that we are okay.

22 THE COURT: I might ask one, Mr.
23 Stoney. Let me ask, has any member of the
24 jury panel ever been involved, either as a
25 witness, as someone that was making an

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1 accusation, someone who was supporting
2 someone, in a criminal prosecution involving
3 alleged sexual abuse or a sex crime? If you
4 have been involved in any capacity, please
5 stand. Okay, I will ask those persons to
6 come forward. Attorneys may approach.

7 BALIFF: Juror Number 14.

8 SIDEBAR:

9 JUROR NUMBER 14: Hi, I'm
10 Jane Babb, Juror Number 14. I don't recall
11 exactly when it was but about three years ago
12 I did sit on a jury that was fourteen charges
13 of criminal sexual misconduct.

14 THE COURT: Would that affect
15 you?

16 JUROR NUMBER 14: No.

17 THE COURT: Could you set that
18 experience aside and decide this case based
19 on the evidence in this case?

20 JUROR NUMBER 14: Yes.

21 THE COURT: Based on the
22 evidence and law in this case?

23 JUROR NUMBER 14: Yes.

24 THE COURT: You would base
25 your decision on the evidence and the law and

1 would it be fair to both sides?

2 JUROR NUMBER 14: Yes.

3 THE COURT: Thank you.

4 (SIDEBAR CONCLUDED)

5 THE COURT: Number 14 will remain.

6 Thank you.

7 BAILIFF: Juror 391.

8 SIDEBAR:

9 THE COURT: Yes, ma'am?

10 JUROR NUMBER 391: Gosh, it
11 was back in the eighties that my husband was
12 a soccer coach, Key West Soccer, and one of
13 the husbands of a girlfriend of mine brought
14 her husband to court on allegations of sexual
15 abuse towards children. He was a soccer
16 coach under my husband and she was my friend,
17 so there was some close involvement.

18 THE COURT: Would that affect
19 you in this case?

20 JUROR NUMBER 391: I don't
21 know.

22 THE COURT: And your number?

23 JUROR NUMBER 391: Three
24 ninety-one (391).

25 THE COURT: There are a lot of

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1 similarities to this case, allegations, so
2 out of an abundance of caution I am going to
3 excuse you.

4 JUROR NUMBER 391: I'm sorry.

5 THE COURT: No, no, that's no
6 problem. You did the right thing. Don't
7 apologize. Thank you.

8 (SIDEBAR CONCLUDED)

9 THE COURT: Juror Number 391 is
10 excused. Please call the number after six
11 tonight.

12 (JUROR NUMBER 391 EXCUSED)

13 THE COURT: Yes, sir?

14 BAILIFF: Juror Number 200.

15 SIDEBAR:

16 THE COURT: Yes, sir? How are
17 you, sir?

18 JUROR NUMBER 200: Fine.

19 THE COURT: Your name?

20 JUROR NUMBER 200: Mark
21 Jeffcoat.

22 THE COURT: Yes, sir?

23 JUROR NUMBER 200: About
24 twenty-five years ago I had a kid that worked
25 for me and there was molestation, and I had

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1 to testify in the case.

2 THE COURT: Would that affect
3 you in this case?

4 JUROR NUMBER 200: No.

5 THE COURT: You could set that
6 aside and decide this case based on the
7 evidence and the law presented in this case?

8 JUROR NUMBER 200: Yes.

9 THE COURT: And your decision
10 would be fair to both sides?

11 JUROR NUMBER 200: Yes.

12 THE COURT: Thank you, sir.

13 (SIDEBAR CONCLUDED)

14 THE COURT: Juror Number 200 will
15 remain.

16 BAILIFF: Juror 192.

17 SIDEBAR:

18 JUROR NUMBER 192: Sorry.

19 THE COURT: No problem.

20 JUROR NUMBER 192: I actually
21 served on a jury that involved a child
22 molestation case, it was probably twenty
23 years ago.

24 THE COURT: Would that affect
25 or influence in this case?

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1 JUROR NUMBER 192: No, sir,
2 not at all.

3 THE COURT: And can you -- will
4 you set that aside and decide this case on the
5 evidence and law in this case?

6 JUROR NUMBER 192: Yes, sir.

7 THE COURT: Thank you. You
8 can make a commitment that you can be fair
9 and impartial to both sides?

10 JUROR NUMBER 192: Yes, sir.

11 THE COURT: Thank you.

12 (SIDEBAR CONCLUDED)

13 THE COURT: Number 192 will
14 remain. Are there others? (No response).

15 (OFF RECORD SIDEBAR WITH COUNSEL)

16 THE COURT: All right, I will ask
17 that. This is sort of a collaboration with
18 counsel.

19 Does any member of the jury have any
20 specialized training in the field of
21 psychology, mental health or counseling of
22 persons who have some mental disorder or the
23 like? If so, please stand.

24 JUROR NUMBER 17: I am Ellen
25 Baldino. I am not specifically specialized

1 but I am a physician's assistant and interact
2 with patients.

3 THE COURT: Would you apply your
4 knowledge gleaned in that capacity fairly and
5 impartially in analyzing the testimony?

6 JUROR NUMBER 17: Yes.

7 THE COURT: And you would base
8 your decision on the evidence and the law and
9 be fair to both sides?

10 JUROR NUMBER 17: Yes.

11 THE COURT: Thank you. Yes,
12 ma'am?

13 COURT REPORTER: Her number, Your
14 Honor?

15 THE COURT: Your number, ma'am?

16 JUROR NUMBER 17: Number 17.

17 COURT REPORTER: Thank you.

18 THE COURT: Seventeen (17). Yes?

19 JUROR NUMBER 413: Juror Number
20 413. I was a psychology minor.

21 THE COURT: Would that affect you
22 in this case?

23 JUROR NUMBER 413: (Negative
24 gesture).

25 THE COURT: Would you apply your

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1 knowledge fairly and impartially?

2 JUROR NUMBER 413: Yes, sir.

3 THE COURT: Thank you, you may be
4 seated. Yes, ma'am?

5 JUROR NUMBER 366: I am Juror Number
6 3266. I have a degree in special education
7 and do from time to time counsel parents and
8 students.

9 THE COURT: Thank you, ma'am.
10 Would you be able to apply your life
11 experience and your knowledge fairly and
12 impartially?

13 JUROR NUMBER 366: Yes.

14 THE COURT: And your decision
15 would be fair to both sides?

16 JUROR NUMBER 366: Yes.

17 THE COURT: Thank you. Your
18 number again?

19 JUROR NUMBER 360: Three sixty
20 (360).

21 THE COURT: Yes, ma'am?

22 JUROR NUMBER 299: Juror Number
23 299, Katie O'Neill. I was a psychology major
24 in college.

25 THE COURT: Would you apply your

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1 knowledge fairly and impartially?

2 JUROR NUMBER 299: Yes, Your Honor.

3 THE COURT: Thank you, ma'am.

4 Anyone else?

5 JUROR: What was the question?

6 THE COURT: The question was if
7 you have specialized training in psychology
8 or counseling or in dealing with persons who
9 are mentally challenged in any fashion. Yes?

10 JUROR NUMBER 43: I am certified
11 as a mentally handicap teacher.

12 THE COURT: Would you apply that
13 knowledge fairly and impartially?

14 JUROR NUMBER 43: Yes, sir.

15 THE COURT: Would you base your
16 decision on the evidence and the law and
17 would it be fair to both sides?

18 JUROR NUMBER 43: Yes, sir.

19 THE COURT: Your number?

20 JUROR NUMBER 43: Forty-three (43).

21 THE COURT: Yes, ma'am?

22 JUROR NUMBER 225: I also work for
23 the school.

24 THE COURT: Would you apply your
25 knowledge fairly and impartially?

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1 JUROR NUMBER 225: Yes, sir.

2 THE COURT: Your number?

3 JUROR NUMBER 225: Two twenty-five
4 (225).

5 THE COURT: Thank you. Yes, sir?

6 JUROR NUMBER 144: Chris Gilbert,
7 Number 144. Undergraduate with a degree in
8 Special Ed, sought after-education for the
9 mentally handicapped.

10 THE COURT: Would you apply that
11 knowledge fairly and impartially, sir?

12 JUROR NUMBER 144: Yes, sir.

13 THE COURT: Thank you. Any
14 others? (No response). There appear to be
15 none.

16 Any other specific questions now,
17 gentlemen?

18 GREGG MEYERS: None from the
19 plaintiff.

20 DAWES COOKE: None, Your Honor.

21 THE COURT: The last question that
22 I have for you is kind of what we have been
23 talking about. I was just telling them that
24 I bet y'all get tired of hearing me 'would
25 that affect you', 'will you base your

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1 decision on the evidence and the law', 'will
2 it be fair to both sides.' You should try
3 saying it. But having said that, I am in no
4 way minimizing the significance of what I
5 just said because it is really the essence of
6 what this is all about.

7 What each of you that are selected
8 will do when we start this trial is that you
9 will raise your hand, similar to what I did
10 when I assumed this role of being a judge.
11 You will make a commitment to the court, to
12 the parties, to their attorneys that you
13 will, at the appropriate time, apply that
14 knowledge that you brought with you fairly
15 and impartially in analyzing the evidence in
16 this case and decide what you believe to be
17 the true facts considering only the evidence,
18 the testimony of the witnesses and any
19 exhibits that might be introduced through
20 that testimony.

21 Once you decide those facts, then
22 taking the law as I give it to you and -- and
23 you heard me ask some 'will you set aside
24 what you believe the law to be and what you
25 think that it should be', and -- and we live

1 in an information society. I'll never forget
2 my father, who is no longer with us. I
3 remember returning one time from a trip to
4 the hospital toward the latter stage of his
5 life, trying to make conversation because he
6 was kinda glum. I said, 'What do you think
7 about the internet?' It had just started.
8 He said, "don't like it." I asked why and he
9 said, "too much information." Sometimes I
10 think he may be right.

11 One of the things that you have to
12 be caution about, and as we all know there
13 are many of us who *Google*. You might be
14 right but you might be wrong because it may
15 have changed, and therein lies the problem.

16 I recognize that we're -- that
17 anybody has an opportunity to do that.
18 You're going to be instructed that you can't
19 during this trial, for obvious reasons which
20 we will talk about.

21 You'll have to set aside what you
22 believe the law is or should be and take it
23 as I give it to you, and to apply it fairly
24 and impartially. You will make that
25 commitment to the parties.

1 Is there anything that you've heard
2 about this dispute that would give you any
3 concern about your ability to make that
4 commitment? If so, please stand. (No
5 response). Thank you very, very much.

6 We are going to take a break now.
7 We're getting closer to being there. When
8 you come back, they will take to the court-
9 room right next door. They will show you
10 where you are to report. We will bring you
11 in one at a time as there may be some more
12 questions that we will ask. As I told one of
13 the jurors, there are some questions that we
14 -- I'm not trying to pry into your lives but
15 they are questions that are better served by
16 a more private discussion. We may be asking
17 you about some of those things. Don't worry
18 about it. It's nothing -- if you choose not
19 to answer it, that's your business. Clearly
20 that's just to further help you make your
21 decision as to whether or not you can be fair
22 and impartial.

23 Thank you for your patience with us.
24 This day is kind of a blown day but I hope
25 that you have a good lunch, and we should

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1 have a jury before too much later in the day.
2 Thank you. Be back in the room, please, at
3 2:30. Thank you.

4 (JURY PANEL OUT @ 1:25 P.M.)

5 THE COURT: Why don't we do this,
6 gentlemen, let's just chat about what we do
7 next. When they come back, why don't we have
8 them just come up and stand like they did
9 before and we can ask what we need to ask
10 them. Does anybody have any problem with
11 that?

12 GREGG MEYERS: Only that
13 sometimes I had a little trouble hearing.

14 THE COURT: This will be speaking
15 -- we will have them speak up.

16 GREGG MEYERS: Okay.

17 THE COURT: We are going to be
18 talking and I'll talk in a voice that Deb
19 (court reporter) can hear me. We will just
20 do it that way rather than me sit up there
21 and put them in the box. I just -- that
22 bothers me a little bit.

23 GREGG MEYERS: Okay.

24 THE COURT: Then as I stated, just
25 like some of the jurors made an expression

1 with the fact that there were some things, I
2 -- if you want to follow up on a question,
3 that will be fine. But I will ultimately
4 make the final decision whether or not they
5 are -- I am going to go through -- I'm going
6 to go through your questions at lunch and I'm
7 going to make basically -- basically the
8 question is that I am going to have each
9 juror, as to specifics concerning the case,
10 and then I'm going to -- I'm going to do it
11 just like a death penalty case. I will do
12 the questions and then I will open it up to
13 you. But even if you ask a question, what
14 I've found in my death penalty cases, I just
15 put that in my questions that I ask -- if you
16 bring up something that I think, 'yeah,
17 that's a good question', I'll just ask that
18 of everyone. The first couple, you may have
19 some (questions) but I will probably start
20 covering that thereafter. Thank you.

21 All right, we will be at-ease until
22 2:30

23 (LUNCH RECESS)

24 THE COURT: Just so you know,
25 first I'm going to ask if they've ever been a

1 juror in a civil case before.

2 Secondly, I'm going to ask about
3 family tragedies, those types of things.

4 Then I'll ask specifically if
5 there's been any problem with any child.

6 Then I am going to ask -- the next
7 question is 'have you or any family member
8 ever suffered from any sexual abuse?'

9 Then I am going to ask about post-
10 traumatic stress disorder.

11 Then I'm going to ask about the
12 addiction -- any family member recovering,
13 who was sexually abuse. Recovery from any
14 addiction.

15 I am sure -- I'm not sure why but
16 there's a question about whether they have
17 ever done any research on the sexual offender
18 registry. Is there some issue with that, or
19 are y'all just curious whether or not they've
20 ever conducted any independent investigation.

21 GREGG MEYERS: I think a lot of
22 people do just to know who ---

23 DAWES COOKE: Yeah, I think a
24 lot of people do. That wouldn't necessarily
25 disqualify them.

1 THE COURT: I agree, not for that
2 purpose. I'm asking that question.

3 Ever been witness to sexual
4 harassment or sexual discrimination in the
5 workplace. I will ask that.

6 Ever been falsely accused of crime.
7 I will ask that question.

8 Then rather than a "violent crime",
9 I will ask whether they've ever been the
10 victim of any crime, period.

11 Those are my general questions.
12 Whatever they -- their answers may
13 necessitate further questioning, but I think
14 that covers the essence of what we are
15 looking for.

16 DAWES COOKE: And we are not
17 striking yet?

18 THE COURT: We are going to
19 strike. When I finish my questions, if there
20 are no more, then that person will step
21 outside and we will strike -- make a
22 determination whether that person sits or
23 not. If that person sits, then we will bring
24 them in and I'll instruct them. The bailiff
25 will take them to show them where they can

1 park tomorrow, and they will be on their
2 merry way. If they are stricken, then they
3 will be excused and told to call back tonight
4 after six o'clock.

5 GREGG MEYERS: Your Honor, your
6 idea is that the witness will sit in that
7 chair?

8 THE COURT: Is that okay with
9 everyone? I'm just trying to figure a
10 setting where they would be most comfortable.

11 GREGG MEYERS: I was just -- I
12 appreciate the mic. I seem to be losing some
13 hearing.

14 THE COURT: I tell you something,
15 being in Columbia and going out and sitting
16 with a group of people in a couple of places
17 in Columbia, one of them -- we all went to
18 Liberty Tavern for lunch. There were ten or
19 twelve of us and it's just impossible to --
20 if there is any noise, -- if it is quiet, I
21 can hear pretty much. Boy, if there back-
22 ground noise, (negative gesture).

23 GREGG MEYERS: Ambient noise,
24 yeah.

25 THE COURT: Goodbye. Then that

1 thing (jury assembly room) downstairs, that's
2 the biggest joke in the world; that and the
3 hinges on these gates.

4 All right. Are we ready to start?

5 DAWES COOKE: Yes, sir.

6 THE COURT: Let me put on the
7 record just so that everybody -- I think that
8 we have compared them so that the record
9 reflects that -- the court, for cause, has
10 stricken on our strike list jurors numbered
11 one, two, nine, twelve, seventeen, eighteen,
12 nineteen, twenty-one, twenty-two, thirty-one,
13 thirty-three, thirty-eight, fifty-nine and
14 sixty. Any objections from anyone concerning
15 those strikes?

16 DAWES COOKE: That's what I've got.

17 GREGG MEYERS: None by the
18 plaintiff, Your Honor.

19 THE COURT: Any from the
20 defendant?

21 DAWES COOKE: None, Your Honor.

22 THE COURT: See who is our first
23 one.

24 (JUROR NUBMER 354 ENTERS COURTROOM)

25 THE COURT: Good afternoon, Mr.

1 Schlabs.

2 EXAMINATION OF PHILIP SCHLABS

3 BY THE COURT:

4 Q. Please state your name and your
5 juror number for us.

6 A. My name is Philip Schlabs, Number
7 354.

8 Q. Good afternoon, Mr. Schlabs. As I
9 mentioned to you, I have a couple of
10 questions that I need for you to answer.
11 If you have any concern, just express that.
12 Again, I am not trying to pry into anything.
13 There are some issues in this case,
14 obviously, that necessitate further inquiry.
15 We thought that we'd do it in a more private
16 setting than we did before.

17 First of all, have you ever been a juror
18 in a civil case before?

19 A. No.

20 Q. Have you ever had any -- either in
21 your family, your personal family, or your
22 family/siblings, any family tragedies?

23 A. No.

24 Q. Do you have children?

25 A. No.

1 Q. Have you ever had a family member,
2 to your knowledge, that was sexually abused?

3 A. No.

4 Q. Do you know of anyone, a family
5 member or close personal friend, who suffers
6 from post-trauma stress disorder?

7 A. I do.

8 Q. Tell me about that.

9 A. I had a girlfriend that was sexually
10 assaulted prior to me meeting her and she
11 suffers post-trauma stress now.

12 Q. If you heard testimony in this trial
13 of a person who allegedly suffered post-
14 traumatic stress from sexual abuse, would
15 that unduly affect your ability to evaluate
16 that testimony?

17 A. I don't think so. Could you -- may
18 I ask a question?

19 Q. Sure.

20 A. After our meeting this morning, it
21 sounded like the decision that you were
22 asking the jury to ponder was whether The
23 Citadel had knowledge of -- or ---

24 Q. At this point, I -- because you've
25 heard no evidence about anything.

1 A. Right.

2 Q. Just that The Citadel is being
3 accused of not -- basically violating or
4 breaching a duty of care is the way that we
5 would couch it; which means that they were
6 careless. And there were some other causes
7 of action.

8 A. So the sexual assault is assumed or
9 is that a separate thing?

10 Q. There is an allegation that a sexual
11 assault occurred at a time and a place and it
12 is further alleged that The Citadel knew or
13 should have known that it was doing and they
14 didn't take proper steps and actions.

15 A. Okay.

16 Q. That is what is alleged.

17 A. Right.

18 Q. There is no evidence yet.

19 A. I feel like it's two different
20 issues.

21 Q. Of course what you would be asked to
22 do is to decide the evidence and then I will
23 give you the law that you have to apply to
24 those facts.

25 A. (Affirmative nod).

1 Q. My concern is, do you have some --
2 it sounds to me like, and I'm not trying to
3 be presumptuous here but it sounds like you
4 may have some issues from your friend's
5 situation of being sexually abused.

6 A. I would like to think that, you
7 know, I can put emotional things aside.

8 Q. Oh, I understand that. The question
9 is, can you make a commitment to both of
10 these parties that you would?

11 A. I believe so.

12 Q. I appreciate that. This is one of
13 those strange times in our lives that that is
14 a pretty good answer, and I don't have any
15 personal problems with it.

16 A. Okay.

17 Q. But it has to be 'absolutely I can.'

18 A. I don't know.

19 Q. I am going to help you.

20 A. I can't say -- you know, I can't say
21 for sure.

22 Q. I understand that. You don't have
23 to feel bad or feel guilty about that. That
24 is why I love this system the way I do. You
25 have ever right to feel the way you do, and

1 have that concern. There is nothing wrong
2 with that, none whatsoever.

3 A. Thank you.

4 THE COURT: I am going to excuse
5 Mr. Schlabs from further participation. If
6 you will, please call the number after
7 tonight at six. Have a great day, sir.
8 Thank you so very much.

9 (JUROR NUMBER 354 EXCUSED AND
10 EXITS COURTROOM)

11 THE COURT: Any objection from the
12 plaintiff?

13 GREGG MEYERS: I'd rather have
14 him, but I understand.

15 THE COURT: Yeah. What I saw with
16 his body language -- and I want to put on the
17 record that I understand that it was
18 traumatic for his friend.

19 CLERK DON MICHELE: Ready for the
20 next one, sir?

21 THE COURT: Just one minute. Any
22 objection from the defendant?

23 DAWES COOKE: No objection.
24 Judge, could I just make one comment? When
25 he started asking what the case was about, I

1 -- I think you may have said that The Citadel
2 had know--, ---

3 THE COURT: I said "knew or should
4 have known."

5 DAWES COOKE: That is not quite
6 exactly what they are claiming.

7 THE COURT: All right.

8 DAWES COOKE: Because he was abused^d
9 later. So something to the effect of The
10 Citadel should have prevented it or something
11 like that ---

12 THE COURT: I will use that The
13 Citadel failed or breached its duty of care.
14 How about that?

15 DAWES COOKE: You did say that.

16 THE COURT: And I apologize about
17 that.

18 DAWES COOKE: No, no, no ---

19 THE COURT: This is a totally
20 different setting. I agree with you.

21 DAWES COOKE: Thank you.

22 THE COURT: Bring in our next one.
23 Were y'all able to hear everything on that?

24 GREGG MEYERS: He was a little
25 bit faint but I could hear him.

1 THE COURT: Okay. Let's test the
2 microphone -- can you turn it up a little
3 bit? I tell you, the microphones in Horry
4 County are frightening. You walk out on the
5 bench talking and everybody hears you.

6 COURT REPORTER: They're wonderful.

7 THE COURT: They really are. I
8 don't know who installed them but we need
9 that here.

10 (JUROR NUMBER 31 ENTERS COURTROOM)

11 EXAMINATION OF JOSEPH S. BOYD

12 BY THE COURT:

13 Q. How are you, sir?

14 A. Fine, thank you.

15 Q. Good to see you. State your full
16 name and your juror number?

17 A. Joseph Stanley Boyd, Jr. Juror
18 Number 31.

19 Q. Thank you, Mr. Boyd. As I mentioned
20 to you, there are some questions that I have.
21 I'm not trying to pry. If there are
22 questions that you prefer not to answer, just
23 let me know.

24 A. Okay.

25 Q. As you can imagine, the nature of

1 this suit warrants further inquiry and we
2 thought it would be better to do that in this
3 setting.

4 A. Okay.

5 Q. First of all, have you ever been a
6 juror in a civil case?

7 A. Yes, I have.

8 Q. Tell me about it.

9 A. It was probably about seven or eight
10 years ago or longer, and it was a City of
11 Charleston police car and a raid on a home
12 that was the wrong home. There were drugs
13 involved.

14 Q. Was it a suit for damages?

15 A. Yes, it was.

16 Q. Okay. You completed that case?

17 A. Yes.

18 Q. The jury returned a verdict?

19 A. (Affirmative nod), yes.

20 Q. Do you recall what the verdict was?

21 A. We found for the plaintiff.

22 Q. And awarded damages?

23 A. Awarded \$250,000 in damages.

24 Q. And you understand that case rises
25 and falls on its merits, its elements?

1 A. Right.

2 Q. And that would not influence you in
3 this case?

4 A. No. Not at all.

5 Q. Very well. Have you ever suffered
6 any family tragedies, with siblings or
7 children?

8 A. Tragedies in what respect?

9 Q. A child severely injured or a
10 brother/sister, that type of thing?

11 A. No, other than my parents passing
12 away a few years ago. (Negative gesture),
13 other than that.

14 Q. Okay. In the normal transition of
15 life?

16 A. Right.

17 Q. Have you ever had a family member or
18 close personal friend who was sexually
19 abused?

20 A. No.

21 Q. Do you have any family members or
22 close personal friends who suffer from post-
23 traumatic stress disorder?

24 A. No, not that I know of.

25 Q. Have you ever personally researched

1 the sex offender registry?

2 A. I think that I did once years ago
3 when it was first publicized on the Internet.

4 Q. But not something that you do on a
5 frequent basis?

6 A. No, it's not.

7 Q. Have you ever witnessed sexual
8 harassment or sexual discrimination in the
9 workplace?

10 A. No.

11 Q. That you were aware of?

12 A. Not that I'm aware of, no.

13 Q. Have you or any family member ever
14 been falsely accused of a crime?

15 A. No.

16 Q. Have you or a close family member
17 been the victim of a crime?

18 A. Other than someone broke in my car
19 one time, that was a few years ago.

20 Q. Was that person ever apprehended?

21 A. I don't believe so.

22 Q. That would not influence you?

23 A. Not at all.

24 THE COURT: Any other questions
25 from the plaintiff?

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1 GREGG MEYERS: None from me, Your

2 Honor.

3 THE COURT: From the defendant?

4 DAWES COOKE: None. Thank you.

5 THE COURT: All right, I have
6 going to ask you, sir, if you would step
7 outside for just a second. We will be with
8 you in a moment -- and you can leave your
9 jacket right there.

10 (JUROR EXITS COURTROOM)

11 THE COURT: Just for the record,
12 I had mentioned the question about recovery
13 from sex offense. He doesn't know any sex
14 offender, so there is no need to ask that
15 question. I assume that was the connection?
16 To be related to a sex offense -- sex
17 offender situation.

18 What says the plaintiff?

19 GREGG MEYERS: Please seat the
20 juror, Your Honor.

21 THE COURT: Defendant?

22 DAWES COOKE: I'm sorry?

23 THE COURT: They said to seat him.
24 It's your turn.

25 DAWES COOKE: May I have a second

1 to confer?

2 THE COURT: Yes, sir.

3 DAWES COOKE: Please seat the
4 juror.

5 THE COURT: Very well, he will be
6 our juror one. Invite Mr. Boyd to return.

7 (JUROR ENTERS COURTROOM)

8 THE COURT: Mr. Boyd, thank you
9 very much. You've been selected to serve on
10 this juror with me. You and I will judge
11 this case together. I am going to ask that
12 you -- we're going to keep you in the jury
13 room for just a few moments, then we will
14 take a break and they'll take you down and
15 show you the parking. Please report to the
16 jury room by 9:45 tomorrow.

17 Please remember that you are not at
18 liberty to talk about this case. You've
19 heard no evidence. Don't allow anybody to
20 talk with you about the case. No need to
21 speculate or conduct any independent
22 research. Have a good evening, sir. Look
23 forward to working with you.

24 (JUROR NUMBER 31 SEATED)

25 (JUROR 31 EXITS COURTROOM)

1 THE COURT: Bring in the next one.

2 (JUROR NUMBER 237 ENTERS COURTROOM)

3 EXAMINATION OF CYNTHIA SUNDE

4 BY THE COURT:

5 Q. Good afternoon, ma'am. How are you?

6 A. Good. How are you?

7 Q. State your name and your juror
8 number, please, for the record.

9 A. Cynthia Sunde. Juror Number 237.

10 Q. Thank you, Ms. Sunde. I appreciate
11 it. I mention to you when we broke for lunch
12 that there are several questions now that we
13 would rather do in this setting. Obviously,
14 as you can imagine, some of them are very
15 personal -- maybe too personal, but I am not
16 trying to pry.

17 A. Okay.

18 Q. Have you ever sat as a juror in a
19 civil case?

20 A. I think I may have once.

21 Q. But you don't recall.

22 A. Four or five years ago. Yeah.

23 Q. You don't have any independent
24 recollection?

25 A. No.

1 Q. Have you ever suffered any family
2 tragedy, injury or serious problem with a
3 family member, your child, children,
4 siblings?

5 A. Other than natural causes.

6 Q. Sorry?

7 A. (Negative gesture), other than
8 natural causes.

9 Q. Okay. Have you, a member of your
10 family or close personal friend ever been
11 accused of sexual abuse? The offense of
12 sexual abuse?

13 A. No.

14 Q. Do you or do you know of anyone, a
15 family member, who suffers from post-trauma
16 stress disorder?

17 A. Not that I know of.

18 Q. Have you ever witnessed sexual
19 harassment or sexual discrimination in the
20 workplace?

21 A. Not that I know of.

22 Q. Okay. Have you or a family member
23 ever been falsely accused of a crime?

24 A. No.

25 Q. Have you ever been the victim of a

1 crime?

2 A. No. Well, a car that was broken
3 into, that kind of thing, but nothing --
4 (negative gesture).

5 Q. And that occurred some time ago?

6 A. Yeah.

7 Q. Was the person ever apprehended?

8 A. No.

9 Q. Would that influence you in any way?

10 A. No.

11 THE COURT: Any further questions?
12 From the plaintiff?

13 GREGG MEYERS: Your Honor, would
14 you clarify the third question that you
15 asked?

16 THE COURT: Whether you know of
17 anyone, or a family member, who suffers from
18 post-trauma stress disorder?

19 JUROR NUMBER 237: Not that I know
20 of.

21 GREGG MEYERS: I'm sorry. I have
22 that as the fourth question. I was referring
23 to sexual abuse, and I think you asked that
24 as whether anyone had been accused of ---

25 EXAMINATION CONTINUED

1 BY THE COURT:

2 Q. Whether you or any family member
3 have ever been accused of or been the victim
4 of sexual harassment?

5 A. No, not that I know of.

6 THE COURT: What else?

7 GREGG MEYERS: And then I think
8 the question about the registry?

9 THE COURT: Oh, yes, the registry.
10 I'm sorry.

11 EXAMINATION CONTINUED

12 BY THE COURT:

13 Q. Have you ever researched the
14 registry, the sex offender registry?

15 A. Yes.

16 Q. Numerous occasions?

17 A. No. A long time ago.

18 Q. Okay.

19 A. And I do want to say -- I hadn't
20 thought about this but my ex-husband, he's a
21 sex offender, from what I know.

22 Q. He is a sex offender?

23 A. Yes.

24 Q. Was he convicted of that?

25 A. Yes, but I was not privy of any of

1 that information.

2 Q. So that occurred after y'all parted
3 ways?

4 A. Yes. He was in the military and --
5 it was prior to us separating and divorcing,
6 but shortly after that ---

7 Q. But you were not aware of it at the
8 time?

9 A. Right.

10 Q. Do you today know any of the
11 particulars?

12 A. No.

13 Q. Would that affect or influence you
14 in any way in this case?

15 A. No.

16 THE COURT: Any additional
17 questions?

18 GREGG MEYERS: No. Thank you,
19 Your Honor.

20 THE COURT: Any additional
21 questions?

22 DAWES COOKE: None from the
23 defendant.

24 THE COURT: If you would step out
25 just for a second, we will be with you in

1 just a moment.

2 (JUROR NUMBER 237 EXITS COURTROOM)

3 THE COURT: What says the
4 plaintiff?

5 GREGG MEYERS: Please seat the
6 juror, Your Honor.

7 THE COURT: What says the
8 defendant?

9 DAWES COOKE: Strike the juror.

10 THE COURT: Ask her to step back
11 in.

12 (JUROR ENTERS COURTROOM)

13 THE COURT: Ms. Sunde, you have
14 been excused from further participation in
15 this trial. I appreciate it. You can exit
16 through this door here. Call the number
17 after six tonight and follow that
18 instruction.

19 (JUROR NUMBER 237 EXCUSED)

20 (JUROR EXITS COURTROOM)

21 THE COURT: Next, Mr. Constantine.

22 (JUROR NUBMER 70 ENTERS COURTROOM)

23 EXAMINATION OF JOHN CONSTANTINE

24 BY THE COURT:

25 Q. Good afternoon, sir. Give us your

1 name and juror number, please.

2 A. My name is John Peter Constantine
3 and my juror number is 70.

4 Q. Mr. Constantine, I have several
5 questions for you. If any of them are
6 uncomfortable for you, just tell me that.

7 A. Okay.

8 Q. We are not trying to make you feel
9 uncomfortable but obviously there is some
10 additional information that we need. First
11 of all, have you ever been a juror in a civil
12 case?

13 A. I have not.

14 Q. Have you ever had or suffered any
15 family tragedy?

16 A. Not close.

17 Q. Close personal friend or family
18 member?

19 A. It was my father's mother.

20 Q. That was what, basically? What was
21 the tragedy?

22 A. She died of natural causes.

23 Q. That would not affect or influence
24 you?

25 A. No, sir.

1 Q. Okay. Have you, a family member or
2 a close personal friend ever been accused of
3 sexual abuse or ever been the victim of
4 sexual abuse?

5 A. No, Your Honor.

6 Q. Do you have any family member or
7 close family friend(s) that you're aware
8 suffers from post-trauma stress disorder?

9 A. No, Your Honor.

10 Q. Have you ever researched the sex
11 offender registry?

12 A. I have not.

13 Q. Have you ever witnessed sexual
14 harassment or sexual discrimination in the
15 workplace, to your knowledge?

16 A. No, Your Honor.

17 Q. Have you or a family member ever
18 been falsely accused of a crime?

19 A. No, Your Honor.

20 Q. Have you or a family member ever
21 been the victim of a crime?

22 A. No, Your Honor.

23 THE COURT: Any additional
24 questions, from the plaintiff?

25 GREGG MEYERS: No, Your Honor.

1 THE COURT: From the defendant?

2 DAWES COOKE: None.

3 THE COURT: If you could step out
4 just for a moment, we will be with you
5 momentarily.

6 (JUROR NUMBER 70 EXITS COURTROOM)

7 THE COURT: What says the
8 plaintiff?

9 GREGG MEYERS: Strike the juror.

10 THE COURT: Ask Mr. Constantine to
11 step back in.

12 (JUROR NUMBER 70 ENTERS COURTROOM)

13 THE COURT: Thank you, sir. We
14 appreciate your help. You've been excused
15 from further participation in this dispute.
16 Please call the number after six tonight and
17 follow that instruction.

18 (JUROR NUMBER 70 EXCUSED)

19 (JUROR EXITS COURTROOM)

20 THE COURT: Next.

21 DAWES COOKE: Judge, we each have
22 four strikes and then the alternates?

23 THE COURT: Yes, three alternates.

24 (JUROR NUMBER 446 ENTERS COURTROOM)

25 EXAMINATION OF HANNAH YALDAPARAST

1 BY THE COURT:

2 Q. Hi. Markeley Dennis. Nice to see
3 you.

4 A. Hannah.

5 Q. Take the seat, please, and state
6 your full name for the record and your juror
7 number.

8 A. I'm Hannah Yaldaparast, 446.

9 Q. Thank you, Ms. Yaldaparast, we
10 appreciate that. Is this the first time
11 you've ever been a juror in a civil trial?

12 A. Yes, sir.

13 Q. Have you or any -- have you ever had
14 any family tragedy of close family members?

15 A. No, sir.

16 Q. Have you or any family member ever
17 been the victim of or ever been accused of
18 committing the crime of sexual abuse?

19 A. No, sir.

20 Q. Do you know of any family member or
21 close personal friend who suffers from post-
22 trauma stress disorder?

23 A. No, sir.

24 Q. Have you ever researched the sex
25 offender registry?

1 A. No, sir.

2 Q. Have you ever witnessed any sexual
3 harassment or sexual discrimination in the
4 workplace?

5 A. No, sir.

6 Q. Have you or a family member ever
7 been falsely accused of a crime?

8 A. No.

9 Q. Have you or a family member ever
10 been the victim of a crime?

11 A. No, sir.

12 THE COURT: Any additional
13 questions from the plaintiff?

14 GREGG MEYERS: None, Your Honor.

15 THE COURT: From the defendant?

16 DAWES COOKE: None.

17 THE COURT: If you would step out
18 just for a moment, we will be with you in a
19 moment.

20 (JUROR NUMBER 446 EXITS COURTROOM)

21 THE COURT: Says the plaintiff?

22 GREGG MEYERS: Please seat the
23 juror.

24 DAWES COOKE: Seat the juror.

25 THE COURT: Ask her to step in.

1 (JUROR NUMBER 446 ENTERS COURTROOM)

2 THE COURT: Thank you very much.
3 You've been selected to serve on this jury
4 with me. We will get started tomorrow. I'm
5 going to ask that you go back to the jury
6 room for just a few minutes, then they will
7 come and get you to show you where you park
8 throughout the trial. They have parking
9 places for you.

10 While you are out and away from this
11 place, do not speculate. Of course, you've
12 heard no evidence about this case. Don't
13 talk with anyone about it or permit anyone to
14 talk with you about it.

15 I'd ask that you return to your jury
16 room by 9:45 tomorrow. Thank you very much.
17 Have a great afternoon.

18 (JUROR NUMBER 446 SEATED)

19 (JUROR EXITS COURTROOM)

20 THE COURT: Ms. Sneed.

21 (JUROR NUMBER 382 ENTERS COURTROOM)

22 EXAMINATION OF MARTHA SNEED

23 BY THE COURT:

24 Q. Ms. Sneed, please take a seat. Give
25 us your full name and your juror number.

1 A. Martha Rachel Sneed and my birthdate
2 is March 25th, 1983.

3 Q. Thank you.

4 A. Oh, -- my jury number! Sorry!
5 Number 382.

6 Q. We now have your birthdate, so
7 that's good. It's in March, so we are
8 getting close to it.

9 Is this the first time that you've ever
10 been a juror in a civil trial?

11 A. Yes.

12 Q. Have you ever had or experienced any
13 family tragedies in your life?

14 A. Just deaths to cancer.

15 Q. Deaths to cancer?

16 A. (Affirmative nod).

17 Q. Of who? Whom?

18 A. My aunt and my uncle.

19 Q. Did that have any undue influence on
20 you? Was it sudden deaths, or was it ---

21 A. No, it was prolonged.

22 Q. Prolonged cancer?

23 A. (Affirmative nod).

24 Q. Would that affect or influence you
25 in any way in this dispute, to your know-

1 ledge?

2 A. No.

3 Q. Have you or a family member ever
4 been the victim or been accused of committing
5 the offense of sexual abuse, the act of
6 sexual abuse?

7 A. No.

8 Q. Do you know of any family member or
9 close personal friend who suffers from any
10 post-trauma stress disorder?

11 A. No.

12 Q. Have you ever researched the sex
13 offender registry?

14 A. No.

15 Q. Have you ever witnessed any sexual
16 harassment or sexual discrimination?

17 A. No.

18 Q. Have you or a family member or close
19 personal friend ever been falsely accused of
20 a crime?

21 A. No.

22 Q. Have you ever been the victim of a
23 crime?

24 A. No.

25 THE COURT: Any additional

1 questions from the plaintiff?

2 GREGG MEYERS: None, Your Honor

3 THE COURT: From the defendant?

4 DAWES COOKE: None.

5 THE COURT: If you would step out
6 just for a moment, we'll be with you in just
7 a second.

8 (JUROR NUMBER 382 EXITS COURTROOM)

9 THE COURT: What says the
10 plaintiff -- I almost said what says the
11 State.

12 DAWES COOKE: Please seat the juror.

13 DAWES COOKE: Seat the juror.

14 THE COURT: Ask Ms. Sneed to
15 return.

16 (JUROR NUMBER 382 ENTERS COURTROOM)

17 THE COURT: Ms. Sneed, thank you
18 very much. Appreciate it. You've been
19 selected to assist in resolving this dispute.

20 They are going to take you to the
21 jury room in just a few moments and then in a
22 few minutes they'll take you down and show
23 you the parking place they've provided for
24 you this week.

25 I ask you to be back in your jury

1 room at 9:45 in the morning.

2 Don't talk with anyone about this
3 case or permit anybody to talk with you about
4 it. Don't speculate about it.

5 Have a good evening. We will see
6 you tomorrow.

7 (JUROR NUMBER 382 SEATED)

8 (JUROR EXITS COURTROOM)

9 THE COURT: Ms. Babb.

10 (JUROR NUMBER 14 ENTERS COURTROOM)

11 EXAMINATION OF JANE BABB

12 BY THE COURT:

13 Q. Ms. Babb, how are you?

14 A. I'm good.

15 Q. Great. If you will, have a seat and
16 tell us your full name and juror number.

17 A. Jane Babb, B-a-b-b. Juror Number
18 14.

19 Q. Thank you, Ms. Babb. I have a few
20 questions for you. First, is this the first
21 time that you've been a juror in a civil
22 trial?

23 A. I was a juror but I don't know if it
24 was a civil trial or a criminal case.

25 Q. You don't recall?

1 A. No.

2 Q. Have you had any -- suffered any
3 family tragedies in your life?

4 A. No.

5 Q. Have you or a family member ever
6 been the victim of or ever been accused of
7 committing the offense of sexual abuse?

8 A. No.

9 Q. Do you have any family members or
10 close personal friends who suffer from post-
11 traumatic stress disorder?

12 A. Not that I know of.

13 Q. Have you ever witnessed sexual
14 harassment or sexual discrimination?

15 A. No.

16 Q. Have you or a family member ever
17 been falsely accused of a crime?

18 A. No.

19 Q. Have you been the victim of a crime?

20 A. (Negative gesture).

21 THE COURT: Any additional
22 question, from the plaintiff?

23 GREGG MEYERS: None, Your Honor.

24 THE COURT: From the defendant?

25 DAWES COOKE: None. Thank you.

1 THE COURT: If you could step out
2 just for a moment, we will be with you in a
3 second.

4 (JUROR NUMBER 14 EXITS COURTROOM)

5 THE COURT: Says the plaintiff?

6 GREGG MEYERS: Please seat the
7 juror.

8 THE COURT: Defendant?

9 DAWES COOKE: Strike the juror.

10 THE COURT: Please ask Ms. Babb to
11 step in.

12 (JUROR NUMBER 14 ENTERS COURTROOM)

13 THE COURT: Thank you, Ms. Babb,
14 for assisting us. You've been excused from
15 further participation in this trial. You can
16 leave through that door.

17 Please call the number after six
18 tonight and follow the instructions. Thank
19 you so much for your help. Appreciate it.

20 (JUROR NUMBER 14 EXCUSED)

21 (JUROR EXITS COURTROOM)

22 THE COURT: Next is Ms. Newham.

23 (JUROR NUMBER 292 ENTERS COURTROOM)

24 EXAMINATION OF JANET NEWHAM

25 BY THE COURT:

1 Q. Hi, Ms. Newman. How are you?

2 A. Fine, thank you, sir.

3 Q. Good. Please take a seat and, if
4 you will, state your name and juror number,
5 please.

6 A. My name is Janet Newham, Number 292
7 N-e-w-h-a-m.

8 Q. Thank you. We have several
9 questions. The first one is, is this the
10 first time that you've been a juror in a
11 civil dispute? A civil trial?

12 A. No, sir.

13 Q. All right, tell me -- you've been
14 before?

15 A. (Affirmative nod).

16 Q. What did it involve?

17 A. It was probably twenty-five years
18 ago, was in Frederick, Maryland, and was a
19 child molestation case.

20 Q. Really?

21 A. (Affirmative nod).

22 Q. Do you recall much about that case?

23 A. Bits and pieces, unfortunately not
24 the whole thing.

25 Q. You understand that this is

1 basically -- that the allegations is some
2 sexual abuse of a child, in this case?

3 A. I didn't know that.

4 Q. Those are some of the allegations in
5 this case. Would that -- the fact that
6 you've been on a jury, would that influence
7 you in this case?

8 A. I don't believe so.

9 Q. Well, I appreciate that answer. I
10 guess my question is, could you make a
11 commitment to both sides that it would not?

12 A. Yes.

13 Q. And you understand that this case
14 has its own set of facts?

15 A. (Affirmative nod).

16 Q. And you would be instructed to
17 follow the law that I give you not-
18 withstanding what the court may have
19 indicated to you in that other trial?

20 A. Yes, sir.

21 Q. And you could do that?

22 A. Yes, sir.

23 Q. And would do that?

24 A. Yes, sir.

25 Q. And your decision would be fair to

1 both sides?

2 A. Yes, sir.

3 Q. Do you recall what the verdict was?

4 A. The verdict was not guilty.

5 Q. Have you, a family member or a close
6 personal friend ever been the victim of or
7 been accused of sexual abuse?

8 A. No, sir.

9 Q. Do you know of any family members or
10 close personal friends who suffer from post-
11 trauma stress disorder?

12 A. No, sir.

13 Q. Have you ever researched the sex
14 offender registry?

15 A. No, sir.

16 Q. Have you ever witnessed, to your
17 knowledge, sexual harassment or sexual
18 discrimination?

19 A. Yes.

20 Q. Tell me about it.

21 A. Sexual discrimination. I guess
22 harassment/discrimination ---

23 Q. Okay.

24 A. --- as it is defined, uh, -- I think
25 as people. I think that as people our

1 society has become more knowledgeable about
2 what that is.

3 Q. Right.

4 A. Being in the corporate world for so
5 long, there was an emphasis on training
6 everyone for that. With a lot of training
7 for that, you just see people say and do
8 things from time to time that you have been
9 trained not to.

10 Q. I understand. Would any of that
11 influence or affect you in this trial?

12 A. I don't believe so.

13 Q. Okay. And you would apply the
14 knowledge gleaned from your work experience,
15 as you have just related, fairly and
16 impartially?

17 A. Yes, sir.

18 Q. Have you, a family member or close
19 personal friend ever been falsely accused of
20 a crime?

21 A. No, sir.

22 Q. Have you ever been the victim of a
23 crime?

24 A. No, sir.

25 THE COURT: Any additional

1 questions from the plaintiff?

2 GREGG MEYERS: Could I ask if the
3 juror has ever had a family tragedy?

4 THE COURT: I asked her that and
5 she said no.

6 GREGG MEYERS: I apologize, I
7 missed that.

8 JUROR NUMBER 292: Family tragedy?

9 THE COURT: Yeah. Didn't I ask
10 you that?

11 JUROR NUMBER 292: I don't believe
12 so, but the answer is no.

13 THE COURT: Okay, the answer is
14 no.

15 GREGG MEYERS: No other questions.
16 Thank you.

17 DAWES COOKE: No questions.

18 THE COURT: If you would, step out
19 and we will be with you in just a moment.

20 (JUROR NUMBER 292 EXITS COURTROOM)

21 THE COURT: I may not have asked
22 that, Mr. Meyers. Good catch.

23 GREGG MEYERS: Please strike the
24 juror.

25 THE COURT: Okay.

1 THE COURT: Ask Ms. Newham to come
2 in.

3 (JUROR NUMBER 292 ENTERS COURTROOM)

4 THE COURT: Thank you, Ms. Newham.
5 You may be excused from any further
6 participation in this trial. Have a great
7 day. Thank you for all your help. Call the
8 number after six tonight and follow the
9 instructions. You may exit through this door
10 here.

11 (JUROR NUMBER 292 EXCUSED)

12 (JUROR EXITS COURTROOM)

13 THE COURT: Moving on.

14 (JUROR NUMBER 332 ENTERS COURTROOM)

15 EXAMINATION OF RICHARD D. RICHARDSON

16 BY THE COURT:

17 Q. Good afternoon, sir. Take a seat.
18 State your full name, please, for us and give
19 us your juror number, please.

20 A. My full name is Richard Dan
21 Richardson, Juror Number 332.

22 Q. Mr. Richardson, I have several
23 questions for you. The first one is, is this
24 the first time that you've ever been a juror
25 on a civil trial?

1 A. Yes, Your Honor.

2 Q. Have you suffered -- you in your
3 family life ever had any family tragedies?

4 A. Aside from the death of a loved one,
5 no.

6 Q Was it a death -- if there is such a
7 thing as "normal", but through the course of
8 life?

9 A. Natural causes.

10 Q. Were they young or old?

11 A. Grandparents.

12 Q. Grandparents?

13 A. (Affirmative nod).

14 Q. Have you or any family member ever
15 been the victim of or been accused of sexual
16 abuse?

17 A. No, sir.

18 Q. Do you have any family members or
19 close personal friends who suffer from post-
20 traumatic stress disorder?

21 A. Yes, Your Honor.

22 Q. Tell me about that.

23 A. A good friend of mine, a veteran of
24 the most recent war effort, came home with no
25 personal injury but a lot of mental stress

1 and -- stress in that way.

2 Q. Okay. If you heard testimony in
3 this trial from someone who may be suffering
4 from post-trauma stress disorder, would --
5 the fact that you have that friend, would
6 that unduly influence you?

7 A. No, sir.

8 Q. Would you be able to apply your
9 life's experiences with your friend and your
10 knowledge of that fairly and impartially?

11 A. Yes, Your Honor.

12 Q. Have you ever researched the sex
13 offender registry?

14 A. I have not, sir.

15 Q. Have you ever witnessed sexual
16 harassment or sexual discrimination in the
17 workplace?

18 A. No, sir.

19 Q. Have you, a family member or close
20 personal friend ever been falsely accused of
21 a crime?

22 A. No, sir.

23 Q. And have you ever been the victim of
24 a crime?

25 A. I have not, sir.

1 DAWES COOKE: Any additional
2 questions from the plaintiff?

3 GREGG MEYERS: None from us, Your
4 Honor.

5 DAWES COOKE: None.

6 THE COURT: If you would, step out
7 just for a moment.

8 (JUROR NUMBER 332 EXITS COURTROOM)

9 THE COURT: Plaintiff?

10 GREGG MEYERS: Please excuse the
11 juror.

12 THE COURT: Okay, that leaves you
13 with one strike. Ask Mr. Richardson to come
14 back in.

15 (JUROR NUMBER 332 ENTERS COURTROOM)

16 THE COURT: Thank you, Mr.
17 Richardson. Thank you for all your help
18 today. You have been excused from any
19 further participation in this. Please call
20 the number after six tonight and follow the
21 instructions.

22 (JUROR NUMBER 332 EXCUSED)

23 (JUROR EXITS COURTROOM)

24 THE COURT: This is the police officer?

25 (JUROR NUMBER 32 ENTERS COURTROOM)

EXAMINATION OF TIMOTHY BROMMER

BY THE COURT:

Q. Sir, did you have a good lunch?

A. It was good.

Q. If you would, state your name for the record and your juror number.

A. Timothy Brommer, Juror Number 32.

Q. Thank you, sir. Several questions that we have as follow up from this morning. Is this the first time that you've ever been on a jury in a civil trial?

A. Yes.

Q. Have you suffered any family tragedies in your life?

A. No.

Q. Have you or a member of your family ever been the victim of or been accused of sexual abuse?

A. No.

Q. Do you know of any family members or close personal friend who suffers from post-traumatic stress disorder?

A. No.

Q. Have you ever researched the sex offender registry?

1 A. Not other than in an official
2 capacity.

3 Q. Not in ---

4 A. Not as a civilian. As a police
5 officer, if I had to, I would have.

6 Q. But you don't have any independent
7 recollection?

8 A. No.

9 Q. The only -- but only in your
10 capacity as a police officer?

11 A. Correct.

12 Q. Have you ever witnessed sexual
13 harassment or sexual discrimination in the
14 workplace?

15 A. Probably. I don't remember anything
16 specific off the top of my head.

17 Q. But you feel that you may have seen
18 that in your life?

19 A. Possibly. Nothing serious enough to
20 where I recall specifically.

21 Q. Would that -- since you can't
22 recall, it would not influence you in this
23 trial?

24 A. No, it wouldn't.

25 Q. Have you or a family member, close

1 personal friend, ever been falsely accused of
2 a crime?

3 A. No.

4 Q. Have you ever been the victim of a
5 crime?

6 A. Yes.

7 Q. Tell me what.

8 A. As a police officer, getting
9 assaulted in the course of doing my duties.

10 Q. Would that affect or influence you
11 in any way?

12 A. No.

13 THE COURT: Any additional
14 questions from the plaintiff?

15 GREGG MEYERS: None, Your Honor.
16 Thank you.

17 THE COURT: From the defendant?

18 DAWES COOKE: None.

19 THE COURT: If you would step out,
20 we will be with you in just a moment.

21 (JUROR NUBMER 32 EXITS COURTROOM)

22 THE COURT: Says the plaintiff?

23 GREGG MEYERS: Strike the juror.

24 THE COURT: Let's bring him in.

25 (JUROR NUMBER 32 ENTERS COURTROOM)

1 THE COURT: Thank you, sir. You
2 have been excused from any further
3 participation in this one. If you would,
4 call the number after six tonight and follow
5 the instructions. Have a great day. Thank
6 you, sir.

7 (JUROR NUMBER 32 EXCUSED)

8 (JUROR EXITS COURTROOM)

9 THE COURT: Mr. Wells.

10 (JUROR NUMBER 425 ENTERS COURTROOM)

11 EXAMINATION OF WAYNE E. WELLS

12 BY THE COURT:

13 Q. Hello, Mr. Wells.

14 A. Hey.

15 Q. How are you this afternoon?

16 A. Fine.

17 Q. Good. Take your seat there, get
18 comfortable. State your full name and your
19 juror number.

20 A. Wayne Edmond Wells, 425.

21 Q. Thank you, sir. A couple of
22 questions for you. Is this the first time
23 you've ever been a juror in a civil trial?

24 A. (Negative gesture) -- I was a juror
25 on a criminal trial in '84.

1 Q. But not a civil trial?

2 A. Not a civil trial.

3 Q. Do you remember what the case was in
4 the criminal trial?

5 A. It was a rape case.

6 Q. Would that affect or influence you
7 in this case?

8 A. No, sir.

9 Q. And you understand that this case
10 would be based on its facts and circumstances
11 and the law in this case?

12 A. Yes, sir.

13 Q. Have you suffered any family
14 tragedies in your life?

15 A. My dad died of cancer five years
16 ago.

17 Q. Was that a sudden occurrence?

18 A. No, he fought it for nine years.

19 Q. Long?

20 A. (Affirmative nod).

21 Q. Protracted?

22 A. Yes, sir.

23 Q. Would that unduly influence you?

24 A. No, sir.

25 Q. Have you or a family member or close

1 personal friend ever been accused of or ever
2 been the victim of sexual abuse?

3 A. Yes, sir.

4 Q. You have?

5 A. Yes, sir.

6 Q. Tell me about it.

7 A. It was me. I was ten, eleven years
8 old and a couple of the older boys in the
9 neighborhood -- (pause).

10 Q. Okay. Would that influence you in
11 this case?

12 A. I made peace with that a few years
13 ago. No.

14 Q. I understand that but would it
15 affect how you viewed the evidence in this
16 case in any way?

17 A. No, sir.

18 Q. You would be able to apply that
19 experience fairly and impartially?

20 A. Yes, sir.

21 Q. And your decision would be based on
22 the evidence and the law?

23 A. Yes, sir.

24 Q. Do you have any family members or
25 close personal friends who suffer from post-

1 traumatic stress disorder?

2 A. No, sir.

3 Q. Have you or a family member ever
4 suffered from any addiction and/or dealt with
5 addiction which was due to sexual abuse?

6 A. No.

7 Q. Have you ever researched the sex
8 offender registry?

9 A. Researched it?

10 Q. (Affirmative nod).

11 A. No, sir.

12 Q. Have you ever witnessed sexual
13 harassment or sexual discrimination in the
14 workplace?

15 A. Yes, sir.

16 Q. Can you tell me a little bit about
17 that?

18 A. When I was working for Piggly
19 Wiggly, I had a cashier and the overnight
20 manager was constantly making comments about
21 her. She went to management and a couple of
22 weeks later she was fired.

23 Q. She was fired?

24 A. (Affirmative nod), she was fired.

25 Q. Would that affect or influence you

1 in this dispute?

2 A. No, sir.

3 Q. Again, you would be able to apply
4 that life's experience fairly and
5 impartially?

6 A. Yes, sir.

7 Q. Okay. Have you, a family member or
8 a close personal friend ever been falsely
9 accused of a crime?

10 A. No, sir.

11 Q. Have you ever been the victim of a
12 crime -- other than of course what you shared
13 earlier about early in your life?

14 A. I don't -- no. I mean, not a crime.
15 I mean, when I was younger, I got beat up a
16 couple of times.

17 Q. Okay.

18 THE COURT: Any additional
19 questions from the plaintiff?

20 GREGG MEYERS: I would just ask
21 the outcome of the criminal case that happen-
22 ed to the juror?

23 EXAMINATION CONTINUED

24 BY THE COURT:

25 Q. Do you recall?

1 A. Yes, the young gentlemen was found
2 guilty.

3 Q. And the crime was, again?

4 A. Rape. It was -- well, in technical
5 terms it was digital penetration without
6 permission.

7 Q. Criminal sexual conduct?

8 A. (Affirmative nod), criminal sexual
9 conduct.

10 THE COURT: Any additional
11 questions?

12 DAWES COOKE: Could we ask whether
13 as a result of the experience that he had as
14 a child whether any charges were brought
15 against ---

16 EXAMINATION CONTINUED

17 BY THE COURT:

18 Q. Were any charges brought against any
19 of the persons?

20 A. No, that was '66, '67 and it was
21 much different back then. I never really
22 talked about it until I talked to a
23 psychiatrist in the late '70s.

24 Q. So you sought counseling for it?

25 A. Yes, sir, I had some counseling.

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1 Q. Do you seek counseling for that now?

2 A. No.

3 Q. And I think you said you put that to
4 rest?

5 A. I made peace with that like twenty-
6 five or thirty years ago.

7 THE COURT: Nothing further.
8 Thank you. You may step out and we will be
9 with you in just a moment.

10 (JUROR NUMBER 425 EXITS COURTROOM)

11 THE COURT: Any challenge for
12 cause?

13 GREGG MEYERS: None.

14 DAWES COOKE: Yes, Your Honor.

15 As the victim of sexual assault as a child,
16 I believe that he couldn't be fair. He's
17 received psychotherapy for his ---

18 THE COURT: He stated very
19 categorically, very effectively I thought, --
20 as you may have sensed in my voice, I almost
21 became possibly accusatory as whether 'you
22 can possibly do that' and he allayed that
23 right off the bat.

24 Let the record reflect that the
25 juror couldn't have been more direct, less --

1 no showing of passion whatsoever, just a very
2 methodical response to it.

3 So I -- I understand and I had that
4 in my mind, but given his responses,
5 (negative gesture). Then going back through
6 it, talking about the counseling, he further
7 confirmed.

8 I respectfully deny cause. Do you
9 move to strike?

10 DAWES COOKE: Yes, please.

11 THE COURT: Okay. Let the record
12 reflect that as to number fifteen on the list
13 (Juror Number 415, Wayne Wells) that there
14 was a challenge for cause denied, that the
15 defendant -- and that is protected. Thank
16 you.

17 (JUROR NUMBER 425 ENTERS COURTROOM)

18 THE COURT: Thank you, Mr. Wells.
19 I appreciate it. You've been excused from
20 participation in this dispute. If you will,
21 call the number after six tonight and follow
22 that instruction. Thank you. Appreciate it.
23 Have a great day. You may exit through that
24 door.

25 (JUROR NUMBER 415 EXCUSED)

1 (JUROR EXITS COURTROOM)

2 THE COURT: Okay.

3 (JUROR NUMBER 228 ENTERS COURTROOM)

4 EXAMINATION OF CHAD LAVINGHOUSEZ

5 BY THE COURT:

6 Q. If you will, just take a seat.

7 A. Yes, sir.

8 Q. State your full name and juror
9 number.

10 A. Chad Lavinghousez. 228.

11 Q. Thank you. I have several questions
12 for you. First one, is this the first time
13 you've been a juror in a civil case?

14 A. Yes, sir.

15 Q. Have you in your life experienced
16 any family tragedies?

17 A. No, sir.

18 Q. Okay. Have you or a family member
19 or close personal friend ever been accused of
20 or been the victim of sexual abuse?

21 A. Not a close friend. One of my
22 friend's cousins -- but not a direct ---

23 Q. Were you involved in that?

24 A. No, sir.

25 Q. Do you have any direct or indirect

1 -- independent knowledge of that?

2 A. No, sir.

3 Q. Do you recall anything specific
4 about being ---

5 A. I believe that there was child
6 pornography found on his computer. That was
7 -- (pause).

8 Q. That was the extent of it?

9 A. Yes, sir.

10 Q. Would that affect or influence you
11 in any way, sir?

12 A. No, sir.

13 Q. You would be able to consider the
14 evidence fairly and impartially, without
15 being influenced by that knowledge?

16 A. Yes, sir.

17 Q. Have you or any family member or
18 close personal friend ever been diagnosed or
19 suffered from post-trauma stress disorder?

20 A. No, sir.

21 Q. Have you ever witnessed sexual
22 harassment or sexual discrimination in the
23 workplace?

24 A. No, sir.

25 Q. Have you ever researched the sex

1 offender registry?

2 A. No, sir.

3 Q. Have you, a family member or a close
4 personal friend ever been falsely accused of
5 a crime?

6 A. No, sir.

7 Q. Have you ever been the victim of a
8 crime?

9 A. When I -- it's kind of -- I was
10 punched in the face before but that was it.

11 Q. Was there a criminal prosecution?

12 A. There was a cop present and they
13 arrested the guy but I wasn't involved in
14 that, other than he had to pay for the
15 replacement of my glasses.

16 Q. Okay. How long ago did that occur?

17 A. That was September of 2011.

18 Q. Would that influence you in this
19 case at all?

20 A. No, sir.

21 THE COURT: Any additional
22 questions from the plaintiff?

23 GREGG MEYERS: None, Your Honor.

24 THE COURT: From the defendant?

25 DAWES COOKE: The incidence where

1 somebody had child pornography, were there
2 criminal charges brought as a result of that?

3 EXAMINATION CONTINUED

4 BY THE COURT:

5 Q. Were there criminal charges, to your
6 knowledge, against the person with the
7 computer?

8 A. From what I know, yes.

9 Q. There were?

10 A. But I don't know the extent.

11 Q. You don't know what -- you don't
12 know the outcome?

13 A. I know that he was found guilty of
14 whatever the child pornography was on his
15 computer, but I don't know anything in
16 particular.

17 Q. How long ago was that?

18 A. (Negative gesture), six years?
19 Seven years? Something like that.

20 THE COURT: Anything else?

21 DAWES COOKE: No, sir. Thank you.

22 THE COURT: Thank you. If you
23 would step out, we will be with you in just a
24 moment, sir.

25 (JUROR NUMBER 228 EXITS COURTROOM)

1 THE COURT: Any challenge for cause?

2 GREGG MEYERS: None.

3 DAWES COOKE: Seat the juror.

4 THE COURT: Okay, ask him to come
5 in, please.

6 (JUROR NUMBER 228 ENTERS COURTROOM)

7 THE COURT: Thank you so much,
8 sir. You've been selected to assist us in
9 resolving this dispute. I'm going to let you
10 go to your jury room for just a minute and
11 then they will take you down, very shortly,
12 and show you where you'll park.

13 Be back in your jury room by 9:45
14 tomorrow. While you are out, don't talk to
15 anyone about this case or permit anyone to
16 talk about it in your presence. Don't
17 conduct any independent research. We will
18 see you tomorrow.

19 (JUROR NUMBER 228 SEATED)

20 (JUROR EXITS COURTROOM)

21 THE COURT: Bring in Mr. Rauton.

22 (JUROR NUMBER 325 ENTERS COURTROOM)

23 EXAMINATION OF GEORGE RAUTON

24 BY THE COURT:

25 Q. Good afternoon, sir.

1 A. Good afternoon.

2 Q. How are you?

3 A. Fine.

4 Q. If you would, just take a seat.

5 Give us your name and give us your juror
6 number?

7 A. George Rauton, Number 325.

8 Q. Thank you, Mr. Rauton. I have
9 several questions for you. Is this the first
10 time that you've ever served as a juror on a
11 civil trial?

12 A. Yes, sir.

13 Q. It is?

14 A. Yes, sir.

15 Q. Have you in your life suffered any
16 family tragedies?

17 A. Such as?

18 Q. That's a very good question, because
19 it's not very clear. Obviously if we live
20 long enough we may experience the death of a
21 loved one through the normal course of life.

22 A. (Affirmative nod).

23 Q. But basically the untimely death of
24 someone, the untimely injury to someone such
25 as they were incapacitated -- an

1 incapacitated person?

2 A. Yes. Most recently -- I have a twin
3 brother, had a twin brother. He suddenly --
4 he had surgery and passed away October 17th,
5 2014.

6 Q. I am sorry to hear that.

7 A. Thank you.

8 Q. Would that affect you in this trial,
9 sir?

10 A. No, sir.

11 Q. And it wouldn't unduly influence
12 your view of any evidence; is that correct?

13 A. Right. No, sir.

14 Q. Have you, a close personal friend or
15 family member ever been the victim of sexual
16 abuse?

17 A. No, sir.

18 Q. Do you know of any family member(s)
19 or close personal friends who suffer from
20 post-traumatic stress disorder?

21 A. No, sir.

22 Q. Okay. Have you ever witnessed
23 sexual harassment or sexual discrimination
24 in the workplace, to your knowledge?

25 A. No, sir, not in the workplace. We

1 had a situation in our church not long ago,
2 that I was just slightly involved in.

3 Q. Were you involved in it in the sense
4 of part of an investigating body or were you
5 ---

6 A. I was one of three people, or either
7 four people, that was asked to go to the
8 person -- well, first to see what we needed
9 to do. Fortunately we went to our church's
10 attorneys and a lady on the staff told us
11 exactly what to do. We did it, that was it.

12 Q. Were there any criminal charges
13 brought?

14 A. Not to my knowledge.

15 Q. Was any remedial action taken, such
16 as dismissing that person or anything?

17 A. Yes, sir, that was the information
18 that we got. We were told how to do it and
19 we made the statement and it was over with
20 and accomplished. No complications.

21 Q. That would not influence you?

22 A. No, sir.

23 Q. Have you ever researched the sex
24 offender registry?

25 A. No, sir.

1 Q. Have you or a family member or close
2 personal friend ever been the victim or
3 falsely accused of a crime?

4 A. No, sir.

5 Q. Have you ever been the victim of a
6 crime? Or has a close personal friend?

7 A. Not that I can think of right this
8 second.

9 Q. Thank you, sir.

10 THE COURT: Any additional
11 questions from the plaintiff?

12 GREGG MEYERS: None, Your Honor.
13 Thank you.

14 THE COURT: From the defendant?

15 DAWES COOKE: Could we ask,
16 without getting into great details, the
17 circumstances that he was called upon to
18 investigate.

19 EXAMINATION CONTINUED

20 BY THE COURT:

21 Q. What were the allegations?

22 A. The allegation was that -- this
23 person was on staff with the church and there
24 were some things going, like inviting young
25 men to go on a camping trip and that type

1 thing that was not aboveboard. That was what
2 was involved.

3 Q. So there were allegations or
4 assertions of homosexuality?

5 A. Yes.

6 Q. Would that -- would that -- is that
7 a problem for you?

8 A. No, sir.

9 Q. Do you have any personal beliefs or
10 philosophies about homosexuality?

11 A. No, sir.

12 THE COURT: Anything else?

13 DAWES COOKE: No, sir. Thank you.

14 THE COURT: Thank you very much.

15 If would you step out, we'll be with you in a
16 moment.

17 (JUROR NUMBER 325 EXITS COURTROOM)

18 THE COURT: That creates something
19 that I've been meaning to ask. We haven't
20 had anybody even close, I don't think, but
21 I'm going to probably include that in the
22 inquiries, about homosexuality, as well.

23 Any objection from the plaintiff?

24 GREGG MEYERS: None, Your Honor.

25 THE COURT: Any objection from the

1 defendant to including that in my questions?

2 DAWES COOKE: No objection.

3 THE COURT: Is there any challenge
4 for cause, Mr. Meyers?

5 GREGG MEYERS: None, Your Honor.

6 DAWES COOKE: Seat the juror,
7 please.

8 THE COURT: Seat the juror. Thank
9 you. Have Mr. Rauton come back in.

10 (JUROR NUMBER 325 ENTERS COURTROOM)

11 THE COURT: Thank you, sir. We
12 appreciate your patience. You've been
13 selected to assist us in further resolving
14 this case. We will resume this at 9:45
15 tomorrow. They are going to show you to the
16 jury room where you are going to need to
17 report, then they are going to take you down
18 and show you where your parking place is for
19 the duration of the trial.

20 Don't discuss this case with anyone
21 or allow anyone to talk about it in your
22 presence. Have a great evening and we will
23 see in the morning at 9:45. Appreciate it.

24 (JUROR NUMBER 325 SEATED)

25 (JUROR EXITS COURTROOM)

1 THE COURT: Who is next?

2 (JUROR NUMBER 258 ENTERS COURTROOM)

3 EXAMINATION OF CLIFTON L. MCDONALD

4 BY THE COURT:

5 Q. Good to see you, sir. Had a good
6 afternoon thus far? I hope.

7 A. So far, (affirmative nod).

8 Q. So far?

9 A. (Affirmative nod).

10 Q. Have a seat and, if you would, state
11 your name for the record and juror number.

12 A. My name is Clifton L. McDonald and I
13 am Juror Number 258.

14 Q. Thank you, sir. There are some
15 questions that I have for you, Mr. McDonald.
16 The first one is, is this the first time that
17 you've ever sat on a civil jury?

18 A. Yes, it is.

19 Q. In your lifetime, have you ever had
20 any family tragedies?

21 A. My father passed away.

22 Q. Was that a normal -- was that a ---

23 A. He had a heart attack.

24 Q. Suddenly?

25 A. Yes.

1 Q. How long was that?

2 A. Five years ago.

3 Q. Would that unduly influence you in
4 any way in this case? I know that was
5 probably not an exciting time in your life,
6 certainly a traumatic time, but would that
7 unduly influence you now?

8 A. No, sir.

9 Q. It wouldn't affect how you would
10 view the evidence in this case?

11 A. No.

12 Q. Have you or a family member or close
13 personal friend ever been the victim of or
14 ever been accused of committing a sexual
15 abuse or a sexual offense?

16 A. No, sir.

17 Q. Do you know any family members or
18 close personal friends who suffer from post-
19 trauma stress disorder?

20 A. No.

21 Q. Have you ever researched the sex
22 offender registry?

23 A. I have looked, yes.

24 Q. Have you done it frequently or do
25 you do it just on occasion or what?

1 A. On occasion.

2 Q. Do you recall what precipitated your
3 looking at the registry?

4 A. Just curious of who was in my
5 neighborhood.

6 Q. Would that affect you in any way in
7 this case?

8 A. No.

9 Q. Have you ever witnessed any sexual
10 harassment or discrimination in the work-
11 place?

12 A. No.

13 Q. Do you have personal feelings,
14 strong feelings or any personal philosophy
15 concerning homosexuality?

16 A. No.

17 Q. Have you or a family member ever
18 been falsely accused of a crime?

19 A. No.

20 Q. Have you ever been the victim of a
21 crime?

22 A. Yes.

23 Q. Tell me about that.

24 A. A hit-and-run. They hit our parked
25 vehicle and left.

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1 Q. Left?

2 A. Yeah, (affirmative nod).

3 Q. Were they ever apprehended?

4 A. No.

5 Q. How long ago was that?

6 A. Two years ago.

7 Q. Would that affect you, Mr. McDonald,
8 in any way in this case?

9 A. No.

10 THE COURT: Any additional
11 questions from the plaintiff?

12 GREGG MEYERS: None, Your Honor.
13 Thank you.

14 THE COURT: From the defendant?

15 DAWES COOKE: Mr. McDonald said
16 earlier that he'd went to summer camp.

17 JUROR NUMBER 258: Yes.

18 DAWES COOKE: Could we ask which
19 camp that was?

20 THE COURT: Yes.

21 EXAMINATION CONTINUED

22 BY THE COURT:

23 Q. What camp was that?

24 A. It was The Citadel summer camp.

25 Q. What year was that?

1 A. I guess I was about thirteen, so --
2 I'm forty-nine right now, so about thirty-
3 something years ago.

4 Q. And I believe that you indicated
5 that that experience would not influence you
6 in any way?

7 A. (Affirmative nod), no.

8 Q. And that if there were some
9 assertions or allegations or discussions
10 about The Citadel camps that that wouldn't
11 influence how you viewed that evidence
12 either?

13 A. No.

14 THE COURT: Anything else?

15 DAWES COOKE: That's fine.

16 THE COURT: Anything further from
17 the plaintiff?

18 GREGG MEYERS: No, Your Honor.

19 THE COURT: Thank you, Mr.
20 McDonald. If you would step out, we will be
21 with you in just a moment.

22 (JUROR NUMBER 258 EXITS COURTROOM)

23 THE COURT: Any challenge for
24 cause?

25 GREGG MEYERS: None.

1 DAWES COOKE: Seat the juror.

2 THE COURT: Bring him in, please.

3 (JUROR NUMBER 258 ENTERS COURTROOM)

4 THE COURT: Thank you, Mr.

5 McDonald. We look forward to working with
6 you. You've been selected to assist in
7 resolving this dispute.

8 You'll need to be back in your jury
9 room -- and they'll show you that in just a
10 moment -- by 9:45 in the morning. Have a
11 great evening.

12 Please don't discuss this case with
13 anyone or permit anyone to talk with you
14 about it or in your presence.

15 They will also show you where you
16 will be parking for the duration of the
17 trial. Thank you. See you in the morning.

18 (JUROR NUMBER 258 SEATED)

19 (JUROR EXITS COURTROOM)

20 THE COURT: Ms. Raulston.

21 (JUROR NUBMER 324 ENTERS COURTROOM)

22 EXAMINATION OF JOANNA RAULSTON

23 BY THE COURT:

24 Q. Hi, Ms. Raulston. Come on in and
25 have a seat. Good afternoon. How are you?

1 A. Fine, thank you.

2 Q. If you would, state your full name
3 and give us your juror number, please.

4 A. Joanna Raulston, 324.

5 Q. Thank you, Ms. Raulston. We have
6 several questions for you. First, is this
7 the first time that you've ever been a juror
8 in a civil case?

9 A. Yes.

10 Q. Have you had any family tragedies in
11 your life?

12 A. Yes.

13 Q. Tell me about them.

14 A. My younger brother committed
15 suicide.

16 Q. How long ago was that?

17 A. About four years ago.

18 Q. Was it a sudden, unexpected
19 situation? Had he had any problems, mental
20 problems before then?

21 A. Not that we knew of.

22 Q. Not that you knew of?

23 A. (Negative gesture).

24 Q. And were you present when that
25 occurred?

1 A. No.

2 Q. That would not unduly influence you
3 or affect you in this case?

4 A. No.

5 Q. Anything else?

6 A. No.

7 Q. The -- have you, any family member
8 or close personal friend ever been accused of
9 or ever been the victim of sexual abuse?

10 A. No.

11 Q. Do you know of any family members or
12 close personal friends who suffer from post-
13 trauma stress disorder?

14 A. No.

15 Q. Have you ever researched the sex
16 offender registry?

17 A. Yes.

18 Q. Tell me about that.

19 A. I am actually new to the Charleston
20 area, so I did a search of people around me.

21 Q. I understand. Do you do that on a
22 regular basis?

23 A. I've only done it once.

24 Q. Only once?

25 A. (Affirmative nod).

1 Q. And the purpose was to ascertain if
2 there were any persons living nearby?

3 A. Yes.

4 Q. Have you ever witnessed any sexual
5 harassment or any sexual discrimination?

6 A. No.

7 Q. Do you have any personal strong
8 feelings or philosophies concerning homo-
9 sexuality?

10 A. No.

11 Q. Have you or any family member ever
12 been falsely accused of a crime?

13 A. No.

14 Q. And have you ever been the victim of
15 a crime?

16 A. No.

17 THE COURT: Any additional
18 questions from the plaintiff?

19 GREGG MEYERS: None. Thank you,
20 Your Honor.

21 DAWES COOKE: None, Your Honor.

22 THE COURT: If you would step
23 outside, ---

24 JUROR NUMBER 324: I have a ---

25 THE COURT: If you'll step out,

1. we'll be with you in just a moment.

2. (JUROR NUMBER 324 EXITS COURTROOM)

3. THE COURT: Any challenge?

4. GREGG MEYERS: No challenge.

5. THE COURT: Defense?

6. DAWES COOKE: No challenge. Seat

7. the juror, please.

8. THE COURT: Let me, just for my
9. edification, -- and I -- it shows that -- I
10. love what I am in so many ways, but what is
11. the -- has there been threats of suicide in
12. this case?

13. GREGG MEYERS: No, sir.

14. THE COURT: Okay. I just wanted
15. to have that in mind. No problem. Bring her
16. in.

17. (JUROR NUMBER 324 ENTERS COURTROOM)

18. THE COURT: Thank you, Ms.
19. Raulston. I am please to inform you that you
20. have been selected to help further resolve
21. this case.

22. Please be back at 9:45 tomorrow.
23. They are going to take you and show you the
24. jury room and where you will be parking for
25. the duration of the trial.

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1 Please, while you are out, don't
2 allow anybody to talk to you about the case
3 or talk about it in your presence. Don't
4 conduct any independent research.

5 See you tomorrow, 9:45.

6 (JUROR NUBMER 324 SEATED)

7 (JUROR EXITS COURTROOM)

8 THE COURT: Do y'all need a break?

9 DAWES' COOKE: I've never turned down
10 a break in my life, but ---

11 THE COURT: Next juror, let's do
12 this and then we will take a break.

13 (JUROR NUMBER 252 ENTERS COURTROOM)

14 EXAMINATION OF VICKI MARASI

15 BY THE COURT:

16 Q. How are you?

17 A. Good.

18 Q. If you would, have a seat and tell
19 us your full name and juror number.

20 A. Vicki Ann Marsi. My number is 252.

21 Q. Thank you, Ms. Marsi. I have
22 several questions for you. The first one is,
23 is this the first time you've ever served on
24 a civil jury?

25 A. No

1 Q. Tell me. You've been before?

2 A. (Affirmative nod).

3 Q. Where?

4 A. It was when you were over across the
5 street in another building, for a traffic
6 violation case.

7 Q. A traffic case?

8 A. (Affirmative nod).

9 Q. Do you recall what the case was
10 about?

11 A. I do. It was somebody that had just
12 stopped in the middle of the road and got
13 rear-ended. It was to determine who was at
14 fault.

15 Q. And were they seeking damages?

16 A. Yes.

17 Q. Do you remember the result?

18 A. I do. It was a hung jury.

19 Q. So they couldn't decide?

20 A. No.

21 Q. Do you understand that that case --
22 and that case would not influence you in any
23 way in this particular situation, because
24 this case would obviously rises and falls on
25 its own facts and law? Correct?

1 A. Yes.

2 Q. Have you ever experienced or
3 suffered any family tragedies in your life?

4 A. Fortunately not.

5 Q. Good. Have you or a family member
6 ever been accused of or ever been the victim
7 of a sexual abuse?

8 A. No.

9 Q. Do you know of any family members or
10 close personal friends that suffer from post-
11 trauma stress disorder?

12 A. No, I don't believe I do.

13 Q. Okay. Have you ever researched the
14 sex offender registry?

15 A. No.

16 Q. Have you ever witnessed sexual
17 harassment or sexual discrimination in the
18 workplace, anywhere for that matter?

19 A. No, I don't think so.

20 Q. Do you have any strong feelings or
21 personal philosophies about homosexuality?

22 A. Uh, -- no.

23 Q. Would not be unduly influenced by
24 any testimony about homosexuality, that would
25 cause you to feel one way or the other?

1 A. (Negative gesture).

2 Q. Have you or a family member ever
3 been falsely accused of a crime?

4 A. No.

5 Q. Have you ever been the victim of a
6 crime?

7 A. No, sir.

8 THE COURT: Any additional
9 questions from the plaintiff?

10 GREGG MEYERS: None, Your Honor.

11 THE COURT: From the defendant?

12 DAWES COOKE: Could we ask Ms. Marsi
13 -- I believe that she told us that she got a
14 graduate degree from The Citadel. Could we
15 ask what year that was?

16 THE COURT: Yeah.

17 EXAMINATION CONTINUED

18 BY THE COURT:

19 Q. When was that?

20 A. It was 1993.

21 Q. That would not affect or influence
22 you at all in this dispute?

23 A. (Negative gesture).

24 THE COURT: Anything else?

25 DAWES COOKE: That's all.

1 THE COURT: Thank you. If you
2 would step out, we'll be with you in just a
3 moment.

4 (JUROR NUMBER 252 EXITS COURTROOM)

5 THE COURT: Challenge from the
6 plaintiff?

7 GREGG MEYERS: None.

8 THE COURT: From the defendant?

9 DAWES COOKE: Seat the juror,
10 please.

11 THE COURT: That would be number
12 eight. Four more to go. Let's ask her to
13 step back in.

14 (JUROR NUMBER 252 ENTERS COURTROOM)

15 THE COURT: Ms. Marsi, thank you
16 very much. You've been selected to assist us
17 in resolving this dispute.

18 So I will need you back at 9:45 in
19 the morning. They will show you the jury
20 room where you need to report and they will
21 also take you down and show you the parking
22 space that you will have for the duration of
23 the trial.

24 Please, while you are out don't
25 discuss this case with anyone or permit

1 anyone to talk with you about it. Don't do
2 any independent investigations. I'll see you
3 tomorrow at 9:45. Have a good evening.

4 (JUROR NYUMBER 252 SEATED)

5 (JUROR EXITS COURTROOM)

6 THE COURT: Let's take a short
7 recess. Let's take ten minutes.

8 (BRIEF RECESS)

9 THE COURT: I believe the
10 defendant has one strike remaining. Is that
11 correct?

12 DAWES COOKE: Yes, sir.

13 THE COURT: Okay. Bring in our
14 next juror.

15 (JUROR NUMBER 366 ENTERS COURTROOM)

16 EXAMINATION OF ANNABELL SIMMONS

17 BY THE COURT:

18 Q. How are you?

19 A. I'm good.

20 Q. Good. Sorry to keep you waiting.

21 If you would have a seat, please, ma'am.

22 A. Okay.

23 Q. When you're comfortable, state your
24 name, please, and your juror number for us.

25 A. I'm Annabell Simmons, Juror Number

1 366.

2 Q. Thank you, Ms. Simmons. I have a
3 couple of questions for you. First of all,
4 is this the first time that you've ever
5 served as a juror in a civil trial?

6 A. Yes.

7 Q. Have you experienced or suffered in
8 your family any tragedies in your life?

9 A. Like?

10 Q. Well, that's a good question. The
11 untimely death of a loved one, injury or
12 severe injury to a child, anything of that
13 nature?

14 A. My sister died in '06 from cancer,
15 she suffered for eight years; but nothing
16 other than that.

17 Q. Nothing other than that?

18 A. No.

19 Q. And that wouldn't influence you,
20 would it, in this trial?

21 A. No.

22 Q. Have you or a family member ever
23 been accused or ever been the victim of
24 sexual abuse?

25 A. No.

1 Q. Have you or any family member ever
2 been diagnosed with post-trauma stress
3 disorder?

4 A. No.

5 Q. Do you know of anyone who has been?

6 A. Just the clients that I serve.

7 Q. In that capacity, you've talked
8 with them and counseled them with that?

9 A. No. We have a therapist that comes
10 in and a psychiatrist that deals with that.

11 Q. So they come in and deal with that?

12 A. Right.

13 Q. Would that affect or influence you
14 in this dispute if there was testimony that
15 someone had post-trauma stress disorder?
16 Would you be able to apply your knowledge
17 fairly and impartially?

18 A. Yes.

19 Q. And you would base your decision on
20 the evidence and the law?

21 A. Yes.

22 Q. Have you ever researched the sex
23 offender registry, Ms. Simmons?

24 A. No, I've never had any reason to.

25 Q. Have you ever witnessed sexual

1 harassment or sexual discrimination in the
2 workplace?

3 A. No.

4 Q. Do you have any strong feelings or
5 philosophies concerning homosexuality?

6 A. No.

7 Q. Have you or any close -- a member of
8 your family or close personal friend ever
9 been falsely accused of a crime?

10 A. Not that I know of.

11 Q. Have you ever been the victim of a
12 crime?

13 A. No.

14 THE COURT: Any additional
15 questions from the plaintiff?

16 GREGG MEYERS: No, Your Honor.

17 THE COURT: From the defendant?

18 DAWES COOKE: I think Ms. Simmons
19 said that she works with special needs
20 children. Could we ask whether she's taken/
21 taking care of any children that were victims
22 of sexual abuse?

23 EXAMINATION CONTINUED

24 BY THE COURT:

25 Q. Have you ever to your knowledge

1 dealt with any children who have been
2 sexually abused?

3 A. Not that I know of.

4 DAWES COOKE: Nothing further.
5 Thank you.

6 THE COURT: Thank you. If you
7 would step out, we will be with you in just
8 a moment.

9 (JUROR NUMBER 366 EXITS COURTROOM)

10 THE COURT: Any challenge?

11 GREGG MEYERS: No challenge, Your
12 Honor.

13 DAWES COOKE: Seat the juror, Your
14 Honor.

15 THE COURT: Very well. Ask her to
16 step in, please.

17 (JUROR NUMBER 366 ENTERS COURTROOM)

18 THE COURT: Ms. Simmons, I'm
19 pleased to inform you that you've been
20 selected to assist in further resolving this
21 dispute. We will renew this tomorrow at
22 9:45. When you leave now they'll saw you the
23 jury room where you will need to report and
24 they will also take you down and show you
25 where you will be able to park for the

1 duration of the trial.

2 While you are out, please don't talk
3 to anybody about this case or allow them to
4 talk about it in your presence. Don't
5 conduct any independent research. We'll see
6 you tomorrow at 9:45.

7 (JUROR NUMBER 366 SEATED)

8 (JUROR EXITS COURTROOM)

9 (JUROR NUMBER 299 ENTERS COURTROOM)

10 EXAMINATION OF KATIE O'NEILL

11 BY THE COURT:

12 Q. Ms. O'Neill?

13 A. Yes.

14 Q. Hi. Thank you for your patience.

15 Please have a seat. Please give us your full
16 name and your juror number.

17 A. Katie Beecher O'Neill, Juror Number
18 299.

19 Q. Ms. O'Neill, I have several
20 questions for you. First, have you ever been
21 a juror in a civil case other than this one?

22 A. No, Your Honor.

23 Q. Have you had or experienced any
24 family tragedies in your life?

25 A. Tragedies?

1 Q. Such as the untimely death of a
2 loved one, serious injury to a loved one, or
3 that type of thing?

4 A. My brother had serious injuries. He
5 was in a motorcycle accident when I was eight
6 years old. He is a paraplegic, but he's
7 doing great.

8 Q. That would not affect or influence
9 you in this case?

10 A. Not at all.

11 Q. And that was several years ago?

12 A. Yes, sir. I was eight, so twenty-
13 four years ago.

14 Q. Have you, a family member or close
15 personal friend ever been the victim of or
16 ever been accused of sexual abuse?

17 A. My mother was the victim of sexual
18 abuse when she was a child.

19 Q. Do you have any independent know-
20 ledge of that?

21 A. Just from what my mother has told me
22 about it.

23 Q. When did you learn of that?

24 A. Probably when I was a teenager she
25 finally told me about it.

1 Q. Have you talked with her recently,
2 had any recent conversations about it?

3 A. No, sir, it's not something that we
4 discuss.

5 Q. I understand that. Would that
6 affect you in any way if there was testimony
7 in this case about sexual abuse?

8 A. No, Your Honor, it wouldn't.

9 Q. It would not?

10 A. (Negative gesture).

11 Q. And you would not be influenced in
12 any of your decisions?

13 A. No, sir.

14 Q. Do you know of anyone, a family
15 member, a close personal friend, who suffers
16 from post-trauma stress disorder?

17 A. No, sir, I do not.

18 Q. Your mother hasn't suffered from any
19 addictions because of the sexual abuse, has
20 she?

21 A. No, sir.

22 Q. Have you ever researched the sex
23 offender registry?

24 A. No, sir.

25 Q. Have you ever witnessed sexual

1 harassment or sexual discrimination in the
2 workplace?

3 A. No, sir.

4 Q. Do you have any strong feelings
5 about homosexuality?

6 A. No, sir.

7 Q. Have you or a family member ever
8 been falsely accused of a crime?

9 A. No, sir.

10 Q. Ever been the victim of a crime?

11 A. No, sir.

12 THE COURT: Any additional
13 questions from the plaintiff?

14 GREGG MEYERS: Your Honor, if I
15 remember correctly, Ms. O'Neill had family
16 members that participated in The Citadel
17 summer camps. Does she happen to know what
18 years?

19 JUROR NUMBER 299: I think it was
20 actually last summer that my brother-in-law
21 and my nephew went to the baseball camp -- or
22 it may have been summer before last actually.

23 EXAMINATION CONTINUED

24 BY THE COURT:

25 Q. Would that influence or affect you

1 if there was testimony concerning
2 participants in a summer camp?

3 A. No, sir, it would not.

4 GREGG MEYERS: No other questions,
5 Your Honor. Thank you.

6 THE COURT: Mr. Cooke?

7 DAWES COOKE: With regard to her
8 mother, could we ask whether she has suffered
9 any long-term affects as a result of her
10 experience as a child.

11 EXAMINATION CONTINUED

12 BY THE COURT:

13 Q. Does she have any -- has she had
14 counseling, or do you know?

15 A. I think she saw a psychologist but
16 she isn't undergoing any current treatment.
17 I think my mom has had some issues with
18 depression over the years, but she also
19 suffers from MS and I think that plays a role
20 in it as well.

21 Q. But you haven't noticed anything
22 specific from what she would have said or
23 attributed specifically to the sexual abuse?

24 A. No, sir.

25 THE COURT: Anything else?

1 DAWES COOKE: The last thing,
2 could we ask, Your Honor, if the abuse was
3 from a family member or someone outside the
4 family?

5 EXAMINATION CONTINUED

6 BY THE COURT:

7 Q. Do you know the specifics of ---

8 A. Yes, I do. It was my grandfather.

9 Q. Anything else?

10 A. No.

11 Q. Thank you.

12 THE COURT: If you would step out,
13 we will be with you in just a second.

14 GREGG MEYERS: Your Honor, could
15 I ask her a quick question?

16 THE COURT: Yeah.

17 GREGG MEYERS: She said that her
18 mother had something -- some other? MF?

19 THE COURT: MS, multiple
20 sclerosis.

21 JUROR NUMBER 299: Multiple
22 sclerosis.

23 GREGG MEYERS: Thank you, I'm
24 sorry. I just didn't hear it distinctly.

25 THE COURT: We will be with you in

1 just a moment.

2 (JUROR NUMBER 299 EXITS COURTROOM)

3 THE COURT: Challenge?

4 GREGG MEYERS: No challenge.

5 THE COURT: Defense?

6 DAWES COOKE: Seat the juror.

7 THE COURT: Thank you. Ask her
8 to return.

9 (JUROR NUMBER 299 ENTERS COURTROOM)

10 THE COURT: Ms. O'Neill, thank you
11 very much. You've been selected to further
12 assist us in resolving this dispute.

13 We will resume this tomorrow at
14 9:45. When you exit, they will show you your
15 jury room and then they will take you down
16 and show you where your parking space will be
17 for the duration of the trial.

18 Please don't discuss this case with
19 anyone while you are out, don't allow anybody
20 to talk about it in your presence. Don't
21 conduct any independent investigation and
22 I'll see you tomorrow at 9:45.

23 (JUROR NUMBER 299 SEATED)

24 (JUROR EXITS COURTROOM)

25 (JUROR NUMBER 192 ENTERS COURTROOM)

1 EXAMINATION OF MICHAEL C. HUNT

2 BY THE COURT:

3 Q. All right. Mr. Hunt, how are you,
4 sir?

5 A. Fine, thank you.

6 Q. Good. If you would, have a seat.
7 State your full name for us and give us your
8 juror number.

9 A. Michael Christopher Hunt, Juror
10 Number 192.

11 Q. Thank you, Mr. Hunt. We have
12 several questions for you. The first one is,
13 is this the first time that you've ever
14 served as a juror in a civil case?

15 A. I served as a juror twice, one was
16 for a traffic ticket and once when a gentle-
17 man was charged with rape.

18 Q. Do you remember the outcome in each
19 one?

20 A. The Folly Beach trial, the ticket
21 was Guilty. I believe that it was a county
22 case that I mentioned before, and he was
23 found Guilty.

24 Q. Okay. Would that affect or
25 influence you, either of those, in any way in

1 this dispute?

2 A. No, sir.

3 Q. You understand that you would be
4 instructed to decide this case based on the
5 evidence and the law in this case?

6 A. I do.

7 Q. And apply the law in this case?

8 A. Yes, sir.

9 Q. Have you ever suffered or
10 experienced any family tragedies in your
11 life?

12 A. No, sir.

13 Q. Have you or a family member or close
14 person friend ever been accused of committing
15 sexual abuse or been the victim of sexual
16 abuse?

17 A. No, sir.

18 Q. Do you have any family members or
19 close personal friends who suffer from post-
20 traumatic stress disorder?

21 A. No, sir.

22 Q. Have you ever researched the sex
23 offender registry?

24 A. I have not.

25 Q. Have you ever witnessed sexual abuse

1 or sexual harassment -- I mean sexual
2 discrimination or sexual harassment in the
3 workplace?

4 A. No, sir.

5 Q. Do you have any strong feelings or
6 personal philosophies regarding homo-
7 sexuality?

8 A. No, sir.

9 Q. Have you or a family member ever
10 been falsely accused of a crime?

11 A. No, sir. Well, I was sued for my
12 company because we had some cargo that was
13 going overseas and it was incorrectly -- we
14 were found innocent; they sued us just to get
15 damages.

16 Q. So they were suing for damages?

17 A. Correct.

18 Q. It was not a criminal action?

19 A. Correct.

20 Q. So it was a civil proceeding then?

21 A. Yes, sir. I don't understand all
22 the terminology.

23 Q. I understand. It was resolved in
24 your favor?

25 A. Yes, sir.

1 Q. Good. Would that influence or
2 affect you in any way?

3 A. No, sir.

4 Q. Have you ever been the victim of a
5 crime?

6 A. No, sir.

7 THE COURT: Any additional
8 questions, from the plaintiff?

9 GREGG MEYERS: Your Honor, Mr.
10 Hunt, if I remember correctly had a -- some
11 experience in testifying in a child
12 molestation case?

13 JUROR NUMBER 192: Yeah, I served
14 as a juror -- or was on the jury for ---

15 GREGG MEYERS: Oh, that was the
16 case that ---

17 JUROR NUMBER 192: Right. I
18 apologize if misworded that.

19 THE COURT: That's fine.

20 GREGG MEYERS: No further
21 questions.

22 THE COURT: Anything further?

23 DAWES COOKE: No questions.

24 THE COURT: Thank you, Mr. Hunt.
25 If you would step out, we will be with you in

1 a few minutes.

2 (JUROR NUMBER 192 EXITS COURTROOM)

3 THE COURT: Challenge?

4 GREGG MEYERS: No challenge.

5 DAWES COOKE: Seat the juror.

6 THE COURT: Okay.

7 (JUROR NUMBER 192 ENTERS COURTROOM)

8 THE COURT: Mr. Hunt, I am pleased
9 to inform you that you've been selected to
10 assist us further in resolving this dispute.

11 We will resume this tomorrow at
12 9:45. When you exit, they will show you to
13 your jury room and then take you down to show
14 you your parking place for the duration of
15 the trial.

16 Please, while you are out don't
17 discuss this case with anyone or permit
18 anyone to talk about it in your presence.
19 I will see you tomorrow at 9:45.

20 (JUROR NUMBER 192 SEATED)

21 (JUROR EXITS COURTROOM)

22 THE COURT: Next.

23 DAWES COOKE: Judge Dennis, on the
24 alternates, do we each get one strike on the
25 alternates?

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1 THE COURT: Yeah.

2 GREGG MEYERS: And we are picking
3 three?

4 THE COURT: Picking three and each
5 side may excuse one -- use a strike for each
6 one.

7 (JUROR NUMBER 43 ENTERS COURTROOM)

8 EXAMINATION OF MARLO BURGESS

9 BY THE COURT:

10 Q. Hello, Ms. Burgess.

11 A. Hi.

12 Q. How are you?

13 A. Good. How are you?

14 Q. Fine. Long day.

15 A. Yes.

16 Q. If you would take your seat and then
17 tell us your full name and your juror number,
18 please.

19 A. Marlo Burgess, Juror 43.

20 Q. Ms. Burgess, I have some questions
21 for you. Is this the first time you've ever
22 served on a civil jury?

23 A. Yes.

24 Q. Have you in your life ever
25 experienced or suffered any family tragedy?

1 A. (No verbal response).

2 Q. And that's kind of -- I've had lots
3 of people say, 'what do you mean?' The
4 untimely death of someone; an injury to a
5 young person, a family member, a child;
6 anything of that nature?

7 A. No.

8 Q. Have you or a family member ever
9 been the victim of or ever been accused of
10 sexual abuse?

11 A. No.

12 Q. Do you have any family members or
13 close personal friends who suffer from post-
14 traumatic stress disorder?

15 A. Not that I know of.

16 Q. Have you ever researched the sex
17 offender registry?

18 A. Yes.

19 Q. For what purpose?

20 A. Buying a house.

21 Q. You wanted to see who would be
22 living around you?

23 A. Yeah.

24 Q. Has that happened frequently or have
25 you just done that on occasion?

1 A. (No verbal response).

2 Q. From time to time?

3 A. (Affirmative nod), time to time.

4 Q. And solely for the purpose of seeing
5 who is living in the neighborhood?

6 A. Yes.

7 Q. Have you ever witnessed sexual
8 harassment or sexual discrimination in the
9 workplace?

10 A. No.

11 Q. Do you have any strong feelings or
12 personal philosophies concerning homo-
13 sexuality?

14 A. Have you, a family member or close
15 personal friend ever been falsely accused of
16 a crime?

17 A. No.

18 Q. Have you ever been the victim of a
19 crime?

20 A. No.

21 THE COURT: Any additional
22 questions, from the plaintiff?

23 GREGG MEYERS: Yes, Your Honor.

24 If I am remembering correctly, Ms. Burgess at
25 one time was working for the Camp St.

1 Christopher.

2 JUROR NUMBER 43: Yes.

3 GREGG MEYERS: Do you recall when
4 that was?

5 JUROR NUMBER 43: (No verbal
6 response).

7 GREGG MEYERS: Roughly?

8 JUROR NUMBER 43: Roughly '89, '90.

9 GREGG MEYERS: Thank you.

10 EXAMINATION CONTINUED

11 BY THE COURT:

12 Q. Were you a counselor?

13 A. Yes.

14 THE COURT: Anything further, from
15 the defendant?

16 DAWES COOKE: (Negative gesture).

17 THE COURT: If you will step out,
18 we will be with you shortly.

19 (JUROR NUMBER 43 EXITS COURTROOM)

20 GREGG MEYERS: No challenge.

21 DAWES COOKE: Seat the juror.

22 THE COURT: Very good. All right.
23 Let's have an understanding on this one, that
24 the -- the civil rules provide that we can
25 select our alternates one, two three and then

1 if we need them, that's the way that they are
2 used: one, two three. In criminal I've --
3 most people agree to use the civil approach
4 but I have had them make us redraw our whole
5 panel (sic). But I believe that's the way
6 that it will be. The first one to come in,
7 the second person, then the third person.

8 Ask Ms. Burgess to step in. She is
9 number twelve, I think. Is that correct?

10 COURT REPORTER: Yes, sir.

11 (JUROR NUMBER 43 ENTERS COURTROOM)

12 THE COURT: Ms. Burgess, thank
13 you. You have been selected to assist us
14 further in resolving this dispute. That will
15 take place tomorrow, we will resume at 9:45.
16 I ask that you return to your jury room at
17 that time.

18 Now they're going to show you where
19 the jury room is and then they'll take you
20 down and show you the parking place that they
21 will provide you for the duration of the
22 trial.

23 Please do not discuss this case with
24 anyone or allow anyone to talk about it in
25 your presence. Have a good evening. I'll

1 see you tomorrow at 9:45.

2 (JUROR NUMBER 43 SEATED)

3 (JUROR EXITS COURTROOM)

4 THE COURT: If you'll bring in Mr.
5 Davis, we will begin the selection of
6 alternates.

7 (JUROR NUBMER 85 ENTERS COURTROOM)

8 EXAMINATION OF SOLOMON DAVIS

9 BY THE COURT:

10 Q. Hello, Mr. Davis.

11 A. Hi.

12 Q. How are you, sir?

13 A. Fine.

14 Q. Come on in, take a seat. We need to
15 ask you a couple of questions.

16 A. Okay.

17 Q. State your full name and your juror
18 number, please, sir.

19 A. Solomon Davis, Number 85.

20 Q. Mr. Davis, is this the first time
21 you've ever served as a juror in a civil
22 case?

23 A. Yes.

24 Q. Have you ever experienced or
25 suffered any family tragedies in your life?

1 A. Say that again?

2 Q. Such as the untimely death of a
3 loved one, close personal friend, or some
4 tragic injury to someone, a loved one, family
5 member.

6 A. I guess not untimely.

7 Q. An untimely death, not somebody that
8 -- for instance it was mentioned this morning
9 that my father died, he'd been through -- he
10 was eighty-some years old. Have you had any
11 unusual or untimely death?

12 A. No.

13 Q. Okay. Have you or a family member,
14 or close personal friend, ever been accused
15 of committing sexual abuse or ever been the
16 victim of sexual abuse?

17 A. No.

18 Q. Do you have any family members or
19 close personal friends who suffer from post-
20 traumatic stress disorder?

21 A. (Negative gesture).

22 Q. That was a "no"?

23 A. (Negative gesture).

24 Q. I need for you to speak up, sir.

25 A. Sorry. "No."

1 Q. Thank you, sir. Have you ever
2 researched the sex offender registry?

3 A. No.

4 Q. Have you ever witnessed sexual
5 harassment or sexual discrimination in the
6 workplace?

7 A. No.

8 Q. Do you have any strong feelings or
9 personal philosophies concerning homo-
10 sexuality?

11 A. No.

12 Q. Have you, a family member or a close
13 personal friend ever been falsely accused of
14 a crime?

15 A. No.

16 Q. Have you ever been the victim of a
17 crime?

18 A. No.

19 Q. All right.

20 THE COURT: Any additional
21 questions, from the plaintiff?

22 GREGG MEYERS: No, Your Honor.

23 THE COURT: Any additional
24 questions, from the defendant?

25 DAWES COOKE: None.

1 THE COURT: If you will step out,
2 we will be with you in just a moment, sir.

3 (JUROR NUMBER 85 EXITS COURTROOM)

4 THE COURT: Says the plaintiff?

5 GREGG MEYERS: Seat the juror.

6 THE COURT: Says the defendant?

7 DAWES COOKE: Seat the juror.

8 THE COURT: Very well, Alternate
9 Number 1. Invite Mr. Davis to return.

10 (JUROR NUMBER 85 ENTERS COURTROOM)

11 THE COURT: Mr. Davis, I'm pleased
12 to inform you that you have been selected to
13 assist us in continuing this trial. You will
14 be Alternate Number 1.

15 I need for you to be back in your
16 jury room at 9:45 tomorrow morning. They
17 will show -- when you exit, they will show
18 you the jury room and then take you and show
19 you where you will park.

20 While you are out, don't talk with
21 anyone or allow anyone to talk with you about
22 this case or have any conversation about the
23 case. Don't do any independent research. We
24 will see you tomorrow at 9:45.

25 (JUROR NUMBER 85 SEATED AS ALTERNATE 1)

(JUROR EXITS COURTROOM)

(JUROR NUMBER 95 ENTERS COURTROOM)

EXAMINATION OF LILE DIXON

BY THE COURT:

Q. Hi, Ms. Dixon.

A. Hi.

Q. How are you?

A. Good.

Q. I bet you thought, 'boy, they're
never going to get to me.'

A. No, I didn't think that.

Q. If you could come have a seat,
please, ma'am. I need for you to get
comfortable.

A. Okay.

Q. State your name and your juror
number, please, for us.

A. My name is Lile Dixon and my juror
number is 95.

Q. Thank you. Ms. Dixon, I have a few
questions for you. The first is, is this the
first time you've ever served as a juror in a
civil trial?

A. Yes.

Q. Have you ever experienced or

1 suffered any family tragedies in your life?

2 A. Yes.

3 Q. Tell me about it.

4 A. Well, when my father passed away and
5 when my mother passed away.

6 Q. What was the reason for the death?
7 Was it an illness or ---

8 A. My father died with a heart attack
9 and my mother died of lung cancer.

10 Q. Was the heart attack of sudden
11 onset?

12 A. It was a sudden onset.

13 Q. Your mother's lung cancer, was it an
14 extended illness?

15 A. Yes.

16 Q. Would either of those affect you in
17 any way, your deliberations in this case?

18 A. No, Your Honor.

19 Q. Have you or a family member ever
20 been the victim of or ever been accused of
21 sexual abuse?

22 A. No.

23 Q. Have you or do you know of anyone
24 who has ever been diagnosed with post-trauma
25 stress disorder?

1 A. I was in the military. I was in the
2 Army, so I experienced some sexual harassment
3 there.

4 Q. You have?

5 A. (Affirmative nod).

6 Q. And did you suffer post-trauma
7 stress disorder from that?

8 A. It's pending.

9 Q. Pending?

10 A. Yes.

11 Q. Have you been treated for that?

12 A. No, sir.

13 Q. Would it -- would that affect or
14 influence how you viewed the evidence in the
15 case if there was any evidence about post-
16 trauma stress disorder?

17 A. No, Your Honor.

18 Q. Would you be able to apply your
19 knowledge fairly and impartially?

20 A. Yes.

21 Q. You said that you witnessed sexual
22 harassment or discrimination in the work-
23 place?

24 A. Well, sexual harassment in the
25 military, when I was on active duty, I

1 experienced ---

2 Q. Against you?

3 A. Yes.

4 Q. Were there any charges brought for
5 that?

6 A. No.

7 Q. Was any action taken to punish the
8 person?

9 A. No.

10 Q. Was it reported?

11 A. No.

12 Q. Have you, a family member or close
13 personal friend ever been falsely accused of
14 a crime?

15 A. No.

16 Q. Do you have any strong feelings or
17 personal philosophies concerning
18 homosexuality?

19 A. No.

20 Q. Have you ever been the victim of a
21 crime, other than -- assuming that sexual
22 harassment could possibly fall in that
23 category?

24 A. No.

25 THE COURT: Any questions from the

1 plaintiff?

2 GREGG MEYERS: None,, Your Honor.

3 THE COURT: From the defendant?

4 DAWES COOKE: I believe that Ms.
5 Dixon said earlier that she is an inter-
6 preter, under contract, and that she works
7 with Child Protective Services. Could we ask
8 whether she -- if that causes her to interact
9 with victims of sexual abuse?

10 EXAMINATION CONTINUED

11 BY THE COURT:

12 Q. Do you have interaction with persons
13 that suffer from sexual abuse or experience?

14 A. I do.

15 Q. What knowledge have you gleaned from
16 that?

17 A. (No verbal response).

18 Q. Do you have any independent
19 knowledge or professional knowledge
20 concerning that or do you simply interpret
21 what ---

22 A. My job is to simply interpret
23 communication between clients.

24 Q. Do you have any independent under-
25 standing of that other than what the person

1 is saying that you -- what has been stated,
2 that you interpret?

3 A. Right. That's ---

4 THE COURT: Anything else?

5 DAWES COOKE: The sexual harassment
6 that she experienced in the service, was
7 there any assault or physical component to
8 that?

9 EXAMINATION CONTINUED

10 BY THE COURT:

11 Q. Do you recall anything about it?

12 A. No.

13 Q. I'm not going to say this about my
14 court reporter, though she could tell you
15 about it, but I've had persons say 'I am just
16 taking down words, I am not connected.' But
17 you don't have any independent recollection
18 of any of the cases that you have
19 interpreted, dealing with sexual harassment?

20 A. No.

21 Q. And would you not be influenced by
22 that, sexual abuse of victims?

23 A. Not at all.

24 THE COURT: Okay. Anything else
25 from anyone?

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1 DAWES COOKE: No, Your Honor.

2 THE COURT: If you would step out,
3 we will be with you in just a moment. Thank
4 you.

5 (JUROR NUMBER 95 EXITS COURTROOM)

6 THE COURT: Says the plaintiff?

7 GREGG MEYERS: Seat the juror.

8 THE COURT: Defendant?

9 DAWES COOKE: Excuse the juror.

10 THE COURT: Let's bring her back
11 in.

12 (JUROR NUBMER 95 ENTERS COURTROOM)

13 THE COURT: Thank you, Ms. Dixon.
14 Appreciate it. You've been excused from
15 further participation in this dispute. Have
16 a great day. Call the number after six
17 tonight and follow those instructions.

18 (JUROR NUMBER 95 EXCUSED)

19 (JUROR EXITS COURTROOM)

20 THE COURT: I believe Mr.
21 Fieselman is next.

22 (JUROR NUMBER 119 ENTERS COURTROOM)

23 EXAMINATION OF HENRY J. FISELMAN

24 BY THE COURT:

25 Q. Hello, Mr. Fieselman.

1 A. Hey.

2 Q. Come on it and have a seat, please,
3 sir.

4 A. Yes, sir.

5 Q. Thank you for your patience.
6 Appreciate it.

7 A. That's fine.

8 Q. If you would, state your full name
9 for us and give us your juror number.

10 A. Henry John Fieselman, 119.

11 Q. Mr. Fieselman, I have some questions
12 for you. First of all, is this the first
13 time you've ever served as a juror on a civil
14 case?

15 A. Talking money? That's civil?

16 Q. Yes. Civil.

17 A. I've done two.

18 Q. You've done two? Were they criminal
19 cases?

20 A. No.

21 Q. Oh, you've done two criminal (sic)
22 cases.

23 A. Civil cases.

24 Q. I meant civil cases. What were the
25 civil cases? Do you remember?

1 A. Accidents.

2 Q. Accidents?

3 A. Yes.

4 Q. And you would decide damages?

5 A. Yes.

6 Q. Do you remember the results or
7 determination in either or both?

8 A. Seems like -- I don't remember the
9 first one -- (negative gesture).

10 Q. I understand. You don't have any
11 independent recollection?

12 A. Not of that one. The next one, the
13 jury decided not to ---

14 Q. --- award any damages?

15 A. (Affirmative nod).

16 Q. So you found for the defendant?

17 A. Correct.

18 Q. Do you think that you awarded some
19 damages in the first, but you just don't know
20 what it was?

21 A. Actually I think that was the same
22 thing, too.

23 Q. You do?

24 A. Yes.

25 Q. A defense verdict?

1 A. (Affirmative nod), it was a long
2 time ago.

3 Q. Have you ever experienced or
4 suffered any family tragedies in your life?
5 That's -- let me refine that. Sudden deaths,
6 unexpected deaths, serious injury to a family
7 member, young persons, that type of thing?

8 A. My youngest brother ----

9 Q. What was ---

10 A. --- committed suicide.

11 Q. Committed suicide?

12 A. Yes.

13 Q. How long ago was that, sir?

14 A. Two years ago.

15 Q. Would that affect or influence you
16 in any way, sir?

17 A. No.

18 Q. Will you be able to deal with this
19 case without being influenced by that?

20 A. I can deal with. I feel that I can
21 be fair.

22 Q. Good. Was -- had he been suffering
23 from any problems, any mental problems,
24 before that?

25 A. No, it was medical.

1 Q. Medical?

2 A. Yes.

3 Q. Have you or a family member or close
4 personal friend ever been accused of sexual
5 abuse or ever been the victim of sexual
6 abuse?

7 A. No.

8 Q. Do you know of anyone or a family
9 member who suffers from or has been diagnosed
10 with post-trauma stress disorder?

11 A. No.

12 Q. Have you ever researched the sex
13 offender registry?

14 A. No.

15 Q. Have you ever witnessed sexual
16 harassment or sexual discrimination in the
17 workplace?

18 A. No, not in the workplace.

19 Q. Do you have any strong feelings or
20 personal philosophies concerning homo-
21 sexuality?

22 A. To me that's a person's choice.

23 Q. And you don't have ---

24 A. I hold no judgments in that.

25 Q. Thank you, sir. Have you or a

1 family member ever been falsely accused of a
2 crime?

3 A. No.

4 Q. Have you ever been the victim of a
5 crime?

6 A. No -- well, just a minor crime.

7 Q. What was that?

8 A. Stolen from us.

9 Q. Was someone prosecuted for that?

10 A. No.

11 THE COURT: Any questions further,
12 from the plaintiff?

13 GREGG MEYERS: None.

14 DAWES COOKE: None. Thank you.

15 THE COURT: If you will step out,
16 we will be with you in just a moment.

17 (JUROR NUMBER 119 EXITS COURTROOM)

18 THE COURT: Plaintiff?

19 GREGG MEYERS: Plaintiff strikes
20 the juror.

21 THE COURT: Strikes the juror.
22 Okay. All right. Ask him to step in,
23 please.

24 (JUROR NUMBER 119 ENTERS COURTROOM)

25 THE COURT: Thank you, Mr.

1 Fieselman. I appreciate that, sir. You are
2 -- you will be excused from any further
3 participation in this matter. If you will,
4 exit through that door and call the number
5 after six tonight and follow those
6 instructions. Appreciate it. It was a
7 pleasure to work with you today. Thank you,
8 sir.

9 (JUROR NUMBER 119 EXCUSED)

10 (JUROR EXITS COURTROOM)

11 THE COURT: Ms. Shepp.

12 DAWES COOKE: We still have two
13 strikes left?

14 THE COURT: You do. You have
15 exhausted strikes on this particular one --
16 wait a minute, excuse me. Yes, you did on
17 Dixon and you did on Fieselman, so the next
18 one is for cause.

19 DAWES COOKE: Okay.

20 THE COURT: We did ---

21 (JUROR NUMBER 364 ENTERS COURTROOM)

22 EXAMINATION OF PAMELA SHEPP

23 BY THE COURT:

24 Q. How are you, Ms. Shepp.

25 A. Good.

1 Q. Come on in, this is the wonderful
2 seat for you.

3 A. Thank you.

4 Q. If you would, state your name for
5 the record and your juror number please.

6 A. My name is Pamela Shepp and my
7 number is 364.

8 Q. Thank you, Ms. Shepp. There are
9 some questions that I have for you. Is this
10 the first time you've ever been a juror in a
11 civil case?

12 A. Yes.

13 Q. Have you ever experienced or
14 suffered any family tragedies in your life?

15 A. Well, personal losses. Not ---

16 Q. Let me rephrase it a little bit.
17 The unexpected death of a loved one or ---

18 A. (Affirmative nod).

19 Q. --- tragic injury to a young person
20 or family member?

21 A. My mother died from lung cancer.
22 When she was sixty, she was diagnosed and
23 died two weeks later.

24 Q. Wow.

25 A. That was devastating.

1 Q. Absolutely. How long ago was that?

2 A. About nineteen years ago.

3 Q. Any others other than that one?

4 A. That was the worst.

5 Q. Sorry for that experience.

6 A. Thank you.

7 Q. That would not influence or affect
8 you in this case, would it?

9 A. I don't think so.

10 Q. You could make a commitment ---

11 A. I could make a commitment.

12 Q. --- that it would not?

13 A. Yes.

14 Q. Have you, a family member or a close
15 personal friend ever been accused of or ever
16 been the victim of sexual abuse?

17 A. No.

18 Q. Have you or a family member or close
19 personal friend been diagnosed with post-
20 trauma stress disorder?

21 A. No.

22 Q. Have you ever researched the sex
23 offender registry?

24 A. You know, I may have done that when
25 our child was younger.

1 Q. But you haven't done it recently?

2 A. No, not in twenty years.

3 Q. Have you ever witnessed sexual
4 harassment or sexual discrimination?

5 A. No.

6 Q. Do you have any strong feelings one
7 way or the other, or personal philosophies,
8 concerning homosexuality.

9 A. No.

10 Q. Have you or a family member or close
11 personal friend ever been falsely accused of
12 a crime?

13 A. No, thankfully.

14 Q. Have you ever been the victim of a
15 crime?

16 A. No.

17 THE COURT: Any additional
18 questions, from the plaintiff?

19 GREGG MEYERS: None, Your Honor.
20 Thank you.

21 THE COURT: From the defense?

22 DAWES COOKE: None. Thank you.

23 THE COURT: If you will step out,
24 we will be with you in just a moment.

25 (JUROR NUMBER 364 EXITS COURTROOM)

1 THE COURT: Any challenge from the
2 plaintiff?

3 GREGG MEYERS: No challenge, Your
4 Honor.

5 THE COURT: From the defendant?

6 DAWES COOKE: None.

7 THE COURT: Ask her to come in,
8 please.

9 (JUROR NUMBER 364 ENTERS COURTROOM)

10 THE COURT: Thank you, ma'am. I
11 am pleased to inform you that you are going
12 to get to serve with us and help us resolve
13 this dispute.

14 I will need for you to return at
15 9:45 in the morning. They will show you your
16 jury room where you need to report and will
17 also show you where your parking place will
18 be for the duration of the trial.

19 JUROR NUMBER 364: I hope that it is
20 closer.

21 THE COURT: It is. It's right out
22 the back.

23 JUROR NUMBER 364: I am good with
24 this, yes.

25 THE COURT: Please, while you are

1 out, don't discuss the case with anyone or
2 allow anyone to talk with you about. Have a
3 good day and we will see you tomorrow at
4 9:45.

5 (JUROR NUMBER 364 SEATED AS ALTERNATE 2)

6 (JUROR EXITS COIURTROOM)

7 (JUROR NUMBER 199 ENTERS COURTROOM)

8 EXAMINATION OF HAROLD JARRETT

9 BY THE COURT:

10 Q. Hello, Mr. Jarrett. How are you,
11 sir?

12 A. Very well, thank you.

13 Q. Wondered if we were ever going to
14 get to you?

15 A. I thought I was going to be the last
16 one, but that's okay.

17 Q. Couple of questions for you, and it
18 won't take much more of your time.

19 A. Okay.

20 Q. Is this the first time that you have
21 ever served on a civil case as a juror?

22 A. I believe that it is. I've served
23 on another case but I don't think that it was
24 civil. That was many years ago.

25 Q. Do you remember what the case is

1 about?

2 A. I don't even remember.

3 Q. Okay. Have you experienced in your
4 lifetime or suffered any family tragedies?

5 A. No. I've been very fortunate.

6 Q. Good. Glad for you. Have you or a
7 family member or close personal friend ever
8 been the victim of sexual abuse or ever been
9 accused of committing sexual abuse?

10 A. Thank goodness no.

11 Q. Have you or a family member, close
12 personal friend, been diagnosed with post-
13 trauma stress disorder?

14 A. No, sir.

15 Q. Have you ever researched the sex
16 offender registry?

17 A. No, I haven't.

18 Q. Have you ever witnessed sexual
19 harassment or sexual discrimination in the
20 workplace?

21 A. Yes, I have.

22 Q. Tell me about it.

23 A. It was when I was working at
24 Lockheed. There were a couple of ladies that
25 worked on the production line and would

1 basically get passed over every time there
2 was a promotion.

3 Q. You considered that to be sexual
4 discrimination?

5 A. I thought it was.

6 Q. Did you take any action or get
7 involved in that in any fashion?

8 A. I became the president of the union.

9 Q. That was good. Did you achieve any
10 results as the result of your position?

11 A. Not with them but I felt like I did
12 in other things.

13 Q. Would that experience affect you or
14 influence your thought process in analyzing
15 this case?

16 A. I don't think so.

17 Q. Can you take that experience and
18 apply it fairly and impartially?

19 A. I think that I can.

20 Q. And would you take that experience
21 and the evidence and the law and be fair to
22 both sides?

23 A. (Affirmative nod), that's what we
24 are here for.

25 Q. Thank you, sir. Have you or a

1 family member or a close personal friend ever
2 been falsely accused of a crime?

3 A. No, sir.

4 Q. Do you have any strong feelings or
5 personal philosophies concerning homo-
6 sexuality?

7 A. I did at one time but I think I've
8 moved on.

9 Q. Okay. Before, would you -- when you
10 say that you did, did you have what you would
11 consider to be a bias about homosexuality?

12 A. Probably.

13 Q. Do you feel, if you heard testimony
14 concerning homosexuality now that that would
15 influence your decision in any way?

16 A. No.

17 Q. It would not?

18 A. No.

19 Q. You would set that aside?

20 A. Yes, I have. I've grown up.

21 Q. Thank you, sir. Have you, a family
22 member -- I think that I asked you. You've
23 never been accused of any crime?

24 A. No, sir.

25 Q. Have you ever been the victim of any

1 crime?

2 A. No, sir.

3 THE COURT: Any additional
4 questions, from the plaintiff?

5 GREGG MEYERS: No, sir.

6 THE COURT: From the defendant?

7 DAWES COOKE: None.

8 THE COURT: Thank you. If you
9 will step out, we will be with you
10 momentarily.

11 (JUROR NUMBER 199 EXITS COURTROOM)

12 GREGG MEYERS: Let me ask that you
13 strike for cause. Maybe he has "grown up"
14 but I'd rather not have a wild card in the
15 room, so to speak. So I would move to strike
16 for cause on the ground of past bias as
17 openly acknowledged by the juror.

18 THE COURT: What is your position?

19 DAWES COOKE: He said that he
20 could be fair. It would be hard to strike
21 him for just for that reason.

22 THE COURT: Let me respond for
23 the record in case they have to review this.
24 I might as well be honest, I had some
25 personal bias too when I was growing up. I

1 grew up, have dealt with that as I aged. I
2 am not proud of that in my life, but I
3 confess that. I've cried many times about
4 some of the thoughts that I have had. I
5 think that people can grow up. I pray that
6 I have too. So I respect your opinion but I
7 also respect his, that he has changed his
8 philosophy. So I will deny for cause.

9 GREGG MEYERS: Fair enough, Your
10 Honor.

11 THE COURT: Do you wish to strike
12 him?

13 GREGG MEYERS: I think I only
14 have one ---

15 THE COURT: No, this is a new
16 batch. You have your strike. This is
17 Alternate 3. We start anew and you each have
18 one.

19 GREGG MEYERS: Well, in that
20 case, I am confused. Could I just have a
21 moment, please?

22 THE COURT: You struck Mr.
23 Fieselman.

24 GREGG MEYERS: I didn't know that
25 I had another strike.

1 THE COURT: We have started with
2 the third alternate, will deal with the next
3 three persons and you each have a strike.

4 GREGG MEYERS: I will strike him.
5 I thought that I was out of strikes.

6 THE COURT: No problem. Have him
7 step in, please.

8 (JUROR NUMBER 199 ENTERS COURTROOM)

9 THE COURT: Thank you very much,
10 sir. Appreciate your help in this case.
11 You've been excused from further participa-
12 tion. Call the number after six tonight and
13 follow that instruction. You may exit through
14 this door right here. Thank you, sir.

15 (JUROR NUMBER 199 EXCUSED)

16 (JUROR EXITS COURTROOM)

17 THE COURT: Mr. Baird.

18 (JUROR NUMBER 16 ENTERS COURTROOM)

19 EXAMINATION OF BARRY BAIRD

20 BY THE COURT:

21 Q. Hello, Mr. Baird. Come on in and
22 have a seat, sir. Thank you for your
23 patience. I appreciate it.

24 A. Yes, sir.

25 Q. If you would, state your full name

1 for us and give us your juror number.

2 A. Barry Baird, Number 16.

3 Q. Mr. Baird, I have some questions for
4 you that I need for you to answer, if you
5 could. First, is the first time you've ever
6 been a juror in a civil case?

7 A. I've gotten this far but I haven't
8 ever been selected.

9 Q. You've never been selected for an
10 actual trial?

11 A. That's correct.

12 Q. Have you suffered or experienced any
13 family tragedies in your life?

14 A. None that I can think of, none
15 major.

16 Q. Have you, a member of your family or
17 close personal friend ever been accused of or
18 been the victim of sexual abuse?

19 A. No, sir.

20 Q. Do you know of anyone or a family
21 member who suffers from post-trauma stress
22 disorder?

23 A. No, sir.

24 Q. Have you ever researched the sex
25 offender registry?

1 A. Yes.

2 Q. What was the reason for that?

3 A. I have two children and I searched
4 around my neighborhood.

5 Q. Very good. Do you view it
6 frequently?

7 A. No.

8 Q. Have you ever witnessed any sexual
9 harassment or sexual discrimination in the
10 workplace?

11 A. I can't say that I have. No, sir.

12 Q. Do you have any strong feelings,
13 personal philosophies, concerning
14 homosexuality?

15 A. No.

16 Q. Have you or a family member ever
17 been falsely accused of a crime?

18 A. No, sir.

19 Q. Have you ever been the victim of a
20 crime?

21 A. No. Not that I can think of.

22 THE COURT: Any additional
23 questions, from the plaintiff?

24 GREGG MEYERS: None. Thank you,
25 sir.

Mother Doe A v. The Citadel
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Before The Honorable R. Markley Dennis

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1 THE COURT: Any additional
2 questions, from the defendant?

3 DAWES COOKE: None. Thank you.

4 THE COURT: Mr. Baird, if you will
5 step out, we will be with you momentarily,
6 sir.

7 (JUROR NUMBER 16 EXITS COURTROOM)

8 THE COURT: Plaintiff?

9 GREGG MEYERS: Seat the juror.

10 THE COURT: Defendant?

11 DAWES COOKE: Seat the juror.

12 THE COURT: Thank you. Bring Mr.
13 Baird back in.

14 (JUROR NUMBER 16 ENTERS COURTROOM)

15 THE COURT: Mr. Baird, I'm pleased
16 to inform you that you've selected to assist
17 us in resolving this dispute.

18 We will resume this tomorrow at
19 9:45. When you exit, they will show you the
20 jury room to where you need to report and
21 they will also take you down and show you the
22 parking place for the duration of the trial.

23 Please while you are out, do not
24 discuss this case with anyone or permit
25 anyone to talk about it in your presence.

1 Have a good evening. I will see you tomorrow
2 at 9:45.

3 (JUROR NUMBER 16 SEATED AS ALTERNATE 3)

4 (JUROR EXITS COURTROOM)

5 THE COURT: All right, that is our
6 jury and alternates. Any Motions regarding
7 the selection?

8 GREGG MEYERS: We feel we have
9 something that we feel like we need to
10 disclose, Your Honor.

11 KRISTEN FESHENFELD: I just
12 realized that I went to law school with Katie
13 O'Neill. Her middle name was her name in law
14 school and I didn't recognize it. I wasn't a
15 friend to her, but ---

16 THE COURT: She obviously didn't
17 recognize or remember ---

18 KRISTEN FESHENFELD: Right. We
19 were in the same class.

20 THE COURT: She must not have
21 remembered it. I don't know what that says.
22 I don't think that she's "a plant", but --
23 anyway, what is your position on that?

24 DAWES COOKE: She didn't disclose
25 that she knew anybody so I am assuming -- no

1 offense -- that you didn't make a particular
2 impression on her.

3 KRISTEN FESHENFELD: Right..

4 THE COURT: I didn't sense
5 anything from her that she was trying to hide
6 anything.

7 DAWES COOKE: No.

8 GREGG MEYERS: We felt that was
9 correct but we just wanted to tell the court.

10 THE COURT: Do you have any
11 objection to her serving?

12 DAWES COOKE: No objection.

13 THE COURT: All right. She
14 impressed me as being an abundantly fair
15 person. Okay. Thank you.

16 Any Motion regarding the selection
17 of the jury, from the plaintiff?

18 GREGG MEYERS: None from the
19 plaintiff.

20 THE COURT: Any Motion from the
21 defendant?

22 DAWES COOKE: None, Your Honor.

23 THE COURT: Thank you. We will
24 dismiss these jurors and then we will come
25 back in and deal with some other little

1 matters we may have. Thank you all. I
2 appreciate your patience your patience with
3 me and I look forward to working with each
4 one of you.

5 (REMAINING JURORS RELEASED)

6 (OFF RECORD DISCUSSIONS)

7 (COURT IN RECESS)

8 (TRANSCRIPT CONTINUED NEXT PAGE)

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JANUARY 27, 2015

9:34 A.M.

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THE COURT: Okay, gentlemen, thank
you all very much. Are we ready?

6

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DAWES COOKE: I think we are,
Your Honor.

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THE COURT: Okay.
DAWES COOKE: We talked some
over the evening. I'm not sure we're really
on the same page as to where to go, but we do
have our Motions and I'm ready to argue that
unless you want to hear from Mr. Meyers.

14

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THE COURT: Let me go grab my
computer because I've copied some stuff --
some interesting comments in the case, along
with what we talked about yesterday that may
be of assistance for purposes of the record.
I'll be right back.

20

(BRIEF RECESS)

21

22

23

THE COURT: Okay.
GREGG MEYERS: Your Honor, if I
could give you what our thinking was.

24

25

THE COURT: Sure.
GREGG MEYERS: Our thinking was,

1 after ---

2 THE COURT: On the record? Or do
3 you want this -- do you want this to be
4 formal or informal?

5 GREGG MEYERS: Informal is fine.

6 THE COURT: Let's do an informal
7 discussion and then we can go on the record.

8 (OFF RECORD DISCUSSION)

9 THE COURT: Now we can go back on
10 the record.

11 DAWES COOKE: On the record,
12 then.

13 THE COURT: On the record.

14 DAWES COOKE: Your Honor, ---

15 GREGG MEYERS: Perhaps we should,
16 for the benefit of the record, put on the
17 record that the Court and counsel have spent
18 ten minutes or so discussing various options
19 for scheduling, sequencing and we have
20 decided to go forward on the issues that are
21 present before the Court.

22 THE COURT: That's an accurate
23 statement. All discussions really were
24 germane to the management of multiple cases,
25 what was the best and most feasible approach

1 to take from the standpoint of both sides to
2 determine how to proceed to best facilitate
3 the resolution of the case before the Court
4 today as well as to assist, maybe, in
5 resolution of the cases that may follow.

6 DAWES COOKE: Thank you, Your
7 Honor.

8 THE COURT: Thank you.

9 DAWES COOKE: So, as Your Honor
10 knows, we moved for summary judgment in this
11 case many months ago, sometime last year, and
12 the Court heard it and denied the Motion.

13 Under the Rule, of course a ruling
14 is not final until all issues of a case are
15 decided. So we're asking the Court to
16 reconsider its denial of summary judgment in
17 this case. It was based on two main grounds
18 as to all causes of action, and then I will
19 address a couple of the individual causes of
20 action separately.

21 THE COURT: Okay.

22 DAWES COOKE: As to all causes
23 of action, the first ground is that the
24 plaintiff has not suffered any compensable
25 injury. This is a parent's case, not the

1 child's case. It is a case which is styled
2 loss of services. But in fact, under the *Doe*
3 *v. Greenville School System* case, the only
4 elements that are actually recoverable for a
5 parent would be literally pecuniary loss and
6 loss of services; such as if the child worked
7 in a parent's store, on a farm, or medical
8 expenses. In this case the plaintiff has
9 produced no evidence of either of those.
10 We asked in discovery to itemize medical
11 expenses and to this day they have not
12 produced any financial or pecuniary loss for
13 medical expenses, and there's been no
14 testimony that the child worked for the
15 family or provided services that could be
16 monetized. So it is manifestly clear that
17 this is a claim arising out of the change in
18 relationship between the parent and the
19 child, the mother and the child. That is
20 exactly what the Court held in the *Doe v*
21 *Greenville School* case. Justice Pleconis
22 very vigorously argued against that in his
23 dissent.

24 We would take the position, with all
25 due respect that Justice Pleconis, that he

1 probably overlooks the evolution of recovery
2 for intangible loss in general. . It used to
3 be, in the old days, that you could recover
4 for emotional distress in a number of
5 different circumstances. Then beginning with
6 the *Augusta Sash* and other case, *Augusta Sash*
7 and other cases, the Supreme Court has very
8 tightly restricted instances in which you can
9 recover for nonphysical injuries. So that
10 paralleled, really, the Court pulling back
11 from some of the older common law cases that
12 allowed general recovery for loss of
13 relationship with a child. The Court has
14 said that that is for the legislature, to
15 have a filial loss of consortium. So that's
16 the first ground.

17 The second is that, you know, based
18 on *Doe v. Marion*, *Doe v. WalMart*, the other
19 cases that we have cited, there is no duty
20 that would be owed to what we call the down-
21 stream people. This argument would apply,
22 just as well, to the child but even more so
23 to the parent because the parent is even more
24 remote as a potential person to whom a duty
25 is owed. There was no special relationship

1 with Mother Doe A or her son. He never
2 attended the camp, there was no nexus between
3 the molestation of her child and Mr.
4 ReVille's employment at The Citadel. He was
5 not an employee at the time that he did the
6 act; therefore, The Citadel had no special
7 relationship with him. They did not
8 voluntarily undertake a duty to her.

9 In your original Order, you said
10 that that was a strong point for the
11 plaintiff, that they voluntarily undertook to
12 do this investigation. But they didn't
13 undertake that duty to her and there is no
14 evidence that she relied upon that
15 investigation or even knew about that.
16 That's an essential element, assuming a duty,
17 uh, -- cause of action.

18 They did not negligently create the
19 risk. Plaintiffs argue that they did but if
20 you look at *Doe v. WalMart Stores*, when they
21 created a risk they looked at whether they
22 actually caused the child molester to molest,
23 not whether they enabled them or failed to
24 stop them. Of course, if you expand a
25 failure to prevent an injury to, that's the

1 equivalent of creating the risk. That would
2 succumb the rule rather than the exception,
3 because in every case where you'd fail to
4 stop somebody you would be said to increase
5 the risk of that person. I think Doe v.
6 WalMart makes it clear that that is not the
7 case.

8 The statutory duties, we've argued
9 how each of the acts does not apply in this
10 situation. But even if it did, the public
11 duty rule steps in and says that when you owe
12 a duty to all of us -- and Your Honor very
13 cogently stated, in oral argument previously,
14 that this is a duty that they owed to all of
15 us -- that is exactly when the public duty
16 rule steps in and says that's a problem, that
17 it is a not a duty owed to a specific
18 individual. So that's as to those claims.

19 As to the outrage and intentional
20 infliction of emotional distress, I would
21 like to cite some new authorities beyond ---

22 THE COURT: Okay.

23 DAWES COOKE: --- those that the
24 Court has seen. I will begin with the Tort
25 Claims Act itself, Section 15-78-20(f), which

1 defines what a loss is that is recoverable.
2 It says that a, (reading): "loss means
3 bodily injury, disease, death or damage to
4 tangible property, including lost wages and
5 economic loss to the person who suffered
6 injury, disease or death. Pain and
7 suffering, mental anguish and other elements
8 of actual damages are recoverable in an
9 action for negligence; but does not include
10 the intentional infliction of emotional
11 distress."

12 And then there is a, uh, -- and I've
13 got extra copies of these that I can hand up.

14 THE COURT: Okay.

15 GREGG MEYERS: Could we -- it's
16 not emotional distress. It is emotional
17 harm. That is going to wind up being
18 important.

19 THE COURT: Okay, that's fine.
20 Well, you can respond to that.

21 GREGG MEYERS: Thank you.

22 DAWES COOKE: There's an
23 unpublished District of -- it's published,
24 I'm sorry. It's a District of South Carolina
25 case called *Ward v City of North Myrtle Beach*

1 where they applied that very section, said
2 that a claim of outrage is not recoverable.

3 Of course, outrage is the same as
4 what we've been calling intentional
5 infliction of emotional distress.

6 There is another important doctrine
7 that's not specific to the Tort Claims Act.
8 Under *Upchurch v. N.Y. Times Company*, this
9 was a 1993 case by the Supreme Court of South
10 Carolina that says, (reading), "*It is not*
11 *enough that the conduct is intentional and*
12 *outrageous. It must be conduct directed at*
13 *the plaintiff or occur in the presence of a*
14 *plaintiff, of whom the defendant is aware.*
15 *There is no evidence that respondents*
16 *targeted appellants to be harmed by their*
17 *allegedly tortious acts.*"

18 And the Court goes on to describe
19 that an example of when you could have such a
20 claim would be if I physically assaulted John
21 Doe in front of his mother, that would be --
22 and they literally say that you have to
23 physically assault him in the presence of his
24 mother for her to have a claim of intentional
25 infliction of emotional distress.

1 There is an unpublished decision by
2 the Court of Appeals for South Carolina
3 called *Doe v. Rojas*, which cites the *N.Y.*
4 *Times* case in an exact same situation of a
5 sexual assault and a parent claiming damages
6 as a result of a sexual assault ---

7 THE COURT: Can you hand me a copy
8 of that case?

9 DAWES COOKE: (Tenders copy to
10 Mr. Meyers and to the Court).

11 GREGG MEYERS: Thank you.

12 THE COURT: Thank you, sir.

13 DAWES COOKE: Then on the
14 conspiracy cause of action. First of all,
15 under the -- the claim there is that the --
16 excuse me, the plaintiff claims that she was
17 injured because of a conspiracy between the
18 defendants and Skip ReVille to hide his
19 molestation or his bad acts.

20 *Gordon v. Busby*, a 2011 case, holds
21 that to have a conspiracy claim that you have
22 to have special damages, which is different
23 from damages that would otherwise be
24 recoverable in your main cause of action.

25 They're claiming in this case that

1 the conspiracy is the very act that gave rise
2 to their injury. Therefore there would be no
3 special damages recoverable from that.

4 But, more importantly, conspiracy is
5 an intentional tort. The *Pye v. Estate of*
6 *Fox*, the essential consideration in civil
7 conspiracy is not whether lawful or unlawful
8 acts or means are employed to further the
9 conspiracy but whether the primary purpose or
10 object of the combination is to injure the
11 plaintiff.

12 That's the main element of the claim
13 for conspiracy. So for that reason that
14 would, by definition, include the intent to
15 injure, which is expressly excluded from the
16 scope of the South Carolina Tort Claims Act.

17 There are a couple of other
18 individual causes of action that allege
19 breach of the Tort Act, breach of other
20 specific Acts. I believe that we previously
21 discussed those, that they do not give rise
22 to a private cause of action. For reasons
23 that we've already/previously -- those would
24 be other specifications of negligence under
25 the Tort Claims Act. For that reason, all

1 the other grounds would apply to those causes
2 of action as well.

3 THE COURT: Thank you.

4 DAWES COOKE: Thank you.

5 THE COURT: Mr. Meyers?

6 GREGG MEYERS: Thank you. Let me
7 start with where I agree with Mr. Cooke.

8 THE COURT: Okay.

9 GREGG MEYERS: The reporting Act,
10 -- and for discussion, we agree these are not
11 independent causes of action. They impose
12 duties on The Citadel, which The Citadel has
13 adopted.

14 THE COURT: Sure.

15 GREGG MEYERS: The heart of this
16 case is what The Citadel has voluntarily
17 assumed.

18 Now, let me take them in a little --
19 in the order that -- as best I can, the order
20 in which Dawes presented them.

21 He is incorrect in reading the
22 elements of outrage. The elements of outrage
23 are not confined to the intent to harm. The
24 elements include intent or reckless conduct
25 which harms. The Court of Appeals most

1 recently affirmed that in 2011 where they
2 just reiterated those elements. It's always
3 been part of the elements. The defendants
4 intentionally or recklessly inflicted severe
5 emotional distress.

6 Now, the statute, in defining "loss"
7 says -- as I pointed out, Mr. Cooke read it
8 entirely correctly with the exception of the
9 last word. The statute, the Tort Claims Act,
10 by which the legislature reaches out to alter
11 common law and says 'we are going to make
12 sure that people can sue the State' for
13 things like mental distress -- mental anguish
14 rather -- and pain and suffering. Those
15 things are explicitly included. But it does
16 exclude, by saying that it does not include,
17 the intentional -- the intentional --
18 infliction of emotional harm. It does not
19 say that you cannot sue for the intentional
20 infliction of emotional distress. It says
21 that 'if you intend to hurt somebody, State
22 employee', you can't sue the State for that.

23 We cannot claim that they intended
24 the harm to either the child or this mother.
25 They were well aware, as the documents are

1 going to reflect, that Skip ReVille had ended
2 his employment with The Citadel, according to
3 them, and we're a little fuzzy about what his
4 exact end date was. They were aware that he
5 had applied for unemployment. They
6 originally opposed his unemployment. Then
7 somewhere thereafter, they have a meeting
8 where they tell him to lie low, they withdraw
9 their appeal. They also are lying low.

10 In the Margolis report, there is
11 explicit recognition by The Citadel's general
12 counsel that where ReVille is working
13 matters. He tries to defend his position by
14 saying, it's on Page 27, that he was not
15 working in a context around children.

16 Well, when they know that he has
17 ended his employment at The Citadel and they
18 know that he's looking for work, because he's
19 filed for unemployment -- which you must do
20 when you file for unemployment, -- and they
21 are aware that he could be working around
22 children, as he has done his entire
23 professional career, short as it was at that
24 point, they are aware that they are sending
25 him off with a record that they themselves

1 have deliberately kept clean despite
2 infraction after infraction after infraction.

3 In the conspiracy cause of action,
4 what they've deprived the mother of is
5 slightly different than the abuse itself.
6 What they've deprived the mother of is the
7 opportunity to consciously choose whether or
8 not to send her twelve-year-old son to tennis
9 lesson with a man known to have a sexual
10 interest in children.

11 She doesn't get that information.
12 They have it, they keep a close hold, they
13 don't tell the public, they don't report, and
14 they are aware, consciously aware, that they
15 are sending him off to the world to find some
16 other job.

17 Part of what our attack is on behalf
18 of Mother Doe A is that The Citadel, through
19 its actions and its knowledge that it
20 withheld, assumed duties -- very
21 particularly, not just to the public
22 generally but to a particular class of the
23 public who was going to put their children
24 around Skip ReVille, who they knew had a
25 sexual interest in children.

1 So we contend that the causes of
2 action do survive. The claim for loss of
3 services, we have debated that. If the Court
4 rules and grants summary judgment on the loss
5 of services under *Doe v. Greenville*, we are
6 back in the same position with respect to the
7 outrage cause of action. The conspiracy
8 cause of action is related but slightly
9 different, and the two negligence causes of
10 action -- the claim for gross negligence
11 itself and the claims for negligence in their
12 hiring and retention and supervision of
13 ReVille because of the repeated instances
14 where he was caught. This is not a master
15 criminal, he is operating in the open, he has
16 violated their rules repeatedly, they catch
17 him repeatedly. And they do nothing to
18 enforce what was terminable offenses at the
19 time, or even to report it, so that his
20 record stays clean.

21 When General Rosa stands up, on
22 November 12th, 2011, he says to the public,
23 'We checked his personnel file and there were
24 no other complaints.' Now, that is not a
25 true statement. There were other complaints.

1 They chose not to write any of them down.
2 There has never been a subsequent press
3 conference where General Rosa says, 'I've
4 learned this since I stood up on November
5 12th, 2011.' There has been no effort to try
6 to correct that impression with the public.
7 They tried to embrace their own oversights to
8 argue that it justified them sending him out
9 in the world without any notice.

10 We think that we are in the heart of
11 outrage with these claims, in the heart of
12 negligence. We are -- the conspiracy is
13 unconventional but we think that it is
14 distinguishable from the abuse itself. We
15 think the mother's dismay at what the son,
16 a) carried by himself for four years; b)
17 went through; and now what she has to deal
18 with -- not what he has to deal with, what
19 she has to deal with as a result of what
20 happened to him and the repeated problems in
21 her family; which she will be very articulate
22 about.

23 She, in fact, expressed to some
24 extent in one of the letters that was written
25 anonymously to the court at sentencing -- one

1 of those letters was hers. She articulates,
2 even in that letter, before any of these
3 civil cases were going, that the damage done
4 -- that is on her plate now, not only to her
5 but what she now has to deal with; which are
6 separate from the loss of services, which is
7 the relationship between mother and son.

8 So even if the Court disposes of
9 loss of services on summary judgment, we
10 think the other causes of action have factual
11 issues in dispute. It's about the assumed
12 duty that The Citadel undertook. We think
13 that gets us around both the public duty role
14 and puts us right in the heart of elements of
15 each cause of action. That's the heart of
16 our position.

17 THE COURT: Response?

18 DAWES COOKE: Yes, sir, and
19 I'll try to keep this brief, Your Honor.
20 Appreciate your patience.

21 I go back to the *Upchurch v. New*
22 *York Times* case regarding the outrage claims.
23 That was the case where the plaintiff's son
24 died unexpectedly after exercising and the
25 newspaper reported that there was some

1 implication that there may have been cocaine
2 involved. The parents sued for outrage and
3 intentional infliction of emotional distress.
4 That's where the Court said what I just
5 quoted a few minutes ago, which is that even
6 though it would be foreseeable that the
7 parents would suffer from this and be
8 injured, the conduct was not directed at
9 them. It says specifically that in order to
10 even have an outrage claim the two parties
11 must have at least known each other and the
12 conduct be directed to them. In this case,
13 there is no evidence that The Citadel knew
14 the plaintiff or knew the plaintiff's son at
15 all. Therefore, just -- they don't even get
16 out of the starting gate on the intentional
17 infliction case.

18 The other thing that I would like to
19 address is their negligent hiring and their
20 negligent supervision claim. We addressed
21 that separately in what we've styled as
22 another Motion *in limine*, but it's really a
23 Motion for summary judgment as to that cause
24 of action.

25 There is no liability in South

1 Carolina, there is no duty to protect the
2 public from a former employee. We cited the
3 *Degenhart v. Knights of Columbus* case in
4 South Carolina where even if he were a
5 current employee, they would have to show
6 that he used the instrumentalities of the
7 employer or that the injury occurred on the
8 premises of the employer and that the
9 employer had the ability to control him, and
10 knew that they had the ability to control
11 him. As a matter of logic, that's not
12 possible when you're talking about a former
13 employee. So no matter how badly they
14 supervised him or failed to supervise him
15 back in 2002, that cannot give rise as a
16 matter of law to a person who is, ten years
17 later, or eight or nine years later, injured
18 by that employee.

19 We cited a number of cases from
20 other jurisdiction but a good one from
21 California involved a plumbing company that
22 sent their plumber to the plaintiff
23 decedent's home. They became friends. Then
24 later, after he is no longer employed by the
25 plumbing company, he kills her. There the

1 defendant plumbing company actually put this
2 person in her home and created this relation-
3 ship, or allowed this relationship to occur
4 but he was no longer employed and no longer
5 under their control when he committed this
6 horrible offense. The Supreme Court said
7 that there just is no liability, that you've
8 got to stop somewhere and there's no
9 liability for a former employee.

10 So all of these claims are too
11 remote. When we're arguing the absence of a
12 duty to the downstream people, I think Your
13 Honor was very concerned about where the
14 Court may be going with regard to if you
15 actually know that there is a sexual predator
16 in your midst and you don't take action, that
17 -- and that may be one thing. That may be an
18 area where the Supreme Court is ready to move
19 off of *Doe v. Marion* and *Doe v. WalMart* and
20 other cases. But we haven't seen any
21 inclination that they would do that with
22 regard to mere negligent failure to discover
23 these propensities. That's all of -- that is
24 all of the negligent hiring, negligent
25 supervision claims. Thank you.

1 THE COURT: Do you have anything
2 that you ---

3 GREGG MEYERS: If I may make two
4 points, Your Honor.

5 THE COURT: Sure.

6 GREGG MEYERS: First of all, a
7 case against a media defendant is different
8 from a case where the state legislature has
9 articulated. So the case against the New
10 York Times is a very different context and
11 very different factors in play, because of
12 the media protection.

13 The assumed duty is what takes us
14 beyond the negligence claims.

15 THE COURT: Let me -- while you're
16 standing. Because -- I'm obviously going to
17 go back and read -- I want to read *Upchurch*
18 because -- and I agree with you -- it
19 obviously doesn't deal with the Tort Claims
20 Act.

21 But it seems to me, just listening
22 to this, and I don't have any real problem
23 with all of the things that you have asserted
24 -- I think probably somewhere in the record
25 that I've probably said it. But the real

1 catch to me seems to be -- it seems to me to
2 be a common thread in all of them, the lack
3 of specificity -- and that's just my choice
4 of words -- as to the person. There is no
5 question -- I mean, Lord knows that we have
6 enough data to know that pedophilia creates
7 risk of harm. I mean, there's no question
8 about that. Debating as to what sort of
9 percentages there are with recidivism, and we
10 see this in the Sexually Violent Predator
11 Act, we hear that testimony frequently, uh,
12 but there's no question that there's a
13 problem, there is no question that there is
14 a significant risk.

15 But the one thing, even in the Row
16 case, and I want to read that again
17 specifically, but it talks about not the
18 public -- not the fact that, 'Yes, there are
19 people at risk, but is this person at risk?'
20 That seems to be the focal point that the
21 Court has taken. We are not going to bring
22 this -- create this duty.

23 Now, I don't have any problem with
24 -- I can easily work through the process of
25 saying that they undertook some duty, from a

1 summary judgment standpoint. I think that
2 there is a question of fact there for that;
3 to be candid with you -- Jessica's Law, that
4 alone tells me something. 'What was your
5 obligation? What did you have an obligation
6 to do under that law?' I agree that it is
7 not a separate cause of action but it clearly
8 says what -- something that you had a
9 responsibility to do and it wasn't done.

10 Now, whether or not that was
11 proximate cause, that's an issue for the jury
12 too. But the problem that I get, too, again
13 is that 'does it carry forward to this
14 person?' Because at this point this person
15 didn't even exist.

16 GREGG MEYERS: And the ---

17 THE COURT: In the sense of being
18 at harm. It was a threat, but it was a
19 threat to everybody. You know, that's what
20 I said -- it needs to be addressed. I want
21 it to be framed, so that we can address it.

22 GREGG MEYERS: Two things, Your
23 Honor. I won't argue with The Citadel's ---

24 THE COURT: I don't ---

25 GREGG MEYERS: --- consciousness

1 or their awareness that he was working --
2 that's a fact that bears on that question.

3 THE COURT: I don't ---

4 GREGG MEYERS: And I would encourage
5 the Court, in any ruling, to be specific as
6 to both the mother and the child, because
7 they may be treated differently under the law
8 as to that question.

9 THE COURT: Well, I think both of
10 them would fall into the same category with
11 respect to the specificity. Don't you?

12 GREGG MEYERS: Well, ---

13 THE COURT: I mean, I understand
14 the mother isn't at personal risk because the
15 mother isn't the child.

16 GREGG MEYERS: There is a
17 difference.

18 THE COURT: Right.

19 GREGG MEYERS: But clearly those
20 interests are very closely aligned.

21 THE COURT: I don't quarrel with
22 that but I just think that you've got to get
23 to the point of -- and then whether or not
24 the mother's was foreseeable, versus the
25 child's foreseeable, to me that's a jury

1 issue.

2 GREGG MEYERS: I'm thinking of
3 the context where we have child cases and
4 parent cases.

5 THE COURT: Oh, I understand.

6 GREGG MEYERS: Just in terms of
7 if the Court is looking for a ruling, I was
8 trying to separate out the ones in front of
9 you right now versus the ones that are
10 downstream.

11 THE COURT: And I don't quarrel
12 with that. Obviously the only thing that I
13 can do with this is -- obviously his desire
14 to have sex with children doesn't affect the
15 mother. I mean, that is not a risk to her.
16 It's a risk in the context that she had a
17 child. I understand that.

18 GREGG MEYERS: It's not a
19 physical risk to her.

20 THE COURT: No, I understand that.

21 GREGG MEYERS: But it is a
22 tremendous emotional risk.

23 THE COURT: I understand. You
24 don't have to convince me of that. I concur
25 whole-heartedly. I don't think that there's

1 been a case that -- well, I didn't see these
2 others, but I haven't had one where the
3 damage issue is so enormous as it is in this
4 case. There is no question about that. To
5 me -- of course, I don't make that judgment.
6 That would be up to a jury. But there is
7 absolutely no question of the damages here.

8 This isn't 'imagine', this isn't
9 some minute little -- 'well, you damaged me
10 just a little.' This is serious, serious
11 consequences of what occurred.

12 The question comes, is whether or
13 not, it seems to me, and I'm going to look at
14 your -- I want to read those cases
15 specifically. But it just seems to me, as
16 much as I agree with Justice Pleconis insofar
17 as the loss of consortium of a child -- I
18 can't think of a more realistic damage,
19 having three children and having six grand-
20 children.

21 But by the same token, the
22 legislature has chosen not to act. It seems
23 to me that they've kind of dropped it in
24 there. I am not faulting the legislature at
25 all. I'm just simply stating. It seems that

1 what the implication is from the Doe (sic)
2 case that this is something that we can
3 address, if they choose to. The bottom line
4 is, if they finally do that, so be it. They
5 can frame it very clearly in the law by
6 defining what obligations there are.

7 The real catch -- and we can get
8 through the special relationship because of
9 the voluntary actions, I think. I really do
10 think that gets you around that problem.

11 THE COURT: It is one of the
12 exceptions.

13 THE COURT: And it is an
14 exception, (affirmative nod). The question
15 then come, can you go beyond that here?
16 Because it's not specific as to this
17 plaintiff. Therein lies -- it seems to be
18 the common thread that I'm hearing in the
19 arguments and in reading the cases. But let
20 me look at it. Okay? Thank you. We will
21 be at-ease for a few minutes. Thank you.
22 I may be a little bit longer than a few
23 minutes.

24 (BRIEF RECESS 10:18 - 10:43 A.M.)

25 THE COURT: Thank you all for your

1 patience. First of all, let me make sure
2 that we incorporate all the memoranda that
3 have been submitted in conjunction with this
4 Motion. That would include -- because there
5 is some overlap -- the Motions *in limine* that
6 were filed and the responses to the Motions
7 *in limine*, both sides. All of those cases
8 are also incorporated for purposes of review,
9 should that become necessary.

10 GREGG MEYERS: Your Honor, could
11 I say one thing?

12 THE COURT: Sure.

13 GREGG MEYERS: And I apologize
14 for interrupting.

15 THE COURT: No problem.

16 GREGG MEYERS: Because so many of
17 those Motions came in yesterday, we didn't --
18 we haven't formally responded to them. There
19 is simply one fact that I want to make sure
20 that the Court is aware of.

21 THE COURT: All right.

22 GREGG MEYERS: That is, that in
23 his 30(b)(6) deposition the General Counsel
24 indicated that he acknowledged assuming the
25 duty of future victims. That's the phrase,

1 "future victims." So that is acknowledged.
2 I just want to put that ---

3 THE COURT: Let me be sure that I
4 understand. We agree that, so that there is
5 not an issue of fact as to what he said, he
6 said "to future victims", in the plural.

7 MR. SLOAN: Yes, Your Honor, I
8 believe that's in the deposition. I can find
9 it.

10 THE COURT: That's fine.

11 DAWES COOKE: I would be willing
12 to supplement the record as to what was
13 actually said, because I couldn't find ---

14 THE COURT: That's fine. So that
15 we are clear, we're relying on deposition
16 testimony to support certain factual
17 statements that have been made here. There's
18 no question about that

19 GREGG MEYERS: Right.

20 THE COURT: Insofar as the record
21 if it becomes necessary, to agree upon -- I
22 will just say all pertinent portions of any
23 deposition are incorporated in this Motion.

24 GREGG MEYERS: Fair enough.

25 THE COURT: For both sides.

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1 DAWES COOKE: Thank you.

2 THE COURT: That will cover, I
3 think would cover ---

4 GREGG MEYERS: And I would stand
5 corrected on the exact language if ---

6 THE COURT: Well, ---

7 GREGG MEYERS: Whatever it says.

8 THE COURT: In some ways, it
9 might be -- therein lies the crux of the
10 issue. One that precipitated our
11 conversation whether or not -- however we
12 want to frame it, but it is what it is and
13 we're now here.

14 First of all, I guess I will go in
15 reverse order. As I stated yesterday and
16 I've reviewed again, I believe that *Doe v.*
17 *Greenville School System* -- and we have the
18 cites there, I think we all know which case
19 that I am talking to. If you want me to cite
20 it specifically for purpose of our discussion
21 ---

22 GREGG MEYERS: We do.

23 THE COURT: I think we all are
24 aware of that.

25 GREGG MEYERS: We are aware.

1 THE COURT: Because I -- I think
2 that I indicated to you that I think the
3 logic of Justice Pleconis' dissent in that
4 case is very persuasive, however it is not
5 the law of this state, because there were
6 four other Justices that disagreed with him.

7 Basically as I read that, the filial
8 loss of consortium is not available in this
9 state under common law. It was suggested
10 maybe that's a legislative matter and the
11 legislature, thus far, has not addressed
12 that.

13 Notwithstanding the case that was
14 cited, and I think that you mentioned, Mr.
15 Meyers, in our discussion yesterday the 1913
16 case -- it's an old case nevertheless.

17 GREGG MEYERS: *Wynne v. Southern*
18 *Railway.*

19 THE COURT: That seems to imply
20 that it is broader than just simply what
21 they've ultimately concluded, that is that
22 basically you're entitled to medical expenses
23 and loss of service; which the Court has said
24 is restricted to 'what function have you
25 performed?'

1 GREGG MEYERS: Yeah, and I would
2 say that they are two different things. One
3 is talking about loss of consortium and the
4 other is talking about loss of services.

5 THE COURT: And I would agree that
6 you have constantly -- and I -- my feeling is
7 that in that case, that really is -- that had
8 to have been discussed, because there would
9 have been no reason for Justice Pleconis to
10 write in his Opinion that he believes filial
11 loss of consortium is here. So there's no
12 question it had that under consideration, the
13 difference in the terminology. But be that
14 as it may, I believe that that case is the
15 law of the case and therefore I would grant
16 summary judgment that those are the only
17 damages that this plaintiff is entitled to
18 recover in this action.

19 GREGG MEYERS: The case as a
20 whole, not that cause of action, is what
21 you're saying?

22 THE COURT: The case as a whole,
23 because I'm about to say this. And it really
24 doesn't make any difference because they've
25 said -- I mean -- as to outrage. Because in

1 this particular case, and I hear your
2 argument but, just as we have discussed, and
3 I am going to look at my -- give me a moment
4 to get my (reviewing file).

5 Let's first of all deal with the
6 intentional infliction of emotional distress.
7 I don't think that there is any question that
8 it didn't occur in her presence. You've
9 cited the statute which specifically says
10 that. So clearly from that standpoint, I'll
11 cite basically the existing law and the
12 statute that I believe would grant --
13 entitled -- that they would be entitled to
14 summary judgment on the issue of intentional
15 infliction of emotional distress.

16 I am cognizant of the fact that that
17 is one of the elements of the tort of outrage
18 in making that determination. The tort of
19 outrage, though, is when you take the
20 *Upchurch* case and the *Rojas* case and read
21 them together, which I think you can do very
22 easily, because I -- you've raised the issue
23 that this is dealing with, uh, -- excuse me.
24 In the *Upchurch* case -- excuse me. Certainly
25 in dealing with the *New York Times* and the

1 Rojas case, dealing with public entities, but
2 -- in the *Rojas* case, it talks about a number
3 of things. It mentions in the cite when it
4 references the *Upchurch* case, which I think
5 is a significant cite, in support of for its
6 decision. I quote, "It is not enough that
7 the conduct is intentional and outrageous.
8 It must be conduct directed at the plaintiff
9 or occur in the presence of the plaintiff, of
10 whom the defendant is aware."

11 Now, inferentially you could argue,
12 I guess for purposes of my ruling "victims"
13 -- I think they deal with specificity there.
14 It furthermore goes on to state in that
15 Opinion, "The Does have shown no hostile or
16 abusive encounters or coercive or oppressive
17 conduct."

18 Again, "encounters", it talks about
19 being in in the presence of. That's what the
20 *Hudson v. Ford* case was, something that
21 occurred. It is something that has occurred
22 throughout and it's consistent. Specifically
23 this plaintiff has not had that experience.

24 Now, we were talking earlier about
25 distinctions of this case versus the

1 individuals. There is a major one in that
2 regard, because clearly that is not -- this
3 person does not fall in that category. That
4 is distinguishable, but that's not before me
5 now. I just make that note for the record
6 should that become necessary to deal with
7 that issue in the future.

8 In fact, the Court says in *New York*
9 *Times* -- I think I've already reported that.

10 That segues into the action itself
11 for the negligence, because the Court noted
12 in *Rojas* that while their ruling -- they
13 ruled that it was not outrageous because it
14 didn't meet any of the elements; didn't meet
15 the elements, period. But it says that this
16 doesn't address the negligence action. So
17 the negligence action, we have.

18 Frankly, this is one of the
19 consistencies that I find throughout. Did I
20 leave my notes -- (reviewing file) no, here it
21 is. This comes from the *Bibby* case, which is on
22 cert, but it really is paraphrasing what's been
23 said in *Doe v. Marion*, all of the cases that
24 we've dealt with and what's been argued. The
25 Court -- it's a two-to-one Decision, I would note

1 as well for the purposes of the record, Court of
2 Appeals, and that cite is 410 South Carolina 287,
3 decided October 1st, 2014. The Court, in making
4 the final statement, states as follows: *"We find*
5 *the record contains no evidence respondent has*
6 *knowledge of a specific threat of harm to a*
7 *specific individual. It is not simply the*
8 *foreseeability of the victim which gives rise to*
9 *a person's liability for failure to warn, rather*
10 *it is the person's awareness of a distinct,*
11 *specific, overt threat of harm which the*
12 *individual makes towards a particular victim."*

13 I think that is really the summary of
14 our law and where we are. We talk about it being
15 the public at-large but this case, without
16 stating that, is saying the same thing.

17 Again, the statement, does that create
18 an issue of fact as to this defendant. She's not
19 a victim that I'm aware -- she's a victim, Mr.
20 Meyers. You've argued that and I don't disagree
21 with you. She's definitely a victim in the sense
22 of suffering damages as a parent, but I don't
23 think that's what the Court is talking about. I
24 think they're talking about a specific victim of
25 an overt act, which was obviously the acts of Mr.

1 ReVille. I can say the acts, because he pled
2 guilty to them.

3 So clearly in this particular case --
4 and the conspiracy, I would agree with counsel's
5 argument and the -- and the support in the
6 memorandum for the civil conspiracy. Again, no
7 overt act towards this defendant (sic) -- I mean,
8 this plaintiff specifically.

9 And that seems to be the consistent
10 thread, as I stated before we left, throughout
11 this matter. So I think I've addressed all of
12 them. If I haven't, let me hear from you now.

13 DAWES COOKE: I think the only ones
14 you hit specifically are the statutory ones but I
15 believe counsel agreed those are the ones ---

16 THE COURT: Yeah, and I've never and
17 I don't think they've ever -- to be candid with
18 you, they've never argued this statute. They may
19 have pled it so that it could be inferred that
20 way but they haven't.

21 I think the statute -- and I think that
22 we talked about the Jessica Law. There is no
23 question that may create the duty. The problem
24 that we have is we get through whether or not --
25 just breaching the duty, we still can't get to

1 the specific individual, as I see it in what the
2 law requires here today.

3 DAWES COOKE: I think with that that
4 you've addressed all of the causes of action.

5 THE COURT: Do you concur, Mr.
6 Meyers? Because I don't want to leave something.

7 GREGG MEYERS: With what proposition?

8 THE COURT: The proposition that my
9 ruling covers everything that you needed to frame
10 going forward?

11 GREGG MEYERS: I don't believe that the
12 court addressed conspiracy.

13 THE COURT: I did. I'm relying on
14 counsel's submissions and argument. I agree --
15 because it really is connected with everything
16 else.

17 GREGG MEYERS: Then I agree that the
18 court has covered it.

19 THE COURT: Thank you, sir. Thank you
20 all. Let me state this again for -- and I've
21 said it on numerous occasions. I'm not asking
22 for any money or support, either, for anything
23 but it's true -- something that I knew as a
24 lawyer, having the pleasure to practice law with
25 y'all, with you. But having the pleasure of

1 serving our profession in this role, it's a
2 distinct privilege to work with such wonderful
3 professionals. I just can't thank you enough for
4 your thoroughness, for your passion -- each side.
5 Thank you.

6 GREGG MEYERS: Thank you.

7 DAWES COOKE: Thank you. Do you want
8 us to stay while the jury is dismissed?

9 THE COURT: I'll go tell them. I
10 won't bring them in unless you want me to do
11 that. What I generally do, over the years, is
12 step back and explain to them that there were
13 matters of law that I had to address, and that
14 that was my job. That I've ruled as a matter of
15 law.

16 DAWES COOKE: Thank you.

17 THE COURT: And I tell them that we
18 couldn't have resolved the dispute without them.
19 Sometimes I think that's the judge's way of
20 'throwing them a bone' but it's true.

21 Maybe I should have ruled earlier but I
22 had to get this case in a posture to where the
23 record would support it to where we wouldn't have
24 a situation where it comes back on the falsity of
25 the record. We don't have that. We have lawyers

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1 that have done a tremendous job for their
2 clients. So, thank you.

3 DAWES COOKE: Thank you.

4 GREGG MEYERS: Thank you, Your Honor.

5 THE COURT: Thank all of you.

6 (JURY DISMISSED)

7 (HEARING CONCLUDED)

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STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF CHARLESTON)

I, the undersigned Deborah Garrison, Circuit Court Reporter for the 9th Judicial Circuit, hereby certify that the foregoing is a complete and accurate transcript of the hearing held in the within action heard on January 26-27th, 2015, before The Honorable R. Markley Dennis, Jr.;

I further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Wm. Lloyd Garrison

Deborah Garrison

Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

MOTHER DOE A,

Plaintiff,

v.

THE CITADEL,

Defendant.

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
) CASE NO.: 2011-CP-10-9200

) **NOTICE OF MOTION AND RENEWED**
) **MOTION FOR SUMMARY JUDGMENT**
)
)
)
)
)

TO: GREGG MEYERS, ESQUIRE, LOUIS P. HERNS, ESQUIRE AND ALLAN P. SLOAN III, ESQUIRE, ATTORNEYS FOR PLAINTIFF, MOTHER DOE A:

YOU WILL PLEASE TAKE NOTICE that the undersigned attorneys for Defendant, The Citadel, hereby move this Court, for an Order granting Defendant summary judgment and entering judgment against the Plaintiff pursuant to Rule 56 of the South Carolina Rules of Civil Procedure because there are no genuine issues of material fact supporting Plaintiff's claims. The grounds for this motion¹ are that:

INTRODUCTION

The Citadel (in this and other lawsuits stemming from allegations of sexual abuse by Louis "Skip" ReVille) filed a Motion for Summary Judgment arguing, *inter alia*, that Plaintiff's claim must fail because South Carolina does not permit recovery for damage to a parent's relationship with her child and because South Carolina does not recognize a legal duty owed by The Citadel to the Plaintiff. The Court denied these Motions for Summary Judgment, observing at oral argument that the Supreme Court might be poised to change the law in these areas.

¹ The Citadel incorporates by reference, as if set forth at length, any and all Motions for Summary Judgment (and supporting memoranda) it has submitted previously in this case or in the cases captioned: (a) *John Doe 2 v. The Citadel*, (Case No. 2012-CP-10-1858); (b) *Mother Doe on behalf of John Doe 3 v. The Citadel*, (Case No. 2012-CP-10-1859); (c) *John Doe Camper v. The Citadel*, (Case No. 2012-CP-10-1860); and (d) *Camper Doe 6 v. The Citadel*, (Case No. 2013-CP-10-5247).

However, the Court did note that it considered granting the Motions so that the appellate courts could provide guidance on the important legal issues that control this case. Now that the Supreme Court has denied The Citadel's petition for certiorari, the only vehicle by which this Court and the litigants can learn — without first enduring a difficult and harmful trial — whether the law has in fact changed is for this Court to grant summary judgment so that Plaintiff can appeal. This Court has aptly observed that nobody will benefit from a public trial of this case. Each participant will be ill-served by having to try this case if the law does not recognize the claim that the Plaintiff is making.

RENEWED MOTIONS FOR SUMMARY JUDGMENT

I. Plaintiff's claims fail because she has not sustained any proximately caused injury recoverable under South Carolina law.

- A. The only damages Plaintiff, who was not a victim of ReVille but the parent of a victim, may recover are: (a) medical expenses she paid for her son's treatment; and (b) pecuniary harm from loss of her son's services. *See Wright v. Colleton Cty. Sch. Dist.*, 301 S.C. 282, 391 S.E.2d 564 (1990).
- B. Plaintiff does not seek to recover such damages in this case. Instead, she seeks to recover damages for the intangible loss of her son's companionship and harm to her relationship with him; in other words, whatever label she applies to them, Plaintiff is seeking loss of filial consortium.
- C. The South Carolina Supreme Court, in a sexual abuse case, has expressly forbidden a parent from recovering the very type of damages Plaintiff seeks to recover here. *See Doe v. Greenville Cty. Sch. Dist.*, 375 S.C. 63, 651 S.E.2d 305 (2007) ("Because Mr. and Mrs. Doe's loss of consortium claim is based entirely upon their allegation of a change in their relationship with their child and not a claim for loss of services, we hold that the trial court did not err in dismissing Mr. and Mrs. Doe's claim for loss of filial consortium.") (see Tab A).
- D. Plaintiff can cite no South Carolina authority permitting a parent (in a context outside of the ancient tort of seduction or abduction) to recover damages for intangible losses she has suffered because of injury to her son. Plaintiff's argument, based on old common law, mirrors the dissent in *Doe v. Greenville Cty. Sch. Dist.*, *supra* (see Tab A).
- E. In a similar case involving a claim filed by Plaintiff's counsel, Judge Miller granted a Motion to Dismiss, holding that *Doe v. Greenville County* precludes the very types of damages Plaintiff seeks here, such as: (a) "the shame, humiliation, and mental anguish

caused by the defendant's conduct in permitting her child to undergo sexual contact"; (b) the parent's being forced to "grapple with the added problems of raising her child after the improper sexual contact"; and (c) loss of her child's "companionship." See *Doe v. Brookwood Community Church*, Civ. Action No. 2011-CP-23-1106 (Dec. 13, 2011) (see Tab O). Judge Miller stated that "those are the precise elements of damages that the Supreme Court identified in *Doe* as being recoverable only in an action for filial consortium which is not recognized under South Carolina law."

II. As to Plaintiff's negligence-based claims, The Citadel did not owe a duty of care to Mother Doe A

A. Although there is no duty to control a third-party or warn a potential victim of a risk from a third-party, there are exceptions to this rule: (1) where the defendant has a special relationship to the victim; (2) where the defendant has a special relationship to the injurer; (3) where the defendant voluntarily undertakes a duty; (4) where the defendant negligently or intentionally creates the risk; and (5) where a statute imposes a duty on the defendant. See *Faile v. South Carolina Dep't of Juvenile Justice*, 350 S.C. 315, 566 S.E.2d 536 (2002).

1. The Citadel had no "special relationship" with Mother Doe A or her son

- a. There is no evidence whatsoever that anyone at The Citadel knew either Mother Doe A or her son or that her son was exposed to ReVille in any way.
- b. There is no evidence that The Citadel had the ability to monitor, supervise or control Mother Doe A. See *Doe ex rel. Doe v. Wal-Mart Stores, Inc.*, 393 S.C. 240, 711 S.E.2d 908 (2011) ("Wal-Mart had no special relationship with either the victim or his father because it did not have the ability to monitor, supervise, or control either.") (see Tab B).

2. The Citadel had no "special relationship" with ReVille

- a. There is no evidence that The Citadel had the ability to monitor, supervise or control ReVille. See *Doe ex rel. Doe v. Wal-Mart Stores, Inc.*, 393 S.C. 240, 711 S.E.2d 908 (2011) ("Wal-Mart had no special relationship with either the victim or his father because it did not have the ability to monitor, supervise, or control either.") (see Tab B).
- b. There is no evidence that The Citadel was aware of a specific threat by ReVille to harm Mother Doe A or her son. See *Doe v. Marion*, 373 S.C. 390, 645 S.E.2d 245 (2007) ("Petitioner's claim fails to allege a specific threat against James Doe necessary to create a duty to warn.") (see Tab C).

3. The Citadel did not voluntarily undertake a duty to Mother Doe A

- a. There is no evidence that The Citadel undertook a duty specifically to Mother Doe A. *See Johnson v. Robert E. Lee Academy, Inc.*, 401 S.C. 500, 504-05, 737 S.E.2d 512, 514 (Ct. App. 2012) (refusing to extend doctrine beyond Section 323 formulation) (*see* Tab D).
 - b. There is no evidence that Mother Doe A relied on anything The Citadel allegedly did. *See Underwood v. Coponen*, 367 S.C. 214, 625 S.E.2d 236 (Ct. App. 2006) ("While Taylor did trim the tree occasionally for the purpose of clearing the stop sign and his failure to trim the tree might have increased the risk that the sign would be obstructed, neither Underwood nor Coponen knew that Taylor trimmed the tree, and *thus they did not rely on his doing so.*") (emphasis added) (*see* Tab E); *Staples v. Duell*, 329 S.C. 503, 510, 494 S.E.2d 639, 643 (Ct. App. 1997) ("Without previous knowledge of the policy, Staples could not have relied on the policy. Thus, Duell's policy of looking for dead trees did not create a duty for which he could be held liable.") (*see* Tab F).
4. The Citadel did not negligently or intentionally create the risk.
 - a. Plaintiffs rely heavily on the created risk exception to the no-duty rule. Under Plaintiff's argument the exception would swallow the rule, because anyone who fails to cause an injury can be said to have created an enhanced risk of the injury occurring. The Citadel did not create ReVile's desire to abuse children or encourage ReVile to abuse children. Moreover, it did not control ReVile or have custody over Mother Doe A or her son. *See Doe ex rel. Doe v. Wal-Mart Stores, Inc.*, 393 S.C. 240, 247-48, 711 S.E.2d 908, 912 (2011) ("Wal-Mart did not negligently or intentionally create the risk of the father's sexual abuse.") (*see* Tab B).
 - b. Plaintiff can cite no South Carolina authority imposing a duty under circumstances such as those in this case. It is not enough to say that the Defendant's failure to protect the Plaintiff from harm created an enhanced risk of that harm. The Defendant must have directly created the risk in order for this exception to apply.
 5. No statute imposed a duty on The Citadel.
 - a. Under the "public duty rule," public officials are generally not liable to individuals for their negligence in discharging public duties as the duty is owed to the public at large rather than anyone individually. *See e.g., Trask v. Beaufort Cty.*, 392 S.C. 560, 567, 709 S.E.2d 536, 539 (S.C. App. 2011) (*see* Tab G); *Brown v. Brown*, 360 S.C. 7, 11, 598 S.E.2d 728, 731 (Ct. App. 2004) ("To the extent Woodrow relies on violations of a statute or statutes, we agree with the trial court his claims are barred by the public duty rule. We note the code sections corresponding to Woodrow's claims merely recite in broad terms when circumstances make it unlawful to operate a motor vehicle, procedures surrounding incidents of possible DUI or, as in the case of the latter section, the general licensing requirement for motorists. None of the statutes implicated by Woodrow's claims identify any particular class of victims or

any particular harm that would create a special duty exception to the general rule.") (see Tab H). "The public duty rule is a rule of statutory construction which aids the court in determining whether the legislature intended to create a private right of action for a statute's breach." *Vaughan v. Town of Lyman*, 370 S.C. 436, 442, 635 S.E.2d 631, 634 (2006). This Court has said that The Citadel owed a duty "to all of us" to stop ReVille. Contrary to establishing a basis for liability, this observation demonstrates that the public duty rule applies.

- b. The mandatory reporting statute does not impose a duty of care. See *Doe ex rel. Doe v. Wal-Mart Stores, Inc.*, 393 S.C. 240, 248, 711 S.E.2d 908, 912 (2011) ("Wal-Mart's duty to report under the Reporter's Statute cannot give rise to civil liability.") (see Tab B); accord *Doe v. Marion*, 373 S.C. 390, 645 S.E.2d 245 (2007) (see Tab C). Moreover, the South Carolina Office of the Attorney General has opined that the mandatory reporting statute would not apply where, as Camper Doe did here, an adult comes forward with accusations of abuse that occurred during his childhood. See June 30, 2014 Office of the Attorney General Opinion ("[T]his Office believes a court will conclude that a mandatory reporter would not have to report . . . when an adult discloses being abused in the past as a child, as long as the adult is not mentally incompetent, as long as there is no information that another child (who is, at the time of the disclosure, under the age of eighteen as defined in 63-3-20(3)) has been or may be abused or neglected" (See Tab I).
- c. The Jessica Horton Act does not apply because it was not in effect until after Camper Doe's report. See *Southeastern Site Prep, LLC v. Atlantic Coast Bldrs. and Contractors, LLC*, 394 S.C. 97, 106, 713 S.E.2d 650, 655 (Ct. App. 2011) (citation omitted) ("[W]here a statute . . . creates new obligations [or] imposes a new duty . . . it will be construed as prospective only."). Moreover, that statute was not triggered because it did not allege "criminal sexual conduct" as that offense is defined under South Carolina law. Finally, "the general rule is that a statute which does not purport to establish a civil liability, but merely makes provision to secure the safety or welfare of the public as an entity is not subject to a construction establishing civil liability." *Doe v. Marion*, 373 S.C. 390, 396, 645 S.E.2d 245, 248 (2007) (see Tab C).
- d. The Clery Act plainly states that it does not "[e]stablish a standard of care." See 20 U.S.C. § 1092(f)(14)(A).
- e. The OCR Guidance upon which Plaintiff relies to establish a duty of care under Title IX may not be used to establish an actionable violation of Title IX. See *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 292 (1998).

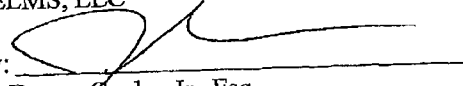
III. As to Plaintiff's non-negligence claims (outrage and civil conspiracy), the South Carolina Tort Claims Act bars Plaintiff's claims against The Citadel.

1. The South Carolina Tort Claims Act precludes these claims because they involve allegations of intent to harm and intentional infliction of emotional distress. See S.C. Code Ann. § 15-78-60(17) (stating that "governmental entity is not liable for a loss resulting from employee conduct ... which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude") (see Tab J); S.C. Code § 15-78-30(f) (noting that a "loss" under the Act "does not include the intentional infliction of emotional harm") (see Tab K); accord *Kinard v. City of Greenville*, 2012 WL 1340103, at *7 (D.S.C. April 18, 2012) ("[T]he City has immunity for the claims made against it for the intentional tort of assault and battery and accordingly these claims against the City are dismissed with prejudice.") (see Tab L); *Landrum v. Spartanburg Cty.*, 2011 WL 3652291, at *5 (D.S.C. Aug. 18, 2011) ("The County has immunity for the claims made against it for the intentional torts of assault and battery; therefore, the County is entitled to summary judgment on these claims.") (see Tab M); see also *Vaught v. Waites*, 300 S.C. 201, 208, 387 S.E.2d 91, 95 (Ct. App. 1989) ("Civil conspiracy consists of three elements: (1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, (3) which causes him special damage.").

CONCLUSION

For the foregoing reasons, this Court should revisit its prior decision and grant The Citadel summary judgment. This will allow the parties to pursue a prompt and final appellate resolution of the key issues.

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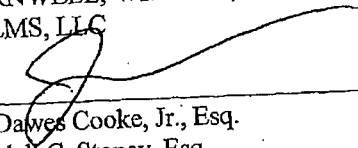
Dated: January 26, 2015
Charleston, South Carolina

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CONCLUSION

For the foregoing reasons, this Court should revisit its prior decision and grant The Citadel summary judgment. This will allow the parties to pursue a prompt and final appellate resolution of the key issues.

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Charleston, South Carolina

CERTIFICATE OF SERVICE

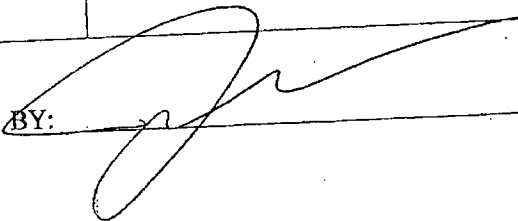
The undersigned hereby certifies that a true copy of the Defendant's Notice of Motion and Renewed Motion for Summary Judgment were served upon all counsel of record via hand delivery on this 26th day of January, 2015.

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West Reporter Image (PDF)

375 S.C. 63, 651 S.E.2d 305, 224 Ed. Law Rep. 975

Judges and Attorneys

Supreme Court of South Carolina.
 John DOE and Jane Doe, Appellants
 v.
 GREENVILLE COUNTY SCHOOL DISTRICT, Respondent.

No. 26372.

Heard May 3, 2007.

Decided Aug. 27, 2007.

Rehearing Denied Oct. 19, 2007.

Background: Student's parents brought action against school district, asserting several causes of action arising from incidents of sexual activity between female student and a substitute teacher. The Circuit Court, Greenville County, Larry R. Patterson, J., granted district's motion to dismiss all causes of action, and parents appealed.

Holdings: The Supreme Court, Toal, C.J., held that:

- (1) cause of action by a parent for negligent infliction of emotional distress as result of injury to his or her child is limited to "bystander liability" scenario;
- (2) South Carolina law does not provide a cause of action for filial consortium;
- (3) complaint stated a claim for negligent supervision sufficient to survive a motion to dismiss for failure to state a claim; and
- (4) district did not have any fiduciary duty or assumed duty in loco parentis.

Affirmed in part, reversed in part.

Pleicones, J., concurred in part and dissented in part with opinion.

West Headnotes

[1] ☒ KeyCite Citing References for this Headnote

• 307A Pretrial Procedure

• 307AIII Dismissal

• 307AIII(B) Involuntary Dismissal

• 307AIII(B)6 Proceedings and Effect

• 307Ak681 k. Matters considered in general. Most Cited Cases

Generally, in considering a motion to dismiss for failure to state a claim, the trial court must base its ruling solely upon allegations set forth on the face of the complaint. Rules Civ.Proc., Rule 12(b)(6).

[2] ☒ KeyCite Citing References for this Headnote

• 307A Pretrial Procedure

• 307AIII Dismissal

• 307AIII(B) Involuntary Dismissal

- ◄ 307AIII(B)4 Pleading, Defects In, in General
- ◄ 307Ak623 Clear and Certain Nature of Insufficiency
- ◄ 307Ak624 k. Availability of relief under any state of facts provable. Most Cited Cases

A motion to dismiss for failure to state a claim may not be sustained if the facts alleged in the complaint and the inferences that can be drawn therefrom would entitle the plaintiff to any relief under any theory. Rules Civ.Proc., Rule 12(b)(6).

[3] KeyCite Citing References for this Headnote

- ◄ 115 Damages
 - ◄ 115III Grounds and Subjects of Compensatory Damages
 - ◄ 115III(A) Direct or Remote, Contingent, or Prospective Consequences or Losses
 - ◄ 115III(A)2 Mental Suffering and Emotional Distress
 - ◄ 115k57.26 Injury or Threat to Another; Bystanders
 - ◄ 115k57.27 k. In general. Most Cited Cases

Cause of action by a parent for negligent infliction of emotional distress as result of injury to his or her child is limited to "bystander liability" scenario.

[4] KeyCite Citing References for this Headnote

- ◄ 115 Damages
 - ◄ 115III Grounds and Subjects of Compensatory Damages
 - ◄ 115III(A) Direct or Remote, Contingent, or Prospective Consequences or Losses
 - ◄ 115III(A)2 Mental Suffering and Emotional Distress
 - ◄ 115k57.26 Injury or Threat to Another; Bystanders
 - ◄ 115k57.27 k. In general. Most Cited Cases

In order to prevail on a cause of action for negligent infliction of emotional distress under the bystander liability scenario, a plaintiff must show that: (1) the negligence of the defendant caused death or serious physical injury to another, (2) the plaintiff bystander was in close proximity to the accident, (3) the plaintiff and the victim are closely related, (4) the plaintiff contemporaneously perceived the accident, and (5) the plaintiff's emotional distress manifests itself by physical symptoms capable of objective diagnosis and be established by expert testimony.

[5] KeyCite Citing References for this Headnote

- ◄ 285 Parent and Child
 - ◄ 285k7 Actions for Injuries To, Loss of Services, Control, or Society of Child
 - ◄ 285k7(1) k. Right of action in general. Most Cited Cases

South Carolina law does not provide a cause of action for filial consortium. Code 1976, § 15-75-20.

[6] KeyCite Citing References for this Headnote

- ◄ 350 Seduction
 - ◄ 350I Civil Liability
 - ◄ 350k1 k. Nature and elements of cause of action in general. Most Cited Cases

A claim for seduction requires the plaintiff to establish that the defendant, by promising to marry or through some other device, enticed the plaintiff, an unmarried chaste woman, to consent to unlawful sexual intercourse.

[7] ☒ KeyCite Citing References for this Headnote

◊ 350 Seduction

◊ 350I Civil Liability

◊ 350k3 Grounds of Action

◊ 350k6 k. Right of action of woman seduced. Most Cited Cases

The right to sue upon an action for seduction belongs to the victim of the seduction.

[8] ☒ KeyCite Citing References for this Headnote

◊ 350 Seduction

◊ 350I Civil Liability

◊ 350k14 k. Parties and persons liable. Most Cited Cases

The defendant to a seduction action must be the perpetrator of the seduction.

[9] ☒ KeyCite Citing References for this Headnote

◊ 141E Education

◊ 141EII Public Primary and Secondary Schools

◊ 141EII(E) Pupils or Students

◊ 141EII(E)8 Injuries to Pupils or Students

◊ 141Ek800 Particular Injuries

◊ 141Ek808 Duty to Protect Against Intentional Injuries

◊ 141Ek808(1) k. In general. Most Cited Cases

(Formerly 345k89.3 Schools)

◊ 141E Education ☒ KeyCite Citing References for this Headnote

◊ 141EII Public Primary and Secondary Schools

◊ 141EII(E) Pupils or Students

◊ 141EII(E)8 Injuries to Pupils or Students

◊ 141Ek811 Actions

◊ 141Ek818 k. Pleading. Most Cited Cases

(Formerly 345k89.3 Schools)

Complaint by female student's parents, which alleged that school district acted with gross negligence in failing to protect their daughter from the known danger of a substitute teacher's inappropriate interest in young girls and which alleged that parents had incurred medical expenses as a result of the negligence, stated a claim for negligent supervision sufficient to survive a motion to dismiss for failure to state a claim, although parents had not indicated any intent to present any medical bills, which trial court found necessary to show allowable damages. Code 1976, § 15-78-60(25).

[10] ☒ KeyCite Citing References for this Headnote

◊ 272 Negligence

◊ 272V Heightened Degrees of Negligence

◊ 272k273 k. Gross negligence. Most Cited Cases

"Gross negligence" is defined as the failure to exercise slight care.

[11] ☒ KeyCite Citing References for this Headnote**272 Negligence**

- 272V Heightened Degrees of Negligence
- 272k273 k. Gross negligence. Most Cited Cases

"Gross negligence" is a relative term, and means the absence of care that is necessary under the circumstances.

[12] ☒ KeyCite Citing References for this Headnote**141E Education**

- 141EII Public Primary and Secondary Schools
 - 141EII(E) Pupils or Students
 - 141EII(E)8 Injuries to Pupils or Students
 - 141Ek800 Particular Injuries
 - 141Ek809 Sexual Abuse, Harassment, or Misconduct
 - 141Ek809(2) k. By teachers or other employees. Most Cited Cases

(Formerly 345k89.2 Schools)

285 Parent and Child ☒ KeyCite Citing References for this Headnote

- 285k15 k. Persons in loco parentis. Most Cited Cases

350 Seduction ☒ KeyCite Citing References for this Headnote

- 350I Civil Liability
 - 350k3 Grounds of Action
 - 350k4 k. In general. Most Cited Cases

School district did not have any fiduciary duty or assumed duty in loco parentis to parents of female student who was involved in a sexual relationship with a substitute teacher. Code 1976, § 15-78-60(25).

[13] ☒ KeyCite Citing References for this Headnote**272 Negligence**

- 272II Necessity and Existence of Duty
 - 272k210 k. In general. Most Cited Cases

An essential element in a cause of action based upon negligence is the existence of a legal duty of care owed by the defendant to the plaintiff.

[14] ☒ KeyCite Citing References for this Headnote**272 Negligence**

- 272II Necessity and Existence of Duty
 - 272k210 k. In general. Most Cited Cases

Without a duty, there is no actionable negligence.

[15] ☒ KeyCite Citing References for this Headnote

- 272 Negligence

272XVIII Actions

272XVIII(D) Questions for Jury and Directed Verdicts

272k1692 k. Duty as question of fact or law generally. Most Cited Cases

The existence of a duty owed is a question of law for the courts.

****306** Gregg E. Meyers, of Charleston, for Appellants.

Christopher R. Antley, of Devlin & Parkinson, of Greenville, for Respondent.

Chief Justice TOAL:

***66** John Doe and Jane Doe ("Mr. and Mrs. Doe") sued the Greenville County School District ("the School District") asserting several causes of action arising from incidents of sexual activity between Mr. and Mrs. Doe's minor daughter and a substitute teacher employed by the School District. The trial court granted the School District's motion to dismiss all causes of action, and Mr. and Mrs. Doe appealed. We affirm in part and reverse in part.

FACTUAL/PROCEDURAL BACKGROUND

In 2001, Mr. and Mrs. Doe discovered that their fourteen-year old daughter was involved in a sexual relationship with a substitute teacher from her school. The substitute teacher was charged and convicted of criminal sexual conduct with a minor as a result of this inappropriate relationship. Ultimately, Mr. and Mrs. Doe sued the School District alleging several causes of action based upon the alleged negligent supervision on the part of the School District. ^{FN1} Specifically, Mr. and Mrs. Doe allege that the School District had prior complaints and warnings regarding the substitute teacher's inappropriate interest in young girls, and that the School District knew or should have known about the development of this relationship.

^{FN1}. Mr. and Mrs. Doe's daughter is not a party to this action. A separate suit was filed on her behalf and was settled at trial.

The School District filed a motion to dismiss all causes of action, and the trial court granted the motion. Mr. and Mrs. Doe appealed, and this Court certified the case from the court of appeals pursuant to Rule 204(b), SCACR. Mr. and Mrs. Doe raise the following issue for this Court's review:

Did the trial court err in granting the School District's motion to dismiss Mr. and Mrs. Doe's claims?

****307 STANDARD OF REVIEW**

[1] ☒ [2] ☒ Generally, in considering a Rule 12(b)(6), SCRCP, motion to dismiss, the trial court must base its ruling solely upon allegations set forth on the face of the complaint. Stiles v. Onorato, 318 S.C. 297, 300, 457 S.E.2d 601, 603 (1995). The motion may not be sustained if the facts alleged in the ***67** complaint and the inferences that can be drawn therefrom would entitle the plaintiff to any relief under any theory. Id.

LAW/ANALYSIS

Mr. and Mrs. Doe argue that the trial court erred in granting the School District's motion to dismiss. We agree that the trial court erred in granting the School District's motion to dismiss Mr. and Mrs. Doe's action for negligent supervision. We disagree, however, with Mr. and Mrs. Doe's argument that the trial court erred in granting the School District's motion to dismiss the causes of action for negligent infliction of emotional distress, loss of consortium, breach of fiduciary duty, and breach of an assumed duty *in loco parentis*.

A. Negligent Infliction of Emotional Distress

[3] ☒ Mr. and Mrs. Doe argue that the trial court erred in dismissing their claim against the School District for negligent infliction of emotional distress. Specifically, Mr. and Mrs. Doe argue that the trial court mistakenly perceived their claim for negligent infliction of emotional distress as a bystander liability claim similar to that discussed in Kinard v. Augusta Sash & Door Co., 286 S.C. 579, 582, 336 S.E.2d 465, 467 (1985). Mr. and Mrs. Doe contend that their claim should have been regarded as another basis upon which emotional distress could be inflicted through negligent acts. We disagree.

[4] ☒ In Kinard, this Court recognized that a parent may bring a cause of action for negligent infliction of emotional distress as a result of injury to his or her child. Kinard, 286 S.C. at 582, 336 S.E.2d at 467. The Court instructed that such an action is strictly limited to the "bystander liability" scenario. Id. In order to prevail on this cause of action, a plaintiff must show that:

- (a) the negligence of the defendant caused death or serious physical injury to another;
- (b) the plaintiff bystander was in close proximity to the accident;
- (c) the plaintiff and the victim are closely related;
- (d) the plaintiff contemporaneously perceived the accident; and
- *68 (e) the plaintiff's emotional distress manifests itself by physical symptoms capable of objective diagnosis and be established by expert testimony.

Id. at 582-83, 336 S.E.2d at 467. This Court has not otherwise defined the parameters of a cause of action for the negligent infliction of emotional distress arising out of an injury to someone other than the plaintiff. 11 S.C. JUR. Damages § 21 (1992).

In this case, Mr. and Mrs. Doe admit that they did not and cannot allege facts which would support a bystander liability cause of action. Because South Carolina courts have limited the recognition of negligent infliction of emotional distress claims in circumstances such as the one presented in this case to bystander liability, Mr. and Mrs. Doe have not stated a claim which is cognizable under South Carolina law.

Therefore, we hold that the trial court did not err in dismissing Mr. and Mrs. Doe's cause of action for negligent infliction of emotional distress.

B. Loss of Consortium

[5] ☒ Mr. and Mrs. Doe argue that the trial court erred in dismissing their claim for loss of consortium. Mr. and Mrs. Doe contend that this Court's decision in Taylor v. Medenica, 324 S.C. 200, 222, 479 S.E.2d 35, 47 (1996), is not dispositive in this case because Taylor dealt only with a child's claim for loss of parental consortium. Additionally, Mr. and Mrs. Doe argue that the Court should acknowledge their claim because South Carolina has long acknowledged claims arising from the seduction of a child. We disagree.

At common law, a father possessed the right to maintain an action for the injuries of his minor child. See Hughey v. Ausborn, 249 S.C. 470, 476, 154 S.E.2d 839, 841-42 (1967). This right was based upon the concept that a *308 father was entitled to compensation for the loss of services and earning capacity of his minor child. Id. Additionally, the father could recover for other pecuniary losses, including medical expenses incurred as a result of the injury. Id. Conversely, the common law right of a husband to recover damages for loss of consortium resulting from the injury of his wife was more encompassing. A spousal loss of consortium claim was based *69 upon the husband's right to the companionship, aid, society, and services of his wife. Cook v. Atlantic Coast Line R. Co., 196 S.C. 230, 243-44, 13 S.E.2d 1, 7 (1941). This common law right belonged only to the husband, and therefore, a wife could not recover similar damages resulting from the injury of her husband. In 1969, the South Carolina legislature

adopted Code § (56) 615, which is now codified at S.C. Code Ann. § 15-75-20 (2005), to allow both spouses the right to recover for loss of consortium.

In Taylor v. Medenica, this Court held that the determination of which relationships may give rise to a loss of consortium claim in South Carolina is one best left to the discretion of the legislature. 324 S.C. 200, 222, 479 S.E.2d 35, 47 (1996) (declining to recognize a cause of action for loss of parental consortium). The United States District Court for the District of South Carolina adopted the Taylor analysis in finding that South Carolina law did not provide a cause of action for loss of consortium of a child or for filial consortium. Kirkland v. Sam's East, Inc., 411 F.Supp.2d 639, 641 (D.S.C.2005). Today, we extend our Taylor analysis in holding that South Carolina law does not recognize claims for loss of filial consortium. Such rights did not exist under the common law, and the legislature has not provided such a right by statute.

The dissent would find that parents have a common law right to sue for loss of filial consortium despite the clear distinctions between a parent's claim for loss of services and a spouse's claim for loss of consortium found in our previous jurisprudence. The cases which the dissent utilizes to support its conclusion that filial consortium claims existed at common law directly address parental claims for loss of services, not loss of filial consortium. See Wright v. Colleton County, 301 S.C. 282, 289, 391 S.E.2d 564, 569 (1990) (providing that a parent's claim for loss of services and medical expenses resulting from the injury of a minor child is within the tort claims act statutory definition of "loss"); see also, e.g., Berger v. Charleston Consol. Ry. Gas & Elec. Co., 93 S.C. 372, 76 S.E. 1096 (1913) (addressing a father's action for medical expenses and loss of services of his injured child). As discussed above, our common law only allowed a parent to maintain an action for the loss of a child's services and earning capacity. These common law claims did not include the intangible losses of aid, ~~*70~~ companionship, and society which have traditionally defined loss of consortium claims. Accordingly, in absence of some action from the legislature, this Court has no authority upon which it could rely in finding that South Carolina law recognizes claims for loss of filial consortium.

[6] ☒ [7] ☒ [8] ☒ Additionally, Mr. and Mrs. Doe's claim that South Carolina's recognition of a cause of action for seduction is a valid basis for recognizing a claim for loss of filial consortium is misleading. A claim for seduction requires the plaintiff to establish that the defendant, by promising to marry or through some other device, enticed the plaintiff, an unmarried chaste woman, to consent to unlawful sexual intercourse. See 18 S.C. JUR. Seduction § 2 (1993). The right to sue upon an action for seduction belongs to the victim of the seduction. See 18 S.C. JUR. Seduction § 9. However, traditionally, a claim for seduction was a father's (or mother's in the absence of the father) right of action for the loss of his daughter's services. See 18 S.C. JUR. Seduction § 8. In either case, the defendant to the action must be the perpetrator of the seduction. See 18 S.C. JUR. Seduction § 2. Clearly, the School District is not the perpetrator of the seduction in this case. Accordingly, **this Court's recognition of a claim for seduction would not lend support to Mr. and Mrs. Doe's argument that this Court should recognize a claim for loss of filial consortium.**

Because Mr. and Mrs. Doe's loss of consortium claim is based entirely upon their allegation of a change in their relationship with ~~**309~~ their child and not a claim for loss of services, we hold that the trial court did not err in dismissing Mr. and Mrs. Doe's claim for loss of filial consortium.

C. Negligent Supervision

[9] ☒ Mr. and Mrs. Doe contend that the trial court erred in dismissing their claim for negligent supervision. We agree.

The South Carolina Tort Claims Act ("TCA") addresses the circumstances under which a governmental entity is liable for tortious conduct of its employees. The TCA states that "a governmental entity [is] liable for [its] torts in the same manner and to the same extent as a private individual under like circumstances, subject to the limitations upon liability and damages, and exemptions from liability and damages, contained ~~*71~~ herein." S.C. Code Ann. § 15-78-40 (2005). One limitation contained in the

TCA provides that a governmental entity will not be liable for a loss resulting from any "responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of any student, ... except where the responsibility or duty is exercised in a grossly negligent manner." S.C.Code Ann. § 15-78-60(25) (2005).

[10] ☒ [11] ☒ Gross negligence is defined as "the failure to exercise slight care." Steinke v. South Carolina Dep't of Labor, Licensing and Regulation, 336 S.C. 373, 395, 520 S.E.2d 142, 153 (1999). It has also been defined as "the intentional, conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do." Id. Gross negligence "is a relative term, and means the absence of care that is necessary under the circumstances." Id.

The trial court found that this cause of action could survive a motion to dismiss, but only to recover for allowable damages, such as medical bills. The trial court went on to find that Mr. and Mrs. Doe had not indicated any intention to present any medical bills. Therefore, the trial court dismissed the claim.

Mr. and Mrs. Doe's complaint alleges that the School District acted with gross negligence in failing to protect their daughter from the known danger of the substitute teacher's inappropriate interest in young girls. The complaint also alleges that Mr. and Mrs. Doe have incurred medical expenses as a result of the School District's negligence.^{FN2} Looking only at the face of the complaint, Mr. and Mrs. Doe's claim for negligent supervision was improperly dismissed. In dismissing this claim, the trial court impermissibly looked beyond the complaint and made a determination on the facts of the case. Whether Mr. and Mrs. Doe are able to show that they have incurred medical bills for which they have not already been *72 compensated is not an issue to be determined upon a motion to dismiss pursuant to Rule 12(b)(6).

FN2. Mr. and Mrs. Doe allege that they have incurred medical bills for the care of their daughter as a result of this incident. It is unclear from the briefs whether the medical costs resulting from this incident were considered in the settlement of their daughter's claims against the School District.

Accordingly, based only on the allegations set forth in the complaint, the trial court erred in dismissing Mr. and Mrs. Doe's cause of action for negligent supervision.

D. Breach of Fiduciary Duty and Assumed Duty *In Loco Parentis*

[12] ☒ Mr. and Mrs. Doe argue that the trial court erred in dismissing their claims for breach of fiduciary duty and for breach of an assumed duty *in loco parentis*. We disagree.

[13] ☒ [14] ☒ [15] ☒ An essential element in a cause of action based upon negligence is the existence of a legal duty of care owed by the defendant to the plaintiff. Bishop v. South Carolina Dep't of Mental Health, 331 S.C. 79, 86, 502 S.E.2d 78, 81 (1998). Without a duty, there is no actionable negligence. Id. The existence of a duty owed is a question of law for the courts. Doe v. Batson, 345 S.C. 316, 323, 548 S.E.2d 854, 857 (2001).

In the instant case, the trial court found that Mr. and Mrs. Doe's claims for breach of fiduciary duty and breach of an assumed **310 duty *in loco parentis* were based only on their claim of negligent supervision. The trial court further found that these causes of action were alleged as an attempt to heighten any duty owed by the School District in this situation.

We agree with the trial court's analysis of these causes of action. The Legislature has clearly provided that the School District may be liable for negligent supervision of a student only if that duty was executed in a grossly negligent manner. See S.C.Code Ann. § 15-78-60(25). Mr. and Mrs. Doe have not alleged any facts under which this Court could find another duty owed by the School District other than

the duty of supervision as outlined by the Tort Claims Act.

Accordingly, we hold that the trial court did not err in dismissing the causes of action for breach of fiduciary duty and breach of an assumed duty *in loco parentis*.

*73 CONCLUSION

For the foregoing reasons, we affirm the trial court's dismissal of Mr. and Mrs. Doe's causes of action for negligent infliction of emotional distress, loss of consortium, breach of fiduciary duty, and breach of an assumed duty *in loco parentis*. Additionally, we reverse the trial court's dismissal of Mr. and Mrs. Doe's causes of action for negligent supervision.

MOORE, BURNETT, JJ., and Acting Justice ALEXANDER S. MACAULAY, concur. PLEICONES, J., concurring in part, dissenting in part in a separate opinion.

Justice PLEICONES, concurring in part and dissenting in part:

I agree with the majority that we should reverse the trial court's dismissal of the Does' negligent supervision claim, but I would also reinstate the loss of consortium claim. Like the majority, I would uphold the trial court's dismissal of the negligent infliction of emotional distress claim and affirm the trial court's dismissal of the breach of fiduciary duty claim and the breach of an *In loco parentis* claim. I have explained my reasoning for each of these conclusions using the order established in the majority opinion.

A. Negligent Infliction of Emotional Distress

I would affirm the dismissal of this cause of action for the reasons given by the majority.

B. Loss of Consortium

The trial judge held that South Carolina does not recognize a cause of action for the parents' loss of their minor child's consortium. The majority affirms. I respectfully disagree. As explained below, I believe this holding is based on a misapplication of the Court's decision in Taylor v. Medenica, 324 S.C. 200, 479 S.E.2d 35 (1996).

At common law, a man could sue for loss of his wife's consortium, but not vice-versa. Berry v. Myrick, 260 S.C. 68, 194 S.E.2d 240 (1973). Moreover, he could sue for loss of his minor child's services and his companionship, that is, his consortium.^{FN3} E.g., *74 Berger v. Charleston Consol. Ry. Gas & Elec. Co., 93 S.C. 372, 76 S.E. 1096 (1913) (action by father for past and future medical expenses, and loss of his injured child's services); Webb v. Southern Ry. Co., 104 S.C. 89, 88 S.E. 297 (1916) (action by mother for loss of child's services and companionship); see also Wright v. Colleton County, 301 S.C. 282, 289, 391 S.E.2d 564, 569 (1990) ("parent's claims for loss of [child's] services and [her] medical expenses are within the statutory definition of "loss" as contained in [tort claims act] ..."). Just as the common law did not permit a wife to sue for loss of her husband's consortium, it did not permit a child to sue for loss of parental services.

FN3. It may be that the difference between my view and that of the majority is one of definition, and I will readily acknowledge that "spousal consortium" includes conjugal elements obviously not included in "filial consortium." I note the broadening of the term beyond the tort field in parental rights cases, where we have repeatedly spoken of a child's right to his parent's consortium. E.g. SCDSS v. Seegars, 367 S.C. 623, 627 S.E.2d 718 (2006).

In 1969, the General Assembly enacted what is now S.C. Code Ann. § 15-75-20 (2005), in order to abrogate the common law rule that a wife had no claim for loss of her husband's consortium. See Berry v. Myrick ("The obvious purpose of the General Assembly **311 in enacting this provision was to extend to the wife the right to recover for the loss of consortium of her husband, which right existed only in favor of the husband under the common law"). In Taylor v. Medenica, the Court was asked to recognize

a cause of action by a child for loss of parental consortium claim, a claim not cognizable under common law. The opinion states "By enacting [§ 15-75-20] the legislature has provided for loss of consortium actions for spouses. The statute has not been amended to provide for a similar cause of action for children. Whether South Carolina should recognize a cause of action for loss of parental consortium is a matter best left to the General Assembly." *Taylor v. Medenica* merely holds that any extension of consortium claims beyond that permitted at common law should be left to the General Assembly, not as the majority would read it, that by enacting § 15-75-20 the General Assembly abolished the common law right of a parent to sue for loss of her child's consortium.

Since a parent has the right to sue for loss of her child's consortium at common law,^{FN4} a right preserved under the South *75 Carolina Tort Claims Act,^{FN5} I would reverse the trial court's dismissal of the Does' consortium claim.

FN4. *Webb v. Southern Ry. Co., supra.*

FN5. *Wright v. Colleton County, supra.*

C. Neglect Supervision

The trial court held the Does' negligent supervision claim was proper, but noted that only medical expenses would be recoverable under this theory. See *Wright v. Colleton County, supra*. The trial court held, however, that the Does' claim must be dismissed because they pleaded no such damages. I agree with the Does that they did plead these damages in paragraph 38 of their complaint. I would therefore reverse the dismissal of this claim.

D. Breach of Fiduciary Duty and Assumed Duty *In Loco Parentis*

The trial judge also dismissed the Does' claims for breach of an assumed duty *In loco parentis* and breach of fiduciary duty, finding no such heightened duties exist in a school-student setting. The question of duty is one for the court. *E.g., Houck v. State Farm Fire and Cas. Ins. Co., 366 S.C. 7, 620 S.E.2d 326 (2005)*. I can find no error in the trial court's conclusion that these two heightened duties do not exist. I agree with the majority that we should affirm the dismissal of these two claims.

CONCLUSION

For the reasons given above, I concur in part and dissent in part.

S.C., 2007.

Doe v. Greenville County School Dist.

375 S.C. 63, 651 S.E.2d 305, 224 Ed. Law Rep. 975

Judges and Attorneys ([Back to top](#))

[Judges](#) | [Attorneys](#)

Judges

• **Macaulay, Hon. Alexander Stephens**

State of South Carolina Circuit Court, 10th Circuit
Anderson, South Carolina 29622

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• **Pleicones, Hon. Costa M.**

State of South Carolina Supreme Court
Columbia, South Carolina 29201

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• **Toal, Hon. Jean Hoefer**

State of South Carolina Supreme Court

Columbia, South Carolina 29201

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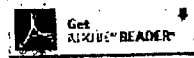
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393 S.C. 240, 711 S.E.2d 908

[Judges and Attorneys](#)

Supreme Court of South Carolina.

J. DOE, by and through his Guardian ad Litem, F. DOE, Appellant,
v.WAL-MART STORES, INC. and Dorchester County Department of Social Services, Defendants,
of which Wal-Mart Stores, Inc. is the Respondent.

No. 26993.

Heard Feb. 15, 2011.

Decided June 27, 2011.

Background: Child's great uncle filed a negligence complaint against retail store after store failed to report suspected abuse depicted in photographs great aunt attempted to have developed at store. The Circuit Court, Charleston County, Roger M. Young, J., granted store summary judgment. Great uncle appealed.

Holding: The Supreme Court, Pleicones, J., held that retail store was not civilly liable due to store employees' failure to report suspected child abuse, as required by the South Carolina Reporter's Statute.

Affirmed.

West Headnotes

[\[1\] !\[\]\(4bcfac7024ed49cf56ec476cdab8d2e1_img.jpg\) KeyCite Citing References for this Headnote](#)[213 Action](#)[213I Grounds and Conditions Precedent](#)[213k3 k. Statutory rights of action. Most Cited Cases](#)[211 Infants !\[\]\(d106b5d2cc897ae1fae69f67f8dfe5c4_img.jpg\) KeyCite Citing References for this Headnote](#)[211X Child Abuse Reporting](#)[211k1507 Particular Reporters](#)[211k1508 k. In general. Most Cited Cases](#)
(Formerly 211k13.5(2))

Retail store was not civilly liable due to store employees' failure to report suspected child abuse, as required by the South Carolina Reporter's Statute, depicted in photographs of child great aunt tried to develop at store, in great uncle's negligence action against retail store; the reporting statute did not create private cause of action for negligence based on failure to report suspected or known child abuse. Code 1976, § 63-7-310(A).

[\[2\] !\[\]\(b8295a1daa59222f76ba058011f1c2cd_img.jpg\) KeyCite Citing References for this Headnote](#)[272 Negligence](#)[272I In General](#)[272k202 k. Elements in general. Most Cited Cases](#)

In order to establish a claim for negligence, a plaintiff must show: (1) the defendant owes a duty of care to the plaintiff; (2) defendant breached the duty by a negligent act or omission; (3) defendant's breach was the actual or proximate cause of the plaintiff's injury; and (4) plaintiff suffered an injury or damages.

[3] ☒ KeyCite Citing References for this Headnote

◉ 272 Negligence

◉ 272XVIII Actions

◉ 272XVIII(D) Questions for Jury and Directed Verdicts

◉ 272k1693 k. Negligence as question of fact or law generally. Most Cited Cases

Whether a defendant has acted negligently is a mixed question of law and fact.

[4] ☒ KeyCite Citing References for this Headnote

◉ 272 Negligence

◉ 272II Necessity and Existence of Duty

◉ 272k220 k. Protection against acts of third persons. Most Cited Cases

◉ 272 Negligence ☒ KeyCite Citing References for this Headnote

◉ 272II Necessity and Existence of Duty

◉ 272k221 k. Duty to warn. Most Cited Cases

There is no general duty to control the conduct of another or to warn a third person or potential victim of danger.

[5] ☒ KeyCite Citing References for this Headnote

◉ 272 Negligence

◉ 272II Necessity and Existence of Duty

◉ 272k220 k. Protection against acts of third persons. Most Cited Cases

There are five exceptions to the general rule that there is no general duty to control the conduct of another or to warn a third person or potential victim of danger: (1) where the defendant has a special relationship to the victim; (2) where the defendant has a special relationship to the injurer; (3) where the defendant voluntarily undertakes a duty; (4) where the defendant negligently or intentionally creates the risk; and (5) where a statute imposes a duty on the defendant.

[6] ☒ KeyCite Citing References for this Headnote

◉ 272 Negligence

◉ 272II Necessity and Existence of Duty

◉ 272k221 k. Duty to warn. Most Cited Cases

The defendant may have a common law duty to warn potential victims under the special relationship exception when the defendant has the ability to monitor, supervise, and control an individual's conduct and when the individual has made a specific threat of harm directed at a specific individual.

[7] ☒ KeyCite Citing References for this Headnote

◉ 272 Negligence

272III Standard of Care272k230 k. In general. Most Cited Cases

The fact finder may consider relevant standards of care from various sources in determining whether a defendant breached a duty owed to an injured person in a negligence case.

[8] ☒ KeyCite Citing References for this Headnote211 Infants211X Child Abuse Reporting211k1507 Particular Reporters211k1508 k. In general. Most Cited Cases
(Formerly 211k13.5(2))

Retail store did not owe a common law duty to child victim to report suspected child abuse, which was allegedly depicted in photographs great aunt tried to develop at store; store did not have a special relationship with child victim, it had no general duty to control the conduct of child victim's father, child's alleged abuser, and store did not negligently or intentionally create the risk of father's sexual abuse.

****909** Russell S. Stemke, of Isle of Palms, for Appellant.

Regina H. Lewis, of Gaffney, Lewis & Edwards, of Columbia, for Respondent.

Justice PLEICONES.

***242** Appellant brought an action against respondent Wal-Mart Stores, Inc. ("Wal-Mart") alleging various theories of negligence. The circuit court granted summary judgment in favor of Wal-Mart. We affirm.

FACTS

This case arises from the physical and sexual abuse of then three-year-old J. Doe ("the victim"). The facts, in the light most favorable to appellant, are as follows. Appellant, F. Doe, is the victim's guardian ad litem and great uncle. F. Doe and his wife ("the aunt") often kept the victim for months at a time. According to the aunt, both of the victim's parents physically abused him beginning when he was three months old. She claimed she had seen bruising on the victim's legs and buttocks, and had observed the father "thump" the victim in the mouth and hit the child with a fly swatter. She did not, however, report the abuse to DSS or the police or seek medical attention for the victim. The aunt did not report the abuse because she feared DSS would remove the victim from his parents' home and she would not be allowed to see him.

In August 1997, upon picking up the victim from his parents' house, the aunt was informed by the victim's mother that the victim had bruises on his buttocks because he had fallen down the steps. After arriving at her house, the aunt examined the victim and found two "wide strips" of bruising on his buttocks. Again, she did not contact the police or DSS or seek medical treatment. Instead, she took two photographs of the victim's buttocks.

After the victim had been in the aunt's custody for several hours, the victim's father called her and told her to bring the victim home because DSS was there. The aunt took the victim home as requested, but did not attempt to speak with the DSS worker who was investigating the abuse allegations. ***243** This investigation did not result in the victim's removal from the home.

Several days later, the aunt took the roll of film, which included other unrelated photographs, to Wal-Mart to be developed. When the aunt retrieved the photos, a photo technician informed her she had destroyed some of the photos because of a store policy requiring the destruction of photos depicting nudity. The aunt explained to the employee she needed the photos to give to DSS and pleaded with her

to provide the photos. The aunt claimed the employee refused and told her ****910** she was required to "destroy them," which the aunt believed meant the employee had destroyed the photos and the negatives. The employee did not, however, destroy the negatives. The aunt left the store with the remainder of the photos and all of the negatives, but erroneously believed the negatives depicting the victim's buttocks had been destroyed.

According to the aunt, the victim's father began sexually abusing him in September 1997, approximately one month after the incident that had caused the aunt to take the photos and DSS to investigate. In December 1997, while giving the victim a bath, the aunt noticed signs of sexual abuse. The aunt took the victim to a doctor who examined the victim and determined he had been sexually abused. The aunt and the doctor contacted DSS, and the victim was placed in the aunt's custody.

Father pled guilty to first degree criminal sexual conduct and was sentenced to twenty-five years' imprisonment.

In 2003, appellant instituted this action, arguing the victim's injuries from the sexual abuse were a result of (1) Wal-Mart's failure to report the suspected physical abuse depicted in the photos as required by the Reporter's Statute; FN1 and/or (2) Wal-Mart's negligent hiring and supervision of its employees and its violations of approximately twenty internal company policies. The circuit court granted Wal-Mart's motion for summary judgment.

FN1. S.C.Code Ann. § 63-7-310 (Supp.2010).

***244 ISSUE**

Did the circuit court err in granting summary judgment in favor of Wal-Mart?

STANDARD OF REVIEW

When reviewing an order granting summary judgment, the appellate court applies the same standard as the trial court. Fleming v. Rose, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law. Rule 56(c), SCRPC. In determining whether any triable issues of material fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. Fleming, 350 S.C. at 493-94, 567 S.E.2d at 860.

LAW/ANALYSIS

The circuit court granted summary judgment in favor of respondent, finding Wal-Mart incurred no civil liability for failing to report the suspected child abuse as required by the Reporter's Statute. The circuit court also found Wal-Mart had no common law duty to warn or protect the victim, and that Wal-Mart's internal policies did not create such a duty.

I. Civil Liability Under the Reporter's Statute

[1] ☒ Appellant first argues the circuit court erred in finding Wal-Mart did not have any civil liability for failing to report the suspected child abuse as required by the South Carolina Reporter's Statute. We disagree.

The Reporter's Statute provides, in pertinent part:

... [P]ersons responsible for processing films ... must report in accordance with this section when in the person's professional capacity the person has received information which gives the person reason to believe that a child has been or may be abused or neglected as defined in Section 63-7-20. FN2

FN2. Section 63-7-20 defines "child abuse or neglect" as a number of actions carried out expressly by "the parent, guardian, or other person responsible for the child's welfare."

***245** S.C.Code Ann. § 63-7-310(A) (Supp.2010).

In *Doe v. Marion*, 373 S.C. 390, 645 S.E.2d 245 (2007), the Court found there could be no private right of action for failing to report suspected or known child abuse in accordance with § 63-7-310. In deciding whether § 63-7-310 gives rise to a private cause of action for negligence *per se*, the Court noted ***911** the main factor in determining whether a statute creates a private cause of action is legislative intent:

The legislative intent to grant or withhold a private right of action for violation of a statute or the failure to perform a statutory duty, is determined primarily from the language of the statute.... In this respect, the general rule is that a statute which does not purport to establish a civil liability, but merely makes provision to secure the safety or welfare of the public as an entity is not subject to a construction establishing civil liability.

Id. at 396, 645 S.E.2d at 248 (quoting *Dorman v. Alken Communications, Inc.*, 303 S.C. 63, 67, 398 S.E.2d 687, 689 (1990)).

The Court first observed § 63-7-310 is silent as to civil liability for failure to report. Noting other provisions in the Reporter's Statute do impose civil liability,^{FN3} the Court found the legislature's silence as to civil liability in § 63-7-310 indicated its intent not to create civil liability for failing to report as required. *Id.* at 397, 645 S.E.2d at 249 (citing *Byrd v. Irmo High Sch.*, 321 S.C. 426, 433-34, 468 S.E.2d 861, 865 (1996) (finding when one provision does not include a right that is included in a related provision, legislative intent is that a right will not be implied where it does not exist)).

FN3. Namely, §§ 20-7-567 and -570 (now §§ 63-7-440 and -430) impose civil liability for making a false report.

Further, the Court looked to the purpose of the Children's Code and determined § 63-7-310 is concerned with the protection of the public and not with the protection of an individual's private right. *Id.* at 398, 645 S.E.2d at 249. The Court also noted other jurisdictions have interpreted similar statutes and reached the same conclusion. *Id.* at 198 n. 4, 645 S.E.2d at 249 n. 4.

***246** Because, consonant with *Doe v. Marion*, there can be no private cause of action under § 63-7-310, we find the circuit court properly granted summary judgment in favor of respondent as to this claim.

II. Other Causes of Action

Appellant also asserts the circuit court erred in granting summary judgment in favor of Wal-Mart on various other theories of common law negligence. We disagree.

Respondent has an internal policy against developing photos depicting nudity. The policy requires employees to bring to the attention of the store manager pornographic pictures of children where child abuse is suspected. It also prohibits the printing of pictures depicting nudity and requires they be shredded if printed in error. There is an exception for cases of suspected child abuse, where the developed photos must be kept as evidence. However, the policy requires processed negatives be returned to the customer.

[2] [3] In order to establish a claim for negligence, a plaintiff must show: (1) the defendant owes a duty of care to the plaintiff; (2) defendant breached the duty by a negligent act or omission; (3) defendant's breach was the actual or proximate cause of the plaintiff's injury; and (4) plaintiff suffered an injury or damages. *Doe v. Marion*, 373 S.C. at 400, 645 S.E.2d at 250. Whether a defendant has acted negligently is a mixed question of law and fact. *Moore v. Weinberg*, 373 S.C. 209, 221, 644 S.E.2d 740, 746 (Ct.App.2007). First, the court must determine, as a matter of law, whether the law recognizes a particular duty. If there is no duty, the defendant is entitled to a judgment as a matter of law. *Id.* (internal citations omitted).

[4] [5] "Under South Carolina law, there is no general duty to control the conduct of another or to warn a third person or potential victim of danger." *Falle v. S.C. Dep't of Juvenile Justice*, 350 S.C. 315, 334, 566 S.E.2d 536, 546 (2002). We recognize five exceptions to this rule: 1) where the defendant has a special relationship to the victim; 2) where the defendant has a special relationship to the injurer; 3) where the defendant voluntarily undertakes a duty; 4) where the defendant negligently or intentionally creates the risk; and 5) where a statute imposes a duty on the defendant. *Id.*

[6] The defendant may have a common law duty to warn potential victims under the "special relationship" exception when the defendant "has the ability to monitor, supervise, and control an individual's conduct" and when "the individual has made a specific threat of harm directed at a specific individual." *Doe v. Marion*, *supra* (quoting *Bishop v. South Carolina Dep't of Mental Health*, 331 S.C. 79, 86, 502 S.E.2d 78, 81 (1998)).

[7] Once a duty has been established, it is the further function of the court to determine and formulate the standard of conduct to which the duty requires the defendant to conform. 57A Am.Jur.2d *Negligence* § 132. "The fact finder may consider relevant standards of care from various sources in determining whether a defendant breached a duty owed to an injured person in a negligence case." *Madison ex rel. Bryant v. Babcock Center, Inc.*, 371 S.C. 123, 140, 638 S.E.2d 650, 659 (2006). "The standard of care in a given case may be established and defined by the common law, statutes, administrative regulations, industry standards, or a defendant's own policies and guidelines." *Id.* (citing *Peterson v. Natl. R.R. Passenger Corp.*, 365 S.C. 391, 397, 618 S.E.2d 903, 906 (2005)). It follows that, if no duty has been established, evidence as to the standard of care is irrelevant. Only when there is a duty would a standard of care need to be established.

[8] The circuit court found Wal-Mart neither owed any common law duty to the victim, nor did it create or undertake any duty when its employees failed to follow Wal-Mart's internal policies.

We find the circuit court properly granted summary judgment as to these alternative causes of action because Wal-Mart owed no duty to the victim. It is clear Wal-Mart had no general duty to control the conduct of the victim's father or warn the victim of the danger of the sexual abuse. Further, none of the exceptions enumerated in *Falle* apply here. Wal-Mart had no special relationship with either the victim or his father because it did not have the ability to monitor, supervise, or control either. *Doe v. Marion*, *supra*. Wal-Mart did not negligently or intentionally create the risk of the father's sexual abuse. Lastly, as discussed above, Wal-Mart's duty to report under the Reporter's Statute cannot give rise to civil liability.

We also hold Wal-Mart did not voluntarily undertake a duty. It is undisputed that Wal-Mart created an internal policy that was subsequently violated when the photo technician destroyed the photos and did not inform the store manager or keep them as evidence. However, this internal policy cannot be said to constitute the voluntary undertaking of a duty. Rather, it could simply serve as evidence of the standard of care, once that duty was established by law. See *Madison*, *supra*.

CONCLUSION

We find the circuit court's grant of summary judgment in favor of Wal-Mart was proper because there can be no civil liability under the Reporter's Statute and Wal-Mart owed no duty to the victim. Accordingly, the order of the circuit court is

AFFIRMED.

TOAL, C.J., BEATTY, KITTREDGE and HEARN, JJ., concur.

S.C., 2011.

Doe ex rel. Doe v. Wal-Mart Stores, Inc.
393 S.C. 240, 711 S.E.2d 908

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State of South Carolina Supreme Court
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• **Hearn, Hon. Kaye G.**

State of South Carolina Supreme Court
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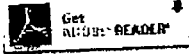
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373 S.C. 390, 645 S.E.2d 245

Judges and Attorneys

Supreme Court of South Carolina.

John DOE, Individually and as Guardian and next friend for his minor child, James Doe, Petitioners,
v.Robert Francis MARION, Jr., M.D., Individually, Parkwood Pediatrics Group, Carolina Family Care, Inc.,
Walton L. Ector, M.D., Individually, William Gamble, M.D., Individually, Malcolm Rhodes, M.D.,
Individually, William Fred O'Dell, M.D., Individually, Carol Graf, M.D., Individually, Carol Graf, M.D. &
Associates, P.A., and Pit Marion, Individually,
of Whom Carol Graf, M.D., and Carol Graf, M.D. & Associates, P.A., are, Respondents.

No. 26323.

Heard March 20, 2007.

Decided May 7, 2007.

Background: Father brought action against multiple defendants seeking to recover damages arising from a physician's sexual abuse of son and psychiatrist's failure to notify of sexual abuse. The Circuit Court, Charleston County, Thomas L. Hughston, Jr., J., granted psychiatrist's motion to dismiss. Father appealed. The Court of Appeals, 361 S.C. 463, 605 S.E.2d 556, affirmed.

Holdings: After granting father's request for a writ of certiorari, the Supreme Court, Burnett, J., held that:

- (1) child abuse reporting statute did not create private cause of action for negligence per se based on failure to report suspected or known child abuse, and
- (2) psychiatrist who treated physician beginning several years before physician allegedly sexually molested a child did not have a common law duty during his treatment of the physician to warn future foreseeable victims of physician's predilection for child molestation of his patients.

Affirmed.

West Headnotes

 KeyCite Citing References for this Headnote 30 Appeal and Error 30XVI Review 30XVI(A) Scope, Standards, and Extent, in General 30k862 Extent of Review Dependent on Nature of Decision Appealed from 30k863 k. In general. Most Cited Cases

In reviewing the dismissal of an action for failure of the pleading to state facts sufficient to constitute a cause of action, the appellate court applies the same standard of review as the trial court. Rules Civ.Proc., Rule 12(b)(6).

 KeyCite Citing References for this Headnote 307A Pretrial Procedure 307AIII Dismissal 307AIII(B) Involuntary Dismissal

- ◄ 307AIII(B)6 Proceedings and Effect
- ◄ 307Ak681 k. Matters considered in general. Most Cited Cases

In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint. Rules Civ.Proc., Rule 12(b)(6).

[3] ☒ KeyCite Citing References for this Headnote

- ◄ 307A Pretrial Procedure
- ◄ 307AIII Dismissal
 - ◄ 307AIII(B) Involuntary Dismissal
 - ◄ 307AIII(B)4 Pleading, Defects In, In General
 - ◄ 307Ak623 Clear and Certain Nature of Insufficiency
 - ◄ 307Ak624 k. Availability of relief under any state of facts provable. Most Cited Cases

◄ 307A Pretrial Procedure ☒ KeyCite Citing References for this Headnote

- ◄ 307AIII Dismissal
 - ◄ 307AIII(B) Involuntary Dismissal
 - ◄ 307AIII(B)6 Proceedings and Effect
 - ◄ 307Ak679 k. Construction of pleadings. Most Cited Cases

If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal for failure of the pleading to state facts sufficient to constitute a cause of action is improper. Rules Civ.Proc., Rule 12(b)(6).

[4] ☒ KeyCite Citing References for this Headnote

- ◄ 307A Pretrial Procedure
- ◄ 307AIII Dismissal
 - ◄ 307AIII(B) Involuntary Dismissal
 - ◄ 307AIII(B)4 Pleading, Defects In, In General
 - ◄ 307Ak622 k. Insufficiency in general. Most Cited Cases

◄ 307A Pretrial Procedure ☒ KeyCite Citing References for this Headnote

- ◄ 307AIII Dismissal
 - ◄ 307AIII(B) Involuntary Dismissal
 - ◄ 307AIII(B)6 Proceedings and Effect
 - ◄ 307Ak679 k. Construction of pleadings. Most Cited Cases

For the purpose of a motion to dismiss for failure of the pleading to state facts sufficient to constitute a cause of action, the question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief. Rules Civ.Proc., Rule 12(b)(6).

[5] ☒ KeyCite Citing References for this Headnote

- ◄ 307A Pretrial Procedure
- ◄ 307AIII Dismissal
 - ◄ 307AIII(B) Involuntary Dismissal
 - ◄ 307AIII(B)4 Pleading, Defects In, In General

307Ak622 k. Insufficiency in general. Most Cited Cases

The complaint should not be dismissed for failure of the pleading to state facts sufficient to constitute a cause of action merely because the court doubts the plaintiff will prevail in the action. Rules Civ.Proc., Rule 12(b)(6).

[6] ☒ KeyCite Citing References for this Headnote

13 Action

- 13I Grounds and Conditions Precedent
- 13k3 k. Statutory rights of action. Most Cited Cases

211 Infants ☒ KeyCite Citing References for this Headnote

- 211X Child Abuse Reporting
- 211k1516 Actions and Proceedings
- 211k1518 k. Right of action, parties, and standing. Most Cited Cases
(Formerly 211k13.5(2))

Child abuse reporting statute did not create private cause of action for negligence per se based on failure to report suspected or known child abuse; statute did not include language creating civil liability for failure to report suspected or known child abuse, and the purpose of the statute was to protect the public and was not to protect an individual's private right. Code 1976, § 20-7-510.

[7] ☒ KeyCite Citing References for this Headnote

13 Action

- 13I Grounds and Conditions Precedent
- 13k3 k. Statutory rights of action. Most Cited Cases

The legislative intent to grant or withhold a private right of action for violation of a statute or the failure to perform a statutory duty, is determined primarily from the language of the statute.

[8] ☒ KeyCite Citing References for this Headnote

13 Action

- 13I Grounds and Conditions Precedent
- 13k3 k. Statutory rights of action. Most Cited Cases

The general rule is that a statute which does not purport to establish a civil liability, but merely makes provision to secure the safety or welfare of the public as an entity is not subject to a construction establishing a civil liability.

[9] ☒ KeyCite Citing References for this Headnote

13 Action

- 13I Grounds and Conditions Precedent
- 13k3 k. Statutory rights of action. Most Cited Cases

When a statute does not specifically create a private cause of action, one can be implied only if the legislation was enacted for the special benefit of a private party.

[10] ☒ KeyCite Citing References for this Headnote

198H Health

198HV Malpractice, Negligence, or Breach of Duty

198HV(D) Duties and Liabilities to Non-Patients

198Hk753 Acts of Mental Health Patients

198Hk757 k. Released or non-committed patients. Most Cited Cases

Psychiatrist who treated physician beginning several years before physician allegedly sexually molested a child, one of physician's patients, did not have a common law duty during his treatment of the physician to warn future foreseeable victims of physician's predilection for child molestation of his patients; physician did not specifically threaten any readily identifiable third party, such as the child who was allegedly molested.

[11] ☒ KeyCite Citing References for this Headnote

272 Negligence

272I In General

272k202 k. Elements in general. Most Cited Cases

In order to prove negligence, a plaintiff must show: (1) defendant owes a duty of care to the plaintiff; (2) defendant breached the duty by a negligent act or omission; (3) defendant's breach was the actual and proximate cause of the plaintiff's injury; and (4) plaintiff suffered an injury or damages.

[12] ☒ KeyCite Citing References for this Headnote

272 Negligence

272II Necessity and Existence of Duty

272k221 k. Duty to warn. Most Cited Cases

The defendant may have a common law duty to warn potential victims under the "special relationship" exception to the general rule that there is no general duty to control the conduct of another or to warn a third person or potential victim of danger when the defendant has the ability to monitor, supervise and control an individual's conduct and when the individual has made a specific threat of harm directed at a specific individual.

****246** J. Graham Sturgis, Jr., of Charleston; Gary B. Blasingame and Henry G. Garrard, III, of Blasingame, Burch, Garrard & Ashley, P.C., and Michael O. Crain, of Oliver and Crain, all of Athens, GA, for Petitioners.

Carol B. Ervin and Stephen L. Brown, of Young, Clement, & Rivers, LLP, of Charleston, for Respondents.

Justice BURNETT.

393** John Doe (Petitioner) brought an action on behalf of his minor son, James Doe, to recover damages arising from the sexual abuse of James Doe by Robert Francis Marion, Jr., M.D. Petitioner also alleged Carol Graf, M.D. *247** and Carol Graf, M.D. & Associates (Respondents) were negligent in failing to report to authorities or warn future victims of Dr. Marion's predilection for child molestation. The trial court disagreed and dismissed the case. The Court of Appeals affirmed. Doe v. Marion, 361 S.C. 463, 605 S.E.2d 556 (Ct.App.2004). We granted Petitioner's request for a writ of certiorari to review the decision of the Court of Appeals, and we affirm.

***394 FACTUAL/PROCEDURAL BACKGROUND**

James Doe was a patient of Parkwood Pediatrics Group (Parkwood) from 1990 to 1998. Dr. Marion was a member of Parkwood until 1985 when he was asked to leave due to complaints of sexual abuse and molestation against him. Dr. Marion established a solo practice and began treating James Doe in

1999 after James Doe's mother transferred him from Parkwood to Dr. Marion. James Doe was allegedly sexually abused by Dr. Marion for a period of several years beginning in 1999.

Dr. Marion received psychiatric treatment from Dr. Graf beginning in 1984 for his predilection for child molestation. Dr. Graf also treated a victim of Dr. Marion who informed Dr. Graf of the molestation. Petitioner alleges Dr. Graf was negligent *per se* in her failure to notify the appropriate authorities of Dr. Marion's child molestation and abuse and in breaching her duty to report suspected sexual abuse of a child pursuant to S.C.Code Ann. § 20-7-510 (Supp.2002). Petitioner also alleges Dr. Graf was negligent under common law principles for her failure to warn "reasonably foreseeable" future minor patients of Dr. Marion. Finally, Petitioner alleges Carol Graf, M.D. & Associates, P.A., is vicariously liable for Dr. Graf's negligence.

Respondents were dismissed from the initial suit after the trial court granted their motions to dismiss under Rule 12(b)(6), SCRPC. The trial court found: (1) no common law duty to warn existed because there was not a specific threat to a specific individual; and (2) § 20-7-510 did not create a private right of action for failing to report, and if it did, it would only apply to threats to a specific child, not any possible future victims.

The Court of Appeals affirmed the dismissal in Doe v. Marion, 361 S.C. 463, 605 S.E.2d 556 (Ct.App.2004). The Court of Appeals found Petitioner failed to allege a specific threat necessary to compel a duty to warn and, therefore, the trial court correctly determined no legal duty existed under the common law. The Court of Appeals also found § 20-7-510 does not create a private cause of action and, consequently, the trial court correctly determined Dr. Graf was not negligent *per se*.

***395 ISSUES**

- I. Did the Court of Appeals err in finding S.C.Code Ann. § 20-7-510 (Supp.2002) does not give rise to a private cause of action for negligence *per se*?
- II. Did the Court of Appeals err in finding a physician/psychiatrist is not liable under common law negligence principles for failing to report to authorities or warn future victims about the predilection for child molestation of her patient?

STANDARD OF REVIEW

[1] [2] [3] [4] [5] In reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRPC, the appellate court applies the same standard of review as the trial court. Williams v. Condon, 347 S.C. 227, 553 S.E.2d 496 (Ct.App.2001). In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint. Spence v. Spence, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006). If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal under Rule 12(b)(6) is improper. Baird v. Charleston County, 333 S.C. 519, 511 S.E.2d 69 (1999); Stiles v. Onorato, 318 S.C. 297, 457 S.E.2d 601 (1995). "The question is whether, in the light most favorable to the plaintiff, **248 and with every doubt resolved in his behalf, the complaint states any valid claim for relief." Gentry v. Yonce, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999). The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action. Toussaint v. Ham, 292 S.C. 415, 357 S.E.2d 8 (1987).

LAW/ANALYSIS

I. Negligence Per Se

[6] [7] Petitioner argues the Court of Appeals erred in affirming the trial court's dismissal of Petitioner's claims for negligence against Dr. Graf. Specifically, Petitioner contends *396 S.C.Code Ann. § 20-7-510 creates a private cause of action for negligence *per se*. We disagree.

Section 20-7-510 provides, in pertinent part:

(A) A physician ... shall report in accordance with this section when in the person's professional capacity the person has received information which gives the person reason to believe that a child's physical and mental health or welfare has been or may be adversely affected by abuse or neglect.

(D) Reports of child abuse or neglect may be made orally by telephone or otherwise to the county department of social services or to a law enforcement agency in the county where the child resides or is found.^{FN1}

^{FN1}. Section 20-7-510(A) was amended in 2003 and now reads: "A physician ... must report in accordance with this section when in the person's professional capacity the person has received information which gives the person reason to believe that a child has been or may be abused or neglected as defined in section 20-7-490." The amendments do not affect the analysis of Petitioner's argument.

Petitioner argues the statute imposes a duty on Dr. Graf to report Dr. Marion's predilection for sexual abuse and/or molestation of children to the appropriate authorities. Petitioner argues the purpose of the Children's Code ^{FN2}, and specifically of the reporting statute, is to protect children from the type of harm James Doe suffered.

^{FN2}. South Carolina Code Ann. §§ 20-7-10 to -9740 (1976 & Supp.2006).

☒ [7] ☒ [8] ☒ [9] ☒ In determining whether a statute creates a private cause of action, the main factor is legislative intent:

The legislative intent to grant or withhold a private right of action for violation of a statute or the failure to perform a statutory duty, is determined primarily from the language of the statute.... In this respect, the general rule is that a statute which does not purport to establish a civil liability, but merely makes provision to secure the safety or welfare of the public as an entity is not subject to a construction establishing a civil liability.

***397** *Dorman v. Aiken Communications, Inc.*, 303 S.C. 63, 67, 398 S.E.2d 687, 689 (1990) (quoting *Whitworth v. Fast Fare Markets of South Carolina, Inc.*, 289 S.C. 418, 420, 338 S.E.2d 155, 156 (1985)). When a statute does not specifically create a private cause of action, one can be implied only if the legislation was enacted for the special benefit of a private party. *Citizens of Lee County v. Lee County*, 308 S.C. 23, 416 S.E.2d 641 (1992).

While § 20-7-510 is silent as to civil liability, §§ 20-7-567 & -570 (Supp.2005) ^{FN3} do impose ****249** liability for making a false report. Sections 20-7-567 & -570 indicate the legislature intended to impose civil liability and establish private causes of action in certain instances. The fact that such language is missing from § 20-7-510 indicates the legislative intent was for the reporting statute not to create civil liability. See *Byrd v. Irmo High Sch.*, 321 S.C. 426, 433-34, 468 S.E.2d 861, 865 (1996) (finding when one provision does not include a right that is included in a related provision, legislative intent is that a right will not be implied where it does not exist); ***398** *State v. Hood*, 181 S.C. 488, 188 S.E. 134 (1936) ("It is presumed that the Legislature was familiar with prior legislation, and that if it intended to repeal existing laws it would have expressly done so."). Further, in *Rayfield v. South Carolina Department of Corrections*, 297 S.C. 95, 374 S.E.2d 910 (1988), this Court stated:

^{FN3}. South Carolina Code Ann. § 20-7-567 states:

(A) It is unlawful to knowingly make a false report of abuse or neglect.

(B) A person who violates subsection (A) is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than ninety days, or both.

South Carolina Code Ann. § 20-7-570 provides:

(A) If the family court determines pursuant to Section 20-7-695 that a person has made a report of suspected child abuse or neglect maliciously or in bad faith or if a person has been found guilty of making a false report pursuant to Section 20-7-567, the department may bring a civil action to recover the costs of the department's investigation and proceedings associated with the investigation, including attorney's fees. The department also is entitled to recover costs and attorney's fees incurred in the civil action authorized by this section. The decision of whether to bring a civil action pursuant to this section is in the sole discretion of the department.

(B) If the family court determines pursuant to Section 20-7-695 that a person has made a false report of suspected child abuse or neglect maliciously or in bad faith or if a person has been found guilty of making a false report pursuant to Section 20-7-567, a person who was subject of the false report has a civil cause of action against the person who made the false report and is entitled to recover from the person who made the false report such relief as may be appropriate, including:

(1) actual damages;

(2) punitive damages; and

(3) a reasonable attorney's fee and other litigation costs reasonably incurred.

[W]e are able to derive a test for determining when a duty created by statute will support an action for negligence. In order to show that the defendant owes him a duty of care arising from a statute, the plaintiff must show two things: (1) that the essential purpose of the statute is to protect from the kind of harm the plaintiff has suffered; and (2) that he is a member of the class of persons the statute is intended to protect.

In determining Dr. Graf had no duty to report, we look to the purpose of the Children's Code and determine **the statute in question is concerned with the protection of the public and not with the protection of an individual's private right** ^{FN4}. Section 20-7-480 ^{FN5} states the purpose of the Children's Code and ***399** focuses entirely, although not explicitly, on the duties of the Department of Social Services (DSS). See, e.g., *S.C. Dep't of Social Servs. v. Pritchett*, 329 S.C. 242, 246, 495 S.E.2d 242, 244 (Ct.App.1997) ("SCDSS has been designated as the state agency primarily responsible for implementing the child welfare scheme for the protection of children in South Carolina.").

^{FN4}. Other jurisdictions have interpreted similar statutes and reached the same conclusion. For example, the Alabama Supreme Court held:

The Child Abuse Reporting Act creates a duty owed to the general public, not to specific individuals, and, consequently, it does not create a private cause of action in favor of individuals. Therefore, to the extent that the plaintiffs rely on that statute, they fail to

state a cause of action, and the trial court properly dismissed the claims insofar as they were based on the statute.

C.B. v. Bobo, 659 So.2d 98 (Ala.1995); see also *Arbaugh v. Board of Educ., County of Pendleton*, 214 W.Va. 677, 591 S.E.2d 235 (2003); *Cechman v. Travis*, 202 Ga.App. 255, 414 S.E.2d 282 (1991); *Fischer v. Metcalf*, 543 So.2d 785 (Fla.Dist.Ct.App.1989); *Borne v. Northwest Allen County Sch. Corp.*, 532 N.E.2d 1196 (Ind.Ct.App.1989); but see *Ham v. Hospital of Morristown*, 917 F.Supp. 531 (E.D.Tenn.1995); *Landeros v. Flood*, 17 Cal.3d 399, 131 Cal.Rptr. 69, 551 P.2d 389 (1976).

FN5. Section 20-7-480 declares:

(B) It is the purpose of this article to:

- (1) acknowledge the different intervention needs of families;
- (2) establish an effective system of services throughout the State to safeguard the well-being and development of endangered children and to preserve and stabilize family life, whenever appropriate;
- (3) ensure permanency on a timely basis for children when removal from their homes is necessary;
- (4) establish fair and equitable procedures, compatible with due process of law to intervene in family life with due regard to the safety and welfare of all family members; and
- (5) establish an effective system of protection of children from injury and harm while living in public and private residential agencies and institutions meant to serve them.

Petitioner cites *Jensen v. Anderson County Department of Social Services*, 304 S.C. 195, 403 S.E.2d 615 (1991), to support his contention § 20-7-510 creates a private cause of action. In *Jensen*, this Court upheld a private cause of action when a DSS worker failed to properly investigate claims of abuse of a young man. After the young man's brother was beaten to death by his mother's boyfriend, the administratrix of the brother's estate brought an action against **250 DSS and the social worker. While public officials are generally not liable for their negligence in public duties, this Court noted an exception exists when a duty is owed to an individual rather than the public, i.e., a "special duty." FN6

FN6. A "special duty" exists when the following six elements are present:

- (1) an essential purpose of the statute is to protect against a particular kind of harm;
- (2) the statute, either directly or indirectly, imposes on a specific public officer a duty to guard against or not cause that harm;
- (3) the class of persons the statute intends to protect is identifiable before the fact;

(4) the plaintiff is a person within the protected class;

(5) the public officer knows or has reason to know the likelihood of harm to members of the class if he fails to do his duty; and

(6) the officer is given sufficient authority to act in the circumstances or he undertakes to act in the exercise of his office.

Jensen, 304 S.C. at 200, 403 S.E.2d at 617.

This case is distinguishable from Jensen because there existed no special duty between Dr. Graf and James Doe. Dr. Graf was not a public official. She never had contact with James Doe. In fact, James Doe was not even born when Dr. Graf began treating Dr. Marion in 1984. Therefore, the Court of Appeals did not err in affirming the dismissal of the action and finding § 20-7-510 does not create a private cause of action for negligence *per se*.

***400 II. Common Law Negligence**

[10] ☒ Petitioner argues the Court of Appeals erred in affirming the trial court's dismissal of Petitioner's claim for common law negligence. Specifically, Petitioner argues Dr. Graf had a duty to warn all future foreseeable victims which arose out of the "special relationship" created in the psychiatrist-patient relationship. We disagree.

[11] ☒ In order to prove negligence, a plaintiff must show: (1) defendant owes a duty of care to the plaintiff; (2) defendant breached the duty by a negligent act or omission; (3) defendant's breach was the actual and proximate cause of the plaintiff's injury; and (4) plaintiff suffered an injury or damages. Steinke v. S.C. Dep't of Labor, Licensing and Regulation, 336 S.C. 373, 387, 520 S.E.2d 142, 149 (1999) ("The court must determine, as a matter of law, whether the law recognizes a particular duty. If there is no duty, then the defendant in a negligence action is entitled to a directed verdict."). In Faile v. South Carolina Department of Juvenile Justice, 350 S.C. 315, 334, 566 S.E.2d 536, 546 (2002), this Court recognized five exceptions to the general rule that there is no general duty to control the conduct of another or to warn a third person or potential victim of danger:

- (1) where the defendant has a special relationship to the victim;
- (2) where the defendant has a special relationship to the injurer;
- (3) where the defendant voluntarily undertakes a duty;
- (4) where the defendant negligently or intentionally creates the risk; and
- (5) where a statute imposes a duty on the defendant.

350 S.C. 315, 334, 566 S.E.2d 536, 546 (2002).

[12] ☒ The defendant may have a common law duty to warn potential victims under the "special relationship" exception when the defendant "has the ability to monitor, supervise and control an individual's conduct" and when "the individual has made a specific threat of harm directed at a specific individual." Bishop v. South Carolina Dep't of Mental Health, 331 S.C. 79, 86, 502 S.E.2d 78, 81 (1998). In Bishop, this Court relied on "[t]he seminal case on the liability of one treating a *401 mentally afflicted patient for failure to warn or protect third persons threatened by a patient" and stated:

When a therapist determines, or pursuant to the standards of his profession should determine, that his patient presents a serious danger of violence to another, he incurs an obligation to use reasonable care to protect the intended victim against such danger. The discharge of this duty may require the therapist to take one or more of various steps, depending upon the nature of the case. Thus it may call for him to warn the intended victim or others likely to apprise the victim of the danger, to notify the police, or to take whatever other steps are reasonably necessary under the circumstances.

****251** *Bishop*, 331 S.C. at 87, 502 S.E.2d at 82 (quoting *Tarasoff v. Regents of Univ. of California*, 17 Cal.3d 425, 131 Cal.Rptr. 14, 551 P.2d 334 (1976)). The key is there must be a specific threat made by the patient to harm a readily identifiable third party. *Id.*

Petitioner argues Dr. Graf had a duty to warn James Doe because he was a member of a readily identifiable group of future patients of Dr. Marion. In *Gilmer v. Martin*, 323 S.C. 154, 157, 473 S.E.2d 812, 814 (Ct.App.1996), the Court of Appeals rejected a similar argument, holding "it is not simply foreseeability of the victim which gives rise to a person's liability for failure to warn; rather, it is the person's awareness of a distinct, specific, overt threat of harm which the individual makes towards a particular victim."

Petitioner's claim fails to allege a specific threat against James Doe necessary to create a duty to warn. Therefore, the Court of Appeals did not err in affirming the trial court's dismissal of Petitioner's claims.

CONCLUSION

We affirm the decision of the Court Appeals and find: (1) § 20-7-510 does not create a private right of action for negligence *per se*; and (2) a physician/psychiatrist is not liable under common law negligence principles for failing to report or warn about the predilection for child molestation of her *402 patient in the absence of a specific threat to an identifiable party.

AFFIRMED.

TOAL, C.J., MOORE, WALLER and PLEICONES, JJ., concur.

S.C., 2007.

Doe v. Marion

373 S.C. 390, 645 S.E.2d 245

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Judges

• Burnett, Hon. E. C. III

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• Hughston, Hon. Thomas Leslie Jr.

State of South Carolina Circuit Court, 9th Circuit
Charleston, South Carolina 29401-2258

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• Moore, Hon. James E.

State of South Carolina Supreme Court
Columbia, South Carolina 29201

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• **Pleicones, Hon. Costa M.**

State of South Carolina Supreme Court
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• **Toal, Hon. Jean Hoefer**

State of South Carolina Supreme Court
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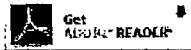
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401 S.C. 500, 737 S.E.2d 512, 289 Ed. Law Rep. 388, 34 IER Cases 1395

Judges, Attorneys and ExpertsCourt of Appeals of South Carolina.
Patricia Rhodes JOHNSON, Appellant,

v.

ROBERT E. LEE ACADEMY, INC., Jennifer Hostetler, Marc Qulgley, Moore, Beauston & Woodham, LLP,
Moore, Kirkland & Beauston, LLP and City of Bishopville, Defendants,
Of Whom Moore, Beauston & Woodham, LLP is the, Respondent.
Appellate Case No. 2011-198446.

No. 5067.

Heard Nov. 13, 2012.

Decided Dec. 28, 2012.

Background: Former bookkeeper/office manager of school brought negligence action against accounting firm hired by school to investigate missing money. The Circuit Court, Lee County, W. Jeffrey Young, J., granted summary judgment in favor of accounting firm. Bookkeeper/office manager appealed.

Holding: The Court of Appeals, Konduros, J., held that accounting firm hired by school to assist authorities owed no duty of care to bookkeeper/office manager.

Affirmed.

West Headnotes

[1] KeyCite Citing References for this Headnote11A Accountants11Ak9 k. Duties and liabilities to third persons. Most Cited Cases

Former bookkeeper/office manager fired by school after funds went missing was not client of accounting firm hired by school to assist law enforcement in investigating missing funds, and therefore, firm owed bookkeeper/office manager no duty of care, as required to support negligence action, where firm did not render a service to bookkeeper/office manager.

[2] KeyCite Citing References for this Headnote272 Negligence272XVIII Actions272XVIII(D) Questions for Jury and Directed Verdicts272k1692 k. Duty as question of fact or law generally. Most Cited Cases

Whether the law recognizes a particular duty is an issue of law to be determined by the court.

[3] KeyCite Citing References for this Headnote272 Negligence

272II Necessity and Existence of Duty
 272k210 k. In general. Most Cited Cases

An affirmative legal duty exists only if created by statute, contract, relationship, status, property interest, or some other special circumstance.

[4] ☒ KeyCite Citing References for this Headnote

272 Negligence
 272II Necessity and Existence of Duty
 272k210 k. In general. Most Cited Cases

Ordinarily, the common law imposes no duty on a person to act.

[5] ☒ KeyCite Citing References for this Headnote

272 Negligence
 272II Necessity and Existence of Duty
 272k217 Voluntarily Assumed Duty
 272k218 k. In general. Most Cited Cases

272 Negligence ☒ KeyCite Citing References for this Headnote
 272III Standard of Care
 272k234 k. Voluntarily assumed duties. Most Cited Cases

Where an act is voluntarily undertaken, the actor assumes the duty to use due care.

****512** James B. Moore, III and J. Edward Bell, III, both of Law Office of J. Edward Bell, LLC, of Georgetown, for Appellant.

Mason A. Summers, Anthony E. Rebollo, and Francis Marion Mack, all of Richardson Plowden & Robinson, PA, of Columbia, for Respondent.

KONDUROS, J.

***501** Patricia Johnson appeals the circuit court's grant of summary judgment to the accounting firm Moore, Beauston, & Woodham, LLP (MBW) with respect to her negligence claim. We affirm.

FACTS/PROCEDURAL HISTORY

Johnson was employed as the bookkeeper and office manager at Robert E. Lee Academy in Lee County, South Carolina. Her responsibilities in that role included collecting and depositing ***502** tuition and other incoming funds. Around the middle of May 2006, Johnson had collected funds including \$9,100 in cash plus additional cash and checks. On May 17, Johnson accounted for the \$9,100 in her record keeping and planned to deposit the funds in the bank. Not having time to reconcile the additional cash and checks, she placed those funds in a container in the school's vault. According to bank records, the \$9,100 deposit was made the morning of May 18. Johnson was delayed in depositing the other monies for various personal reasons, and when she arrived at work on May 23, the container was missing. She reported this to the school principal, Mrs. Virginia Stokes.

****513** The school began an investigation into the missing funds and the Bishopville Police Department was brought in to assist. As part of the investigation, Johnson made a list of deposits from the weeks immediately preceding the disappearance of the funds and that list showed Johnson had made the \$9,100 deposit. The school's monthly statement from the bank also showed the deposit.

Johnson was fired from her position at the school, and the school board hired MBW to investigate the

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missing funds.^{FN1} Marc Quigley was the accountant from MBW assigned to this task. Quigley met with the Bishopville Police investigating officer, Calvin Collins, and Agent Glen McClellan from the South Carolina Law Enforcement Division on August 8. Agent McClellan testified in his deposition Quigley indicated funds appeared to be missing. A schedule of deposits compiled by MBW and the list created by Johnson were inconsistent because the MBW list did not show the \$9,100 deposit. Agent McClellan also indicated he provided Quigley with his email address should further information come to light about which the authorities should know. According to Quigley, he emphasized to Officer Collins and Agent McClellan during this meeting his review was still in the preliminary stages and had not been finalized. Later that same day, Quigley compared the financial records and lists and realized the \$9,100 deposit had been made. He emailed Agent McClellan with that ***503** information the same day and also informed Katherine Woodham, a Robert E. Lee Academy school board member involved in the investigation. No one informed the Bishopville Police Department of this discovery. An arrest warrant accusing Johnson of misappropriating \$9,100 was issued on August 15 and Johnson turned herself in to authorities on August 16.^{FN2} The charges against Johnson were subsequently dropped.

FN1. Whether MBW was hired to perform an actual audit or just to investigate the missing funds is disputed; however, that does not affect our analysis of the issues on appeal.

FN2. The record is unclear as to exactly the amount of funds that were unaccounted.

Johnson sued Robert E. Lee Academy, Jennifer Hostetler and Marc Quigley (both of MBW), MBW, and the City of Bishopville for defamation, abuse of process, malicious prosecution, negligence, and false imprisonment. The claims against MBW were all dropped with the exception of the defamation and negligence claims. The circuit court granted summary judgment in MBW's favor on both remaining causes of action. With respect to the negligence claim, the circuit court determined that because Johnson was not a client, MBW owed no duty of care thereby eliminating that claim as a matter of law. This appeal followed.

STANDARD OF REVIEW

A trial court may grant a party's motion for summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. "An appellate court applies the same standard used by the trial court under Rule 56(c) when reviewing the grant of a motion for summary judgment." Epstein v. Coastal Timber Co., 393 S.C. 276, 281, 711 S.E.2d 912, 915 (2011). "This Court has established that '[t]he plain language of Rule 56(c) mandates the entry of summary judgment ... against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case, and on which that party will bear the burden of proof.'" Hansson v. Scalise Builders of S.C., 374 S.C. 352, 357-58, 650 S.E.2d 68, 71 (2007) (Internal citations omitted).

*504 LAW/ANALYSIS

[1] ☒ Johnson maintains the circuit court erred in finding MBW owed her no duty. She contends Quigley's actions constituted a voluntary undertaking that gave rise to a duty of care toward her. We disagree.

[2] ☒ [3] ☒ [4] ☒ [5] ☒ "Whether the law recognizes a particular duty is an issue of law to be determined by the court." Ellis v. Niles, 324 S.C. 223, 227, 479 S.E.2d 47, 49 (1996). "An affirmative legal duty exists only if created by statute, contract, relationship, status, ***514** property interest, or some other special circumstance." Hendricks v. Clemson Univ., 353 S.C. 449, 456, 578 S.E.2d 711, 714 (2003). "Ordinarily, the common law imposes no duty on a person to act. Where an act is voluntarily

undertaken, however, the actor assumes the duty to use due care." *Id.* at 456-57, 578 S.E.2d at 714 (citing *Russell v. City of Columbia*, 305 S.C. 86, 89, 406 S.E.2d 338, 339 (1991)).

The recognition of a voluntarily assumed duty in South Carolina jurisprudence ^{FN3} is rooted in the Restatement of Torts, which states:

^{FN3}. See *Madison ex rel. Bryant v. Babcock Ctr., Inc.*, 371 S.C. 123, 136, 638 S.E.2d 650, 657 (2006) (recognizing a duty may arise under section 323); *Russell v. City of Columbia*, 305 S.C. 86, 89-90, 406 S.E.2d 338, 340 (1991) (relying in part on section 323 to find duty may exist between volunteer defendant and plaintiff); *Sherer v. James*, 290 S.C. 404, 407-08, 351 S.E.2d 148, 150 (1986) (internal citation omitted) ("Section 323(a) simply establishes a duty on one who undertakes to render services for the protection of another to use due care to avoid increasing the risk of harm." We agree with this rationale."); *Roundtree Villas Ass'n, Inc. v. 4701 Kings Corp.*, 282 S.C. 415, 423, 321 S.E.2d 46, 51 (1984) (finding common law duty of care arose under section 323 when lender undertook to repair defects in condominiums); *Shropshire v. Jones*, 277 S.C. 468, 471, 289 S.E.2d 410, 411 (1982) (stating cause of action for negligent performance of gratuitous promise is summarized in Restatement section 323); *Staples v. Duell*, 329 S.C. 503, 510, 494 S.E.2d 639, 643 (Ct.App.1997) (noting the South Carolina Supreme Court recognized section 323(a) "as relating to the element of duty."); *Goode v. St. Stephens United Methodist Church*, 329 S.C. 433, 444-45, 494 S.E.2d 827, 832-33 (Ct.App.1997) (finding no duty under section 323 when visitor to apartment building did not rely on any security measures undertaken by the building, and any measures taken were for protection of the tenants).

One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, ~~he~~ is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if

(a) his failure to exercise such care increases the risk of such harm, or

(b) the harm is suffered because of the other's reliance upon the undertaking.

Restatement (Second) of Torts § 323.

The relationship between Johnson and MBW does not fit within the parameters set forth in section 323(a). Section 323(a) contemplates a party relying on the rendering of services to another for the other's protection. Even assuming Quigley acted voluntarily, he assisted the Bishopville Police Department in its investigation.^{FN4} He did not render a service to Johnson; he assisted authorities. Additionally, his conduct was not undertaken for Johnson's protection and any negligence in his performance did not result in her physical harm.^{FN5}

^{FN4}. While we do not need to reach the factual issue of whether Quigley's conduct arose to the level of volunteer, we generally agree with Chief Justice Toal's statement that "[i]t simply does not square with common sense experience to characterize a ... response to a governmental inquiry as voluntary." See *Miller v. City of Camden*, 329 S.C. 310, 318, 494 S.E.2d 813, 817 (1997) (Toal, C.J., dissenting in part, concurring in part).

^{FN5}. We are cognizant of Restatement (Second) of Torts section 324A, although that section has not been adopted by our courts and is not specifically argued by Johnson on appeal. See *Miller*, 329 S.C. at 315 n. 2, 494 S.E.2d at 816 n. 2 (declining to adopt section 324A). Section 324A contemplates a duty arising on the part of one who undertakes to

render a service to another for the protection of a third party from physical harm. However, even applying section 324A to these circumstances, Johnson's cause of action fails because Quigley's cooperation with police was not intended to protect any party from physical harm.

Furthermore, contorting the Restatement to create a precedent that may have a chilling effect on cooperation with the authorities or other conduct that inures to the public good is ill-advised and poor public policy. See Underwood v. Coponen, 367 S.C. 214, 219 n. 3, 625 S.E.2d 236, 239 n. 3 (Ct.App.2006) ("If we extended the duty to require private landowners to ensure that their trees do not hinder traffic control devices, we would be discouraging private landowners from voluntarily maintaining vegetation on their property which adjoins a *506 public roadway or highway in an effort to shield themselves from unwarranted liability."); Staples, 329 S.C. 503, 510, 494 S.E.2d 639, 643 (Ct.App.1997) (declining to impose duty on defendant to inspect property **515 under circumstances as doing so "would create the highly undesirable precedent of encouraging rural landowners to shield their eyes and never inspect their land"). Other causes of action exist to address when citizens have been maliciously accused of or prosecuted for a crime.

Additionally, in Hendricks, 353 S.C. at 456-58, 578 S.E.2d at 714-15, the South Carolina Supreme Court signaled a reluctance to expand the voluntary assumption of duty doctrine beyond the circumstances set forth in the Restatement 323 and recognized in our jurisprudence.

We believe recognizing a duty flowing from advisors to students is not required by any precedent and would be unwise, considering the great potential for embroiling schools in litigation that such recognition would create. Further, the Court of Appeals citation to Miller [329 S.C. at 318, 494 S.E.2d at 817] indicating a duty may have been created by Clemson's voluntary undertaking to advise Hendricks to ensure NCAA eligibility, is inapposite. The line of cases Miller discusses have thus far been limited to situations in which a party has voluntarily undertaken to prevent physical harm, not economic injury.

Id. at 458, 578 S.E.2d at 715.

The circumstances of this case do not fit within the existing voluntary assumption of duty framework, and we decline to expand that doctrine under the facts presented.^{FN6}

FN6. South Carolina has recognized an accountant may have a duty to a third party under a negligent misrepresentation cause of action. See ML-Lee v. Deloitte, 327 S.C. 238, 241 n. 3, 489 S.E.2d 470, 471 n. 3 (1997) ("We adopt the [Restatement (Second) of Torts] § 552 standard of liability.... Under § 552, an accountant has a duty to exercise reasonable care or competence in obtaining or communicating information."). However, to successfully pursue such a claim, the plaintiff must have relied on the accountant's misrepresentation, and Johnson conceded at oral arguments she did not rely on Quigley's statements.

Additionally, Johnson submitted with her Rule 59(e), SCRPC, motion the affidavit of John Hamilton, a certified public accountant, who opined MBW owed Johnson a duty of care under the circumstances. However, the existence of a *507 legal duty is a question of law for the court, and Hamilton's affidavit does not call into question any facts in the case. See Hendricks, 353 S.C. at 456, 578 S.E.2d at 714 ("Whether the law recognizes a particular duty is an issue of law to be decided by the Court."). The affidavit simply proposes extending the potential third-party liability of an accountant beyond the limitations placed thereon by the Restatement. Consequently, his affidavit did not create a genuine issue of material fact warranting the reconsideration of the circuit court's decision as to summary judgment.

Because MBW did not render a service to Johnson or for her protection from physical harm, we

conclude MBW owed no duty of care to Johnson as a matter of law arising out of Quigley's conduct in communicating with police officials regarding the investigation into REL's missing funds. The circuit court's grant of summary judgment is

AFFIRMED.

SHORT and **LOCKEMY, JJ.**, concur.

S.C.App., 2012.

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• **Konduros, Hon. Aphrodite K.**

State of South Carolina Court of Appeals
Columbia, South Carolina 29201

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• **Lockemy, Hon. James E.**

State of South Carolina Court of Appeals
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• **Short, Hon. Paul E. Jr.**

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• **Young, Hon. William Jeffrey**

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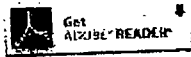
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367 S.C. 214, 625 S.E.2d 236

Judges and AttorneysCourt of Appeals of South Carolina.
David R. UNDERWOOD, Appellant,

v.

Laurine H. COPONEN, Carolyn T. Webb, as Personal Representative of the Estate of Ansel B. Taylor, and
County of Greenville, Defendants,
Of Whom Carolyn T. Webb, as Personal Representative of the Estate of Ansel B. Taylor is the
Respondent.

No. 4067.

Submitted Nov. 1, 2005.

Decided Jan. 9, 2006.

Background: Motorist brought action against property owner's estate alleging negligent failure to trim tree on property, thereby contributing to motorist's accident in intersection. Estate moved for summary judgment. The Circuit Court, Greenville County, John C. Few, J., granted summary judgment. Motorist appealed.

Holding: The Court of Appeals, Short, J., held that property owner did not assume a duty to keep tree from blocking stop sign.

Affirmed.

West Headnotes

[1] KeyCite Citing References for this Headnote272 Negligence272I In General272k202 k. Elements in general. Most Cited Cases

To prevail on a theory of negligence, the plaintiff must establish three elements: (1) that defendant owed a plaintiff a duty of care; (2) that by some act or omission, defendant breached that duty; and (3) that, as a proximate result of the breach, the plaintiff suffered damage.

[2] KeyCite Citing References for this Headnote272 Negligence272II Necessity and Existence of Duty272k210 k. In general. Most Cited Cases272 Negligence KeyCite Citing References for this Headnote272XVIII Actions272XVIII(D) Questions for Jury and Directed Verdicts272k1692 k. Duty as question of fact or law generally. Most Cited Cases

In deciding whether a defendant acted negligently, the court must determine, as a matter of law,

whether the law recognizes a particular duty; if there is no duty, then the defendant in a negligence action is entitled to a judgment as a matter of law.

[3] ☒ KeyCite Citing References for this Headnote

◊ 272 Negligence

◊ 272XVII Premises Liability

◊ 272XVII(B) Necessity and Existence of Duty

◊ 272k1018 k. Duty to inspect or discover. Most Cited Cases

Urban landowners have a duty of reasonable care to inspect trees on their property and to make certain they are safe.

[4] ☒ KeyCite Citing References for this Headnote

◊ 48A Automobiles

◊ 48AVI Injuries from Defects or Obstructions in Highways and Other Public Places

◊ 48AVI(A) Nature and Grounds of Liability

◊ 48Ak269 k. Property adjacent to highway. Most Cited Cases

◊ 268 Municipal Corporations ☒ KeyCite Citing References for this Headnote

◊ 268XII Torts

◊ 268XII(C) Defects or Obstructions in Streets and Other Public Ways

◊ 268k808 Liabilities of Abutting Owners

◊ 268k808(1) k. In general. Most Cited Cases

Landowners have a duty of reasonable care to make certain their trees are safe for travelers of streets adjoining their land.

[5] ☒ KeyCite Citing References for this Headnote

◊ 48A Automobiles

◊ 48AVI Injuries from Defects or Obstructions in Highways and Other Public Places

◊ 48AVI(A) Nature and Grounds of Liability

◊ 48Ak269 k. Property adjacent to highway. Most Cited Cases

Property owner did not assume a duty to keep a tree on his property from blocking a stop sign, and therefore, property owner was not negligent in failing to trim the tree, even though property owner occasionally trimmed the tree for the purpose of clearing the stop sign and his failure to trim the tree might have increased the risk that the sign would be obstructed; neither the driver that ran the stop sign nor the motorist that was injured by collision with driver that ran the stop sign was aware that property owner occasionally trimmed the tree and did not rely on his doing so.

****237** William H. Ehlires, II, of Greenville, for Appellant.

John P. Riordan and Zandra L. Johnson, both of Greenville, for Respondent.

SHORT, J.:

***215** Laurine Coponen ran through a stop sign at an intersection and collided with David Underwood's car. Underwood brought an action against Carolyn Webb, the personal representative of Ansel Taylor's estate, alleging Taylor was negligent ***216** in failing to trim a tree located on his property, thereby contributing to the accident. The trial court granted Webb's motion for summary judgment, which Underwood now appeals. We affirm. ^{FN1}

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FN1. We decide this case without oral argument pursuant to Rule 215, SCACR.

FACTS

On May 4, 2002, Underwood was driving on Ansel School Road in Greenville County when Coponen ran through a stop sign at the intersection of Ansel School Road and Sharon Drive and collided with Underwood's car. Coponen testified that she did not see the stop sign because the limbs of a tree located on Taylor's property were partially blocking the sign. The respondent, Webb, is the personal representative of Taylor's estate. Taylor's wife testified that Taylor was aware the tree's limbs could obscure the stop sign and occasionally trimmed the tree to prevent it from doing so. Coponen testified that she had driven on Sharon Drive before; however, she also testified that she was not looking for a stop sign because she mistakenly thought she was on another road that did not have stop signs.

Underwood initially brought this action solely against Coponen, alleging that she was liable for his injuries from the collision because she was negligent in running the stop sign. However, on October 23, 2003, Underwood amended his complaint to include both Webb and Greenville County as additional defendants, alleging that either or both were negligent in failing to trim the tree located on Taylor's property, thereby contributing to the accident. Webb filed a motion for summary judgment. After a hearing on November 2, 2004, the trial judge granted Webb's motion. A settlement was reached between Underwood and the other defendants. Underwood now appeals.

STANDARD OF REVIEW

When reviewing the grant of a summary judgment motion, we apply the same standard which governs the trial court under Rule 56(c) of the South Carolina Rules of Civil Procedure: ***217** summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. ****238** Fleming v. Rose, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). "When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." Id. at 494-495, 567 S.E.2d at 860. "If triable issues exist, those issues must go to the jury." Nelson v. Charleston County Parks Recreation Comm'n, 362 S.C. 1, 5, 605 S.E.2d 744, 746 (Ct.App.2004).

LAW/ANALYSIS

Underwood argues the trial court erred by granting Webb's motion for summary judgment because Taylor owed a duty of care to Underwood as a matter of law. We disagree.

[1] [2] "To prevail on a theory of negligence, the plaintiff must establish three elements: (1) that defendant owed a plaintiff a duty of care; (2) that by some act or omission, defendant breached that duty; and (3) that as a proximate result of the breach, the plaintiff suffered damage." Staples v. Duell, 329 S.C. 503, 506, 494 S.E.2d 639, 641 (Ct.App.1997). "The court must determine, as a matter of law, whether the law recognizes a particular duty. If there is no duty, then the defendant in a negligence action is entitled to a judgment as a matter of law." Simmons v. Tuomey Reg'l Med. Ctr., 341 S.C. 32, 39, 533 S.E.2d 312, 316 (2000).

[3] [4] In South Carolina, urban landowners have a duty of reasonable care to inspect trees on their property and to make certain they are safe. Staples, 329 S.C. at 508, 494 S.E.2d at 641-42 (quoting W. Page Keeton et al., Prosser and Keeton on the Law of Torts, § 57 at 391 (5th ed.1984)); Israel v. Carolina Bar-B-Que, Inc., 292 S.C. 282, 288, 356 S.E.2d 123, 127 (Ct.App.1987). Also, landowners have a duty of reasonable care to make certain their trees are safe for travelers of streets adjoining their land. Staples, 329 S.C. at 508, 494 S.E.2d at 642. In Israel v. Carolina Bar-B-Que, 292 S.C. 282, 288-90, 356 S.E.2d 123, 127-28 (Ct.App.1987), we held that a landowner has a duty to protect others from "defective or unsound trees on his premises" and found the landowner was liable for the damage caused by the fallen tree limb ***218** because there was evidence that the owner either saw

or could have seen upon reasonable inspection that the tree that caused the damage was partially decayed.

In this case, Taylor's tree was not unsafe or defective. The tree limb did not fall and injure Coponen. The only effect the tree limb had was that it partially obscured the stop sign, which Coponen testified that she was not looking for because she thought that she was driving on another street, which does not have stop signs. Therefore, the rule set forth in *Israel* does not apply to the facts in this case.^{FN2}

^{FN2}. In making their decision, the *Israel* court adopted Illinois' ruling in *Mahurin v. Lockhart*, 71 Ill.App.3d 691, 28 Ill.Dec. 356, 390 N.E.2d 523 (1979). Therefore, it is worth noting that subsequent to publishing the *Mahurin* decision, Illinois issued several opinions on visual obstructions. In *Nichols v. Sitko*, 157 Ill.App.3d 950, 109 Ill.Dec. 903, 510 N.E.2d 971, 974 (1987), the court refused to extend the *Mahurin* rule, which involved an injury caused by a fallen dead branch, to an alleged visual obstruction from overgrown weeds. The court reasoned that the alleged obstruction was "no different from obstructions which are caused by houses and buildings encountered routinely in daily life." *Id.* Also, in *Adame v. Munoz*, 287 Ill.App.3d 181, 222 Ill.Dec. 619, 678 N.E.2d 26, 29 (1997), the court held that there is no duty "on the part of landowners to maintain their property in such a way that it does not obstruct the view of travelers on an adjacent highway, and this refusal to find such a duty applies even where the obstruction is an artificial condition."

[5] ☒ Underwood also claims that because Taylor periodically trimmed the tree on his property, he undertook the duty to keep his tree from blocking the stop sign. However, the Restatement (Second) of Torts provides:

One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if (a) his failure to exercise such care increases the risk of such harm, or (b) the harm is suffered because of the other's reliance upon the undertaking.

Staples, 329 S.C. at 510, 494 S.E.2d at 643 (quoting **239 Restatement (Second) of Torts § 323(a) (1965)). While Taylor did trim the tree occasionally for the purpose of clearing the stop sign and his failure to trim the tree might have increased the *219 risk that the sign would be obstructed, neither Underwood nor Coponen knew that Taylor trimmed the tree, and thus they did not rely on his doing so. Therefore, Taylor's occasional trimming of his tree did not create a duty for which he can be held liable. ^{FN3} Additionally, even if Taylor had assumed a duty to trim the trees, he could have abandoned the duty at any time so long as his actions did not increase any risk that might have existed. See *Id.* at 506, 494 S.E.2d at 641 (affirming the trial court's ruling that the defendant's policy of searching for dead trees did not create a duty because he could have abandoned the policy at any time as long as doing so would not increase the risk of harm).

^{FN3}. We further note that not imposing a duty on Taylor promotes good public policy. If we extended the duty to require private landowners to ensure that their trees do not hinder traffic control devices, we would be discouraging private landowners from voluntarily maintaining vegetation on their property which adjoins a public roadway or highway in an effort to shield themselves from unwarranted liability.

AFFIRMED.

GOOLSBY, and ANDERSON, JJ., concur.

S.C.App.,2006.
Underwood v. Coponen
367 S.C. 214, 625 S.E.2d 236

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Judges

• **Anderson, Hon. Ralph King Jr.**

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• **Few, Hon. John C.**

State of South Carolina Court of Appeals
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• **Goolsby, Hon. C. Tolbert Jr.**

State of South Carolina Court of Appeals
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• **Short, Hon. Paul E. Jr.**

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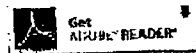
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329 S.C. 503, 494 S.E.2d 639

[Judges and Attorneys](#)

Court of Appeals of South Carolina.
Julie STAPLES, Appellant,
v.
Charles DUELL, d/b/a Middleton Place, Respondent.

No. 2756.
Heard Sept. 10, 1997.
Decided Nov. 24, 1997.

Motorist who was injured when she struck tree which had fallen onto highway from adjacent rural property sued property owner. The Circuit Court, Charleston County, John C. Hayes, III, J., granted owner's motion for directed verdict, and motorist appealed. The Court of Appeals, Howell, C.J., held that: (1) owner of rural land does not owe duty to inspect or improve property, and (2) actions of owner in adopting policy of searching for dead trees did not result in assumption of duty owed to motorist.

Affirmed.

West Headnotes

[\[1\] !\[\]\(25c77846cb4a7b040376f3c27a554d74_img.jpg\) KeyCite Citing References for this Headnote](#)[388 Trial](#)[388VI Taking Case or Question from Jury](#)[388VI\(D\) Direction of Verdict](#)[388k178 k. Hearing and Determination. Most Cited Cases](#)

In deciding motion for directed verdict, evidence and all reasonable inferences must be viewed in light most favorable to nonmoving party.

[\[2\] !\[\]\(ab5cc6e2ac9ed23b71c10a3741cf792a_img.jpg\) KeyCite Citing References for this Headnote](#)[388 Trial](#)[388VI Taking Case or Question from Jury](#)[388VI\(A\) Questions of Law or of Fact in General](#)[388k142 k. Inferences from Evidence. Most Cited Cases](#)

If more than one inference can be drawn from evidence, case must be submitted to jury, but if evidence yields only one inference, directed verdict in favor of moving party is proper.

[\[3\] !\[\]\(cbd6a3b869f7c30d33597f68087821e8_img.jpg\) KeyCite Citing References for this Headnote](#)[272 Negligence](#)[272I In General](#)[272k202 k. Elements in General. Most Cited Cases
\(Formerly 272k1\)](#)

To prevail on theory of negligence, plaintiff must establish three elements: (1) that defendant owed

plaintiff duty of care, (2) that by some act or omission, defendant breached that duty, and (3) that as proximate result of breach, plaintiff suffered damage.

[4] KeyCite Citing References for this Headnote

◉ 272 Negligence

◉ 272XVIII Actions

◉ 272XVIII(D) Questions for Jury and Directed Verdicts

◉ 272k1692 k. Duty as Question of Fact or Law Generally. Most Cited Cases
(Formerly 272k136(3))

◉ 272 Negligence KeyCite Citing References for this Headnote

◉ 272XVIII Actions

◉ 272XVIII(D) Questions for Jury and Directed Verdicts

◉ 272k1694 k. Standard of Proof; Evidentiary Showing Required. Most Cited Cases
(Formerly 272k136(3))

Issue of negligence is mixed question of law and fact; court must first determine whether duty arises in one party to exercise reasonable care for benefit of another under facts of given case, existence and scope of which duty are questions of law, and thereafter, jury determines whether breach of duty has occurred and resulting damages.

[5] KeyCite Citing References for this Headnote

◉ 48A Automobiles

◉ 48AVI Injuries from Defects or Obstructions in Highways and Other Public Places

◉ 48AVI(A) Nature and Grounds of Liability

◉ 48Ak268 k. Falling Objects. Most Cited Cases

◉ 48A Automobiles KeyCite Citing References for this Headnote

◉ 48AVI Injuries from Defects or Obstructions in Highways and Other Public Places

◉ 48AVI(A) Nature and Grounds of Liability

◉ 48Ak269 k. Property Adjacent to Highway. Most Cited Cases

Owner of rural property adjacent to highway did not owe duty of care to motorists on highway to inspect and improve land, and thus was not liable for injuries sustained by motorist who struck dead tree which had fallen from property onto highway.

[6] KeyCite Citing References for this Headnote

◉ 272 Negligence

◉ 272XVII Premises Liability

◉ 272XVII(B) Necessity and Existence of Duty

◉ 272k1018 k. Duty to Inspect or Discover. Most Cited Cases
(Formerly 272k50, 272k2)

Rural and urban landowners have different duties and responsibilities, so that, unlike urban landowner, rural landowner does not have duty to inspect and improve his land.

[7] KeyCite Citing References for this Headnote

◉ 277 Notice

← 277k4 Constructive Notice

← 277k5 k. In General. Most Cited Cases

"Constructive notice" is notice that reasonable person should know and carries duty of reasonable care.

[8] ☒ KeyCite Citing References for this Headnote

← 48A Automobiles

← 48AVI Injuries from Defects or Obstructions in Highways and Other Public Places

← 48AVI(A) Nature and Grounds of Liability

← 48AK252 k. In General. Most Cited Cases

State highway department has duty to protect commuters along highways.

[9] ☒ KeyCite Citing References for this Headnote

← 272 Negligence

← 272III Standard of Care

← 272k234 k. Voluntarily Assumed Duties. Most Cited Cases

(Formerly 272k1)

One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if (1) his failure to exercise such care increases risk of such harm, or (2) harm is suffered because of other's reliance upon undertaking. Restatement (Second) of Torts § 323(a).

[10] ☒ KeyCite Citing References for this Headnote

← 48A Automobiles

← 48AVI Injuries from Defects or Obstructions in Highways and Other Public Places

← 48AVI(A) Nature and Grounds of Liability

← 48AK268 k. Falling Objects. Most Cited Cases

Rural landowner's policy of searching for dead trees on property did not result in assumption by landowner of duty owed to motorists on highway adjacent to property, for breach of which landowner could be held liable in action by motorist who was injured when she struck tree which had fallen from property onto highway; policy did not increase risk of harm to motorist, and motorist did not have prior knowledge of policy and thus did not detrimentally rely on it. Restatement (Second) of Torts § 323(a).

****640 *505** Daniel A. Beck, Charleston, for appellant.

Benjamin A. Moore, Jr., and James D. Myrick, of Buist, Moore, Smythe & McGee, Charleston, for respondent.

HOWELL, Chief Judge:

Julie Staples brought this suit against Charles Duell for damages arising out of an automobile accident that occurred near Duell's property on Highway 61. Both parties moved for a directed verdict. The trial judge denied Staples's motion, but granted Duell's motion, finding that Duell owed no duty of care to Staples. We affirm.

I.

During the early morning hours of May 24, 1997, Staples was driving from Charleston toward

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Summerville on Highway 61. As she drove, Staples encountered a dead pine tree in the road. Staples swerved but collided with the tree, causing her to suffer multiple injuries.

The tree with which Staples collided was a dead pine measuring about 100 feet in length. The tree fell approximately sixty feet from the roadway and was located on land owned by Duell. For about two miles between Charleston and Summerville, Duell owns land on both sides of Highway 61. Along Duell's two mile stretch of Highway 61, there are no residences except one cabin. According to department of transportation records, approximately 13,500 vehicles a day pass by Duell's two-mile stretch of land on Highway 61.

Located on the property owned by Duell is Middleton Place National Historic Landmark. Part of Middleton Place is a tourist attraction which receives an estimated 100,000 admission-paying visitors a year. The only public entrance or exit to Middleton Place is on Highway 61. Duell maintains a two hundred and fifty foot buffer zone of trees on both sides of *506 Highway 61, to protect the scenic beauty of the road. The highway department owns a fifty foot right-of-way along Highway 61.

Duell employed James Woddle to "take care of the woodlands and security" for Middleton Place. Woddle's job duties included **641 twice a day driving around the perimeter of Middleton Place to inspect the premises. During his inspections, Woddle looked for trespassers, abandoned vehicles, and dead trees.

In granting Duell's motion for a directed verdict, the trial court held that because the land from which the tree fell was rural, Duell had no common law duty to prevent the dangerous condition caused by the dead pine tree. The trial court further concluded that even if Duell adopted a policy of searching for dead trees along the roadway, Duell's policy did not create a duty because Duell could have abandoned it at any time and it did not increase the risk. Staples appeals the trial court's decision to grant Duell's motion for a directed verdict.

II.

[1] ☒ [2] ☒ "In deciding a motion for directed verdict, the evidence and all reasonable inferences must be viewed in the light most favorable to the nonmoving party. If more than one inference can be drawn from the evidence, the case must be submitted to the jury.... [I]f the evidence yields only one inference, a directed verdict in favor of the moving party is proper." Turnblin v. Ball-Incon Glass Packaging Corp., 324 S.C. 359, 365, 478 S.E.2d 81, 84 (Ct.App.1996).

[3] ☒ [4] ☒ To prevail on a theory of negligence, the plaintiff must establish three elements: (1) that defendant owed plaintiff a duty of care; (2) that by some act or omission, defendant breached that duty; and (3) that as a proximate result of the breach, the plaintiff suffered damage. Estate of Cantrell v. Green, 302 S.C. 557, 397 S.E.2d 777 (Ct.App.1990).

The issue of negligence is a mixed question of law and fact. The court must first determine whether a duty arises in one party to exercise reasonable care for the benefit of another under the facts of a given case. The existence and *507 scope of the duty are questions of law. Thereafter, the jury determines whether a breach of the duty has occurred, and the resulting damages.

Miller v. City of Camden, 317 S.C. 28, 31, 451 S.E.2d 401, 403 (Ct.App.1994), cert. granted, (June 16, 1995) (citations omitted).

III.

[5] ☒ Staples argues that the trial court erred in finding that Duell did not have a duty to inspect and improve his land.^{FN1} We disagree.

^{FN1}. In her final brief, Staples did not argue the classification of Duell's property as urban

or rural land constituted a jury question. We, therefore, do not address whether the trial court erred in declining to submit the rural or urban issue to the jury. See State v. McLaughlin, 307 S.C. 19, 413 S.E.2d 819 (1992) (citing State v. Sullivan, 277 S.C. 35, 282 S.E.2d 838 (1981), for the proposition that exceptions not argued in brief are deemed abandoned).

[6] ☒ In South Carolina rural landowners and urban landowners have different duties and responsibilities. In Israel v. Carolina Bar-B-Que, Inc., 292 S.C. 282, 356 S.E.2d 123 (Ct.App.1987), this court quoted W. Page Keeton et al., *Prosser and Keeton on the Law of Torts*, § 57, at 391 (5th ed. 1984), in holding:

The rule of non-liability for natural conditions was obviously a practical necessity in the early days, when land was very largely in a primitive state. It remains to a considerable extent a necessity in rural communities, where the burden of inspecting and improving the land is likely to be entirely disproportionate not only to any threatened harm but even to the value of the land itself. But it is scarcely suited to cities, to say that a landowner may escape all liability for serious damage to his neighbors, merely by allowing nature to take its course. A different rule accordingly has been developed as to urban centers.

This is well illustrated by the cases of dangerous trees. It is still the prevailing rule that the owner of rural land is not required to inspect it to make sure that every tree is safe, and will not fall over into the public highway and kill a person, although there is already some little dissent even as to this, and, at least if the defendant knows that the tree is *508 dangerous, he may be required to take affirmative steps. But when the tree is in an urban area, and may fall into a city street, the *642 landowner now has a duty of reasonable care, including inspection to make sure that the tree is safe. Recent decisions have extended the right to reasonable protection from travelers on the street to adjoining landowners as well.

Israel, 292 S.C. at 288, 356 S.E.2d at 127. See generally Thomas R. Trenkner, Annotation, Liability of Private Owner or Occupant of Land Abutting Highway for Injuries or Damage Resulting from Tree or Limb Falling onto Highway, 94 A.L.R.3d 1160 § 3 (1979). Even though other jurisdictions may be rethinking their approach to landowner liability, South Carolina follows the traditional rural and urban distinction. Cf. Ford v. South Carolina Dep't of Transp., 328 S.C. 481, 492 S.E.2d 811 (Ct.App.1997). The policy reasons which were present at the inception of the rural landowner rule still exist in rural South Carolina today. See *Prosser and Keeton, supra*, § 57. To restrict or reverse the rural landowner rule would "impose a new and unusual burden upon the owners of forest lands." Chambers v. Whelen, 44 F.2d 340, 341 (4th Cir.1930) (holding a landowner not liable for an accident on a country road caused by a tree which fell from the landowner's property).

[7] ☒ [8] ☒ Staples also argues that constructive notice of the dead tree created a duty for Duell to safely remove the tree.^{FN2} Constructive notice is notice that a reasonable person should know and carries a duty of reasonable care. See Hightower v. Greenville County, 255 S.C. 192, 195, 177 S.E.2d 785, 786 (1970) ("Where a defect or dangerous condition, not created by its act or that of its agents, has existed for such length of time that in the exercise of reasonable care the defect should have been discovered and remedied, the county is chargeable with knowledge of such defect, and consequently with negligence in not having remedied it."). Accordingly, we believe that it is illogical to say that rural landowners have no duty to inspect and improve their property, but then to charge a rural landowner with a duty arising out of constructive notice. Thus, in *509 this case, once the trial judge ruled that Duell's land was rural, all of Staples's evidence and testimony concerning what Duell or Wodde should have known or noticed became irrelevant because Duell was not liable for constructive notice.^{FN3}

^{FN2}. Actual notice is not an issue in this case because Duell testified that neither he nor

Woddle was aware of the dead tree, and Staples offered nothing to refute Duell's assertion.

FN3. Our holding is easily reconcilable with *Inabinett v. State Highway Department*, 196 S.C. 117, 12 S.E.2d 848 (1941). *Inabinett* dealt with the state highway department's liability for injuries resulting from a fallen tree, where the highway department had actual or constructive notice of the tree's condition. *Id.* at 123, 12 S.E.2d at 851. Unlike a rural landowner, however, the highway department has a duty to protect commuters along the highways.

IV.

Staples invites us to carve out a commercial exception to the rule imposing no duty on rural landowners to inspect their land. We decline.

Staples argues without citation to legal authority that because Highway 61 is the only means available for the public to reach Middleton Place, Duell had a duty to insure safe passage for everyone travelling along Highway 61. Adopting Staples's exception would effectively place on every farmer, rancher, and country store owner the puzzling and onerous task of determining whether their property is subject to a higher standard of care than that of other rural landowners. In addition, Staples's novel contention undermines the rural landowner rule's policy of protecting rural landowners from the burden of inspecting and improving land where the likely benefit is most often minimal. See *Prosser and Keeton, supra*, § 57. We believe that in actual practice, Staples's exception could produce bizarre and inconsistent results and we therefore do not adopt it.

V.

Staples also argues that Duell assumed a duty by implementing a policy to search for dead trees. We disagree.

[9] ☒ Even though there was conflicting evidence about whether Duell instituted an official ****643** policy for Woddle to inspect the premises for dead trees, we assume for the purposes of review that such a policy existed. The Restatement (Second) of Torts § 323(a) (1965), states:

***510** One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if (a) his failure to exercise such care increases the risk of such harm, or (b) the harm is suffered because of the other's reliance upon the undertaking.

In *Sherer v. James*, 290 S.C. 404, 351 S.E.2d 148 (1986), the South Carolina Supreme Court recognized section 323(a) "as relating to the element of duty." *Id.* at 407, 351 S.E.2d at 150.

[10] ☒ Because the rural landowner rule relieved Duell of any duty to inspect or improve his land, in order to prevail, section 323(a) mandates that Staples prove either that Duell's policy of searching for dead trees increased her risk of harm or that she detrimentally relied on Duell's policy. First, Staples presents no evidence that Woddle's act of simply patrolling the area looking for dead trees increased her risk of harm. Duell's policy of inspecting for dead trees did not hasten the decay of trees or affect when and where dead trees might fall. Second, Staples made no allegation that she knew of the policy of searching for dead trees before the accident. Without previous knowledge of the policy, Staples could not have relied on the policy. Thus, Duell's policy of looking for dead trees did not create a duty for which he could be held liable.

Not imposing a duty on Duell in this case promotes good public policy. To impose a duty on Duell

would create the highly undesirable precedent of encouraging rural landowners to shield their eyes and never inspect their land. The better policy for this court to endorse is that rural landowners who inspect their lands for potential dangers are not creating a duty for themselves unless their inspection either increases the risk of harm to others or others detrimentally rely on their inspection.

VI.

We hold that the trial judge correctly applied the rural landowner test to find that Duell, as a rural landowner, did not have a duty to inspect and improve his land along Highway 61. *511 In addition, we hold that Duell did not create a legal duty by instituting a policy of searching for dead trees along the highway.

For all of the foregoing reasons, the judgment of the lower court is hereby

AFFIRMED.

HEARN and STILWELL, JJ., concur.

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Judges

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- **Hearn, Hon. Kaye G.**

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- **Howell, Hon. William T.**

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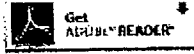
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392 S.C. 560, 709 S.E.2d 536

Judges and Attorneys

Court of Appeals of South Carolina.

L. Paul TRASK, Jr., Personally, and as Next of Kin and as the Duly Appointed Personal Representative of the Estate of L. Paul Trask, III, deceased; and Meredith C. Trask, Appellants,

v.

BEAUFORT COUNTY; Curtis M. Copeland in His Official Capacity as Coroner of Beaufort County; Judy R. Copeland, as Personal Representative of the Estate of Curtis M. Copeland; and Copeland Company of Beaufort, LLC, Respondents.

No. 4799.

Heard Oct. 6, 2010.

Decided March 2, 2011.

Rehearing Denied June 3, 2011.

Background: Parents of 20-year-old driver who was killed in accident after consuming alcohol filed negligence claims against county coroner, both in his official capacity and individually, as operator of crematory, in connection with cremation of body without an autopsy or toxicology tests. The Circuit Court, Beaufort County, Doyet A. Early, III, J., granted summary judgment to coroner. Parents appealed.

Holding: The Court of Appeals, Few, C.J., held that statutes relied upon by parents did not create a special duty of care owed to them by coroner.

Affirmed.

West Headnotes

[1] ☒ KeyCite Citing References for this Headnote

272 Negligence

272II Necessity and Existence of Duty

272k210 k. In general. Most Cited Cases272 Negligence ☒ KeyCite Citing References for this Headnote

272XVIII Actions

272XVIII(C) Evidence

272XVIII(C)1 Burden of Proof

272k1550 k. In general. Most Cited Cases

In a negligence cause of action, it is the plaintiff's burden to establish that a duty of care is owed to him by the defendant.

[2] ☒ KeyCite Citing References for this Headnote

272 Negligence

272II Necessity and Existence of Duty

272k210 k. In general. Most Cited Cases

272 Negligence ☒ [KeyCite Citing References for this Headnote](#)

272II Necessity and Existence of Duty

272k222 k. Duty based upon statute or other regulation. [Most Cited Cases](#)

Though the common law generally does not impose a duty to act, a statute may create an affirmative duty owed to a plaintiff.

[3] ☒ [KeyCite Citing References for this Headnote](#)

272 Negligence

272II Necessity and Existence of Duty

272k222 k. Duty based upon statute or other regulation. [Most Cited Cases](#)

In order to show that the defendant owes him a duty of care arising from a statute, the plaintiff in a negligence action must show two things: (1) that the essential purpose of the statute is to protect from the kind of harm the plaintiff has suffered; and (2) that he is a member of the class of persons the statute is intended to protect.

[4] ☒ [KeyCite Citing References for this Headnote](#)

283 Officers and Public Employees

283III Rights, Powers, Duties, and Liabilities

283k115 Liabilities for Negligence or Misconduct

283k116 k. In general. [Most Cited Cases](#)

"Public duty rule" holds that public officials are generally not liable to individuals for their negligence in discharging public duties, as the duty is owed to the public at large rather than anyone individually.

[5] ☒ [KeyCite Citing References for this Headnote](#)

283 Officers and Public Employees

283III Rights, Powers, Duties, and Liabilities

283k115 Liabilities for Negligence or Misconduct

283k116 k. In general. [Most Cited Cases](#)

The public duty rule represents a presumption that a statute creating or defining the duties of a public official has the essential purpose of providing for the structure and operation of the government or of securing the general welfare and safety of the public, and thus does not satisfy the elements required to create a duty of care.

[6] ☒ [KeyCite Citing References for this Headnote](#)

157 Evidence

157II Presumptions

157k83 Official Proceedings and Acts

157k83(1) k. In general. [Most Cited Cases](#)

The presumption of no duty of care arising from a statute creating or defining the duties of a public official may be overcome when the statute creates a "special duty" to the plaintiff.

[7] ☒ [KeyCite Citing References for this Headnote](#)

13 Action13I Grounds and Conditions Precedent13k5 k. Criminal acts. Most Cited Cases116 Dead Bodies ☒ KeyCite Citing References for this Headnote116k9 k. Civil liabilities. Most Cited Cases

Criminal statute making it unlawful for a person willfully and knowingly, and without proper legal authority, to destroy or damage the remains of a deceased human being did not create an actionable duty on part of crematory operator to parents of 20-year-old driver who was killed in accident after consuming alcohol and whose remains were cremated without an autopsy or toxicology tests; essential purpose of statute was not to preserve a body as evidence for a civil action, and alleged harm to parents was that their settlement with gas station operator who sold beer to driver was less than it could have been with definitive toxicology results. Code 1976, § 16-17-600.

[8] ☒ KeyCite Citing References for this Headnote100 Coroners100k9 Inquests100k14 k. Autopsy. Most Cited Cases

No special duty was owed, under statute requiring that coroner of the county in which a body is found dead order an autopsy or post-mortem examination to be conducted to ascertain the cause of death, to parents of 20-year-old driver who was killed in accident after drinking alcohol; essential purpose of statute was to ascertain cause of death, whereas the particular kind of harm parents claimed to have suffered was that an autopsy would have provided evidence for their suit against gas station generator that sold beer to minor and would have provided the family with its desired level of detail regarding cause of death. Code 1976, § 17-7-10.

[9] ☒ KeyCite Citing References for this Headnote100 Coroners100k8 k. Powers and duties in general. Most Cited Cases

Statute requiring every coroner to take such fluids from body of driver as are necessary to a determination of the presence and percentages of alcohol or drugs, and to forward such fluids to the Law Enforcement Division, did not create a special duty owed by coroner to parents of 20-year-old driver who was killed in accident after consuming alcohol; purpose of statute was one of law enforcement, not to allow parents to determine whether alcohol played a role in son's death. Code 1976, § 17-7-80.

[10] ☒ KeyCite Citing References for this Headnote379 Torts379III Tortious Interference379III(D) Obstruction of or Interference with Legal Remedies; Spoliation379k303 Spoliation, Destruction, or Loss of Evidence379k306 k. Particular cases. Most Cited Cases

Parents of 20-year-old driver who was killed in accident after consuming alcohol failed to establish claim of negligent third-party spoliation of evidence against county coroner and crematory operator in connection with cremation of driver's body; there was no evidence that coroner had knowledge two days

after driver's death of a potential civil action against gas station operator that sold beer to driver, parents authorized the cremation, and they failed to show it was possible to obtain a toxicology test or how results of that test would be vital to their ability to prevail in a civil action.

[11] KeyCite Citing References for this Headnote

30 Appeal and Error

30XVI Review

30XVI(A) Scope, Standards, and Extent, in General

30k838 Questions Considered

30k843 Matters Not Necessary to Decision on Review

30k843(2) k. Review of specific questions in general. Most Cited Cases

Appellate court did not need to reach issue of whether county had control over county coroner, on appeal of summary judgment for both parties in negligence suit premised on the actions and inactions of coroner, after finding that coroner owed no duty to plaintiffs and was therefore not liable.

[12] KeyCite Citing References for this Headnote

272 Negligence

272II Necessity and Existence of Duty

272k210 k. In general. Most Cited Cases

If no duty exists, the defendant is entitled to judgment as a matter of law in negligence action.

****537** Stephen P. Groves, Thomas S. Tisdale, Jr., and Jeffrey S. Tibbals, all of Charleston, for Appellants.

Andrew F. Lindemann, of Columbia; and Marshall H. Waldron, Jr., of Beaufort; for Respondents.

FEW, C.J.

***563** The primary issue in this appeal is whether various statutes governing coroners and crematory operators give rise to private rights of action for civil damages. We agree with the circuit court that they do not, and affirm. We also affirm the circuit court's ruling granting summary judgment for the defendants for spoliation of evidence and intentional infliction of emotional distress.

***564 I. Facts**

On November 21, 2005, Paul Trask, III, a twenty-year-old, consumed beer at his parents' home in Beaufort.^{FN1} Shortly before midnight Paul drove his father's car to a Hess gas station named Xpress Lane on Boundary Street. The gas station attendant sold Paul two twenty-four-ounce cans of beer without verifying his age. Paul Trask, Jr. described the store video as showing his son "going into the Xpress Lane store and immediately going in, going to the bathroom, pretty clear he had been drinking beer, coming out, he seems steady, but we know he's been drinking beer." Paul consumed the beer he ****538** purchased from Xpress Lane while driving approximately twenty-two miles to Fripp Island, but was turned away at the security gate. After driving almost four miles away from Fripp Island, Paul lost control of the car, ran off the road, and collided with large pine trees. The car caught on fire and Paul died from the injuries he sustained in the accident, either the impact, fire, or a combination.

^{FN1}. We recite the facts, derived primarily from the complaint and Mr. Trask's deposition, in the light most favorable to the Trasks. See Nelson v. Piggly Wiggly Cent., Inc., 390 S.C. 382, 388, 701 S.E.2d 776, 779 (Ct.App.2010) (noting in a summary judgment case "the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the non-moving party").

On May 22, 2006, Mr. Trask and his wife filed a wrongful death and survival action against Hess Corporation and Xpress Lane, Inc., which we refer to as the Xpress Lane suit. The Trasks alleged Paul's death "was the proximate result of the alleged negligence of [Hess and Xpress Lane], in several particulars, including: the negligent sale of alcohol to a minor." ^{FN2} They claimed the beers Xpress Lane sold to Paul "were the beers that caused his intoxication." Hess and Xpress Lane agreed to pay the Trasks \$750,000 to settle the case before trial. As required by law, the Trasks requested the circuit court approve the settlement, which it did on January 9, 2008. However, Mr. Trask later testified "that it was worth more than \$750,000" and explained, "we were only able to negotiate a very partial settlement in the Xpress Lane case because we had no definitive toxicology results to prove *565 ... that Paul was intoxicated.... And so I would say that caused great damage to the Xpress Lane suit."

^{FN2}. This quotation is from the "Petition for Approval of Settlement" in the Xpress Lane suit.

In this action the Trasks have sued Beaufort County and Curtis Copeland, ^{FN3} both in his official capacity as the coroner of Beaufort County and in his individual capacity as a crematory operator. They seek damages for the reduced settlement value of the Xpress Lane suit along with damages for emotional harm. The Trasks contend various statutes create duties owed to them which Copeland breached individually and officially. This case is troubling because Copeland did violate at least some of the statutes, and conducted himself in a manner we believe was inappropriate. We hold, however, that the law does not provide a remedy for this conduct in the form of civil damages.

^{FN3}. Mr. Copeland passed away after oral argument. Judy R. Copeland, the personal representative of his estate, has been substituted for him in his individual capacity.

Shortly after the accident occurred, Copeland went to the scene. At around 1:00 a.m. on November 22, after he learned who owned the car, Copeland drove to the Trasks' home to inform them of the accident and death. When Copeland arrived at their home, he did not know who was killed in the accident; he knew only that the car belonged to Mr. Trask. Once the Trasks determined Paul was the only family member not at home, they realized he had been the driver. Later that day family and friends of the Trasks gathered at Mr. Trask's mother's home. Copeland went there around noon to discuss the funeral arrangements. In addition to being the county coroner, Copeland also owned Copeland Company of Beaufort, LLC, which owns and operates Copeland Funeral Home and Coastal Cremation Services. At the gathering, the Trasks told Copeland they wanted Paul's body cremated and signed the cremation authorization form. Although they signed the form sometime between noon and one o'clock, Copeland instructed them to write the time as 9:15 a.m. The following day Coastal Cremation Services cremated Paul's body.

The Trasks contend two statements made by Copeland caused them emotional distress. First, when Copeland was leaving the Trasks' home after telling them about the accident, Mrs. Trask asked him if he planned to perform an autopsy on *566 Paul's body. Copeland responded there was no need to perform an autopsy because "the cause of death is obvious." Second, a few months later the Trasks asked Copeland how badly Paul's body was burned in the accident, to which he responded, "you couldn't tell if the body was black, white, or Mexican."

The Trasks allege Copeland, as coroner, was required, but failed, to positively identify the body in the car as their son, to conduct an autopsy, and to prepare a toxicology report on the body. They claim that because Copeland individually cremated the body **539 without conducting a toxicology test officially

as coroner, the resulting lack of knowledge of Paul's blood alcohol level "made it difficult, if not impossible, for the Trasks to establish and prove otherwise valid claims against the Xpress Lane and Hess Corporation" and forced them to settle for less money.

The Trasks filed this action on April 11, 2007, with claims for negligence and negligent supervision and training against Beaufort County and Copeland officially; for negligent spoliation of evidence against Beaufort County; for negligence and intentional or negligent spoliation of evidence against Copeland individually and Copeland Company; and for intentional infliction of emotional distress against Copeland individually.^{FN4} The Trasks moved for partial summary judgment based on liability. All Respondents filed motions for summary judgment. The trial court filed its order on January 2, 2009, granting summary judgment for Respondents. The Trasks appeal the entire order.

FN4. In their complaint, the Trasks sought damages for wrongful death and survival actions. Because the Trasks conceded they were not alleging a wrongful death or survival action against Respondents, we do not address that claim.

II. Determining the Existence of a Private Right of Action

[1] ☒ [2] ☒ In a negligence cause of action, it is the plaintiff's burden to establish that a duty of care is owed to him by the defendant. See McKnight v. S.C. Dep't of Corr., 385 S.C. 380, 390-91, 684 S.E.2d 566, 571 (Ct.App.2009) ("An essential element in a negligence cause of action is the existence of a legal *567 duty of care owed by the defendant to the plaintiff. Without such a duty, a plaintiff cannot establish negligence.") (Internal quotation marks and citation omitted); Chastain v. Hiltabidle, 381 S.C. 508, 519, 673 S.E.2d 826, 832 (Ct.App.2009) ("If no duty exists, the defendant is entitled to judgment as a matter of law."). Though the common law generally does not impose a duty to act, a statute may create an affirmative duty owed to a plaintiff. Vaughan v. Town of Lyman, 370 S.C. 436, 441, 635 S.E.2d 631, 634 (2006).

[3] ☒ In Rayfield v. South Carolina Department of Corrections, 297 S.C. 95, 103, 374 S.E.2d 910, 914 (Ct.App.1988), cert. denied, 298 S.C. 204, 379 S.E.2d 133 (1989), this court set forth the analysis to apply when determining whether a statute creates a duty whose breach allows for a private right of action:

In order to show that the defendant owes him a duty of care arising from a statute, the plaintiff must show two things: (1) that the essential purpose of the statute is to protect from the kind of harm the plaintiff has suffered; and (2) that he is a member of the class of persons the statute is intended to protect.

If the plaintiff demonstrates these two elements, he has established the first element of a negligence claim—a duty owed to him by the defendant. 297 S.C. at 103, 374 S.E.2d at 915.

[4] ☒ [5] ☒ However, when the statute at issue creates or defines the duties of a public official, the public duty rule applies. 297 S.C. at 105, 374 S.E.2d at 915. "This rule holds that public officials are generally not liable to individuals for their negligence in discharging public duties as the duty is owed to the public at large rather than anyone individually." Vaughan, 370 S.C. at 441, 635 S.E.2d at 634 (quoting Steinke v. S.C. Dep't of Labor, Licensing, & Regulation, 336 S.C. 373, 388, 520 S.E.2d 142, 149 (1999)). The public duty rule represents a presumption that such a statute "has the essential purpose of providing for the structure and operation of the government or of securing the general welfare and safety of the public," and thus does not satisfy the elements of the two-part Rayfield test. 297 S.C. at 105, 374 S.E.2d at 915.

*568 [6] ☒ The presumption may be overcome when the statute creates a "special duty" to the

plaintiff: 297 S.C. at 106, 374 S.E.2d at 916. In *Rayfield*, this court stated:

A special duty exists if: (1) an essential purpose of the statute is to protect against a particular kind of harm; (2) the statute, either directly or indirectly, imposes on a specific public officer a duty to guard against or not to cause that harm; (3) the class of persons the statute intends to protect is identifiable before the fact; (4) the plaintiff is a person within the protected class; (5) the public officer knows or has reason to know of the likelihood of harm to members of the class if he fails to do his duty; and (6) the officer is given sufficient authority to act in the circumstances or he undertakes to act in the exercise of his office.

Id.; see also *Vaughan*, 370 S.C. at 441, 635 S.E.2d at 634 (referring to the six-part *Rayfield* test as "the well established 'special duty' exception"); *Jensen v. Anderson Cnty. Dep't of Soc. Servs.*, 304 S.C. 195, 203, 403 S.E.2d 615, 619 (1991) (adopting the six-part *Rayfield* test and calling it an "exception to the public duty rule"). If a special duty is found to exist after analyzing a statute under this test, courts can be sure the Legislature intended that a plaintiff within the protected class injured by a public official's breach of the duty have a private right of action against the official. 304 S.C. at 201, 403 S.E.2d at 618; see *Vaughan*, 370 S.C. at 442, 635 S.E.2d at 634 ("The public duty rule is a rule of statutory construction which aids the court in determining whether the legislature intended to create a private right of action.... [T]he dispositive issue is ... whether the statute was intended to provide ... a private right of action....").

We must analyze the one statute alleged to have been violated by Copeland individually under the general two-part test and those alleged to have been violated by Copeland officially under the special duty exception to the public duty rule.

A. Section 16-17-600 Does Not Create a Duty Owed by Copeland Individually and Copeland Company to the Trasks

[7] ☒ The only allegation of negligence against Copeland individually and Copeland Company is that they breached a *569 statutory duty contained in section 16-17-600 of the South Carolina Code (Supp.2010). The section provides:

(A) It is unlawful for a person willfully and knowingly, and without proper legal authority to: (1) destroy or damage the remains of a deceased human being;....

A person violating the provisions of subsection (A) is guilty of a felony....

A crematory operator is neither civilly nor criminally liable for cremating a body which (1) has been incorrectly identified by the funeral director, coroner, medical examiner, or person authorized by law to bring the deceased to the crematory; or (2) the funeral director has obtained invalid authorization to cremate.

§ 16-17-600(A).^{FN5} The Trasks contend this statute creates an actionable duty under the two-part *Rayfield* test. Specifically, they argue the statute's essential purpose "is to ensure dead bodies are not destroyed without proper authority." Even if that is the essential purpose, however, it is not the harm the Trasks claim they suffered. At oral argument, the Trasks' counsel stated the harm they suffered was a loss of settlement value of the Xpress Lane suit because Paul's body was no longer available. Additionally, Mr. Trask stated in his deposition: "Mr. Copeland performed an illegal cremation on my son's body, which had the effect of destroying any opportunity to, number one, know for certain whether or not it was our son, Paul,^{FN6} number two, the actual cause of his death, whether it was the crash itself or whether he burned to death. We have been denied the toxicology results as a result of the illegal cremation...." Therefore, the harm they claim to have suffered is that Paul's body was no longer available for an autopsy and a toxicology test.

^{FN5}. Subsections (B) and (C) prohibit actions of theft, destruction, vandalism, or

desecration on burial grounds or in a graveyard. S.C.Code Ann. § 16-17-600(B)-(C) (Supp.2010).

FN6. In several causes of action, the Trasks claimed damages for uncertainty as to whether Paul is dead because his body was never "positively identified." However, the Trasks later conceded the body from the accident was their son. Mr. Trask stated: "I acknowledge that my son is dead."

570** The essential purpose of section 16-17-600 is not to preserve a body as evidence for a civil action. Accordingly, the Trasks fail to meet the first element of the two-part *541 Rayfield** test. The Trasks argue, however, that the statute's specific reference to a crematory operator's immunity for civil liability demonstrates the Legislature intended for its violation to serve as the basis for civil liability. We disagree. Section 16-17-600 is a criminal statute which provides only for criminal sanctions. See Dorman v. Aiken Commcns., Inc., 303 S.C. 63, 67, 398 S.E.2d 687, 688-89 (1990) (refusing to find a private right of action for "a criminal statute which provides only for criminal sanctions" because "[t]he primary consideration in deciding whether a private cause of action should be implied under a criminal statute is legislative intent"). We find section 16-17-600 does not create a duty of due care owed by Copeland or Copeland Company to the Trasks, and therefore they do not have a private right of action for its breach.**FN7**

FN7. Because we find section 16-17-600 created no duty owed by Copeland to the Trasks, we do not reach the issue of whether the coroner could be immune from liability under the Safe Cremation Act. S.C.Code Ann. §§ 32-8-300 to -385 (2007 & Supp.2010).

B. No Duties Exist as to the Negligence Claims Against Copeland Officially

The Trasks allege the following statutory duties were breached by Copeland officially: (1) to perform an autopsy to ascertain the cause of death pursuant to section 17-7-10 of the South Carolina Code (2003); (2) to perform a toxicology test of the victim of a motor vehicle accident pursuant to section 17-7-80 of the South Carolina Code (2003); and (3) to take certain steps pursuant to sections 17-5-570(B) and -590 of the South Carolina Code (2003 & Supp.2010), which are required when a body cannot be identified. Copeland pled the public duty rule as a defense to these claims. We agree with the trial court that none of these statutes satisfy the elements of the six-part Rayfield test, and thus no special duty exists under any of them and the Trasks have no private rights of action.

[8] ☒ First, the Trasks allege section 17-7-10 creates a special duty. It states: "The coroner of the county in which a ***571** body is found dead ... shall order an autopsy or post-mortem examination to be conducted to ascertain the cause of death." § 17-7-10. The essential purpose of the statute is "to ascertain the cause of death," The "particular kind of harm" the Trasks claim to have suffered is that an autopsy would have provided evidence for the Xpress Lane suit, and they were not satisfied with the level of detail in the coroner's explanation of the cause of death. Mr. Trask testified an autopsy "would have confirmed the results of a toxicology examination, would have determined the actual cause of death, whether it be the crash itself or by the fire." The essential purpose of the statute is neither to provide evidence for a civil lawsuit nor to ensure that the family of a deceased person is given its desired level of detail regarding the cause of death.**FN8** Accordingly, the Trasks' negligence claim against Copeland officially under section 17-7-10 is barred by the public duty rule.

FN8. "Cause of death" is a defined term and "refers to the agent that has directly or indirectly resulted in a death." S.C.Code Ann. § 17-5-5(2) (2003). In this case, the

Coroner's Report states the "Manner of Death" is "Accident" and the "Cause of Death" is "Multiple Injuries Extreme."

[9] ☒ Second, the Trasks allege section 17-7-80 creates a special duty. Title 17 is labeled "Criminal Procedures," and section 17-7-80 states:

Every coroner ... shall examine the body within eight hours of death of any driver and any pedestrian, sixteen years old or older, who dies within four hours of a motor vehicle accident ..., and take or cause to have taken by a qualified person such blood or other fluids of the victim as are necessary to a determination of the presence and percentages of alcohol or drugs. Such blood or other fluids shall be forwarded to the South Carolina Law Enforcement Division within five days after the accident in accordance with procedures established by the Law Enforcement Division.

The Trasks argue the essential purpose of the section "is to protect those who may perish in a motor vehicle accident, as well as their survivors, their estates, and their heirs, **542 and equally importantly, to accurately ascertain the cause of the decedent's death." They contend if Copeland had taken a toxicology sample, they "would have known what effect alcohol *572 had on Paul's ability to drive, whether it likely impaired his driving, and whether it significantly contributed to his death." We do not believe the essential purpose of the statute is to protect against this "particular kind of harm." Rather, because the statute requires the toxicology sample be sent to the South Carolina Law Enforcement Division, we find the purpose of the statute is one of law enforcement. Therefore, any benefit or injury to the Trasks from its performance or nonperformance in determining whether alcohol played a role in their son's death is incidental to its essential purpose. The Trasks' negligence claim against Copeland officially under section 17-7-80 is also barred by the public duty rule.

Third, and finally, the Trasks allege sections 17-5-570(B) and 17-5-590 create a special duty when a body is not identifiable. Because the Trasks concede that Paul died in the accident, we need not address this further. Even under their own theory, they are not within the protected class: families of unidentifiable deceased persons. Accordingly, the Trasks' claims based on these statutory duties are barred by the public duty rule.

III. Third Party Spoliation of Evidence

[10] ☒ The Trasks also allege a third party spoliation of evidence cause of action. In Austin v. Beaufort County Sheriff's Office, 377 S.C. 31, 36, 659 S.E.2d 122, 124 (2008), the supreme court refused to adopt the tort of third party evidence spoliation. However, it stated, "we decline to address whether we would, under other factual circumstances, adopt the tort." *Id.* The supreme court then listed the elements of negligent and intentional third party spoliation as stated in Hannah v. Heeter, 213 W.Va. 704, 584 S.E.2d 560, 569-70, 573 (2003). Austin, 377 S.C. at 34-35, 659 S.E.2d at 123-24. As the supreme court did in Austin, we find the Trasks fail to meet those elements. The Trasks have not presented any evidence that Copeland or Beaufort County had knowledge two days after Paul's death of a potential civil action against Hess Corporation and Xpress Lane, or that Paul's body would be considered evidence in such a lawsuit. More importantly, the Trasks authorized the cremation of Paul's body. They also failed to show it was possible to obtain a toxicology test, and did not show how the results of that test would be vital to *573 their ability to prevail in a civil action. The circuit court correctly granted summary judgment as to this claim.

IV. Intentional Infliction of Emotional Distress

The second category of damages the Trasks claim from Copeland's conduct is emotional harm. They allege Copeland is liable for intentional infliction of emotional distress for the two statements he made to the Trasks. The statements were made in response to questions from the Trasks about the performance of an autopsy and the details of the accident. These are questions properly addressed to a coroner, not a funeral home owner. Under the Tort Claims Act, a coroner is immune from suit for "the intentional infliction of emotional harm." S.C. Code Ann. § 15-78-50 (2005) ("Any person who may suffer a loss

proximately caused by a tort of the State, an agency, a political subdivision, or a governmental entity, and its employee acting within the scope of his official duty may file a claim as hereinafter provided.") (emphasis added); § 15-78-30 (2005) ("Loss' ... does not include the intentional infliction of emotional harm."). We agree with the trial court that the Trasks cannot "circumvent the bar of sovereign immunity by raising alleged acts by Copeland acting as the Coroner and then seeking to recover for those acts against Copeland individually."

V. Beaufort County is Not Liable for the Acts or Omissions of Copeland Officially

☐ [11] ☒ [12] ☒ The negligence claim against Beaufort County for Copeland's failure to perform a toxicology test in his official capacity and the claim of negligent supervision and training were properly dismissed because Copeland owed no duty to the Trasks arising from his official actions or inactions in this ***543** case. Beaufort County cannot be vicariously liable for Copeland's conduct because Copeland is not liable. "If no duty exists, the defendant is entitled to judgment as a matter of law." Chastain, 381 S.C. at 519, 673 S.E.2d at 832. Therefore, we need not reach the issue of whether Beaufort County has control over the coroner. See Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (recognizing that an appellate court need not address remaining issues when resolution of one issue is dispositive).

*574 VI. Conclusion

In this case, much of the coroner's conduct is troubling, but none of it is actionable. Because we find the statutes at issue do not give rise to private rights of action, because South Carolina has not recognized the tort of third party spoliation of evidence, and because the Trasks fail to state a claim for intentional infliction of emotional distress, we find the circuit court was correct in granting summary judgment.

AFFIRMED.

HUFF and GEATHERS, JJ., concur.

S.C.App., 2011.

Trask v. Beaufort County

392 S.C. 560, 709 S.E.2d 536

Judges and Attorneys ([Back to top](#))

[Judges](#) | [Attorneys](#)

Judges

• Early, Hon. Doyet A. III

State of South Carolina Circuit Court, 2nd Circuit
Aiken, South Carolina 29801

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• Few, Hon. John C.

State of South Carolina Court of Appeals
Columbia, South Carolina 29201

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• Geathers, Hon. John D.

State of South Carolina Court of Appeals
Columbia, South Carolina 29201

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• Huff, Hon. Thomas E.

State of South Carolina Court of Appeals
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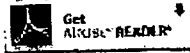
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360 S.C. 7, 598 S.E.2d 728

Judges and Attorneys

Court of Appeals of South Carolina.
Woodrow Wilson BROWN, Appellant,
v.

Joseph Wilson BROWN and Town of Harleyville, Respondents.

No. 3827.

Submitted April 6, 2004.

Decided June 21, 2004.

Background: Motorist brought negligence action against town after police officer allowed him to drive away from scene of traffic stop as replacement driver for driver who had been drinking alcohol, and he ran off road. The Circuit Court, Dorchester County, James C. Williams, Jr., J., granted summary judgment in favor of town. Motorist appealed.

Holdings: The Court of Appeals, Stilwell, J., held that:

- (1) public duty rule barred motorist's statutory negligence claims;
- (2) officer properly exercised his discretion in selecting motorist as replacement driver; and
- (3) town was immune from claim that it failed to properly train and supervise its police officers.

Affirmed.

West Headnotes

[1] ☒ KeyCite Citing References for this Headnote268 Municipal Corporations268XII Torts268XII(A) Exercise of Governmental and Corporate Powers in General268k723 k. Nature and Grounds of Liability. Most Cited Cases

"Public duty rule" is only implicated when a plaintiff relies upon a statute as creating a duty.

[2] ☒ KeyCite Citing References for this Headnote268 Municipal Corporations268XII Torts268XII(A) Exercise of Governmental and Corporate Powers in General268k723 k. Nature and Grounds of Liability. Most Cited Cases

Under the public duty rule, a statute prescribing the duties of a public officer does not, without more, impose on him a duty of care toward individual members of the public in the performance of his duties.

[3] ☒ KeyCite Citing References for this Headnote268 Municipal Corporations268XII Torts

- 268XII(B) Acts or Omissions of Officers or Agents
- 268k747 Particular Officers and Official Acts
- 268k747(3) k. Police and Fire. Most Cited Cases

Public duty rule barred statutory negligence claims in motorist's action against town after police officer allowed him to drive away from scene of traffic stop as replacement driver for driver who had been drinking alcohol, and he ran off road; statutes corresponding to motorist's claims merely recited in broad terms when circumstances made it unlawful to operate motor vehicle, procedures surrounding incidents of possible driving under the influence (DUI), and general licensing requirement for motorists, but no statutes implicated by motorist's claims identified any particular class of victims or any particular harm that would create special duty exception to general rule. Code 1976, § 15-78-60.

[4] ☒ KeyCite Citing References for this Headnote

- 268 Municipal Corporations
- 268XII Torts
- 268XII(B) Acts or Omissions of Officers or Agents
- 268k747 Particular Officers and Official Acts
- 268k747(3) k. Police and Fire. Most Cited Cases

Police officer properly exercised his discretion in selecting motorist, who was passenger in vehicle driven by driver who had been drinking alcohol, as replacement driver, and thus, town was immune to motorist's negligence claim under tort claims act; officer had choice of issuing citation to original driver and having car towed, or selecting another driver, and so officer chose motorist to drive after he volunteered and satisfactorily completed sobriety tests, motorist admitted that he was in better condition to drive than original driver, and other passenger expressly refused to drive, and police trainer stated that officer operated pursuant to accepted law enforcement practices. Code 1976, § 15-78-60(5).

[5] ☒ KeyCite Citing References for this Headnote

- 268 Municipal Corporations
- 268XII Torts
- 268XII(B) Acts or Omissions of Officers or Agents
- 268k747 Particular Officers and Official Acts
- 268k747(3) k. Police and Fire. Most Cited Cases

Town was immune from motorist's claim under tort claims act that town failed to properly train and supervise its police officers after officer allowed motorist to drive away from scene of traffic stop as replacement driver for driver who had been drinking alcohol, where officer's decision in selecting motorist to be replacement driver met requirements to establish discretionary immunity under tort claims act. Code 1976, § 15-78-60(5).

****729 *8** Helen Tyler McFadden, of Kingstree, for appellant.

Christy Stephens, of Walterboro, for respondents.

STILWELL, J.:

Woodrow Brown brought this action against Joseph Wilson Brown and the Town of Harleyville alleging negligence by a *9 police officer resulting in injury to Woodrow. The trial court granted summary judgment in favor of the town. We affirm.^{FN1}

FN1. We decide this case without oral argument pursuant to Rule 215, SCACR.

****730 FACTS**

Officer McKee of the Harleyville Police Department stopped Earl Felder's car after he noticed Felder driving in an erratic manner. Woodrow, his brother Joseph, and another young man were all traveling as passengers in the car. While speaking with Felder, the officer smelled alcohol on his breath and required him to perform several field sobriety tests. Felder performed marginally well indicating that, although he had consumed alcohol, he did not lack control of his functions, nor was he fully impaired. The men insisted they lived at an address less than one mile from the stop site and promised to go straight home. Officer McKee did not issue a citation but determined one of the passengers should drive the car.

When asked by the officer whether any of the passengers could drive, Joseph volunteered. Joseph was allowed to drive only after he satisfactorily completed the same battery of field sobriety tests given to Felder. The men assured the officer they would go straight home.

As an added precaution, Officer McKee followed the car to observe Joseph's driving. The officer testified that Joseph was not driving erratically or unsafely. He finally turned around and resumed his patrol once the car reached the town limit of Harleyville.

Rather than driving home as promised, the men waited until the patrol car was out of sight and reversed course and began driving to a party. Sometime before reaching the party, Joseph ran off the road and into a tree. Woodrow, along with other passengers, suffered minor injuries. When the highway patrol arrived they discovered Joseph was not a licensed driver. He was issued tickets for driving without a license, no insurance, driving too fast for conditions, and failing to wear a safety belt. No citation was issued for DUI.

Two years after the accident, Woodrow brought this action asserting claims for common law negligence against Joseph ***10** and negligence against the town for 1) failing to properly train and supervise its officers; 2) failing to properly require officers to provide for health and safety on the roadway; 3) failing to charge Felder with DUI; 4) choosing Joseph, an unlicensed driver, to operate the vehicle; and 5) violations of statutes and the common law of South Carolina. The trial court granted the town's motion for summary judgment, finding the public duty rule applied and as such Woodrow failed to establish a duty owed to him individually by Officer McKee. Additionally, the court concluded Woodrow produced no evidence of any special undertaking by the officer that would create an exception to the rule.

DISCUSSION

When we review the trial court's grant of a motion for summary judgment, we apply the same standard that governs the trial courts. Summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. On appeal, we review the evidence and all inferences reasonably drawn from it in the light most favorable to the nonmoving party. Rule 56(c) SCRPC; *Osborne v. Adams*, 346 S.C. 4, 7, 550 S.E.2d 319, 321 (2001).

Woodrow claims the trial court incorrectly applied the public duty rule without first determining whether the officer properly exercised his discretion under S.C. Code Ann. § 15-78-60 (Supp.2003). We disagree.

☒ [1] ☒ [2] ☒ [3] Woodrow's complaint alleges general acts of negligence without basing those allegations on any specific statutory authority. Rather, he claims only generally that the town violated state statutes and common law. The trial court granted summary judgment based upon the public duty rule. The public duty rule is only implicated when a plaintiff relies upon a statute as creating a duty. See *Trousdell v. Cannon*, 351 S.C. 636, 641, 572 S.E.2d 264, 266-267 (2002); *Arthurs v. Aiken County*, 346 S.C. 97, 103, 551 S.E.2d 579, 582 (2001) (holding when and only when the plaintiff relies upon a statute as creating the duty does the public duty rule come into play). Under the public duty rule, a statute prescribing the duties of a public officer does not, without more, impose on him a duty ***11** of

care toward individual members of the public in the performance of his duties. See ****731 Rayfield v. South Carolina Dep't of Corr.**, 297 S.C. 95, 105, 374 S.E.2d 910, 915-16 (Ct.App.1988).

To the extent Woodrow relies on violations of a statute or statutes, we agree with the trial court his claims are barred by the public duty rule. We note the code sections corresponding to Woodrow's claims merely recite in broad terms when circumstances make it unlawful to operate a motor vehicle, procedures surrounding incidents of possible DUI or, as in the case of the latter section, the general licensing requirement for motorists. None of the statutes implicated by Woodrow's claims identify any particular class of victims or any particular harm that would create a special duty exception to the general rule. See *Rayfield*, 297 S.C. at 106, 374 S.E.2d at 916. See also *Jensen v. Anderson County Dep't of Soc. Servs.*, 304 S.C. 195, 200, 403 S.E.2d 615, 617 (1991) (wherein the supreme court adopted this court's six step special duty analysis as an exception to the public duty rule). We conclude the duty, if any, created by the statutes in question is owed to the public at large and not to Woodrow individually.

Woodrow's complaint also included negligence claims based on Officer McKee's decision to choose Joseph as the replacement driver and alleged failure by the town to properly train and supervise its police officers. Neither of these claims is based on statutory duties. Therefore, they are not barred by the public duty rule. See *Arthurs*, 346 S.C. at 103, 551 S.E.2d at 582 (2001). However, the town raised the affirmative defense of immunity based upon the tort claims act and in particular *S.C.Code Ann. §§ 15-78-60(4), (5), (20), (25)* (Supp.2003) in its motion for summary judgment. We agree that Woodrow's remaining claims are barred by the act.^{FN2}

^{FN2}. Though we recognize the trial court's order was silent on this issue, on appeal this court may affirm on any ground contained in the record. See *Rule 220(c), SCACR*.

[4] ☒ *S.C.Code Ann. § 15-78-60* carves out exceptions to the limited waiver of governmental immunity established by the tort claims act, including discretionary immunity that arises when a government employee's decision is within the discretion or judgment allowed. See *S.C.Code Ann. § 15-78-60(5) *12* (Supp.2003). Officer McKee was faced with the choice of issuing a DUI citation, requiring the passengers to find another way home and have the car towed, or selecting another driver after determining whether that individual was fit to drive. He chose Joseph to drive after he volunteered and satisfactorily completed field sobriety tests. Woodrow admitted in his affidavit that Joseph was in a better condition to drive than he. The other passenger expressly refused to drive.

Major Neil Baxley, a police-training instructor, stated in his affidavit that Officer McKee operated pursuant to accepted practices of law enforcement in South Carolina and was not required to arrest Felder. Major Baxley opined Officer McKee was entitled to use his discretion to best remedy the situation. Viewing the evidence in the light most favorable to Woodrow, we find Officer McKee's selection of Joseph was a considered, discretionary judgment. As such, the town is immune to Woodrow's negligence claim under *section 15-78-60(5)* of the tort claims act. See *Clark v. South Carolina Dep't of Pub. Safety*, 353 S.C. 291, 304, 578 S.E.2d 16, 22 (Ct.App.2002) (stating the requirements necessary to establish discretionary immunity under the tort claims act).

[5] ☒ Finally, Woodrow alleges the town failed to properly train and supervise its police officers. There is no evidence in the record to support this claim beyond Woodrow's allegations in his affidavit that, in his opinion, Officer McKee was not following standard law enforcement procedures when he made the discretionary judgment to allow Joseph to drive instead of arresting Felder and impounding the car. As we have already determined that the officer's decision met the requirements to establish discretionary immunity under the tort claims act, we conclude the town is likewise immune from this claim pursuant to *section 15-78-60(5)*.

AFFIRMED.

HUFF, J., and CURETON, A.J., concur.

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Judges and Attorneys ([Back to top](#))

[Judges](#) | [Attorneys](#)

Judges

- **Huff, Hon. Thomas E.**

State of South Carolina Court of Appeals
Columbia, South Carolina 29201

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- **Stilwell, Hon. H. Samuel**

State of South Carolina Court of Appeals
Columbia, South Carolina 29201

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- **Williams, Hon. James C. Jr.**

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Attorneys for Respondent

- **Stephens, Christy Scott**

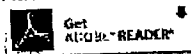
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ALAN WILSON
ATTORNEY GENERAL

June 30, 2014

The Honorable Mike Fair
211 Gressette Senate Office
Columbia, SC 29202

Dear Senator Fair:

Attorney General Alan Wilson has referred your letter dated March 11, 2014 to the Opinions section for a response. The following is this Office's understanding of your question and our opinion based on that understanding.

Issues (as quoted from your letter):

- 1) Does S.C. Code Ann. § 63-7-310 impose a duty on a mandatory reporter to report when an adult discloses that he or she was abused as a child?
- 2) If yes, under what circumstances would such a report be required (e.g. if the alleged abuser is a parent or teacher, other children [may] possibly still [be] at risk; [what is] the length of time passed since [the] abuse occurred; etc.?)
- 3) [If yes,] are there any circumstances under which such reporting would not be required (e.g. death of the perpetrator, length of time passed)?

Short Answer: Based on the statutory intent of South Carolina Code § 63-7-310 of the Children's Code to protect children, this Office believes a court will find that a mandatory reporter would not have to report pursuant to South Carolina Code § 63-7-310 when an adult discloses being abused in the past as a child, as long as the adult is not mentally incompetent, as long as there is no information that another child (who is, at the time of the disclosure, under the age of eighteen as defined in 63-3-20(3)) has been or may be abused or neglected as defined in S.C. Code Section 63-7-20(4), and as long as there is no other law that would require the abuse to be reported. Nevertheless, an adult who was abused in the past as a child may voluntarily report abuse that occurred in South Carolina to law enforcement at any time, as there is no statute of limitations on criminal actions for child abuse or criminal sexual conduct in South Carolina.¹

Law/Analysis:

South Carolina Code § 63-7-310 states:

(A) A physician, nurse, dentist, optometrist, medical examiner, or coroner, or an employee of a county medical examiner's or coroner's office, or any other medical, emergency medical services, mental health, or allied health professional, member of the clergy including a Christian Science Practitioner or religious healer, school teacher, counselor, principal, assistant principal, school attendance officer, social or public assistance worker, substance abuse treatment staff, or childcare worker in a

¹ Adults and mandatory reporters still must comply with any other laws that may otherwise require disclosure or action.

childcare center or foster care facility, foster parent, police or law enforcement officer, juvenile justice worker, undertaker, funeral home director or employee of a funeral home, persons responsible for processing films, computer technician, judge, or a volunteer non-attorney guardian ad litem serving on behalf of the South Carolina Guardian Ad Litem Program or on behalf of Richland County CASA **must report in accordance with this section when in the person's professional capacity the person has received information which gives the person reason to believe that a child has been or may be abused or neglected as defined in Section 63-7-20.**

(B) If a person required to report pursuant to subsection (A) has received information in the person's professional capacity which gives the person reason to believe that **a child's physical or mental health or welfare has been or may be adversely affected by acts or omissions that would be child abuse or neglect if committed by a parent, guardian, or other person responsible for the child's welfare**, but the reporter believes that the act or omission was committed by a person other than the parent, guardian, or other person responsible for the child's welfare, the reporter must make a report to the appropriate law enforcement agency.

(C) Except as provided in subsection (A), a person, including, but not limited to, a volunteer non-attorney guardian ad litem serving on behalf of the South Carolina Guardian Ad Litem Program or on behalf of Richland County CASA, who has reason to believe that a child's physical or mental health or welfare has been or may be adversely affected by abuse and neglect may report, and is encouraged to report, in accordance with this section.

(D) Reports of child abuse or neglect may be made orally by telephone or otherwise to the county department of social services or to a law enforcement agency in the county where the child resides or is found.

S.C. Code § 63-7-310 (1976 Code, as amended) (emphasis added).

As a background regarding statutory interpretation, the cardinal rule of statutory construction is to ascertain the intent of the Legislature and to accomplish that intent. Hawkins v. Bruno Yacht Sales, Inc., 353 S.C. 31, 39, 577 S.E.2d 202, 207 (2003). The true aim and intention of the Legislature controls the literal meaning of a statute. Greenville Baseball v. Bearden, 200 S.C. 363, 20 S.E.2d 813 (1942). The historical background and circumstances at the time a statute was passed can be used to assist in interpreting a statute. Id. An entire statute's interpretation must be "practical, reasonable, and fair" and consistent with the purpose, plan and reasoning behind its making. Id. at 816. Statutes are to be interpreted with a "sensible construction," and a "literal application of language which leads to absurd consequences should be avoided whenever a reasonable application can be given consistent with the legislative purpose." U.S. v. Rippetoe, 178 F.2d 735, 737 (4th Cir. 1950). Like a court, this Office looks at the plain meaning of the words, rather than analyzing statutes within the same subject matter when the meaning of the statute appears to be clear and unambiguous. Sloan v. SC Board of Physical Therapy Exam., 370 S.C. 452, 636 S.E.2d 598 (2006). The dominant factor concerning statutory construction is the intent of the Legislature, not the language used. Spartanburg Sanitary Sewer Dist. v. City of Spartanburg, 283 S.C. 67, 321 S.E.2d 258 (1984) (citing Abell v. Bell, 229 S.C. 1, 91 S.E.2d 548 (1956)).

The first place to look in regards to interpreting the statute is to the legislative intent. Title 63 is the titled as the "Children's Code" and states:

This title shall be liberally construed to the end that families whose unity or well-being is threatened shall be assisted and protected, and restored if possible as secure units of law-abiding members; and that each child coming within the jurisdiction of the court shall receive, preferably in his own home, the care, guidance and control that will conduce to his welfare and the best interests of the State, and that when he is removed from the control of his parents the court shall secure for him care as nearly as possible equivalent to that which they should have given him.

S.C. Code § 63-1-30 (1976 Code, as amended). Additionally, the purpose of protecting children is clearly laid out in plain language by the Legislature in S.C. Code § 63-7-10. It states:

(A) Any intervention by the State into family life on behalf of children must be guided by law, by strong philosophical underpinnings, and by sound professional standards for practice. Child welfare services must be based on these principles:

(B) It is the purpose of this chapter to:

- (1) acknowledge the different intervention needs of families;
- (2) establish an effective system of services throughout the State to safeguard the well-being and development of endangered children and to preserve and stabilize family life, whenever appropriate;
- (3) ensure permanency on a timely basis for children when removal from their homes is necessary;
- (4) establish fair and equitable procedures, compatible with due process of law to intervene in family life with due regard to the safety and welfare of all family members; and
- (5) establish an effective system of protection of children from injury and harm while living in public and private residential agencies and institutions meant to serve them.

S.C. Code § 63-7-10 (1976 Code, as amended). A child is defined in Title 63 as "a person under the age of eighteen." S.C. Code §§ 63-1-40(1); 63-7-20(3) (1976 Code, as amended). It seems clear the legislative intent of S.C. Code § 63-7-310 is to protect children. More specifically, the intent is to protect those children who are or who have been abused by reporting that information to law enforcement. An implication is that children either would not know to report abuse to law enforcement or else they would not be able to do so themselves. It goes without saying that if an adult is not mentally competent, if there is a child (someone under the age of eighteen at the time the information is being disclosed) who currently is or has been abused, or if there is another law that requires disclosure, then the mandatory reporter would need to report the abuse of an adult in the past as a child pursuant to South Carolina Code § 63-7-310. However, your question concerns adults who were abused in their past. A mentally-competent adult would have both the ability to report prior abuse and knowledge of the crime but may not choose to report past abuse for a number of reasons.

An adult who was abused as a child may voluntarily report past criminal abuse to law enforcement regardless of how long ago the conduct occurred.² As stated above, it should be noted that South Carolina does not have a statute of limitations for criminal charges for sexual abuse of a child or criminal sexual conduct. Jodi Leibowitz, Criminal Statutes of Limitations: An Obstacle to the Prosecution and Punishment of Child Sexual Abuse, 25 Cardozo L.Rev. 907 (Dec. 2003). A civil statute of limitations on actions is generally three years from when "the person knew or by the exercise of reasonable diligence should have known that he had a cause of action," though there have been numerous cases discussing the circumstances in which tolling begins in civil sexual abuse cases. S.C. Code § 15-3-535; see, e.g., Doe v. Bishop of Charleston, 407 S.C. 128, 754 S.E.2d 494 (2014); Doe v. Crooks, 364 S.C. 349, 613 S.E.2d 536 (2005); Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 534 S.E.2d 672 (2000); Doe v. R.D., 308 S.C. 139, 417 S.E.2d 541 (1992).³ However, South Carolina Code Section 15-3-555 states regarding civil actions based on sexual abuse or incest:

(A) An action to recover damages for injury to a person arising out of an act of sexual abuse or incest must be commenced within six years after the person becomes twenty-one years of age or within three years from the time of discovery by the person of the injury and the causal relationship between the injury and the sexual abuse or incest, whichever occurs later.

(B) Parental immunity is not a defense against claims based on sexual abuse or incest that occurred before, on, or after this section's effective date.

S.C. Code § 15-3-555 (1976 Code, as amended).⁴

Conclusion: As stated above, this Office believes a court will conclude the statutory intent of South Carolina Code § 63-7-310 of the Children's Code is to protect children. As such, this Office believes a court will conclude that a mandatory reporter would not have to report pursuant to South Carolina Code § 63-7-310 when an adult discloses being abused in the past as a child, as long as the adult is not mentally incompetent, as long as there is no information that another child (who is, at the time of the disclosure, under the age of eighteen as defined in 63-3-20(3)) has been or may be abused or neglected as defined in S.C. Code § 63-7-20(4), and as long as there is no other law that would require the abuse to be reported. However, this Office is only issuing a legal opinion based on the current law at this time. Until a court or the Legislature specifically addresses the issues presented in your letter, this is only an opinion on how

² However, as with all cases, there may be legal or other issues that may apply which could preclude prosecution of a case, and such cases must be evaluated on a case-by-case basis. South Carolina law enforcement has jurisdiction over crimes that occurred in South Carolina which violate state law. For conduct that occurred outside of South Carolina, law enforcement at the location where the conduct occurred would normally have jurisdiction.

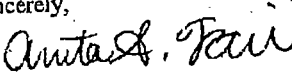
³ While there is not a significant amount of case law on S.C. Code § 63-7-310, our State Supreme Court has held there is no private cause of action for negligence based on failure to report abuse pursuant to S.C. Code § 63-7-310. Doe ex rel. Doe v. Wal-Mart Stores, Inc., 393 S.C. 240, 711 S.E.2d 908 (2011). See, also, Doe v. Marion, 373 S.C. 390, 645 S.E.2d 245 (2004) (finding a psychiatrist had no duty to warn all foreseeable future victims). However, for further questions or specific factual scenarios we would recommend seeking a declaratory judgment from the court, as only a court of law can interpret statutes and make such determinations. S.C. Code § 15-53-20, et al.

⁴ Please note 2013 S.C. H.B. 3940 proposed removing any limitation on commencement of civil actions in S.C. Code § 15-3-555 when the Victim is under eighteen. While there may be other relevant statutes, case law and proposed legislation regarding your question, this opinion is merely noting a few.

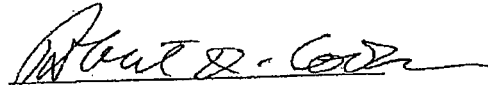
Senator Mike Fair
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this Office believes a court would interpret the law in the matter. If it is later determined otherwise or if you have any additional questions or issues, please let us know.

Sincerely,


Anita S. Fair
Assistant Attorney General

REVIEWED AND APPROVED BY:


Robert D. Cook
Solicitor General

- 1
- Screen 2
- »

(2 screens)

Code 1976 § 15-78-60

Code of Laws of South Carolina 1976 Annotated Currentness

Title 15. Civil Remedies and Procedures

Chapter 78. South Carolina Tort Claims Act

→ § 15-78-60. Exceptions to waiver of immunity.

The governmental entity is not liable for a loss resulting from:

- (1) legislative, judicial, or quasi-judicial action or inaction;
- (2) administrative action or inaction of a legislative, judicial, or quasi-judicial nature;
- (3) execution, enforcement, or implementation of the orders of any court or execution, enforcement, or lawful implementation of any process;
- (4) adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies;
- (5) the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee;
- (6) civil disobedience, riot, insurrection, or rebellion or the failure to provide the method of providing police or fire protection;
- (7) a nuisance;
- (8) snow or ice conditions or temporary or natural conditions on any public way or other public place due to weather conditions unless the snow or ice thereon is affirmatively caused by a negligent act of the employee;
- (9) entry upon any property where the entry is expressly or impliedly authorized by law;
- (10) natural conditions of unimproved property of the governmental entity, unless the defect or condition causing a loss is not corrected by the particular governmental entity responsible for the property within a reasonable time after actual or constructive notice of the defect or condition;
- (11) assessment or collection of taxes or special assessments or enforcement of tax laws;

(12) licensing powers or functions including, but not limited to, the issuance, denial, suspension, renewal, or revocation of or failure or refusal to issue, deny, suspend, renew, or revoke any permit, license, certificate, approval, registration, order, or similar authority except when the power or function is exercised in a grossly negligent manner;

(13) regulatory inspection powers or functions, including failure to make an inspection, or making an inadequate or negligent inspection, of any property to determine whether the property complies with or violates any law, regulation, code, or ordinance or contains a hazard to health or safety;

(14) any claim covered by the South Carolina Workers' Compensation Act, except claims by or on behalf of an injured employee to recover damages from any person other than the employer, the South Carolina Unemployment Compensation Act, or the South Carolina State Employee's Grievance Act;

(15) absence, condition, or malfunction of any sign, signal, warning device, illumination device, guardrail, or median barrier unless the absence, condition, or malfunction is not corrected by the governmental entity responsible for its maintenance within a reasonable time after actual or constructive notice. Governmental entities are not liable for the removal or destruction of signs, signals, warning devices, guardrails, or median barriers by third parties except on failure of the political subdivision to correct them within a reasonable time after actual or constructive notice. Nothing in this item gives rise to liability arising from a failure of any governmental entity to initially place any of the above signs, signals, warning devices, guardrails, or median barriers when the failure is the result of a discretionary act of the governmental entity. The signs, signals, warning devices, guardrails, or median barriers referred to in this item are those used in connection with hazards normally connected with the use of public ways and do not apply to the duty to warn of special conditions such as excavations, dredging, or public way construction. Governmental entities are not liable for the design of highways and other public ways. Governmental entities are not liable for loss on public ways under construction when the entity is protected by an indemnity bond. Governmental entities responsible for maintaining highways, roads, streets, causeways, bridges, or other public ways are not liable for loss arising out of a defect or a condition in, on, under, or overhanging a highway, road, street, causeway, bridge, or other public way caused by a third party unless the defect or condition is not corrected by the particular governmental entity responsible for the maintenance within a reasonable time after actual or constructive notice;

(16) maintenance, security, or supervision of any public property, intended or permitted to be used as a park, playground, or open area for recreational purposes, unless the defect or condition causing a loss is not corrected by the particular governmental entity responsible for maintenance, security, or supervision within a reasonable time after actual notice of the defect or condition;

(17) employee conduct outside the scope of his official duties or which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude;

(18) imposition or establishment of a quarantine by a governmental entity, whether the quarantine relates to persons or property;

(19) emergency preparedness activities and activities of the South Carolina National Guard and South Carolina State Guard while engaged in state or federal training or duty. This exemption does not apply to vehicular accidents;

(20) an act or omission of a person other than an employee including but not limited to the criminal actions of third persons;

(21) the decision to or implementation of release, discharge, parole, or furlough of any persons in the custody of any governmental entity, including but not limited to a prisoner, inmate, juvenile, patient, or client or the escape of these persons;

(22) termination or reduction of benefits under a public assistance program;

(23) institution or prosecution of any judicial or administrative proceeding;

(24) holding or conduct of elections;

(25) responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of any student, patient, prisoner, inmate, or client of any governmental entity, except when the responsibility or duty is exercised in a grossly negligent manner;

(26) failure to supervise or control areas open for public hunting or activities thereon. Failure to control, maintain, and/or supervise the use of and activities in, on, and around public boat ramps except within a reasonable time after actual notice of the defect or condition. Failure to maintain navigational markers, except within a reasonable time after actual notice of the defect or condition.

(27) solicitations on streets and highways as authorized by the provisions of Section 5-27-910.

(28) Notification of any public school student's parent, legal guardian, or other person with whom a public school student resides of the student's suspected use of alcohol, controlled substance, prescription or nonprescription drugs by any public school administrator, principal, counselor, or teacher if such notification is made in good faith.

(29) acts or omissions of members of the state and county athletic commissions or ringside physicians acting within the scope of their official duties pursuant to Chapter 7 of Title 52.

(30) acts or omissions of members of local foster care review boards acting within the scope of their official duties pursuant to Subarticle 4, Article 13, Chapter 7 of Title 20. However, the member shall act in good faith, his conduct may not constitute gross negligence, recklessness, wilfulness, or wantonness, and he must have participated in a training program established by the state foster care review board system.

(31) acts or omissions of employees and volunteers of the South Carolina Protection and Advocacy System for the Handicapped acting within the scope of their official duties pursuant to Article 5, Chapter 33 of Title 43, when such acts or omissions are done or made in good faith, and do not constitute gross negligence, recklessness, wilfulness, or wantonness.

(32) a pre-occupancy housing inspection contracted for by the South Carolina Department of Employment and Workforce pursuant to Section 46-43-40.

(33) the performance of any duty related to the service of members of the Judicial Merit Selection Commission or the Citizens Committees on Judicial Selection.

(34) the performance of any duty related to the service of the members of the Tobacco Community Development Board.

(35) the failure of a library's or media arts center's governing board to adopt policies as provided in Section 10-1-205.

(36) acts or omissions by a special state constable who is appointed pursuant to Section 23-7-10 and acting within the scope of his official duty under conditions of a national emergency or of a serious and immediate risk to the physical security of an energy facility within the special state constable's jurisdiction as provided in Section 23-7-40.

(37) the performance of any duty related to the service of the members of the Tobacco Settlement Revenue Management authority.

(38) conduct of a director appointed pursuant to Section 58-31-20 giving rise to a lawsuit under Section 58-31-57.

(39) the grant or denial by a governing body of a county or municipality as provided in Section 23-35-175 of an application to extend a Fireworks Prohibited Zone beyond the subject property for which a Discharge of Fireworks Prohibited Agreement has been filed.

(40) an injury a student may sustain as a result of self-monitoring or self-administering medications or for an injury that a student may sustain from taking or using medications or self-monitoring devices for which the student does not have a prescription or does not have authorization by the school district.

CREDIT(S)

HISTORY: 1986 Act No. 463, § 1; 1988 Act No. 352, §§ 5, 6; 1988 Act No. 373, § 2; 1988 Act No. 664; 1988 Act No. 675, § 1; 1989 Act No. 132, § 2; 1990 Act No. 351, § 2; 1996 Act No. 386, § 3; 1997 Act No. 35, § 6; 1999 Act No. 77, § 4; 2000 Act No. 362, § 1; 2000 Act No. 387, Part II, § 69A.5; 2000 Act No. 387, Part II, § 97B; 2000 Act No. 407, § 3; 2005 Act No. 6, § 2, eff January 13, 2005; 2005 Act No. 81, § 2, eff May 26, 2005; 2005 Act No. 137, § 2, eff May 25, 2005.

Code 1976 § 15-78-30

Code of Laws of South Carolina 1976 Annotated Currentness

Title 15. Civil Remedies and Procedures

Chapter 78. South Carolina Tort Claims Act

➔ § 15-78-30. Definitions.

(a) "Agency" means the individual office, agency, authority, department, commission, board, division, instrumentality, or institution, including a state-supported governmental health care facility, school, college, university, or technical college, which employs the employee whose act or omission gives rise to a claim under this chapter.

(b) "Claim" means any written demand against the State of South Carolina or a political subdivision for money only, on account of loss, caused by the tort of any employee of the State or a political subdivision while acting within the scope of his official duty.

(c) Prior to January 1, 1989, "employee" means any officer, employee, or agent of the State or its political subdivisions, including elected or appointed officials, law enforcement officers, and persons acting on behalf or in service of a governmental entity in the scope of official duty, whether with or without compensation, but the term does not include an independent contractor doing business with the State or a political subdivision of the State. Custody of prisoners by the State or any of its political subdivisions does not in and of itself create an employer and employee relationship between the State and the prisoner. Provided, the provisions of this section in no way limit or modify the liability of a licensed physician or dentist, acting within the scope of his profession.

On or after January 1, 1989, "employee" means any officer, employee, agent, or court appointed representative of the State or its political subdivisions, including elected or appointed officials, law enforcement officers, and persons acting on behalf or in service of a governmental entity in the scope of official duty including, but not limited to, technical experts whether with or without compensation, but the term does not include an independent contractor doing business with the State or a political subdivision of the State. Custody of prisoners by the State or any of its political subdivisions does not in and of itself create an employer and employee relationship between the State and the prisoner. Provided, the provisions of this section in no way limit or modify the liability of a licensed physician or dentist, acting within the scope of his profession, with respect to any action or claim which involved services for which the physician or dentist was paid, should have been paid, or expected to be paid at the time of the rendering of the services from a source other than the salary appropriated by the governmental entity or fees received from any practice plan authorized by the employer whether or not the practice plan is incorporated and registered with the Secretary of State.

(d) "Governmental entity" means the State and its political subdivisions.

(e) "State" means the State of South Carolina and any of its offices, agencies, authorities, departments, commissions, boards, divisions, instrumentalities, including the South Carolina Protection and Advocacy System for the Handicapped, Inc., and institutions, including state-supported governmental health care facilities, schools, colleges, universities, and technical colleges.

(f) "**Loss**" means bodily injury, disease, death, or damage to tangible property, including lost wages and economic loss to the person who suffered the injury, disease, or death, pain and suffering, mental anguish, and any other element of actual damages recoverable in actions for negligence, but **does not include the intentional infliction of emotional harm**.

(g) "Occurrence" means an unfolding sequence of events which proximately flow from a single act of negligence.

(h) "Political subdivision" means the counties, municipalities, school districts, a regional transportation authority established pursuant to Chapter 25 of Title 58, and an operator as defined in item (8) of § 58-25-20 which provides public transportation on behalf of a regional transportation authority, and special purpose districts of the State and any agency, governmental health care facility, department, or subdivision thereof.

(i) "Scope of official duty" or "scope of state employment" means (1) acting in and about the official business of a governmental entity and (2) performing official duties.

(j) "Governmental health care facility" means one which is operated by the State or a political subdivision through a governing board appointed or elected pursuant to statute or ordinance and which is tax-exempt under state and federal laws as a governmental entity and from which no part of its net income from its operation accrues to the benefit of any individual or nongovernmental entity. Health care facility includes any facility as defined in Title 44, S. C. Code Ann. for the provision of mental or physical care to individuals, whether or not it is required to be licensed under those provisions.

CREDIT(S)

HISTORY: 1986 Act No. 463, § 1; 1988 Act No. 352, §§ 3, 4; 1990 Act No. 351, § 1; 1994 Act No. 380, § 2; 1996 Act No. 271, § 1; 2008 Act No. 199, § 2, eff April 16, 2008.

EFFECT OF AMENDMENT

The 2008 amendment, in subsection (c), in the first sentence of the second undesignated paragraph added ", or court appointed representative" and made nonsubstantive changes throughout.

Not Reported In F.Supp.2d, 2012 WL 1340103 (D.S.C.)

Motions, Pleadings and Filings

Judges and Attorneys

Only the Westlaw citation is currently available.

United States District Court,
D. South Carolina,
Spartanburg Division.
Ira Milton KINARD, Plaintiffs,

v.

CITY OF GREENVILLE; Officers and or Former Officers C.B. Mills, Matthew Scott Jowers, Jeremiah Milliman, and American Services, Inc., Defendants.

C/A No. 6:10-3246-TMC.

April 18, 2012.

Todd Brown Ledford, Ledford Law Firm, Bolling Springs, SC, for Plaintiff.

Adam Crittenden Bach, Luanne Lambert Runge, W. Howard Boyd, Jr., Gallivan White and Boyd, Greenville, SC, Charles Lloyd Appleby, IV, Christopher Adams, Collins and Lacy, Columbia, SC, for Defendants.

OPINION & ORDER

TIMOTHY M. CAIN, District Judge.

*1 This matter is before the court on the Defendants American Services, Inc. ("American Services"), City of Greenville ("City"), Officer C.B. Mills ("Mills"), and Officer Jeremiah Milliman's ("Milliman's") Motions to Dismiss. In his Second Amended Complaint, Plaintiff Ira Milton Kinard ("Plaintiff") asserts federal claims pursuant to 42 U.S.C. § 1983 for violations of his 4th, 6th, 7th, 8th, and 14th Amendment rights and a state law cause of action for assault and battery and intentional infliction of emotional distress. Pursuant to Rule 12(b)(6), Fed.R.Civ.P., Defendant American Services and Defendants the City, Mills, and Milliman filed two separate motions to dismiss for failure to state a claim (Dkt. # 44 and 45). For the reasons set forth below, these motions are granted in part and denied in part.

STANDARD FOR A MOTION TO DISMISS PURSUANT TO RULE 12(b)(6)

When considering a 12(b)(6) motion to dismiss, the court must accept as true the facts alleged in the complaint and view them in a light most favorable to the plaintiff. Ostrzenski v. Seigel, 177 F.3d 245, 1251 (4th Cir.1999). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, ----, 129 S.Ct. 1937, 1949, 173 L.Ed.2d 868 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* Although "a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations," a pleading that merely offers "labels and conclusions," or "a formulaic recitation of the elements of a cause of action will not do." Twombly, 550 U.S. at 555. Likewise, "a complaint [will not] suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancements.'" Iqbal, 129 S.Ct. at 1949 (quoting Twombly, 550 U.S. at 557).

FACTUAL AND PROCEDURAL BACKGROUND

In his Complaint, Plaintiff alleges that on November 22, 2008, he was brought to Greenville Memorial Hospital ("Hospital") by emergency medical services ("EMS") complaining of migraines, and lower back pain and muscle spasms, and/or a severe leg cramp. He was transported to the emergency room ("ER")

by wheel chair where Plaintiff states that he lowered himself to the floor. Plaintiff alleges that Mills, an off-duty City of Greenville police officer working as a private security guard for American Services, verbally accosted him using derogatory expletives and gender slurs and physically assaulted him by doing "knee drops" on Plaintiff's back. He alleges Mills pulled him back into the wheelchair, transported him out of the ER, and placed him into a police car. Plaintiff alleges City of Greenville police officers Matthew Jowers ("Jowers") and Millman pulled him into the police car while verbally accosting him with gender slurs and offensive language. He further alleges Jowers made sexual comments to him alluding to rape and then slammed the door on his leg several times.

***2** Plaintiff alleges the verbal assault and threats continued on the ride to the Greenville County Detention Center ("GCDC") and the GCDC refused to accept him because of his condition and "because he had not properly been arrested." He states he was sent back to the Hospital by EMS. Plaintiff alleges he suffered physical pain and assault, emotional suffering and distress, mental anguish, undue grief, indignity, and loss of enjoyment of life.

Plaintiff originally brought this action in state court. Defendants removed the action to this court and filed motions to dismiss. Plaintiff sought leave to amend his complaint and submitted a proposed amended complaint. United States District Judge J. Michelle Childs granted Defendants' motions to dismiss. Judge Childs also granted Plaintiff leave to amend, but she found the proposed amended complaint which Plaintiff had submitted was insufficient to cure the deficiencies of the original complaint. Therefore, she granted Plaintiff thirty days to file another amended complaint which she ordered must contain definite statements of fact to address the deficiencies outlined in her order. Plaintiff thereafter filed an amended complaint and the next day he filed a motion to amend his amended complaint. Judge Childs granted this motion to amend to allow Plaintiff to clarify the proper defendants and further explain the basis for certain causes of action. Plaintiff subsequently filed his Second Amended Complaint and Defendants have again filed motions to dismiss this complaint.

DISCUSSION

1) American Services' Motion to Dismiss

American Services moves for dismissal with prejudice of all of Plaintiff's claims based upon Plaintiff's failure to comply with the Judge Child's order and also for failure to state a claim pursuant to Rule 12(b)(6). First, the court will address American Services' argument that all of Plaintiff's claims should be dismissed with prejudice for failing to follow the court's prior order. The Federal Rules of Civil Procedure recognize that courts must have the authority to control litigation before them, and this authority includes the power to order dismissal of an action for failure to comply with court orders. Fed. R. Civ. P. 41(b).

The Fourth Circuit Court of Appeals has identified four factors to be considered before dismissing a case pursuant to Rule 41(b): (1) the plaintiff's degree of personal responsibility; (2) the amount of prejudice caused the defendant; (3) the presence of a drawn out history of deliberately proceeding in a dilatory fashion; and (4) the effectiveness of sanctions less drastic than dismissal. Davis v. Williams, 588 F.2d 69, 70 (4th Cir.1978). These factors "are not a rigid four-prong test," and "the propriety of a dismissal ... depends on the particular circumstances of the case." Ballard v. Carlson, 882 F.2d 93, 94 (4th Cir.1989). "[D]ismissal as a sanction is an extreme remedy to be used only when a party has displayed callous disregard to its obligations or exhibited very bad faith." Berry v. South Carolina Dep't of Soc. Servs., 1997 WL 499950, at 6 (4th Cir.1997). The Fourth Circuit has also mandated that before dismissing a case with prejudice, district courts must give a party "clear and explicit" warning of the consequences of failing to satisfy the court's orders. See Choice Hotels Int'l, Inc. v. Goodwin & Boone, 11 F.3d 469, 472 (4th Cir.1993).

***3** In this case, upon consideration of the *Davis* factors, the court finds dismissal would be too harsh a sanction in this instance as it appears that the failure to follow the court's prior orders was not the fault of Plaintiff (as opposed to his counsel) and the amount of prejudice caused to American Services is minimal. Accordingly, the court will not dismiss with prejudice all of Plaintiff's claims for failing to follow the court's prior order. American Services' Motion to Dismiss for failure to state a claim is discussed

below.

A) Section 1983 claims^{FN1}

^{FN1}. As an initial matter, the court notes that in his Second Amended Complaint Plaintiff has alleged a § 1983 claim pursuant to the 8th Amendment. (2nd Am.Compl. ¶ 6). However, Plaintiff's 8th Amendment claim was dismissed with prejudice by Judge Childs. (Dkt. # 26 at 8).

American Services moves to dismiss on the ground that Plaintiff fails to plead facts in his Second Amended Complaint sufficient to allege a § 1983 claim. Specifically, American Services contends that Plaintiff has failed to allege facts which demonstrate that: 1) American Services acted under the color of state law; 2) American Services' policies and customs caused a deprivation of Plaintiff's civil rights; and 3) American Services violated Plaintiff's constitutional rights. The court agrees.

Section 1983 provides in relevant part as follows:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State ... subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress....

42 U.S.C.A. § 1983. To state a § 1983 claim, Plaintiff has to establish that he was "deprived of a right secured by the Constitution or laws of the United States, and that the alleged deprivation was committed under color of state law." *American Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 119 S.Ct. 977, 143 L.Ed.2d 130 (1999).

To impose liability under § 1983 against a county or city, Plaintiff must allege that the action at issue was one that "execute[s] a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers" or that represents informal governmental "custom." See *Monell v. Dep't. of Soc. Servs.*, 436 U.S. 658, 690-91, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978). Counties and other local governments cannot be held liable under § 1983 for injuries inflicted by their employees or agents based on the theory of respondeat superior. *Id.* at 694.

Similarly, a private corporation is not liable under § 1983 for torts committed by its employees when such liability is predicated solely upon a theory of respondeat superior. See *Austin v. Paramount Parks, Inc.*, 195 F.3d 715, 727 (4th Cir.1999); see also *Powell v. Shopco Laurel Co.*, 678 F.2d 504, 506 (4th Cir.1982) (holding that the principles of § 1983 municipal liability articulated in *Monell v. Dep't of Soc.* are "equally applicable to the liability of private corporations" and "a private corporation cannot be saddled with section 1983 liability via respondeat superior alone."). "[P]rivate corporations can only be held liable under § 1983 if "an official policy or custom of the corporation causes the alleged deprivation of federal rights." *Rodriguez v. Smithfield Packing Co., Inc.*, 338 F.3d 348, 355 (4th Cir.2003) (emphasis added) (citing *Austin v. Paramount Parks, Inc.*, 195 F.3d 715, 727 (4th Cir.1999)).

*4 Plaintiff has failed to plead any facts demonstrating that a specific policy or custom of American Services led to his alleged injuries. Plaintiff alleges that the Defendants "were acting under th (sic) cover of pretense of South Carolina law, customs, practices, usage or policy at all times mentioned herein as police officers or other such personnel or employees and had certain duties imposed upon them with regard to the Plaintiff herein." (2nd Am. Compl. at ¶ 26). However, Plaintiff does not identify a specific policy or custom of American Services nor allege a direct causal link between that policy or custom and his injuries. *Walker v. Prince George's County, Md.*, 575 F.3d 426, 431 (4th Cir.2009) (finding that a plaintiff is obliged to identify a policy or custom that caused injury).

In his response to American Services' Motion to Dismiss, Plaintiff refers to "the specific policy of the Greenville Police Department that allowed Plaintiff to be falsely arrested at Greenville Memorial Hospital after he was transported there by Greenville Emergency Medical Services, which violated his Constitutional right to seek medical treatment." (Dkt. # 50—Pl.'s Mem. Opp. Mot. to Dismiss at 2). First, Plaintiff refers to a policy of the Greenville Police Department, and not American Services. Second, Plaintiff still has not identified a "specific" policy.

Plaintiff's allegations are far too general and vague. He has not pled that American Services adopted a policy or custom pursuant to which Mills acted. Plaintiff's conclusory assertions are insufficient.^{FN2} Accordingly, Plaintiff's 1983 claims against American Services are dismissed with prejudice.^{FN3}

^{FN2}. The question of whether American Services was a state actor is a difficult one and need not be addressed because Plaintiff has failed to allege or establish that any deprivation of his federal rights was caused by an official policy or custom of American Services. See Austin, 195 F.3d 715.

^{FN3}. Ordinarily, leave to amend is granted liberally to cure any defects in a pleading. Fed.R.Civ.P. 15(a)(2) ("The court should freely give leave [to amend] when justice so requires."). However, Plaintiff does not request further amendment, and the defects that were apparent in Plaintiff's claims in his original complaint have not been cured. Plaintiff previously requested, and the court granted, leave to address the deficiencies in his pleading. Plaintiff has now been provided several opportunities to attempt to cure the deficiencies in his claims, which he has failed to do. The court concludes that further leave to amend is unwarranted. Cf. Pittston Co. v. United States, 199 F.3d 694, 705 (4th Cir.1999) (noting that leave to amend should be freely given "[i]n the absence of any apparent or declared reason—such as ... repeated failure to cure deficiencies by amendments previously allowed" (quoting Foman v. Davis, 371 U.S. 178, 182, 83 S.Ct. 227, 9 L.Ed.2d 222(1962))). Because Plaintiff has made multiple attempts to sufficiently state his claims, the court dismisses these claims with prejudice. Feeley v. Total Realty Mgmt., 660 F.Supp.2d 700, 715–716 (E.D.Va.2009) and Robinson v. Morgan Stanley, 2008 WL 4874459, at *7 (N.D.Ill. June 18, 2008).

B) State Law Claims^{FN4}

^{FN4}. Although Plaintiff sets out his cause of action as one, for assault and battery and intentional infliction of emotional distress (2nd Am. Compl. at 7), the court addresses these as separate causes of action.

i) Intentional Infliction of Emotional Distress

Plaintiff alleges a state law claim of intentional infliction of emotional distress.^{FN5} To establish such a claim, Plaintiff must show Defendants: (1) "Intentionally or recklessly inflicted severe emotional distress, or was certain, or substantially certain, that such distress would result from his conduct"; (2) that the conduct was so outrageous it exceeded "all possible bounds of decency" and so "atrocious" it was "utterly intolerable in a civilized community"; (3) such actions actually caused plaintiff's emotional distress; and (4) the emotional distress was so severe "no reasonable man could be expected to endure it." Hansson v. Scalise Builders, 374 S.C. 352, 650 S.E.2d 68, 70 (S.C.2007) (citing Ford v. Hutson, 276 S.C. 157, 276 S.E.2d 776 (S.C.1981)).

FN5. As American Services points out, this cause of action was not alleged in Plaintiff's original complaint and when Judge Childs granted Plaintiff leave to amend, leave was not granted to add additional causes of action but rather to clarify the proper defendants and further explain certain already alleged causes of action.

In *Hansson*, the South Carolina Supreme Court found that the plaintiff's testimony he lost sleep and developed a habit of grinding his teeth was not sufficient to survive summary judgment. The court held that:

To permit a plaintiff to legitimately state a cause of action by simply alleging, 'I suffered emotional distress' would be irreconcilable with this Court's development of the law in this area. In the words of Justice Littlejohn, the court must look for something 'more'—in the form of third party witness testimony and other corroborating evidence—in order to make a prima facie showing of 'severe' emotional distress.

***5 *Hansson*, 650 S.E.2d at 72.**

Here, Plaintiff alleges he suffered "physical pain, emotional suffering, indignity, physical assault, and loss of his afore-mentioned Federal rights, and the Plaintiff did suffer the loss of enjoyment of life, mental anguish, emotional distress, undue grief, and will likely suffer from the effects of the Defendants' actions now and in the future." (2nd Am.Compl. ¶ 34). These allegations are not sufficient to state a cause of action for intentional infliction of emotional distress. As Plaintiff cannot prevail on a claim of intentional infliction of emotional distress on the facts as alleged, this cause of action is dismissed. Twombly, 550 U.S. at 555 ("While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, ... [f]actual allegations must be enough to raise a right to relief above the speculative level"). Again, because Plaintiff has had multiple attempts to sufficiently state his claims, the court dismisses this claim with prejudice. See *supra* n. 3.

ii) Assault and Battery

Plaintiff also alleges a state law claim of assault and battery. An assault occurs when a person has been placed in reasonable fear of bodily harm by the conduct of the defendant and a battery is the actual infliction of any unlawful, unauthorized violence on the person of another. Herring v. Lawrence Warehouse Co., 222 S.C. 226, 72 S.E.2d 453 (S.C.1952). Under South Carolina caselaw, liability of an employer, under the doctrine of respondeat superior, is established if the employee was at the time engaged in the discharge of duties entrusted to him in reference to the particular matter in hand and acting within the apparent scope of his employment. Reviewing Plaintiff's Second Amended Complaint, the court finds that Plaintiff has sufficiently alleged a cause of action for assault and battery against American Services based upon Mills' alleged actions. Accordingly, the court denies American Services' Motion to Dismiss this claim.

2) City of Greenville, Mills, and Milliman's Motion to Dismiss

Defendants the City and Officers Mills and Milliman, in their official capacities, move for dismissal for failure to state a claim pursuant to Rule 12(b)(6). The City contends that Plaintiff's § 1983 claims it should be dismissed because Plaintiff has failed to plead a specific policy or custom of the City that caused a deprivation of Plaintiff's rights and the City cannot be held liable for an intentional tort of its employees. The Officers Mills and Milliman, in their official capacities, contend they should be dismissed because a claim against them in their official capacities is the same as a claim against the City. Finally, these Defendants contend that Plaintiff may not recover punitive damages or prejudgment interest pursuant to § 1983 or the South Carolina Torts Claim Act ("SCTCA").

A) Section 1983 claims against the City

Plaintiff alleges that the City is liable under § 1983 for failure to train and supervise the officers involved in the alleged incident. The City contends that it cannot be held vicariously liable for the actions

of its employees pursuant to § 1983. The court agrees.

*6 The doctrine of respondeat superior generally does not apply to claims brought under § 1983. *Monell*, 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611. As noted above, a municipality may be liable under § 1983 only if the alleged wrongful conduct causing the constitutional deprivation is undertaken to effectuate an official policy or custom of the municipality. *Fisher v. Washington Metro. Area Transit Auth.*, 690 F.2d 1133, 1142-43 (4th Cir.1982). Once it is demonstrated that there is a policy established and maintained by the municipality, the municipality is liable for deprivations of constitutional rights caused by actions pursuant to that policy. *Id.* Further, a municipality may be liable for the wrongful acts of its employees if the municipality knew of a pervasive, unreasonable risk of harm from a specific source and as the result of a deliberate indifference or tacit authorization, did not take corrective action. *Slakan v. Porter*, 737 F.2d 368 (4th Cir.1984). Generally, a failure to supervise gives rise to a § 1983 liability only where there is a history of widespread abuse. Only then may knowledge be imputed to the supervisory personnel. A single act or isolated incidents are normally insufficient to establish supervisory inaction upon which to predicate § 1983 liability. *Wellington v. Daniels*, 717 F.2d 932, 936 (4th Cir.1983).

Further, "the inadequacy of police training may serve as the basis for § 1983 liability only where the failure to train amounts to deliberate indifference to the rights of persons with whom the police come into contact." *City of Canton v. Harris*, 489 U.S. 378, 388, 109 S.Ct. 1197, 103 L.Ed.2d 412 (1989). In *Drewry v. Stevenson*, 2010 WL 93268 (D.Md.2010), the court dismissed a constitutional failure to train claim because the complaint alleged no facts showing 1) the nature of the training of sheriff's officers by the County, 2) that any failure to train was a deliberate or conscious choice by the County, or 3) that the conduct was caused by a failure to train. *Id.* at * 4. Further, as *Drewry* notes, "[a] single incident of misconduct by a police officer is not sufficient to state a claim for inadequate training." *Id.*

Here, the allegations in Plaintiff's Second Amended Complaint are insufficient to state such a claim. Plaintiff alleges that the City failed to adequately train and supervise the officers involved in the alleged incident and failed to institute proper procedures and policies to protect Plaintiff's constitutional rights. Plaintiff seems to be questioning the City's allowance of Mills' employment as a private security guard by American Services'. (Dkt. # 50—Pl.'s Mem. Opp. Mot. to Dismiss at 2.) However, Plaintiff does not allege that the City was deliberately indifferent to Plaintiff's rights in allowing Mills to work as a private security guard or that the City was aware of any unreasonable risk of harm in the manner in which it employed or trained officers.^{FN6} Further, Plaintiff does not allege that any other incidents have occurred in which officers exhibited behavior similar to that alleged by Plaintiff in this case. The court finds that Plaintiff's conclusory allegations are simply insufficient to state a § 1983 claim against the City. Again, because Plaintiff has made multiple attempts to sufficiently state his claims, the court dismisses these claims with prejudice. *See supra n. 3.*

^{FN6}. The court notes that Plaintiff has not alleged exactly what the City's policy is on allowing officers to work as private security guards or if there is even any official policy on this subject.

B) Section 1983 claims against Defendants Mills and Milliman in their official capacities

*7 As Defendants Officers Mills and Milliman note, Plaintiff has not specified in his Second Amended Complaint whether he is suing the officers in their individual or official capacities. These Defendants contend that, to the extent that they are being sued in their official capacities, Plaintiff has failed to state a claim against them. The court agrees. A suit against an officer in his official capacity is the same as a suit against the governmental entity. *Kentucky v. Graham*, 473 U.S. 159, 166, 105 S.Ct. 3099, 87 L.Ed.2d 114 (1985). Furthermore, the court notes that Judge Childs dismissed these claims with prejudice in her prior order. (Dkt. # 26 at 10). Therefore, to the extent that the Plaintiff is alleging claims against Mills and Milliman in their official capacities, these claims are dismissed with prejudice.

C) State Law Claim against the City

The City contends that it is immune from Plaintiff's state law claim of assault and battery.^{FN7} While the SCTCA provides a limited waiver of immunity for tort actions against the state, the state has not waived its immunity for intentional torts. South Carolina Code Ann. § 15-78-60(17) states that a "governmental entity is not liable for a loss resulting from ... (17) employee conduct ... which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude." Therefore, the City has immunity for the claims made against it for the intentional tort of assault and battery and accordingly these claims against the City are dismissed with prejudice.

^{FN7}. The court will not address Plaintiff's cause of action of intentional infliction of emotional distress as it is being dismissed as previously discussed herein.

C) Punitive Damages

Finally, the City contends that Plaintiff cannot recover punitive damages on his § 1983 or state law claims against the City. First, the court points out that Judge Childs dismissed with prejudice Plaintiff's claims for punitive damages against the City. (Dkt. # 26 at 11). Furthermore, as the court is dismissing with prejudice these claims against the City, such a claim is also now moot.

Based on the foregoing, Defendants' Motions to Dismiss are **GRANTED** in part and **DENIED** in part. Furthermore, as all the claims against the City of Greenville are dismissed with prejudice, the City of Greenville is dismissed as a defendant.

IT IS SO ORDERED.

D.S.C., 2012.

Kinard v. City of Greenville

Not Reported in F.Supp.2d, 2012 WL 1340103 (D.S.C.)

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- [2011 WL 10885485](#) (Trial Filing) Amended Complaint (Jan. 6, 2011) [Original Image of this Document \(PDF\)](#)
- [6:10cv03246](#) (Docket) (Dec. 22, 2010)

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Judges

- **Cain, Hon. Timothy M.**

United States District Court, South Carolina
Anderson, South Carolina 29624

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Not Reported in F.Supp.2d, 2011 WL 3652291 (D.S.C.)

Motions, Pleadings and Filings

Judges and Attorneys

Only the Westlaw citation is currently available.

United States District Court,
D. South Carolina,
Greenville Division.

Diane LANDRUM, in her capacity as Personal Representative of the Estate of Aaron Clark Gray, Plaintiff,
v.

SPARTANBURG COUNTY, Chuck Wright, Christopher Raymond, and Glen Stuart, in their individual
capacities, Defendants.

C.A. No. 7:10-cv-00007-JMC.

Aug. 18, 2011.

Karl B. Allen, Greenville, SC, for Plaintiff.

Andrew Todd Darwin, Holcombe Bomar Gunn and Bradford, Spartanburg, SC, for Defendants.

OPINION AND ORDER

J. MICHELLE CHILDS, District Judge.

*1 This matter is before the court on Defendants' Spartanburg County (the "County") and Spartanburg County Sheriff Chuck Wright's ("Wright") Motion for Summary Judgment [Doc. 24] on Plaintiff Diane Landrum's ("Landrum") Amended Complaint [Doc. 6], pursuant to Rule 56 of the Federal Rules of Civil Procedure. Plaintiff filed no response to these Defendants' Motion for Summary Judgment.

For the reasons set forth below, the court grants Defendants' (the County and Wright) Motion for Summary Judgment on Plaintiff's Third, Fourth, Fifth, and Sixth causes of action.

FACTUAL AND PROCEDURAL HISTORY

This case arises out of a drug bust organized and conducted by the Spartanburg County Sheriff's Department on February 10, 2005. On February 7, 2005, the Spartanburg County Sheriff's Office Narcotics Unit received information that Aaron Clark Gray ("Gray") was distributing crack cocaine in the Spartanburg area, and the Narcotics Unit purchased \$400.00 worth of crack cocaine using an undercover operative. The informant maintained contact with Gray throughout the week with the intention of making a second purchase from Gray.

On February 10, 2005, the Narcotics Unit arranged to purchase \$1,600.00 worth of cocaine from Gray at a residence located on Overhill Circle in Spartanburg County. After the purchase was completed by the informant, Defendant Glen Stuart ("Stuart") and Defendant Christopher Raymond ("Raymond") remained in the vicinity to obtain a description of the residence for the purposes of obtaining a search warrant. As Stuart and Raymond drove by the residence in an unmarked vehicle, they observed a car leaving which Raymond recognized as Gray's vehicle. Stuart and Raymond followed the car and radioed for a marked unit to initiate a traffic stop.

Before the second unit arrived, Gray turned into a driveway also located on Overhill Circle. At that time, Stuart believed that Gray was acting as if he was attempting to evade them and as if he knew something was wrong. According to the officers, they decided to place Gray under arrest and Raymond parked his vehicle at the mouth of the driveway. The officers exited the vehicle and instructed Gray to get out of the car and to get on the ground. Both officers were wearing marked clothing and allegedly told Gray numerous times to get out of the car and to get on the ground. According to the officers'

testimony, as Stuart and Raymond approached Gray's vehicle, Gray placed the car in reverse and backed toward the officers. As the car was backing up and in fear of being struck by the vehicle, Raymond fired at the vehicle.

According to the officers' testimony, Gray began to drive erratically in the yard, turned the car around, and proceeded forward. Then, he reversed directly toward Stuart. Believing he was going to be overrun as the car was within three to five feet of him, Stuart fired at the vehicle. Raymond, also believing that the car was going to strike Stuart, fired at the vehicle. The car came toward Raymond, and he fired again. The car then slowed and came to rest. The officers approached the car, saw Gray slumped over, and immediately called for medical assistance. Stuart estimated the entire incident, from the initial approach on the vehicle to the call for emergency medical services, took no more than fifteen seconds. Gray was transported to Spartanburg Regional Medical Center where he later died from his wounds.

*2 Some of the above facts as provided by the officers and the County are disputed by Landrum. In her Amended Complaint, Landrum alleges that Stuart and Raymond did not have probable cause or reasonable suspicion to seize Gray, nor did they have proper identification or authority to attempt to seize Gray. Landrum alleges that Stuart and Raymond attempted to seize Gray by opening his car door and attempting to pull him out of the car. Gray rebuffed their attempts and tried to flee the area. Landrum alleges that "at no time did Gray attempt to use his car as a weapon to threaten the lives of Stuart and Raymond." [Doc. 6 at ¶ 8]. Furthermore, Landrum alleges that "[w]ithout legal justification or threat to their personal safety, Defendants Raymond and Stuart began firing multiple, numerous and excessive shots in the residential neighborhood striking innocent homes, (interior and exterior), striking the vehicle being operated by Gray and striking the body of Gray." *Id.*

Additionally, Landrum alleges that the County was grossly negligent in hiring Raymond and Stuart when it knew or should have known that they were unqualified and not suitable to be deputies, in failing to supervise Raymond and Stuart when they knew that one or more had engaged in similar unlawful and excessive force conduct in the past, and in failing to properly train the other officers at the scene to intercede when they observed Raymond and Stuart applying unnecessary and excessive force against Gray. [Doc. 6]

Landrum has set forth the following causes of action:

- 1) a survival action claim under 42 U.S.C. § 1983 against Raymond and Stuart for illegal seizure of Gray in violation of the Fourth Amendment;
- 2) a wrongful death action claim under 42 U.S.C. § 1983 against Raymond and Stuart for use of excessive force during the seizure of Gray in violation of the Fourth Amendment;
- 3) a claim under 42 U.S.C. § 1983 against Wright under a supervisor liability theory for allowing an unconstitutional custom, policy and practice;
- 4) a survival action for common law assault and battery against the County based on the shooting of Gray.
- 5) a wrongful death action for common law assault and battery against the County based on the shooting and killing of Gray;
- 6) a wrongful death action for gross negligence against the County based on the shooting and killing of Gray.

Even with the court's understanding that there are substantial facts which are being disputed by Landrum, this does not affect the particular findings in favor of summary judgment for Defendants the County and Wright. Because this order solely entails claims against the County and Wright, only the

third through sixth causes of action will be discussed herein.

LEGAL STANDARD

Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(a). To prevail on a motion for summary judgment, the movant must demonstrate that: (1) there is no genuine issue as to any material fact; and (2) that he is entitled to judgment as a matter of law. In determining whether a genuine issue has been raised, the court must construe all inferences and ambiguities against the movant and in favor of the nonmoving party. See United States v. Diebold, Inc., 369 U.S. 654, 655, 82 S.Ct. 993, 8 L.Ed.2d 176 (1962).

***3** The party seeking summary judgment shoulders the initial burden of demonstrating to the district court that there is no genuine issue of material fact. See Celotex Corp. v. Catrett, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). Once the movant has made this threshold demonstration, the non-moving party, to survive the motion for summary judgment, may not rest on the allegations averred in his pleadings. Rather, the non-moving party must demonstrate that specific, material facts exist which give rise to a genuine issue. See id. at 324. Under this standard, the existence of a mere scintilla of evidence in support of the plaintiff's position is insufficient to withstand the summary judgment motion. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). Likewise, conclusory allegations or denials, without more, are insufficient to preclude the granting of the summary judgment motion. See Ross v. Commc'ns Satellite Corp., 759 F.2d 355, 365 (4th Cir.1985). "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted." Anderson, 477 U.S. at 248.

DISCUSSION

A. Plaintiff's Third Cause of Action

Plaintiff alleges that "prior to February 10, 2005, Defendant Wright developed and maintained policies or customs exhibiting deliberate indifference to the constitutional rights of persons of Spartanburg County, which caused the violation of Mr. Gray's rights." [Doc. 6, at ¶ 21]. The County filed a Motion for Summary Judgment [Doc. 24] on behalf of itself and Wright, contending that Landrum's 42 U.S.C. § 1983 claims against the County and Wright should be dismissed because she failed to allege that Gray's constitutional rights were deprived as a result of an official County custom, policy, pattern, practice, or procedure which was adhered to by the County Sheriff's Office and Wright.

Here, Landrum claims that it was the policy and/or custom of Wright to "inadequately and improperly investigate citizen complaints of police misconduct, and Sheriff Wright instead tolerated the acts of misconduct." [Doc. 6, at ¶ 22]. She sets forth general allegations of deliberate indifference but puts forth no evidence in support of these blanket allegations. Furthermore, Landrum fails to provide any evidence of how any policy or procedure maintained by the Sheriff's Department directly led to the alleged violation of Gray's constitutional rights. Landrum cannot demonstrate that the policies of the County's Sheriff's Department are unconstitutional, and the record fails to demonstrate any pattern or practice of unconstitutional conduct by Sheriff Wright or his deputies.

1. Official Capacity of Wright

The County further argues that Landrum's 42 U.S.C. § 1983 claims against Wright in his official capacity should be dismissed. A suit against an officer in his official capacity is the same as a suit against the governmental entity. See Kentucky v. Graham, 473 U.S. 159, 166, 105 S.Ct. 3099, 87 L.Ed.2d 114 (1985). Therefore, to the extent that the Court construes the Amended Complaint as making allegations against Wright in his "official" capacity as Sheriff of Spartanburg County, these claims are dismissed with prejudice.

***4** The South Carolina Supreme Court, United States District Court for the District of South Carolina, and the United States Court of Appeals for the Fourth Circuit have all held that South Carolina sheriffs

and deputy sheriffs are state officials. In Gulledge v. Smart, 691 F.Supp. 947 (D.S.C.1988), the court conducted an extensive review of South Carolina state law concluding that sheriffs and deputy sheriffs are state officials and therefore are not "persons" for purposes of § 1983 when sued in their official capacity. In reaching this determination, the court relied on many of the same factors cited by the Supreme Court in McMillan v. Monroe County, 520 U.S. 781, 117 S.Ct. 1734, 138 L.Ed.2d 1 (1997), which ultimately held that this particular inquiry is on a state-by-state basis.

In Gulledge, the district court found that the "state constitution establishes the elective office of county sheriff and his term of office" and that the state General Assembly "prescribes his duties and compensation." Gulledge, 691 F.Supp. at 954 (citing S.C. Const. art. V § 24). The South Carolina Code of Laws also sets forth sheriffs' "arrest powers," which in turn "relate primarily to state offenses." *Id.* Furthermore, although "the sheriff as an elected official is not subject to hiring and firing by the state, the legislature has nevertheless prescribed that the Governor is the public official empowered to remove the sheriff from office for misconduct and to fill a vacancy in that office." *Id.* (citing S.C. Code Ann. §§ 1-3-240, 23-11-40). Therefore, when sued pursuant to 42 U.S.C. § 1983 in their official capacities, sheriffs are not "persons" amenable to suit.

2. Individual Capacity of Wright

Landrum's Amended Complaint states that Wright is being sued in his individual or personal capacity, rather than his official capacity. [Doc. 6 at ¶ 2] "Personal-capacity suits seek to impose individual liability upon a government officer for actions taken under color of state law. Thus, on the merits, to establish personal liability in a § 1983 action, it is enough to show that the official, acting under color of state law, caused the deprivation of a federal right." Hafer v. Melo, 502 U.S. 21, 25, 112 S.Ct. 358, 116 L.Ed.2d 301 (1991) (quoting Ky. v. Graham, 473 U.S. 159, 166, 105 S.Ct. 3099, 87 L.Ed.2d 114 (1985)). However, Landrum has not alleged or provided any evidence that Wright had any personal involvement with the incident in question.

It is well settled that "in order for an individual to be liable under § 1983, it must be affirmatively shown that the official charged acted personally in the deprivation of the plaintiff's rights." Davis v. DSS, 941 F.2d 1206 (4th Cir.1991) (quoting Wright v. Collins, 766 F.2d 841 (4th Cir.1985)). Landrum's Amended Complaint contains no allegations of personal involvement of Wright in the incident where Gray was fatally wounded. The allegations against Wright are merely that he was the Sheriff of Spartanburg County at the time of the incident, and that as Sheriff, he "developed and maintained policies or customs exhibiting deliberate indifference" to constitutional rights. [Doc. 6 at ¶ 21]].

*5 Additionally, a plaintiff may not allege a constitutional cause of action against Defendants to recover damages for the unconstitutional acts of other employees. The United States Supreme Court has clearly held that a governmental entity may not be held liable for the acts of its employees under a *respondeat superior* theory because of the employment relationship. See Monell v. Department of Social Services, 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978). To the extent that Landrum seeks to impose vicarious liability on Defendant Wright for alleged conduct of Raymond and Stuart, these allegations must be dismissed pursuant to Monell.

There is no evidence that Wright caused the deprivation of a federal right belonging to Gray. Accordingly, Landrum has failed to carry the burden of proof against Wright, and the court finds in favor of Defendant Wright.

B. Plaintiff's Fourth and Fifth Causes of Action

Landrum's Fourth and Fifth causes of action in the Amended Complaint allege that the County is liable to Landrum based upon the common law intentional torts of assault and battery inflicted upon Gray. South Carolina defines an assault as the placement of a person "in reasonable fear of bodily harm by the conduct of the defendant." Jones by Robinson v. Winn-Dixie Greenville, Inc., 318 S.C. 171, 175, 456 S.E.2d 429, 432 (Ct.App.1995). Battery is "the actual infliction of any unlawful, unauthorized violence on the person of another, irrespective of its degree." *Id.* at 432. Both of these torts outline intentional conduct rather than negligent conduct.

South Carolina Code § 15-78-60(17) states that a "governmental entity is not liable for a loss resulting from (17) employee conduct which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude." The South Carolina Tort Claims Act provides a limited waiver of immunity for tort actions against the state, but the state has not waived its immunity for intentional torts. See S.C. Code § 15-78-60(17). The County has immunity for the claims made against it for the intentional torts of assault and battery; therefore, the County is entitled to summary judgment on these claims.

C. Plaintiff's Sixth Cause of Action

Plaintiff alleges that the County was grossly negligent in the hiring and supervision of Raymond and Stuart. South Carolina courts have defined gross negligence as "the intentional conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do." Etheredge v. Richland Sch. Dist. One, 341 S.C. 307, 310, 534 S.E.2d 275, 277 (2000); Clyburn v. Sumter County District Seventeen, 317 S.C. 50, 451 S.E.2d 885 (1994); Richardson v. Hambright, 296 S.C. 504, 374 S.E.2d 296 (1988). "It is the failure to exercise slight care." Clyburn, 317 S.C. at 53, 451 S.E.2d at 887. Gross negligence ordinarily is a mixed question of law and fact, but when the evidence supports but one reasonable inference, the question becomes a matter of law for the court and summary judgment may be appropriate. See Id., 317 S.C. at 53, 451 S.E.2d at 887-88.

*6 However, in Sims v. Greenville County, 211 F.3d 1265 (Table), at *4 (4th Cir.S.C. Apr. 14, 2000), the court held that while the plaintiff "failed to present any evidence that Greenville County intentionally and consciously provided an allegedly inadequate training program to its officers that was bound to result in the use of excessive force during multiple-officer takedowns," the County had the burden of proof to demonstrate they were entitled to one of the exceptions listed under S.C. Code Ann. § 15-78-60. Id. The Sims court found support from Etheredge which held that "[t]he burden of establishing a limitation upon liability or an exception to the waiver of immunity is upon the governmental entity asserting it as an affirmative defense." Etheredge v. Richland Sch. Dist. I, 330 S.C. 447, 499 S.E.2d 238, 242 (Ct.App.1998).

Here, Landrum has not provided any evidence to demonstrate that the County was grossly negligent in the hiring and supervision of Raymond and Stuart or in the training of other officers on the scene in question. Therefore, these Defendants are entitled to summary judgment on this claim.

CONCLUSION

For the foregoing reasons, the court **GRANTS** Defendants' (Spartanburg County and Sheriff Chuck Wright) Motion for Summary Judgment on the Third, Fourth, Fifth and Sixth causes of action. [Doc. 24].

IT IS SO ORDERED.

D.S.C., 2011.
Landrum v. Spartanburg County
Not Reported in F.Supp.2d, 2011 WL 3652291 (D.S.C.)

Motions, Pleadings and Filings ([Back to top](#))

• [7:10cv00007](#) (Docket) (Jan. 4, 2010)

Judges and Attorneys ([Back to top](#))

[Judges](#) | [Attorneys](#)

Judges

• **Childs, Hon. Julianna Michelle**
United States District Court, South Carolina

Columbia, South Carolina 29201

[Litigation History Report](#) | [Judicial Motion Report](#) | [Judicial Reversal Report](#) | [Judicial Expert Challenge Report](#) | [Profiler](#)

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[Litigation History Report](#) | [Profiler](#)

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STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF GREENVILLE

CASE NO: 2011CP2301106

IN THE COURT OF COMMON PLEAS

2011 DEC 13 12:00

Jane Doe vs. Brookwood Community Church Inc

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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ 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:

Dated at Greenville, South Carolina, this .

Court Reporter:

PRESIDING JUDGE -

This judgment was entered on the 13th day of December, 2011, and a copy mailed first class this 13th day of December, 2011, to attorneys of record or to parties (when appearing pro se) as follows:

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ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

2011 DEC 13 P 12:00

Plaintiff,

Civil Action No. 2011-CP-23-1106

V.

**Brookwood Community Church, Inc.,
Perry Duggar, Mike Hepola, Elicia
Dressler, and Karen Hammons,**

Defendants.

ORDER

This matter is before this Court on the Motion to Dismiss and Motion to Strike filed by the Defendants Brookwood Community Church, Inc., Perry Duggar, Mike Hepola, and Elicia Dressler. A hearing was held on June 1, 2011. Gregg Myers was present representing the Plaintiff, and Andrew Lindemann appeared for the Defendants Brookwood Community Church, Duggar, Hepola, and Dressler.

By way of background, the Plaintiff Jane Doe is the mother of an alleged sexual assault victim who is unnamed in the Plaintiff's Complaint. Jane Doe's daughter has reached majority and is the Plaintiff in a companion action bearing Civil Action Number 2010-CP-23-4984.¹ In her Complaint in this action, the Plaintiff alleges inappropriate sexual conduct on the part of Danny Hammons, a former facilities worker with Brookwood Community Church.

In addition to pleading negligence causes of action, the Plaintiff has pled a third cause of action entitled "Loss of Child's Services." While that is the caption for the third cause of action, the

¹ The plaintiff in both cases have been identified as "Jane Doe" although the Plaintiff in the 2010 action is the daughter and the Plaintiff in the 2011 action is the mother.

Defendants maintain that the Plaintiff is, in actuality, seeking to recover for loss of filial consortium. The Defendants have therefore moved to dismiss any claim for loss of filial consortium.

This motion is governed by the case of *Doe v. Greenville County School District*, 375 S.C. 63, 651 S.E.2d 305 (2007), in which parents sued a school district as a result of sexual activity between their daughter (who was a student) and a substitute teacher employed by the school district. In *Doe*, our Supreme Court ruled that South Carolina law does not recognize claims for loss of filial consortium. Drawing a clear distinction between a parental claim for loss of a child's services and a claim for loss of consortium, the Supreme Court concluded that *only* a loss of services claim was viable. The Court ruled:

[O]ur common law only allowed a parent to maintain an action for the loss of a child's services and earning capacity. These common law claims did not include the intangible losses of aid, companionship, and society which have traditionally defined loss of consortium claims. Accordingly, in absence of some action from the legislature, this Court has no authority upon which it could rely in finding that South Carolina law recognizes claims for loss of filial consortium.

651 S.E.2d at 308.

The Supreme Court rejected the same arguments made by the Plaintiff in the present case. The Court rejected the argument that the common law recognition of a claim for loss of a child's services supports a recognition of a claim for filial consortium. The Court also rejected the argument that a common law claim for seduction, which has not been pled by the Plaintiff here, may also support a recognition of a claim for filial consortium.²

In the Plaintiff's third cause of action, she seeks more than damages for the loss of her daughter's services – she is seeking to recover for her own resulting injuries. For instance, the

² As the Supreme Court explained in *Doe*, a common law claim for seduction could not be brought against these Defendants because "the defendant to the action must be the perpetrator of the seduction." *Doe*, 651 S.E.2d at 308.

Plaintiff seeks damages for "the shame, humiliation, and mental anguish caused by the defendant's conduct in permitting her child to undergo sexual contact at Brookwood." *See*, Complaint, para. 36. She alleges that she must now "grapple with the added problems of raising her child after the improper sexual contact." *See*, Complaint, para. 38. In addition to loss of services, she also specifically pleads that she is entitled to her child's "companionship." *See*, Complaint, para. 37. Those are the precise elements of damages that the Supreme Court identified in *Doe* as being recoverable only in an action for filial consortium which is not recognized under South Carolina law. While the Plaintiff may recover for the loss of her daughter's services, she may not recover for any loss of consortium, which includes the types of other damages alleged in the third cause of action. In sum, consistent with the *Doe* decision, this Court rules that the Plaintiff may not recover consortium-type damages. Instead, she is limited to only economic damages for loss of services.

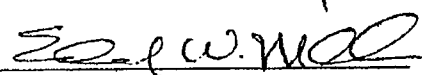
While the Plaintiff is entitled to seek damages for loss of her daughter's services, this Court further concludes that there is not a separate cause of action that must be pled. Loss of services is not a cause of action; it is an element of damages that a parent can recover if she prevails on her negligence claim. In this respect, loss of services is no different from a parent's recovery of medical bills incurred for the child. Thus, to the extent that the Plaintiff is seeking to recover for the loss of her child's services, that constitutes an element of damages rather than a separate, cognizable cause of action. The Court therefore agrees with the Defendants' position and hereby dismisses the third cause of action as pled. If the Plaintiff has been damaged by the loss of her daughter's services, that element of damages may be recovered by way of her negligence cause of action.

With respect to the Motion to Strike, the Defendants seek an order striking Paragraph 4 from the Plaintiff's Complaint on the basis that pre-suit settlement positions and/or discussions, if any, are immaterial, irrelevant and impertinent matters and may not be properly pled. This Court agrees with the Defendants' position. In Paragraph 4 of her Complaint, the Plaintiff alleges that she attempted to resolve the matter prior to seeking counsel by seeking assistance and that such assistance was refused. Rule 12(f), SCRPC, provides that "[u]pon motion ... the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter." It is well settled that evidence of any settlement negotiations is not relevant nor admissible. Rule 408, SCRE, provides that "[e]vidence of conduct or statements made in compromise negotiations is likewise not admissible." This Court concludes that Paragraph 4 contains only pre-suit settlement positions and/or discussions that are not material to any cause of action asserted by the Plaintiff, and as a result, Paragraph 4 is hereby stricken from the Complaint.

IT IS, THEREFORE, ORDERED that the Motion to Dismiss is hereby granted, and the Plaintiff's third cause of action is dismissed.

IT IS FURTHER ORDERED that the Motion to Strike is granted, and as a result, Paragraph 4 of the Complaint is stricken.

AND IT IS SO ORDERED.


EDWARD W. MILLER
Presiding Judge,
Thirteenth Judicial Circuit

Greenville, South Carolina

December 12, 2011

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Mother Doe A,)

Plaintiff,)

v.)

The Citadel,)

Defendant.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Civil Action No.: 2011-CP-10-9200

PROPOSED ORDER DENYING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

FILED
2011 DEC - 1 PM 4:24
JULIE J. ARMSTRONG
CLERK OF COURT
BY

This matter is before the Court on the motion of the Defendant, The Citadel, for an order granting summary judgment as to Plaintiff's claims. In support of its motion, The Citadel asserts the following issues: (1) The Citadel owed no common law or statutory duty of care to Plaintiff pursuant to Doe v. Marion, 373 S.C. 390, 645 S.E.2d 245 (2007); (2) Plaintiff has no evidence of cognizable damages or, in the alternative, that her recovery is limited to out of pocket medical expenses and loss of services; (3) Plaintiff's claims are barred by S.C. Code § 15-78-110, the two-year statute of limitations of the South Carolina Tort Claims Act ("TCA"); (4) Plaintiff's outrage claim is barred by 15-78-30(f) and by the presence of "other potential remedies;" (5) Plaintiff "cannot proffer a scintilla of evidence that The Citadel acted with the requisite level of culpability for an outrage claim;" and (6) Plaintiff's claims involve a single "occurrence" as defined by the TCA, limited to a potential recovery to \$300,000. For the reasons that follow, Defendant's motion is denied on all grounds.

SUMMARY OF FINDINGS

As set forth herein, summary judgment is improper because the testimony of Citadel fact and expert witnesses, together with Citadel records, summer camp files, emails, notes and other relevant evidence presented by Plaintiff, establishes genuine issues of material fact. Viewed in

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the light most favorable to the Plaintiff, the record supports the reasonable inference that the law imposes a duty of care on The Citadel based upon its actions in voluntarily undertaking certain duties, in creating the danger for the plaintiff, or in violating statutorily imposed duties, as well as based upon its special relationship with ReVille. In particular, Citadel witness and expert testimony reveals that not only did The Citadel have a statutory duty to take action in response to numerous reports regarding ReVille's child sexual abuse, but The Citadel voluntarily undertook various duties of care pursuant to its policies and procedures, and the failure to take the appropriate action required by these policies in 2001, 2002, 2003, 2005 and 2007 created the risk of harm for the Plaintiff. Citadel witnesses and experts have likewise admitted that The Citadel had a special relationship with ReVille and that Citadel officials, employees and/or agents were more than acutely aware of a specific threat of harm to Plaintiff by ReVille. At a minimum, the evidence herein creates a triable issue as to whether the law imposes a duty of care on The Citadel based upon its special relationship with ReVille and/or its actions in voluntarily undertaking certain duties, in creating the danger for the Plaintiff, or in violating statutorily imposed duties.

As to the statute of limitations, The Citadel's assertion that the instant matter is time-barred ignores the well-settled rubric of the discovery rule, which extends the commencement of the limitation period until the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises. See Bayle v. S. Carolina Dep't of Transp., 344 S.C. 115, 123, 542 S.E.2d 736, 740 (Ct. App. 2001) ("The discovery rule is applicable to actions brought under the Tort Claims Act."); Doe. v. Bishop of Charleston, 407 S.C. 128, 754 S.E.2d 494 (S.C. 2014) ("Deliberate acts of deception by a defendant calculated to conceal from a potential plaintiff that he has a cause of action toll the statute of limitations.").

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Moreover, The Citadel is equitably estopped from asserting the statute of limitations bar based upon evidence of its fraudulent conduct in concealing its knowledge regarding ReVille.

Similarly, Defendant's contention that Plaintiff's damages are not recoverable is likewise inconsistent with South Carolina jurisprudence and the weight of the evidence supporting recovery for Plaintiff's intangible injuries as well as out of pocket expenses. Defendant's assertion that Plaintiff is not entitled to recovery for the tort of outrage is equally misguided and unsupported by the facts.

Furthermore, on the issue of occurrences, evidence of repeated failures and neglect of duty by The Citadel through the acts of President Rosa, Mark Brandenburg, Colonel Trez, Colonel Lackey, Major Bates, Jennifer Garrott and others, creates a factual issue as to the number of occurrences of negligence under the South Carolina Tort Claims Act. Plaintiff has presented evidence of at least thirty-three separate and distinct occurrences of gross negligence beginning in 2001 and ending in 2011. Such evidence established by The Citadel's own witnesses and experts, as referenced herein, certainly satisfies the mere scintilla burden of proof.

As addressed in turn below, The Citadel is not entitled to summary judgment on these critical disputed issues. See Grooms v. Marlboro County School Dist., 414 S.E.2d 802, 803 (Ct. App. 1992) ("Summary judgment should not be granted except where it is perfectly clear that no genuine issue of material fact exists and an inquiry into the facts is not desirable to clarify application of the law.").

BACKGROUND AND PROCEDURAL HISTORY

Mother Doe A is the parent of one among numerous child victims sexually abused by former cadet and Citadel employee, Louis "Skip" ReVille. The sexual abuse of Mother Doe A's child occurred in 2007 and 2008, after The Citadel was on notice that ReVille had displayed a

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sexual interest in children, and that he had, in fact, abused other children on The Citadel campus. The relevant facts are as follows.

From 1957 until 2006, The Citadel operated a residential summer camp for children ages ten to fifteen wherein The Citadel employed Citadel cadets, college students, and former campers as counselors. Among the counselors selected, employed and supervised by The Citadel was Louis ReVile, who was recommended and hired by The Citadel as Head Counselor in Charge of Quarters ("CCQ") in 2001 and Senior Counselor for the summers of 2002 and 2003.

In 2001, during ReVile's first summer at The Camp, The Citadel was notified that a highly regarded volunteer counselor and Citadel graduate, Michael Arpaio, had sexually abused and molested a ten-year old male camper in his dorm room during the course of The Camp's First Session. In addition, The Citadel learned that campers attending The Camp had been exposed to pornography, profanity, alcohol, and inappropriate touching. The Citadel was later informed that additional minor campers were sexually abused by Michael Arpaio while attending The Camp between 1995 and 2000.

Following the criminal investigation of the Arpaio matter, Sergeant Dale Middleton of the Charleston Police Department advised The Citadel by letter dated August 8, 2001, of certain activities and practices occurring at The Camp that warranted attention. These activities and practices included counselors allowing campers to leave their rooms at night, campers watching movies and sleeping in the same bed as counselors, counselors engaging in sexual conversation in the presence of campers, campers viewing alcohol and tobacco products belonging to counselors in the barracks, and counselors taking campers off campus on unrelated camp functions without parental consent. (See Exhibit 1, Middleton Letter, August 8, 2001). Sergeant

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Middleton indicated in his letter that "[t]hese are the most serious findings that were brought to [his] attention during [his] investigation," and concluded the correspondence with an invitation to The Citadel to contact him regarding the matter. (See Exhibit 1). However, no one at The Citadel ever contacted Sergeant Middleton regarding the letter, his concerns, or the other findings that warranted attention. Rather, following notice of Arpaio's acts of sexual abuse at The Camp and of the concerning practices and activities highlighted in Middleton's letter, The Citadel neglected to implement new policies and procedures to eliminate the threat of harm posed by child sexual predators and instead placed increased emphasis on the pre-existing anti-cohabitation policy which prohibited counselors from being alone with a minor behind closed doors.

After the abuses perpetrated by Arpaio, The Citadel opened its doors for the second camp session of 2001. Initially, increased emphasis was placed by staff on The Camp's long standing rule restricting counselors from being alone with minors behind closed doors. But within days, The Camp reverted back to operating as it had in the past—with "laxity." According to ReVille, "After I saw that everything was going back to the laxity – the laxity that this was before, then I started – I resumed my selecting and grooming the campers." (Exhibit 2, ReVille Deposition, 152:7-11). In fact, ReVille admitted to committing at least a dozen acts of abuse during the month long session immediately following Arpaio's termination. (Exhibit 2, ReVille Deposition, 152:21-23). Absent additional safety precautions, ReVille, like Arpaio, was able to utilize The Camp to sexually abuse and molest at least seventeen boys during the summers of 2001, 2002, and 2003. Throughout this time, The Citadel turned a blind eye to inappropriate conduct, policy violations, and Citadel procedures requiring termination and reporting of sexual assault, sexual abuse, sexual harassment, sexual misconduct, and immoral and illegal conduct.

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Camp Director Major Bill Bates, Deputy Director Jennifer Garrott, Colonel John Lackey, Commandant General Emory Mace, and others were aware of ReVille's deviant, pedophilic tendencies as early as 2001, wherein it was noted that ReVille was "senior counselor material *if learns to distance himself from campers* . . ." (Exhibit 3, 2001 Employee Evaluation). These individuals, as well as other Citadel officials and staff, were likewise aware of ReVille's policy and code of conduct violations and knew, or should have known, that ReVille was sexually harassing, molesting and abusing The Camp's minor campers on The Citadel campus.

In particular, during the summer of 2002, The Camp's Deputy Director, Jennifer Garrott, caught ReVille alone with a minor camper in his dorm room. Both Garrott and Camp Director Major Bates discussed the issue with ReVille, but declined to reprimand or terminate his employment despite established policies and procedures requiring immediate termination for such a violation. Additionally, neither Garrott nor Bates followed up with the minor camper or other counselors to investigate any inappropriate or suspicious behavior involving ReVille and minor campers, and no written report of ReVille's infraction was ever recorded in his employee file. Instead, when faced with notice of ReVille's inappropriate behavior, The Citadel took no action, and as a result, at least four young boys were sexually abused and molested by ReVille at The Camp in 2002.

In 2003, ReVille was asked back to The Camp to again serve as Senior Counselor.¹ At least six times during the 2003 Camp, ReVille was confronted by Camp staff member, Anna

¹ Notably, ReVille was hired as Senior Counselor despite a clearly deficient application which The Citadel's own experts agree was cause for concern. (See Exhibit 4, 2003 Application, referencing as qualifications: "5'11"; brown hair; brown eyes; athletic; can cook; recite poetry; dance; enjoys walks on the beach."; Exhibit 5, Shapiro Deposition, p. 185-187; Exhibit 6, Margolis Deposition, p. 226-228)

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Bronk, for violating the rule against having minors in his room at night. However, no formal action was taken and laxity continued to reign over enforcement of the rules.

In July 2003, at the beginning of The Camp's Second Session, Camp Director Garrott caught ReVille alone in his room rubbing "Icy-Hot" on the leg of a minor identified in this litigation as Camper Doe 6 ("Camper Doe 6" or "Doe 6"). Upon discovering ReVille and Doe 6 alone, Garrott ignored, neglected and disregarded The Camp's policy requiring immediate termination for such behavior and further neglected to even draft a report or memorandum to document the violation. (Exhibit 2, ReVille Deposition, 163:10-164:4). ReVille, who at the time had not yet succeeded in abusing Camper Doe 6, went on to abuse Doe 6 repeatedly and on numerous separate occasions throughout the remainder of the three-week camp session. ReVille has since stated that he considered his conduct in applying the sports cream to be "a sexual act." (Exhibit 2, Deposition of ReVille, Volume III at 559:2-5).

Despite declining to take appropriate remedial action at the time, Garrott now concedes that, pursuant to Camp and Citadel policies and procedures, ReVille should have been terminated immediately, the incident should have been recorded in ReVille's permanent file, and a written report should have been drafted and circulated regarding the matter. Garrott has likewise conceded that had ReVille been terminated, Doe 6 would not have been subjected to ReVille's sexual abuse and molestation. (Exhibit 7, Deposition of Jennifer Garrott, p. 57:10-13).

In the summer of 2005, Doe 6 returned to work at The Camp as a Junior Counselor. After completing pre-camp counselor training in June of 2005, which included a section on mandatory reporting of child sexual abuse, Doe 6 felt compelled to report ReVille's sexual abuse to Director Garrott. However, as soon as he explained to Garrott that he wanted to talk about "Skip ReVille," her demeanor immediately changed. She abruptly called off the meeting,

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claiming she had another obligation. No less than an hour later, Doe 6 was fired and instructed to leave the premises within two hours. (Exhibit 8, Deposition of Camper Doe 6, p. 142-144). Because Citadel and Camp policy would require reports of sexual abuse to be disclosed to Citadel Public Safety and other appropriate law enforcement agencies, The Citadel chose to terminate Doe 6 without just cause to avoid the damaging ramifications such a report could have on the college.

In 2007, The Citadel received yet another report of abuse regarding ReVille—this time involving multiple children. Specifically, on April 23, 2007, the father of a former camper called President John W. Rosa and reported that his son had been sexually abused while attending The Camp in 2002. The call was forwarded to The Citadel's General Counsel, Mark Brandenburg who followed up with the former camper ("Camper Doe" or "Doe") that evening. The allegations of the complaint reported to The Citadel were memorialized in a letter from Mark Brandenburg to The Citadel's insurance carrier, the Internal Reserve Fund ("IRF"), and copied to President Rosa. The letter, dated May 16, 2007, stated:

Both allege that during one summer, [Doe] and another camper were coerced by a counselor into the counselor's room, where the counselor showed them pornographic movies and convinced them to masturbate. [Doe] alleges the counselor watched the movies and masturbated as well. Importantly, however, [Doe] specifically said that the counselor never touched him or the other camper. [Doe] does allege that the counselor *engaged in this activity frequently, though, and with many other campers.*

The letter further noted that Doe's father "wanted the school to know about this incident and to know that an apparent predator was once affiliated with the school." (Exhibit 9, May 16, 2007 Letter to IRF).

Thereafter, Brandenburg was dispatched to Dallas, Texas on July 1, 2007, to take the former camper's statement. The statement was transcribed by a court reporter and revealed the following:

- i. In 2001, ReVille hosted movie nights where he would order pizza or Chinese food to entice campers to come to his room to watch pornography. During these movie nights, ReVille would masturbate in front of the boys and encourage them to do the same. ReVille would also shower with the boys.
- ii. On one occasion, ReVille invited the Doe and his friend, also a camper, to his room. ReVille ordered Chinese food and began showing the boys pornographic videos on his computer. Eventually, ReVille began masturbating in front of the boys and encouraged them to join him. When the camper refused, ReVille "got a little aggressive" and asked the boy to come back to the computer and join him, which he did.
- iii. ReVille also insisted that Doe and the other camper spend the night with him in his room. When Doe tried to leave, ReVille coerced him into staying and masturbating in front of him.
- iv. ReVille abused the other camper who accompanied Doe to ReVille's dorm room, as well as four other campers, multiple times during the summers of 2001 and 2002.
- v. Furthermore, Doe personally observed younger boys going into ReVille's room late at night over the course of the summer. He further explained that at least five other boys had been involved, stating: "I know there are about five other kids that experienced it a few times."

(See Exhibit 10, July 1, 2007 Statement at 73-75, 80-81, 83). When asked by Brandenburg whether "there [was] anything [he] want[ed] the Citadel to do as a result of this," Doe expressed his foremost desire to put an end to the abuse, stating: "Most of all, the thing I want the most is just to make sure that [ReVille] doesn't have a chance to do this to anyone else." (Exhibit 10, July 1, 2007 Statement, p. 109).

In an email to the IRF, dated August 8, 2007, Brandenburg summarized his findings from the interview, stating, "In short. . . I found [Doe] to be believable." (Exhibit 11, Aug. 8, 2007 Email to IRF). In this same email, Mr. Brandenburg called attention to ReVille's emphatic

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denial of the allegations, and likened his statements to similar comments made by Arpaio during the 2002 sexual abuse investigation. However, despite the admitted similarities to the Arpaio matter and the confirmed credibility of the information obtained from the investigation, The Citadel never reported the abuse to the Citadel Public Safety, the Charleston Police, SLED, the Title IX Coordinator, or other authorities as mandated by clearly established campus policies and procedures, accepted professional standards, and state and federal law.

Both the April 23, 2007 report, and the July 1, 2007 statement containing additional specific facts and allegations of sexual abuse and identification of victims not only alleged acts of inappropriate sexual misconduct against the former camper himself but also alleged acts of criminal sexual conduct against many other children, including victims presently residing on The Citadel campus enrolled as cadets. (Exhibit 10, July 1, 2007 Statement, p. 105). Alarming, outside of sending one email to these former campers—one of which was the eyewitness to Doe's abuse—Brandenburg never spoke with the alleged victims. In fact, he never even walked the short distance from his office to the barracks where the eyewitness resided to corroborate Doe's complaint. (Exhibit 12, Brandenburg Deposition, Vol. I, 143:25—145:3). Rather, after taking Doe's statement on July 1, 2007, Brandenburg and The Citadel took no further action regarding the investigation of the matter.

Not long after Doe's statement, ReVile obtained employment as a coach and tennis instructor in Mt. Pleasant through which he was provided access to other minor victims, including Mother Doe A's son. In late 2007, ReVile began grooming Mother Doe A's child for what would progress into sexual abuse and molestation which occurred on at least forty-five separate occasions throughout a two year period.

Pursuant to The Citadel's policies and procedures, the sexual abuse and molestation suffered by Doe and Camper Doe 6, who were minors under the age of 18 when the abuse occurred, constitutes sexual assault, sexual harassment, immoral conduct, illegal activity, unlawful sexual behavior, contact which is not mutually agreed upon, sexual misconduct, and prohibited sexual activity. These same policies mandate prompt actions such as reporting of the conduct to Citadel Public Safety or law enforcement, as well as termination where, as here, the conduct involves an employee. (Exhibit 13, Sexual Assault Crisis Intervention Policy; Exhibit 14, Sexual Harassment Policy; Exhibit 15, Serious Incidents Policy; Exhibit 16, Camp Policies Regarding Sexual Misconduct Issues; Exhibit 17, College Regulations; Exhibit 18 Counselor Code of Conduct).

Despite The Citadel's duties and obligations pursuant to these policies and procedures, however, the Citadel concealed its knowledge of ReVille's child sexual abuse until October of 2011, when ReVille was finally arrested on charges of molestation and sexual abuse of twenty-three boys, including Doe, Camper Doe 6 and Mother Doe A's child. ReVille has since testified that "close to 30" young boys—including the Plaintiff's child—would have been spared had The Citadel contacted law enforcement in 2007. (Exhibit 2, ReVille Deposition, 177:11-17).

On December 14, 2011, within less than two months of learning that her son had been abused in part by The Citadel's silence about ReVille, the Plaintiff filed the present action. The claims alleged in the Complaint include gross negligence/failure to warn; negligent hiring, retention and supervision; violation of the Jessica Horton Act; civil conspiracy; violation of the Mandatory Reporting Statute; outrage; and loss of services.

On May 5, 2014, The Citadel filed for summary judgment, arguing:

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- (1) The Citadel owed no common law or statutory duty of care to Plaintiff pursuant to Doe v. Marion, 373 S.C. 390, 645 S.E.2d 245 (2007);
- (2) Mother Doe A has no evidence of cognizable damages or, in the alternative, that her recovery is limited to out of pocket medical expenses and loss of services;
- (3) Mother Doe A's claims are barred by S.C. Code § 15-78-110, the two-year statute of limitations of the South Carolina Tort Claims Act ("TCA");
- (4) The Plaintiff's outrage claim is barred by 15-78-30(f) and by the presence of "other potential remedies;"
- (5) Mother Doe A "cannot proffer a scintilla of evidence that The Citadel acted with the requisite level of culpability for an outrage claim;" and
- (6) The Plaintiff's claims involve a single "occurrence" as defined by the TCA, limited to a potential recovery to \$300,000.

For the reasons summarized above and stated below, The Citadel's motion must be denied.

STANDARD OF REVIEW

Summary judgment is a drastic remedy which should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues. Madison ex rel. Bryant v. Babcock Ctr., Inc., 371 S.C. 123, 134, 638 S.E.2d 650, 655 (2006). As such, summary judgment is proper only when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC. In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. Madison ex rel. Bryant, at 134, 638 S.E.2d at 655. Summary

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judgment should be denied if more than one inference can be drawn from the evidence. Miller v. City of Camden, 329 S.C. 310, 315, 494 S.E.2d 813, 815 (1997) (citing Koester v. Carolina Rental Center, Inc., 313 S.C. 490, 443 S.E.2d 392 (1994)).

The party moving for summary judgment has the initial burden of showing an absence of evidentiary support for the opponent's case, and the non-moving party must show more than the allegations or denials contained in the pleadings. Peterson v. W. Am. Ins. Co., 336 S.C. 89, 94, 518 S.E.2d 608, 610 (Ct. App. 1999). The non-moving party must come forward with specific facts showing a genuine issue for trial. Regions Bank v. Schmauch, 354 S.C. 648, 660, 582 S.E.2d 432, 438 (Ct. App. 2003). As set forth in detail herein, there are more than sufficient facts establishing a genuine issue for trial on all causes of action.

LAW/ANALYSIS

I. SUMMARY JUDGMENT ON THE ISSUE OF COMMON LAW AND STATUTORY DUTY IS IMPROPER.

Defendant's motion asks this Court to determine whether The Citadel, after failing to take action in response to numerous complaints about ReVille from 2001-2011, had a duty to protect the Plaintiff and the Plaintiff's child from ReVille. The evidence presented by Plaintiff is replete with facts to support the reasonable inference that such a duty existed. An affirmative legal duty may be created by statute, a contractual relationship, status, property interest, or some other special circumstance. Jensen v. Anderson County Dept. of Soc. Servs., 304 S.C. 195, 199, 403 S.E.2d 615, 617 (1991); Miller v. City of Camden, 317 S.C. 28, 33-34, 451 S.E.2d 401, 404 (Ct. App. 1994). While there is no general common law duty to control the conduct of another or to warn a third person or potential victim of danger, South Carolina recognizes the following five exceptions to this rule: 1) where the defendant has a special relationship to the victim; 2) where

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the defendant has a special relationship to the injurer; 3) where the defendant voluntarily undertakes a duty; 4) where the defendant negligently or intentionally creates the risk; and 5) where a statute imposes a duty on the defendant. Faile v. S.C. Dept. of Juvenile Justice, 350 S.C. 315, 334, 566 S.E.2d 536, 546 (2002). As detailed herein, the evidence, including Citadel witness and expert testimony, reveals four of the above five exceptions could apply in the instant matter so as to create such a duty on the part of The Citadel.

a. Doe v. Marion is inapplicable to the instant matter.

In maintaining Defendant owed no common law or statutory duty of care to Plaintiff, The Citadel incorrectly relies on Doe v. Marion, 373 S.C. 390, 645 S.E.2d 245 (2007), as the governing law in this case. Absent the common theme of sexual abuse, Marion is entirely inapposite. Specifically, at issue in Marion was whether the Child Abuse Reporting Statute (presently S.C. Code § 63-7-310) created either a private cause of action for *negligence per se* or a common law duty to warn where a doctor who treated a pedophile patient failed to warn future victims of the patient's predilection for child sexual abuse. Here, Plaintiff does not assert a private cause of action under § 63-7-310, or that § 63-7-310 created a duty of care. Rather, Plaintiff's actions are rooted in the Citadel's negligence in creating the harm for Plaintiff through numerous acts of gross negligence, including the failure to report or warn.

The Citadel's reliance on Marion likewise overlooks the relevant exceptions to the rule that there is no general common law duty to control the conduct of another or to warn a third person or potential victim of danger. Only one of these exceptions was addressed in Marion; the instant case involves at least four. Indeed, Marion, which cited these exceptions with favor, did not overturn the well-established duties provided by these exceptions—exceptions which, when applied to the facts herein, support the reasonable inference that The Citadel, unlike Dr. Marion,

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owed a duty of care to Plaintiff. Id. at 249 (citing the recognized exceptions set forth in Faille v. S.C. Dept. of Juvenile Justice, 566 S.E.2d at 546). Accordingly, Doe v. Marion is not controlling.

b. The Citadel had a duty to control the conduct of another or to warn Plaintiff under the exception for voluntarily undertaking a duty.

While The Citadel maintains it had no duty to warn or to control the conduct of ReVille, a review of Citadel policies and procedures, as well as the various services undertaken by The Citadel, reveals otherwise. "[I]t has long been the law that one who assumes to act, even though under no obligation to do so, thereby becomes obligated to act with due care." Madison ex rel. Bryant v. Babcock Ctr., Inc., 371 S.C. 123, 136-37, 638 S.E.2d 650, 656-57 (2006) (citing Sherer v. James, 290 S.C. 404, 406, 351 S.E.2d 148, 150 (1986); Roundtree Villas Assn. v. 4701 Kings Corp., 282 S.C. 415, 423, 321 S.E.2d 46, 50-51 (1984); Miller v. City of Camden, 317 S.C. 28, 33-34, 451 S.E.2d 401, 404 (Ct. App. 1994)). "One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if (a) his failure to exercise such care increases the risk of such harm, or (b) the harm is suffered because of the other's reliance upon the undertaking." Id. (quoting Restatement (Second) of Torts § 323 (1965)).

Although a volunteer assumes the duty to use due care, the question whether a duty of care arises in a given case may depend on the existence of particular facts. Miller v. City of Camden, 329 S.C. 310, 314-15, 494 S.E.2d 813, 815-16 (1997) (citing Carson v. Adgar, 326 S.C. 212, 486 S.E.2d 3 (1997)). Evidence, such as prior conduct or internal memoranda, could serve

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as evidence of a voluntary undertaking. Id. (citing Vaughan v. Town of Lyman, 370 S.C. 436, 635 S.E.2d 631, 637-38 (2006) (finding genuine issue of material fact as to whether there was a voluntary undertaking of the maintenance of town sidewalks where there were references to sidewalk maintenance in town minutes; there were town ordinances regulating sidewalks; town was aware of complaints about the sidewalks and did not report these to any other authority; and the town had previously handled complaints about sidewalks); Fickling v. City of Charleston, 372 S.C. 597, 643 S.E.2d 110, 116 (Ct. App. 2007) (fielding complaints, maintaining a log of calls, and having a policy and employees in place to repair sidewalks was used by a court as evidence to assess whether there was a voluntary undertaking)). "Where there are factual issues regarding whether the defendant was in fact a volunteer, the existence of a duty becomes a mixed question of law and fact to be resolved by the fact-finder. Id. Here, the evidence leads to the reasonable inference that The Citadel voluntarily undertook the duty to report, to investigate and to protect Plaintiff from harm.

i. Duty voluntarily undertaken by adoption of Citadel policies.

The evidence presented by Plaintiff establishes The Citadel undertook various duties pursuant to its policies and procedures, including, the duty to report ReVile to law enforcement. Citadel expert Anne Franke testified that an institution can self-impose mandatory reporter duties by undertaking policies obligating certain officials to report. (Exhibit 18, Deposition of Anne Franke, Vol. I, p. 176:6-18). Thus, by adopting policies for the protection and well-being of prospective and foreseeable victims, the Citadel acquired a duty under state common law to provide Plaintiff with adequate protection against that danger. See e.g. DeShaney v. Winnebago Cnty. Dep't of Soc. Servs., 489 U.S. 189, 202, 109 S. Ct. 998, 1006, 103 L. Ed. 2d 249 (1989) (observing that by voluntarily undertaking to provide petitioner with protection against a danger

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it played no part in creating, the state may have acquired a duty under state tort law to provide petitioner with adequate protection against that danger). Here, The Citadel acquired such a duty through its policies aimed at preventing harm and imposing reporter duties.

In particular, The Citadel's "Serious Incidents Memorandum," dated April 2000, defines "serious incident" as "unexpected occurrences directly or indirectly involving The Citadel, which require a response or action from the college administration; or which have the potential to generate positive or negative publicity regarding the college." (Exhibit 15, Serious Incidents Memo, p. 1). Among the non-exclusive list of examples of serious incidents are "allegations concerning illegal or immoral activities at the college." (Exhibit 15, p. 12). The policy directs that when an individual is in receipt of allegations concerning illegal or immoral activities at the college, they are required to notify the Executive Assistant to the President, *i.e.* Colonel Trez, who is, in turn, required to alert the President and, if criminal activity is alleged, to contact the Department of Public Safety. (Exhibit 15, p. 12). Further, if criminal activity involving someone affiliated with the Citadel occurs, as in the instant case, the "first member of the Citadel community learning of the occurrence" is required to report it to the Citadel Public Safety Department.

Mark Brandenburg, The Citadel's Rule 30(b)(6) witness with the most knowledge about Citadel policy and procedure relating to Doe's 2007 complaint of child sexual abuse, has testified that if the Serious Incidents policy was in effect--which it was--it applied to him. (Exhibit 12, Brandenburg Deposition, p. 261:5-11). Brandenburg also acknowledged that per the policy, Col. Trez was required to report allegations of illegal or immoral activities involving ReVille to the Citadel Department of Public Safety:

Q So it's Colonel Trez's job to report the ReVille allegations to the

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- Department of Public Safety and he didn't do it?
- A According to this memo, he is to report allegations of illegal or immoral activities, right.
- Q There's just no question that what ReVille did with those 14-year-old boys was illegal and immoral?
- A It's clear now, yes.
- Q It was immoral when it came in, wasn't it?
- A The allegations -- It was allegations of immoral activity, yes.

(Exhibit 12, Brandenburg Deposition, p. 264:5-17). Citadel expert Gary Margolis likewise conceded that the Serious Incidents Policy required reporting to law enforcement and that the Citadel voluntarily undertook the duty to report ReVille:

- Q. Would you agree with me that if The Citadel had a policy and procedure that applied to those [Doe] allegations that required The Citadel to report ReVille to law enforcement, that The Citadel had voluntarily undertaken the duty to report a child sexual predator to law enforcement?
- A. If there was a policy that existed to that effect, I would agree with you.

(Exhibit 6, Margolis Deposition, Vol. I, p. 57).

- Q. So when Wanda Milligan or Mark Brandenburg were notified that the crime had been committed on the Citadel campus, they should have notified Public Safety, according to this policy [Serious Incidents Policy], right?
- A. According to this policy, correct.

(Exhibit 6, Margolis Deposition, Vol. I, p. 286-287).

- Q. Okay. And so, now, you have and I have established that under the serious incidents memo, which applies to everybody at The Citadel and was in effect in April of 2007, that there are two separate parts of that serious incidents memo which required reporting the allegations to law enforcement, correct?
- A. Correct.

(Exhibit 6, Margolis Deposition, Vol. I, p. 290). However, no report to the Citadel Public Safety was ever made.

Furthermore, The Citadel self-imposed a duty to report pursuant to its "Summer Camp Policies Regarding Sexual Misconduct Issues." This policy unambiguously requires that,

"[r]egardless of validity of the violation, any sexually inappropriate conduct reports concerning any camper or employee of the camp will be turned over to the Citadel Public Safety Department and a thorough investigation will be conducted." (Exhibit 16, Camp Policies Regarding Sexual Misconduct Issues). The policy likewise makes clear that "[t]here are no time period restrictions regarding sexual misconduct investigations," stating, "[a]ll sexual misconduct allegations disclosed *at any time concerning any individual(s)*, currently or *formerly*, associated with the camp, will be investigated upon disclosure." (Exhibit 16). Despite the duty imposed by this policy, no member of The Citadel administration reported Doe's child sexual abuse complaint to the Citadel Public Safety Department.

In addition to self-imposing the duty to report to law enforcement, The Citadel had disseminated policies against sex discrimination and harassment that obligated Citadel officials, employees and/or agents to report the 2007 sexual abuse complaint to the Citadel's Title IX Coordinator. (Exhibit 13, Sexual Assault Crisis Intervention Policy; Exhibit 14, Sexual Harassment Policy; Exhibit 19, General Procedures for Conducting Formal Investigations of Sexual Harassment Complaints). The sexual assault policy also provides that "The Citadel will punish any individual who is found to have committed a sexual assault." Brandenburg admitted that the 2007 complaint against ReVillie constituted a sexual assault. (Exhibit 12, Brandenburg Deposition, p. 265-266). However, he does not recall ever considering contacting The Citadel's sexual response coordinator. (Exhibit 12, Brandenburg Deposition, p. 267:5-8).

The Citadel also undertook various duties pursuant to its Employee Misconduct Policy, which include: 1) not expunging molestation findings from the employee's record; 2) not terminating any investigation in exchange for resignation by the employee; 3) providing factual and candid responses to inquiries by potential employers; and 4) fully cooperating with law

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enforcement. (Exhibit 20, In the Event of Employee Misconduct Policy). The Citadel failed to impose any of these requirements with regard to ReVille. In fact, The Citadel's actions in instructing ReVille to lay low and to leave Citadel employment with no record of the sexual abuse report were in direct violation of this policy.

That the duties undertaken by these policies extended to the Plaintiff victims is also clear under The Citadel's core values and college regulations. In fact, President Rosa testified that The Citadel's core value of duty, *i.e.* the moral obligation of responsibility for the welfare of others, applies to The Citadel's policies and procedures:

Q And under core values under -- this is the statement of vision, under core value, it says, "Duty, we emphasize the importance of individual accountability and a moral obligation of responsibility for the welfare of others." Is that correct, what it says?

A Right.

Q Do you agree with that?

A Right.

Q Would you agree with me that some of The Citadel's policies and procedures and guidelines, when they're written, they take into account the duty of a moral obligation of responsibility for the welfare of others?

A Right.

(Exhibit 21, Deposition of President Rosa, Vol. I, p. 53). Thus, based on The Citadel's own witness and expert testimony, The Citadel had a duty to report ReVille to law enforcement and the reason for reporting was for the welfare of others—namely, victims and future victims of ReVille.

The evidence therefore reveals that by virtue of adopting policies and procedures, The Citadel undertook a duty to report ReVille to law enforcement and to warn the Plaintiff, the community, and potential employers of ReVille's dangerous propensities and known acts of abuse. See Miller, 329 S.C. at 314-15, 494 S.E.2d at 815-16 (stating "[e]vidence such as . . . internal memoranda, could serve as evidence of a voluntary undertaking."). Despite the duties

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undertaken pursuant to the above policies in effect, The Citadel ensured that none were followed, and that the child sexual abuse was instead concealed. In other words, by its very own policies and procedures, The Citadel failed to exercise due care. See Madison ex rel. Bryant, 371 S.C. at 140, 638 S.E.2d at 659 (noting the standard of care in a given case may be established by a defendant's own policies and guidelines).

ii. Duty voluntarily undertaken by investigation.

Citadel witness and expert testimony confirms the existence of a duty by The Citadel to protect foreseeable victims, such as the Plaintiff's child, by undertaking an investigation into the 2007 report of sexual abuse. Brandenburg admitted that "preventing harm to other young boys or victims" was a goal of the investigation. (Exhibit 12, Brandenburg Deposition, Vol. I, p. 31:4-7). He further agreed that "by undertaking the investigation . . . The Citadel was aiming to prevent harm to potential victims." (Exhibit 12, Brandenburg Deposition, Vol. I, p. 31:8-11). Similarly, Brandenburg testified that The Citadel's core values apply to him and that "the moral sense of duty" and "obligation of responsibility for the welfare of others" would apply to his investigation of an alleged sexual offense. (Exhibit 12, Brandenburg Deposition, Vol. II, p. 259, lines 11-19; Exhibit 17, College Regulations, defining "Duty" as "individual accountability and moral *obligation of responsibility for the welfare of others*"). For instance, Brandenburg—The Citadel's 30(b)(6) witness with the most knowledge regarding the investigation into Doe's allegations—testified as follows:

- Q Would you agree with me that preventing harm to other young boys or victims was a goal of the investigation?
- A Sure.
- Q Would you agree with me that by undertaking the investigation, that The Citadel was aiming to prevent harm to potential victims?
- A I assume so.

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(Exhibit 12, Brandenburg Deposition, Vol. I, p. 31)

- Q Under Core Values, could you read what No. 2 says about duty?
A "We emphasize the importance of individual accountability and the moral obligation of responsibility for the welfare of others."
Q Would you agree that that moral sense of duty would apply to investigating an alleged sexual offense?
A Yes.

(Exhibit 12, Brandenburg Deposition, Vol. II, p. 259). Thus, not only did The Citadel voluntarily undertake the duty of investigating Doe's report of sexual abuse, it did so with the "goal of preventing harm to other young boys or victims," i.e. the Plaintiff's child. Moreover, Brandenburg conceded that the "moral obligation of responsibility for the welfare of others," i.e. the Plaintiff and her child, applied to the investigation. Therefore, by voluntarily undertaking an investigation guided by the "moral obligation of responsibility for the welfare of others" and with the goal of "preventing harm to other young boys or victims," The Citadel owed a common law duty of care to Plaintiff.

Having undertaken the investigation (the *only* investigation conducted in 2007), The Citadel was obligated to act with due care. It did not. In fact, by its own policies and procedures, The Citadel failed to exercise due care. Indeed, if The Citadel had conducted an impartial investigation and not one led by its General Counsel as part of an attempt to conceal ReVile's sexual abuse, The Citadel would have taken action in accordance with, rather than in opposition to, its own policies and procedures and state and federal law requiring reporting to law enforcement, child protective services and the school's Title IX coordinator. Instead, The Citadel neglected to follow these well-established policies and intentionally concealed the matter from law enforcement, the Citadel community, the Board of Visitors and the public at large. The Citadel's deviation from its own policies and procedures demonstrates its lack of due care under

the relevant circumstances. See Peterson v. National Railroad Passenger Corporation, CSX, and Southco Sweeping and Maintenance, Co., 618 S.E.2d 903, 906 (2005) (holding company's deviation from internal maintenance policies admissible to show breach of duty owed); Madison ex rel. Bryant, 371 S.C. at 140, 638 S.E.2d at 659 (noting the standard of care in a given case may be established by a defendant's own policies and guidelines).

In sum, The Citadel undertook the duty to report ReVille to law enforcement; to report the 2007 sexual abuse complaint to the Citadel's Title IX Coordinator; to punish any individual who is found to have committed a sexual assault; to not expunge molestation findings from the employee's record; to not terminate an investigation in exchange for resignation by the employee; to provide factual and candid responses to inquiries by potential employers; to fully cooperate with law enforcement; and to prevent harm to future victims by undertaking an investigation. By voluntarily undertaking these duties, The Citadel owed a duty to use reasonable care to protect Plaintiff and her child from the risk of harm created thereby. Whether The Citadel exercised such care is a question of fact for the jury.

c. The Citadel owed a common law duty to Plaintiff under the exception for negligently or intentionally creating the risk.

Defendant maintains that The Citadel is not liable for Plaintiff's injuries and damages under the statutory exception to the waiver of governmental immunity for "an act or omission of a person other than an employee including but not limited to the criminal actions of third persons." S.C. Code Ann. § 15-78-60(20). However, any argument as to this exception is unpersuasive. The fact that ReVille, as a third party, sexually abused the Plaintiff's child does not affect the common law duty The Citadel owed to Plaintiff to not negligently or intentionally create the risk that ReVille would commit acts of sexual abuse against her child. See Madison

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ex rel Bryant, 638 S.E.2d at 660 (holding facts that independent contractor directly provided services to plaintiff or that third party committed criminal act against plaintiff did not affect the government's common law duty to plaintiff to exercise reasonable care in supervising and providing appropriate care to plaintiff).

The concept of duty based on conduct that "creates a risk" has been adopted as black letter law under the Restatement (third), which explains that "[w]hen the actor's conduct is a factual cause of physical harm, the actor's conduct necessarily 'created a risk' of harm." Restatement (Third) of Torts: Phys. & Emot. Harm § 7 (2010), Comment (a) to Section 7(a) ("An actor ordinarily has a duty to exercise reasonable care when the actor's conduct creates a risk of physical harm"). As explained in the Comment to Section 7(a), the Restatement observes that "[c]onduct may also create risk by exposing another to the improper conduct of third parties." Comment (o) to Section 7(a). Thus, pursuant to Section 7(a) and Comment a, where a defendant's conduct caused the plaintiff physical harm, the defendant owed a duty to have acted reasonably in so doing. W. Jonathan Cardi, Purging Foreseeability the New Vision of Duty and Judicial Power in the Proposed Restatement (Third) of Torts, 58 Vand. L. Rev. 739, 769-70 (2005).

Also instructive on the issue of duty is Greenville Memorial Auditorium v. Martin, 391 S.E.2d 546, 547 (1990). There, the plaintiff alleged that a public auditorium was negligent in adequately securing and maintaining its premises during a concert where the plaintiff was injured by a bottle thrown by an unknown individual from the auditorium's balcony. The Court held that the exception to the waiver of immunity for a loss resulting from the act or omission of a person other than an employee did not apply because Martin did not allege the auditorium was liable for the third party's actions. Id.; S.C. Code § 15-78-60(20). Rather, the complaint alleged

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that the auditorium was liable for its own negligence in creating a reasonably foreseeable risk of such third party conduct. In upholding the jury verdict for the plaintiff, the Supreme Court reasoned:

[The auditorium] cannot successfully defend that [plaintiff's] injuries were caused by the wrongful criminal act of a third party, where the very basis upon which [the auditorium] is claimed to be negligent is that [it] created a reasonably foreseeable risk of such third party conduct.

Id. at 547-548.

As in Martin, The Citadel is liable for its own negligence in creating a reasonably foreseeable risk of sexual abuse by ReVille. Specifically, The Citadel's deliberate concealment of its knowledge of ReVille as a child molester, which began as early as 2001 and extended until ReVille's arrest in 2011, included repeatedly ignoring known acts of abuse at the Citadel Summer Camp, directing ReVille to "lay low" and permitting ReVille to leave The Citadel with no record of the 2007 complaint or prior abuses. Such acts in concealing a known serial molester created the reasonably foreseeable risk that ReVille would continue to sexually abuse young boys in the community. Additionally, alerting ReVille to the allegations on April 24, 2007, served to create and exacerbate the risk of harm to Plaintiff's child by allowing ReVille to revise his tactics so as to better allay suspicions and escape detection.

The evidence also establishes that Citadel leaders, including President Rosa, who had a wealth of experience dealing with sexual harassment and abuse, were well aware that sexual predators continue to abuse and pose a threat to the community. (Exhibit 22, Culture Change at Air Force Academy, October 14, 2003, regarding sexual assault reporting policies implemented by Rosa at the U.S. Air Force Academy; Exhibit 21, Rosa Deposition, Vol. I, p. 168:7-169:13; Exhibit 23, Trez Deposition, p. 54:23-25). The Citadel's own expert further confirms that

ReVille had a propensity to abuse victims within a discrete class of society, calling him a preferential child molester, and even opining as to the foreseeability that ReVille would continue molesting boys once he left Citadel campus. (Exhibit 6, Margolis Deposition, p. 19-20; 188).

d. *Oblachinski v. Reynolds* Does Not Apply to the Exceptions at Issue

In denying the existence of a duty owed by The Citadel, Defendant cites Oblachinski v. Reynolds, 391 S.C. 557, 562, 706 S.E.2d 844, 846 (2011), a medical malpractice case in which the plaintiff asked the Court to find an exception to the general rule that no duty of care exists between a physician and a third party. The present case has nothing to do with the specific issue of whether a physician owes a duty to a third party. The Citadel is not a physician or health care provider. Plaintiff is instead asserting the existence of a common law duty based upon the exceptions enumerated above in Doe v. Marion and Faile. These exceptions were not at issue in Oblachinski or the cases cited therein.

Defendant also cites Oblachinski for the proposition that “[f]oreseeability of injury, in and of itself, does not give rise to a duty.” Id. (emphasis in original) (citing Charleston Dry Cleaners & Laundry, Inc. v. Zurich American Ins. Co., 355 S.C. 614, 618, 586 S.E.2d 586, 588 (2003); and South Carolina State Ports Authority v. Booz-Allen & Hamilton, Inc., 289 S.C. 373, 346 S.E.2d 324 (1986)).² The existence of a duty in this case is not rooted in foreseeability.

² In supporting this proposition, Oblachinski relies on two cases, Charleston Dry Cleaners and S.C. State Ports Authority, which are equally distinguishable from the matters at hand. Charleston Dry Cleaners upheld the majority rule that a negligence claim cannot be brought directly against an independent adjuster and noted that the plaintiff could bring a claim against insurer to recover because the acts of the independent adjuster (agent) may be imputed to the insurer (principal). Id. at 618-619. S.C. State Ports Authority found a duty owed to the S.C. State Ports Authority to accurately report objective factual data concerning the Charleston Port by a consulting company hired by the Georgia Ports Authority. Id. at 377. None of these cases addressed the exceptions creating the existence of a duty in this case.

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Rather, the evidence cited herein shows that The Citadel voluntarily undertook duties and created a risk, not simply that ReVille's subsequent assaults were foreseeable. Indeed, none of the testimony cited addresses foreseeability. The evidence shows that The Citadel assumed a duty by creating or increasing the risk of harm to Plaintiff's child, by voluntarily undertaking policies requiring reporting to law enforcement, and by voluntarily undertaking to investigate sexual abuse claims. Plaintiff has also presented evidence that The Citadel had a moral responsibility for the welfare of others, including the prevention of harm to other boys and potential victims. Accordingly, these claims fall under the exceptions enumerated above in Marion and Faile.

Moreover, like the elements of all negligence claims, Plaintiff has also proven that it is foreseeable that a breach of these duties could harm a third person—the Plaintiff and her child. SC State Ports Authority held foreseeability of injury, in the absence of a duty to prevent that injury, is an insufficient basis on which to rest liability. Id. at 376. Here, the evidence establishes both the existence of a duty to prevent injury and foreseeability. As noted, Citadel witness testimony supports the reasonable inference that The Citadel had a duty to prevent injury to other potential victims, and that The Citadel's negligence in performing these duties increased the risk of harm to Plaintiff. Such circumstances giving rise to the existence of a duty in this case were neither addressed nor at issue in Oblachinski or the cases cited therein.

Defendant contends that The Citadel did not "create" any dangerous condition that would not have existed otherwise. However, the overwhelming evidence supports the reasonable inference that Defendant did create the risk, both negligently and intentionally, in a number of ways, including the following: neglecting its duty to report ReVille to law enforcement; concealing the allegations and designating the matter "close hold"; alerting ReVille to the allegations; directing ReVille to lay-low; failing to conduct an impartial investigation; failing to

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interview witnesses; failing to involve the Title IX coordinator/SARC; failing to file an anonymous report and failing to "punish ReVille" per The Citadel Sexual Assault Policy; failing to document ReVille's Summer Camp policy violations in ReVille's file; failing to follow up regarding Sergeant Middleton's August 6, 2001 letter; and failing to permit Camper Doe 6 to report ReVille. These negligent and intentional acts, all of which are supported by the evidence, constitute affirmative conduct by The Citadel in concealing a known child sexual predator. Such affirmative acts enabled ReVille to gain access to his victims, including the Plaintiff's child.

Indeed, Defendant's own expert witness testimony supports the inference that The Citadel created the dangerous condition by providing ReVille access to his victims:

- Q. Would you agree with me that if you were notified that an individual had sexually abused a minor on campus five years previously, and that individual is currently on campus, and that there are minors on campus when that report comes in five years later, that that person poses a threat to the campus?
- A. I would agree with you, yes.
- Q. And when that individual leaves the campus, he's a threat to minors wherever he goes off campus, correct?
- A. I would agree that that's a reasonable assumption.

(Exhibit 6, Deposition of Margolis, Vol. I, p. 19-20). At a minimum, the evidence creates an issue of fact for the jury that The Citadel's negligent disregard of duty and intentional concealment of ReVille's sexual abuse from 2001-2011 created the reasonably foreseeable risk that the Plaintiff's child would be abused by ReVille.

Thus, The Citadel's own negligence allowed ReVille to remain undetected in the Charleston community as a decorated Citadel alumnus and former employee using his unblemished Citadel record to gain continued employment with children. But for these actions by The Citadel, ReVille would not have had the opportunity to abuse Plaintiff's child. At a

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minimum, the evidence leads to the reasonable inference that The Citadel owed a duty of reasonable care to Plaintiff.

There is substantial evidence from which a reasonable juror could conclude that The Citadel's conduct in negligently and intentionally concealing a known child sexual predator and in failing to take the required action—actions required by Citadel policy and state and federal law—to report ReVille to law enforcement and put an end to the abuse created the risk of harm to Plaintiff and her child.

c. Exceptions for voluntarily undertaking a duty and creation of risk of harm do not require a specific threat of harm to the victim.

Defendant has asserted that the absence of a specific threat of harm defeats Plaintiff's claim of duty. Under South Carolina law, a specific threat of harm is simply not an element of the voluntary duty analysis.³ See Miller, 329 S.C. at 315, 494 S.E.2d at 815 (imposing no requirement of a specific threat of harm in finding issue of fact as to whether defendant voluntarily assumed a duty). In fact, most South Carolina cases analyzing the voluntary duty exception involve no threat of specific harm whatsoever. See Bryant v. City of North Charleston, 304 S.C. 123, 403 S.E.2d 159 (1991) (finding duty owed to remote plaintiff injured on sidewalk because defendant voluntarily undertook maintenance of the area); Vaughn, 370 S.C. at 447-48, 635 S.E.2d at 637-38 (reversing grant of summary judgment where evidence, including town ordinances regulating sidewalks, created factual issue as to whether defendant

³ Notwithstanding, The Citadel's own witnesses have acknowledged that at least one of the reasons for voluntarily undertaking the duties to report and to investigate was to prevent harm to other boys and prevent harm to potential victims, i.e. the Plaintiff and her child. (See Exhibit 12, Deposition of Mark Brandenburg, pp. 31, 259). Of course, such an undertaking would also prevent further harm and reduce the threat of continuing harm to past and current victims of ReVille.

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assumed duty to remote plaintiff injured on sidewalk). Likewise, South Carolina law imposes no requirement of a specific threat of harm where a defendant negligently or intentionally creates the risk of harm. See Martin, 301 S.C. 242, 391 S.E.2d 546 (requiring no specific threat of harm in finding city liable for injuries to plaintiff resulting from the criminal acts of another based on the city's negligence in securing the premises where the negligence created a foreseeable risk of injury); Madison ex rel. Bryant, 371 S.C. 123, 143, 638 S.E.2d at 660 (requiring no specific threat of harm in noting government entity may be held liable for its conduct in relation to prior notice of inappropriate care of a client by another entity where such negligence creates the risk of injury).

Pursuant to the above-referenced jurisprudence, the exceptions for voluntary undertaking and creation of the risk simply do not require knowledge of a "specific threat of harm" to the victim. Rather, the "specific threat of harm" requirement is *only* implicated when analyzing the existence of a duty under the special relationship exception. Thus, while the evidence establishes that such a relationship and knowledge of such a threat did, in fact, exist (for the reasons addressed below), the requirement of a specific threat of harm is not interpolated into the remaining exceptions. Accordingly, Defendant's assertion of the requirement of a specific threat of harm is insufficient to defeat the existence of a duty of care under the exceptions for voluntary undertaking a duty and creation of risk.

f. The Citadel had a duty of care under the special relationship exception based on The Citadel's relationship with ReVille.

The evidence presented by Plaintiff supports the reasonable inference that The Citadel was aware of a specific threat by ReVille and had the ability to monitor, supervise and control ReVille so as to create a duty to warn Plaintiff and/or to report ReVille to law enforcement. A

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common law duty to warn potential victims of an individual's dangerous conduct arises under the special relationship exception where, as here, the defendant "has the ability to monitor, supervise and control an individual's conduct" and the defendant is aware of a specific threat of harm to potential victims by the individual. Bishop v. S. Carolina Dep't of Mental Health, 331 S.C. 79, 86, 502 S.E.2d 78, 81 (1998). A duty to warn under this exception does not require the threat to be made while under the control of or in the custody of the defendant; instead, all that is required is that the defendant was aware or should have been aware of the specific threat by the individual. Id. at 88, 502 S.E.2d at 82.

Turning first to the existence of a special relationship, the evidence more than supports a reasonable inference that The Citadel had a special relationship with ReVille while he was a Citadel cadet, Citadel employee, alumnus using campus facilities, invited guest speaker and prospective job applicant. ReVille has testified that he worked in the writing center until April 30, 2007, during which period he was also in line to assume a new position at The Citadel's Krause Center set to begin once funding was obtained. (Exhibit 2, ReVille Deposition, 172:9-16; 184:19--185:15; 197:6-10). Testimony from Citadel General Counsel, Mark Brandenburg similarly indicates ReVille was on campus working in the writing center on April 24, 2007, when Brandenburg contacted ReVille to alert him of the allegations. (Exhibit 12, Brandenburg Deposition, Vol. I, p. 44:10-22; p. 131:10-12, 132:4-8).

In fact, the call to the writing center on April 24, 2007 turned into a face-to-face meeting with Brandenburg and Colonel Trez in Bond Hall, where ReVille was instructed to "lay low and stay off campus" while Brandenburg and Trez conduct their own investigation into the sexual abuse report. (Exhibit 24, ReVille Affidavit, May 21, 2013; Exhibit 2, ReVille Deposition, 135:1-19; Exhibit 12, Brandenburg Deposition, Vol. I, p. 98:20-99:4, 101:4-102:14; 130:24-

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131:12). Directing ReVille to lay low and stay off campus not only confirms that ReVille had unfettered access to campus but further demonstrates The Citadel's ability to "supervise, monitor and control" ReVille's conduct.

As additional evidence of ReVille's relationship with The Citadel, ReVille's application to the South Carolina Employment Security Commission, Unemployment Insurance Division, notes his "last day worked for the school was 04/30/07." (Exhibit 25, ReVille Unemployment Application, dated 6/7/07, p. 19). ReVille's 2008 job application for a position as a coach in Mt. Pleasant similarly references his employment with The Citadel as extending to May 2007. (Exhibit 26, Velocity Sports Application, p. 2). ReVille also had a Citadel email address on April 23, 2007, that he continued to maintain until at least June 2007. (Exhibit 12, Brandenburg Deposition, Vol. I, p. 45:14-18).

What's more, ReVille continued to have access to the campus after May 2007 by returning to The Citadel numerous times to speak to the Honor Committee, to incoming freshman, and in 2010 at the unveiling of the remodeled Honor Court. (Exhibit 24, ReVille Affidavit, May 21, 2013, p. 3). Given ReVille's demonstrated access to, and affiliation with, the institution, President Rosa and Colonel Trez further admit that ReVille had a "different relationship" with The Citadel than the ordinary graduate. (Exhibit 23, Trez Deposition, Vol. I, p. 81:2-82:6; Exhibit 21, Rosa Deposition, Vol. II, p. 230:10-14;). Thus, while The Citadel contends ReVille was no longer affiliated with the college after April 20, 2007, the evidence suggests otherwise.

As to knowledge by The Citadel of a specific threat of harm to victims, The Citadel, including President Rosa and Colonel Trez, was well aware in 2007 that a child molester is a threat to the community at large:

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Q: Is a child sexual predator an ongoing threat to the community at large?

A: It could—yes.

(Exhibit 23, Trez Deposition, Vol. I, p. 54:23-25).

Q: . . . Skip ReVille is on campus, the next day when he tries to find ReVille, he's on The Citadel Campus, wouldn't you agree that if that person who has been accused of being a pedophile is on The Citadel campus, that that's a current threat to not only The Citadel, but the public at large?

A: Possibly . . .

(Exhibit 21, Rosa Deposition, Vol. I, July 29, 2013, p. 168:10-16).

Despite this knowledge, Citadel officials and employees designated the matter “close hold”, intentionally concealing Doe’s 2007 report of sexual abuse from law enforcement, the Board of Visitors, the Citadel community, and the public at large. (Exhibit 27, Deposition of Jennifer Shiel, p. 36:9-20). The Citadel’s concealment of the sexual abuse by ReVille enabled ReVille to continue his abusive acts on unwitting boys in the community, including the Plaintiff’s child. Likewise, The Citadel’s concealment of its knowledge of ReVille as a child molester, which included alerting ReVille to the allegations, directing him to “lay low” and permitting him to leave The Citadel with no record of the 2007 complaint, created the reasonably foreseeable risk that ReVille would continue to sexually abuse boys in the Charleston community. Indeed, as conceded by The Citadel’s own expert, allowing a sexual molester to leave campus means that he is a threat to minors wherever he goes off campus. (Exhibit 6, Margolis Deposition, Vol. I, p. 20:6-11). By unleashing a known sexual predator into the community, there is evidence that The Citadel was well aware of a specific threat of harm to Plaintiff’s child by ReVille.

The evidence therefore supports the reasonable inference that through this special relationship, The Citadel was aware of the reasonable foreseeability that ReVile would sexually abuse the Plaintiff's child. In the context of child sexual abuse—where, masked by the perpetrator's manipulation, actual threats of harm are disguised by deception and concealment—such awareness is tantamount to a specific threat of harm to Plaintiff's child.

The imposition of a duty on the part of The Citadel based upon a special relationship in this case is likewise consistent with South Carolina jurisprudence. In Bishop, the South Carolina Supreme Court, quoting the seminal case regarding a psychotherapist's duty to warn, Tarasoff v. Regents of University of California, 551 P.2d 334 (1976), determined the Department had a special relationship with the perpetrator, the victim's mother, because the Department had custody and control of her. Thus, the court determined that if the Department knew or should have known a specific threat was made by the mother, the Department had a duty to warn the threatened third party of mother's release. Notably, as to the Department's knowledge of a specific threat of harm, the court stated:

Although the Department's discharge summary stated mother related to the examiners she had no intention of hurting herself or her family and *mother did not make a specific threat of harm to her child while in the Department's custody*, the Department was *aware mother had made specific threats to harm victim in the past*. These threats were noted on the documents admitting mother into the custody of the Department. This knowledge was sufficient to trigger the Department's duty to warn victim of mother's release because a specific threat had been made by mother to harm a specific person.

Bishop, 331 S.C. at 88, 502 S.E.2d at 82 (emphasis added). Therefore, to trigger the duty to warn, the court found it sufficient that the Department merely had knowledge that mother had made specific threats *in the past*. In fact, the opinion notes that "mother did not make a specific

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threat of harm to her child while in the Department's custody." Id. Nonetheless, the court found the Department breached its duty to warn of mother's release.

The control and knowledge of the Department in Bishop is not unlike that of The Citadel, which demonstrated control over ReVille and awareness of specific acts of abuse against multiple boys in the past. In fact, given the foreseeability of future like conduct, as acknowledged by The Citadel's own witnesses and experts, the threat of harm was arguably even more apparent in the instant case. Here, as in Bishop, The Citadel's knowledge of the threat of harm posed by ReVille is sufficient to trigger The Citadel's duty to warn and/or report ReVille to law enforcement.

g. The Citadel had a duty to report and to prevent the threat of harm by sexual abuse under the statutory duty exception.

In South Carolina, the test for determining when a statute creates a duty of care and supports an action for negligence is (1) whether the statute's essential purpose is to protect from the kind of harm the plaintiff has suffered, and (2) whether the plaintiff is a member of the class of persons the statute is intended to protect. Rayfield, 374 S.E.2d at 914 (deriving test from comparison of Clifford v. Southern Railway, 69 S.E. 513 (S.C. 1910) and Hutto v. Southern Railway, 84 S.E. 719 (S.C. 1915)). Accordingly, a statute may create a duty of care for which any resulting violation constitutes breach in a negligence action so as to establish negligence *per se*. Rayfield, 374 S.E.2d at 915.

i. Title IX

The evidence presented by Plaintiff establishes that The Citadel had a statutory duty under Title IX to eliminate the threat of harm posed to Plaintiff's child by ReVille and to prevent its recurrence. Title IX of the Education Amendments of 1972 [Title IX], codified at 20 U.S.C.

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§§ 1681 et seq. and Title 34 Code of Federal Regulations Part 106, seeks to eliminate, with certain exceptions, discrimination on the basis of sex in any education program or activity⁴ receiving Federal financial assistance. 20 U.S.C. § 1681; 34 C.F.R. § 106.1. Title IX bestows a remedial and affirmative action requirement on institutes of undergraduate higher education to take such remedial action as necessary to overcome the effects of such discrimination. 34 C.F.R. § 106.3(a). Therefore, Title IX's essential purpose to eliminate sex discrimination by definition seeks to protect other individuals from the possibility of sex discrimination. For eliminating known sexual discrimination, whether it be in the form of harassment or abuse, prevents the future sexual abuse of other individuals. Accordingly, the Plaintiff and her child are members of the class of persons Title IX is intended to protect.

As early as 2000, the Office of Civil Rights [OCR] provided guidance to schools, including The Citadel, on their obligations under Title IX regarding complaints of sexual discrimination and harassment. (Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties ("OCR 2001 Guidance"), January 2001; see also DCL, April 4, 2011, <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html>). The guidance disseminated by the OCR establishes the standards imposed on federal fund recipients, such as The Citadel, for Title IX compliance. For instance, OCR highlighted that the United States Supreme Court in Gebser v. Lago Vista Indep. School Dist., 524 U.S. 274 (1998), expressly held that schools must take remedial action to remedy the effects

⁴ Under Title IX, an education program recipient of Federal financial assistance means "any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person, to whom Federal financial assistance is extended directly or through another recipient and which operates an education program or activity which receives such assistance, including any subunit, successor, assignee, or transferee thereof." 34 C.F.R. § 106.2(i). "Institutions" include those of higher education as defined by 34 C.F.R. § 106.2(l), (m), (n), and (o), which includes The Citadel as an institute of undergraduate higher education.

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of the harassment on the victim. (Exhibit 28, OCR 2001 Guidance). Similarly, schools must "disseminate a policy against sex discrimination" and "adopt and publish grievance procedures providing for prompt and equitable resolution of sex discrimination complaints, including complaints of sexual harassment." Id.

The Citadel's own expert, Mr. Margolis, also put forth a presentation highlighting the requirements of Title IX, to include the definition of sexual harassment:

Sexual violence is a form of sexual harassment prohibited by Title IX.

- Sexual violence refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to the victim's use of drugs or alcohol
- An individual also may be unable to give consent due to an intellectual or other disability
- May include rape, sexual assault, sexual battery, and sexual coercion.

(Exhibit 29, Notebook 3 to Margolis Deposition, Margolis Healy PowerPoint, p. 7).

In 2007, as referenced above, The Citadel disseminated policies against sex discrimination and harassment that governed its actions regarding Doe's complaint of ReVille's sexual abuse. (Exhibit 13, Sexual Assault Crisis Intervention Policy; Exhibit 14, Sexual Harassment Policy, Exhibit 19, General Procedures for Conducting Formal Investigations of Sexual Harassment Complaints). Title IX requires schools to designate at least one employee to coordinate compliance with the regulations implementing Title IX. (Exhibit 28, OCR 2001 Guidance). Despite President Rosa himself hiring Janet Shealy as the Citadel's Sexual Assault Response Coordinator in 2006, neither he nor any other Citadel administrator referred the ReVille sexual abuse claims to Ms. Shealy. (Exhibit 21, Rosa Deposition, July 29, 2013, p. 29, 83).

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Title IX also requires that if the school knows, or even reasonably should know, of sexual harassment, the school is responsible for taking immediate effective action to eliminate the hostile environment and prevent its recurrence. (Exhibit 28, OCR 2001 Guidance). Even if the school does not learn of the sexual harassment from the victim but from some other source, the school violates Title IX if it fails to take "immediate and effective corrective action." (Exhibit 28, OCR 2001 Guidance). Gary Margolis, Defendant's own expert, has acknowledged the importance of the requirement to take immediate action regardless of whether the complaint comes from the victim, a parent, or a third party. (Exhibit 29, Notebook 3 to Margolis Deposition, Margolis Healy PowerPoint, p. 12). The OCR further instructs that "if harassment has occurred, doing nothing is always the wrong response." (Exhibit 28, OCR 2001 Guidance).

Title IX further emphasizes a school's duty to respond promptly to allegations of harassing conduct or possible criminal conduct, noting:

In some instances, a complainant may allege harassing conduct that constitutes both sex discrimination and possible criminal conduct. Police investigations or reports may be useful in terms of fact gathering. However, because legal standards for criminal investigation are different, police investigations or reports may not be determinative of whether harassment has occurred under Title IX and DO NOT relieve the school of ITS DUTY to respond promptly.

(Exhibit 28, OCR 2001 Guidance) (emphasis added). As emphasized by OCR, the prompt response contemplated by Title IX requires "taking effective corrective actions to stop the harassment, prevent its recurrence, and remedy its effects on the victim." (Exhibit 28, OCR 2001 Guidance; Exhibit 29, Margolis Healy PowerPoint, p. 12). Thus, in addition to taking action to stop the harassment or sexual violence and prevent its recurrence, Title IX recipients, such as The Citadel, are required to provide victim assistance.

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The record in this case is replete with evidence to support the reasonable inference that The Citadel did nothing to rehabilitate or assist Camper Doe, as was required by Title IX, and instead acted to conceal his complaint of sexual abuse. Moreover, The Citadel took no action in response to Doe's third party complaint of sexual abuse as to the two former campers who were presently residing on campus as Citadel Cadets. In fact, The Citadel entirely ignored the fact that ReVille, who was still on campus on April 24, 2007, may have still been abusing, harassing or otherwise creating a hostile environment for these cadets. Rather, the evidence establishes The Citadel intentionally neglected its Title IX duties in favor of concealing the allegations and its knowledge of ReVille's dangerous propensities. The Citadel's motives were self-serving, and as a former member of President Rosa's staff who lived through this ordeal testified:

Q. Looking back on the period of time when you were working within the President's office....do you believe that President Rosa was indifferent towards concerns that he should have been worried about; for example, other victims who may be abused?

Mr. Kovach: Objection.

A. Yeah, I do think he was indifferent to it.

(Exhibit 27, Shiel Deposition, p. 49-50).

The Citadel's failure to abide the duty of care established by Title IX is further evinced in its decision to extend the responsibility for investigating the 2007 complaint to Mark Brandenburg, the Citadel's General Counsel. Title IX specifically requires an impartial investigation, and The Citadel's own expert agrees that college attorneys are not impartial parties for purposes of a Title IX investigation. (Exhibit 6, Margolis Deposition, p. 124-125; Exhibit 29, Margolis Healy PowerPoint, p. 19). What's more, the only outside entity permitted by the Citadel to have knowledge of the complaint and the investigative process was its insurer, the

South Carolina Insurance Reserve Fund ("IRF"). (Exhibit 12, Brandenburg Deposition, p. 169, 190-191). The Citadel's decision to involve the IRF in the investigation was in direct violation of OCR's caution against using insurance company investigations to guide the school's response to complaints of sexual abuse or harassment, because, as OCR explains, "[t]he purpose of an insurance investigation is to assess liability under the insurance policy, and the applicable standards may well be different than those under Title IX." (Exhibit 28, OCR 2001 Guidance). The Citadel's use of its own in house attorney to "investigate" the child sexual abuse and its involvement of the IRF in the investigation directly violates Title IX and the duty of care provided by the OCR and the statutory scheme.

Defendant's own expert even conceded that The Citadel's response to the 2007 complaint violated Title IX:

Q: when Doe made a third-party complaint as to eyewitness Doe and the six others who were abused the year before, The Citadel's duty under Title IX requiring it to take immediate action to eliminate the harassment, prevent its recurrence, and address its effects applied to the many others, not just Doe, correct?

A: Correct.

* * *

Q: You would agree with me that the Title IX coordinator at The Citadel didn't oversee those allegations and the investigation of them by Mark Brandenburg, correct?

A: That is correct.

Q: That would be a violation of Title IX, correct?

A: It would be a violation of this, correct.

(Exhibit 6, Margolis Deposition, Vol. I, 308:8-16; 309:11-20).

In light of the foregoing, there is sufficient evidence to support a finding that The Citadel's actions in response to the 2007 report of child sex abuse violated the duty of care established by Title IX, and its breach of duty constitutes negligence per se and common law negligence under the statutory duty exception reiterated in Faile and Marion.

ii. South Carolina Mandatory Reporter Statute

While Doe v. Marion declined to find a private right of action under South Carolina's Mandatory Reporter Statute, S.C. Code § 63-7-310(A), for the failure of a physician to report suspected child sexual abuse, the intentional failure of The Citadel to report the 2007 allegations of child sexual abuse created the risk of harm to Plaintiff's child by preventing the mechanisms established by the legislature in enacting § 63-7-310 to prevent child sexual abuse. See id., 373 S.C. at 398-99, 645 S.E.2d at 249-50. The Citadel Public Safety are mandatory reporters of child abuse pursuant to S.C. Code § 63-7-310(A), and as such, The Citadel assumed a duty to report Doe's 2007 complaint of child sexual abuse regarding ReVille. Section 63-7-310(A) provides, in relevant part:

(A) A physician, nurse, dentist, optometrist, medical examiner, or coroner, or an employee of a county medical examiner's or coroner's office, or any other medical, emergency medical services, mental health, or allied health professional, member of the clergy including a Christian Science Practitioner or religious healer, school teacher, counselor, principal, assistant principal, school attendance officer, social or public assistance worker, substance abuse treatment staff, or childcare worker in a childcare center or foster care facility, foster parent, *police or law enforcement officer*, juvenile justice worker, undertaker, funeral home director or employee of a funeral home, persons responsible for processing films, computer technician, judge, or a volunteer non-attorney guardian ad litem serving on behalf of the South Carolina Guardian Ad Litem Program or on behalf of Richland County CASA *must report in accordance with this section when in the person's professional capacity the person has received information which gives the person reason to believe that a child has been or may be abused or neglected as defined in Section 63-7-20.*

(B) *If a person required to report pursuant to subsection (A) has received information in the person's professional capacity which gives the person reason to*

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believe that a child's physical or mental health or welfare has been or may be adversely affected by acts or omissions that would be child abuse or neglect if committed by a parent, guardian, or other person responsible for the child's welfare, but the reporter believes that the act or omission was committed by a person other than the parent, guardian, or other person responsible for the child's welfare, the reporter must make a report to the appropriate law enforcement agency.

S.C. Code Ann. § 63-7-310 (formerly cited as 20-7-510).

A plain reading of the statute reveals that regardless of whether The Citadel and its administrators are, by definition, mandatory reporters, "police" and "law enforcement officer[s]" unequivocally are mandatory reporters. This fact is confirmed by the current head of Citadel Public Safety, Colonel William Fletcher, who clarified that Citadel Public Safety are "certified" law enforcement officers. (Exhibit 30, Deposition of Fletcher, p. 17:14-18). Therefore, if The Citadel had reported the sexual abuse to Citadel Public Safety, as required by the Serious Incidents policy outlined above, Citadel Public Safety was required to contact the Charleston Police or SLED who would have investigated the matter and arrested ReVile. See S.C. Code § 63-7-410. However, the evidence presented by Plaintiff suggests that The Citadel deliberately chose not to involve Citadel Public Safety in order to prevent inevitable disclosure by law enforcement of child sex abuse by a Citadel employee on the Citadel campus. Indeed, Chief Fletcher acknowledged that in 2007, he could not have alerted SLED unless the allegation was reported to him. (Exhibit 30, Fletcher Deposition, p. 23:8-17). Evidence of intentional failure of to report the 2007 complaint of child sexual abuse more than supports a finding that The Citadel created the risk of harm to Plaintiff and her child by preventing the mechanisms established by the legislature in enacting § 63-7-310 to prevent child sexual abuse.

iii. **Jessica Horton Act**

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The Jessica Horton Act, S.C. Code Ann. § 59-154-10, effective June 6, 2007, requires notification to SLED by campus police of "a report alleging that an act of criminal sexual conduct has occurred on the property of the institution." In particular, the Act provides:

(B) The chief of the campus police of an institution of higher learning, or his designee, immediately shall notify the State Law Enforcement Division if there is a death resulting from an incident occurring on the property of the institution or if the officer *or another official of the institution* is in receipt of a report alleging that an act of criminal sexual conduct has occurred on the property of the institution.

(C) Upon notification, the State Law Enforcement Division shall participate in a joint investigation of the death or alleged act of criminal sexual conduct. In the case of a death, the State Law Enforcement Division shall lead the investigation. In the case of an alleged act of criminal sexual conduct, the campus police shall lead the investigation.

S.C. Code Ann. § 59-154-10.

Here, Brandenburg specifically testified that the Horton Act applied to Doe's report and that he, along with President Rosa and Colonel Trez, is an "official of the institution" for purposes of the Act. (Exhibit 12, Brandenburg Deposition, Vol. I, p. 180-181). Brandenburg likewise conceded that the allegations reported by Doe alleged criminal sexual conduct. (Exhibit 19, Brandenburg Deposition, Vol. I, p. 184-185, agreeing Horton Act applied to July 1, 2007 statement). Thus, the Horton Act, which was in effect after Doe's July 1, 2007 statement containing additional allegations and identification of victims, imposed a duty on The Citadel to notify SLED and to participate in a joint investigation. This action was not taken.

Furthermore, Chief Fletcher testified that he would have notified SLED pursuant to the Horton Act if he had been informed of the 2007 report. (Exhibit 30, Fletcher Deposition, p. 18-19). As noted, however, the evidence leads to the reasonable inference that The Citadel deliberately chose not to inform Citadel Public Safety in order to prevent disclosure to law

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enforcement. As above, the intentional failure of The Citadel to inform Citadel Public Safety of the 2007 complaint created the risk of harm to Plaintiff and her child by preventing the mechanisms established by the legislature in enacting § 59-154-10 to prevent sexual abuse.

iv. Clery Act

Additional evidence of The Citadel's intentional concealment of the 2007 child sex abuse complaint lies in its failure to include the complaint in The Citadel's report of crime statistics for the 2007 time frame, pursuant to the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. § 1092 (f). Brandenburg's own general counsel documents establish that he was responsible for The Citadel's reporting obligations under the Clery Act and, accordingly, knew, or should have known, the law. (Exhibit 31, Email from Jennifer Shiel, October 24, 2007, including list of Mr. Brandenburg's files to include Clery Act Report- 2007, p. 11). The Clery Act requires an annual security report that contains crime statistics "for the three most recent calendar years concerning the occurrence on campus, in or on non-campus buildings or property, and on public property" of a list of crimes "that are reported to local police agencies or to a campus security authority." 34 C.F.R. § 668.46. Sex offenses, forcible and non-forcible are included. Id. 34 C.F.R. § 668.46(c)(2) also requires that "an institution must record a crime statistic in its annual security report for the calendar year in which the crime was reported to campus security"—rather than the year crime occurred.

However, The Citadel did not include the child sex abuse complaint in the 2007 report. Nor did it report the 2007 child sex abuse complaint to any law enforcement entity, thereby also preventing the trigger of any duty to report pursuant to the Clery Act. As above, the evidence supports the reasonable inference that The Citadel's concealment of the 2007 complaint created the risk of harm to Plaintiff and her child by preventing the disclosure of sex offenses and crime

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statistics in violation of 20 U.S.C. § 1092 (f). Accordingly, given the above cited evidence supporting the existence of a common law and statutory duty, summary judgment on the issue of duty is improper.

II. PLAINTIFF'S DAMAGES ARE RECOVERABLE UNDER SOUTH CAROLINA LAW.

Section 14-1-50 of the South Carolina Code expressly provides that English common law causes of action are recognized in South Carolina until explicitly altered. The statute states:

All, and every part, of the common law of England, where it is not altered by the Code or inconsistent with the Constitution or laws of this State, is hereby continued in full force and effect in the same manner as before the adoption of this section.

English Common Law recognized two separate causes of action for damage to family relations. The first was the trespass action "per quod consortium amisit," which translates as "whereby he lost the company of his wife." Black's Law Dictionary (9th Ed. 2009). At Common Law, the phrase "was used in a trespass declaration to describe the loss suffered by a husband whose wife had been beaten or otherwise abused." Black's Law Dictionary (9th Ed. 2009). That Common Law claim was modified in South Carolina by Section 15-75-20 of the South Carolina Code to enable each spouse to claim for injury to the other, making bilateral the claim permitted at Common Law only by the husband.

The second cause of action began as a trespass action referred to as "per quod servitium amisit," which translates as "whereby he lost the services of his servant." Black's Law Dictionary (9th Ed. 2009). At common law, the phrase "was used in a trespass declaration to describe the loss suffered by a master whose servant had been injured by another." Black's Law Dictionary (9th Ed. 2009). Not later than 1653, the common law theory available to a master for injury to his servant had been adapted as a fiction to extend claims for a parent for injury to a

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child. E.g., U.S. v. Standard Oil, 332 U.S. 301, 312 n. 16 and n. 17, 67 S.Ct. 1604, 1610, n. 16 and 17 (1947) (tracing the fiction to 1653). A parent's loss of services cause of action for injury to a child has existed for more than four hundred years.

Likewise, South Carolina jurisprudence has long recognized that damages to a parent for loss of a child's services includes intangible elements, *i.e.* loss of society. Compensable elements of damage recognized under South Carolina law include: "outrage and deprivation, the injury the [mother] sustains in the loss of [her] child, the insult offered [her] feelings, the agony in the destruction of [her] hopes concerning [her] child, and the irreplaceable loss of that comfort and society which may be the only solace of his declining years." Dobson v Cothran, 13 S.E. 679 (1891). Such damages also include the loss of the child's "companionship." Webb v. Southern Railway Company, 88 S.E. 297, 299 (1916).

The legal rationale for acknowledging a parent's intangible injury is set out in Villepigue v. Shular, 1849 WL 2667, 34 S.C.L. 462, 3 Strob. 462 (Ct. App. 1849), wherein the Court observed: "the loss of service is well understood to be little more than a legal fiction, which has been introduced to secure compensation for outraged feelings." Id. (emphasis added). In particular, compensable elements of damage include: "outrage and deprivation, the injury the [mother] sustains in the loss of [her] child, the insult offered [her] feelings, the agony in the destruction of [her] hopes concerning [her] child, and the irreplaceable loss of that comfort and society which may be the only solace of his declining years." Dobson v Cothran, 16 S.E. 679 (1891). Damages also include the loss of the child's "companionship." Webb v. Southern Railway Company, 88 S.E. 297, 299 (1916).

Moreover, the lost "service" of an injured child is presumed. E.g., Tillotsin v. Currin, 97 S.E. 395, 396 (N.C. 1918) ("If the [child] is under 21 years of age, the loss of service is

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presumed, and no evidence of the fact need be offered; and, if over 21, the slightest service, such as handling a cup of tea, milking a cow, is sufficient at common law to support the action," citing, Snider v. Newell, 132 N.C. 614, 44 S.E. 354 (N.C. 1903) ("the action could be maintained on the bare relation of parent and child alone").

Other cognizable elements of damage are out of pocket costs incurred by a parent to care for an injured child. See e.g., Endres v. Greenville Hospital System, 439 S.E.2d 261 (S.C. 1993) (medical negligence claim); Webb, 104 S.C. 89, 88 S.E. 297 (action by mother for loss of child's services and companionship); Berger v. Charleston Consol. Ry. Gas & Elec. Co., 93 S.C. 372, 76 S.E. 1096 (1913) (addressing a father's action for medical expenses and loss of services of his injured child); Medlin v. United States, 244 F.Supp. 403, 411 (D.S.C. 1965) ("The parents have a right of action for loss of services, expenses incident to their child being injured, including medical care, hospital treatment, physicians' and nurses' fees, and other expenses that have resulted; also the future care and treatment" where their child was burned by fireworks). Furthermore, a parent's claims for a child's medical expenses and loss of services are recoverable as a "loss" under the Tort Claims Act. Wright v. Colleton County School Dist., 301 S.C. 282, 289, 391 S.E.2d 564, 569 (1990) (finding parent's claims for loss of services and medical expenses are within the statutory definition of "loss" as contained in Section 15-78-30(f) and are therefore recoverable independent of the injury to the child).

Loss of services and loss of consortium are distinct claims. Because the legislature altered loss of consortium, the South Carolina Supreme Court, consistent with § 14-1-50, held that the statutory loss of consortium claim is limited to claims between spouses. Doe v. Greenville County School District, 651 S.E.2d 305 (2007) (case pled as loss of consortium, "not a claim for loss of services," 651 S.E.2d at 309). Such is not the case for a parent's right of

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recovery for loss of services and society, which has never been abrogated and is, therefore, cognizable still today.

Dicta in Doe v. Greenville County implies that intangible injury is not part of the loss of services claim. 651 S.E.2d at 308. The Court's dicta on the history of the scope of loss of services is simply incorrect, and overtly contrary to a number of South Carolina cases, some of which are cited above, and none of which were overruled in Doe v. Greenville County. Those cases recognize that a loss of services claim includes intangible injuries as well as out of pocket expenses incurred for the care and treatment of a child, in this instance for Mother Doe A's son resulting from his sexual abuse by ReVille.

Particularly where the facts reflect that The Citadel actively concealed ReVille's known record of abusing children, and facilitated ReVille's ability to obtain employment in the community by trading on his Citadel record, the conduct of The Citadel is distinguishable from the school system in Doe v. Greenville County, which had no explicit prior information that the coach involved had a sexual interest in children. See e.g., Webb, 88 S.E. 297 (a direct claim against the entity whose agents injured the mother's son, and negligent supervision is alleged in this complaint).

In this record, viewed in the light most favorable to the Plaintiff, there is ample evidence from which a jury could award recovery for the Plaintiff's intangible injuries as well as her out of pocket expenses incurred for the care and treatment of her son resulting from his sexual abuse by ReVille. Mother Doe A knows her son was abused by ReVille, and knows her child held that secret for a number of years. She is likewise aware of the probable emotional/psychological effects of child sexual abuse, many of which have already begun to manifest, including

withdrawal, complications among siblings, anger, indifference, lack of companionship, blame, and denial.

Viewed in the light most favorable to the Plaintiff, the record reflects that prior to the abuse, Mother Doe A testified that her child was a thriving, happy boy who enjoyed Tennis and other activities. In the fall of 2007, he enrolled in Tennis lessons at the Mt. Pleasant Recreation Department where he became acquainted with Skip ReVille. (Exhibit 32, Mother Doe A at 65 – 66). At that time, the child was in the seventh and eighth grades. (Exhibit 32, Mother Doe A at 80). He was exposed to ReVille over a two year period during which he was sexually abused on at least forty (40) occasions, twenty of which involved oral contact. (Exhibit 2, Deposition of Louis ReVille, Volume III at 595:25—596:7).

In 2010, the family moved to Charlotte. (Exhibit 32, Mother Doe A at 98). It was at this time that her son began to be very “withdrawn.” (Exhibit 32, Mother Doe A at 100). Among other things, after moving to Charlotte her son stopped playing tennis and “didn’t want to have anything to do with anybody.” (Exhibit 32, Mother Doe A at 102).

In October 2011, her son informed her that ReVille had been arrested, “for molesting kids.” (Exhibit 32, Mother Doe A at 100). Mother Doe A asked her son if ReVille had done anything to him, but the son denied it. (Exhibit 32, Mother Doe A at 100). Two weeks later, Mother Doe A received a call from the Mt. Pleasant police informing her that ReVille had admitted to molesting her son on more than 20 occasions. (Exhibit 32, Mother Doe A at 101-102). When she approached her son with this information, “he just started bawling.” (Exhibit 32, Mother Doe A at 104). He indicated he had not told her before then because, as he put it, “I did not want to worry you with this.”

Because her son did not want his siblings to know about the abuse, it has created "a major ordeal within [the] family." (Exhibit 32, Mother Doe A at 105). Mother Doe A has tried to get her son therapy and even had him meet with a therapist, but he "did not want to go." (Exhibit 32, Mother Doe A at 104). After three months of unproductive therapy and increasing problems among his siblings, the therapist recommended she handle the "no-win situation" by stopping therapy until such time as her son was ready for it. (Exhibit 32, Mother Doe A at 105). Unfortunately, as stated by Plaintiff, the "wedge between [her] sons" remains. (Exhibit 32, Mother Doe A at 106).

Mother Doe A has developed serious concerns about her son, including that he is a "ticking time bomb" which she worries about "constantly." (Exhibit 32, Mother Doe A at 108, 112). He didn't attend social functions his last two years of high school, had "no close friends," and "came home every day and went to his room." (Exhibit 32, Mother Doe A at 168). "He wouldn't have anything to do with his younger brother," he "never spent the night out, never asked to go to a party, never did anything," and was not interested in getting a driver's license. (Exhibit 32, Mother Doe A at 168). Plaintiff also observes that her son is getting increasingly angry about the abuse. (Exhibit 32, Mother Doe A at 110). She testified:

My son was a great kid. Now I'm left with a sullen, melancholy kid that basically does not have anything to do with anyone in our family. And he would be appalled to know — I couldn't even tell my own father about this. It's affected every single relationship I have with all of my children. Because they're having to deal with a mom who has good days and bad days.

(Exhibit 32, Mother Doe A at 114).

Mother Doe A has sought professional mental health help and would like to obtain additional mental health counseling for herself when her finances permit. (Exhibit 32, Mother Doe A at 114—115). Her sense is that her son may at some point be receptive to therapy. She

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testified, "I think he's getting there." (Exhibit 32, Mother Doe A at 173). Because he hasn't dealt with it, Plaintiff testified "I worry about his well-being. I know the statistics that are out there with regard to these children [abuse victims]. And even if it's nothing drastic, in the sense of killing themselves, whatever the case may be, there are a lot of statistics out there about children who don't get help. I worry about when the shoe is going to drop on a daily basis." (Exhibit 32, Mother Doe A at 174). That her son carried this secret with him for the four years he did is very distressing to Plaintiff. (Exhibit 32, Mother Doe A at 175).

In sum, because of The Citadel's assistance to ReVille, Mother Doe A is left with a never-ending complication with her child, and her other children, as the time-bomb elements of sexual abuse can and will re-occur at any time later in life. Having forever lost the pre-ReVille mother/son relationship, Mother Doe A now carries the justifiable concern for the increased risk of future harm to her son as the lasting effects of child sexual abuse continue to manifest, with no end in sight. Given the testimony cited herein, there is certainly evidence that Mother Doe A is outraged and has suffered "the irreplaceable loss of th[e] comfort and society" of her child. Moreover, the cited testimony establishes sufficient evidence to create a genuine issue of material fact as to Mother Doe A's: (1) "shame, humiliation, and mental anguish;" (2) "the insult offered to [a parent's] feeling;" (3) "the agony in the destruction of his hopes concerning his child;" and (4) the effect on the child's "companionship." As outlined above, ample evidence exists that Plaintiff has both an intangible loss associated with the conduct of the Citadel as well as costs incurred in conjunction with such loss. Summary judgment as to Plaintiff's loss of services claim is therefore improper.

A finding that Plaintiff is entitled to recovery for her intangible losses is likewise consistent with common law decisions in other jurisdictions. See e.g. Kendrick v. McCrary, 11

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Ga. 603, 1852 WL 1363 (Ga. 1852); Grable v. Margrave, 4 Ill. 372 (Ill. 1842); Tillotsin v. Currin, 97 S.E.395 (N.C. 1918); O'Brien v. City of Philadelphia, 64 A. 551 (Pa. 1906); and White v. Campbell, 54 Va. 573, 1856 WL 3510 (Va. 1856). For instance in L.P. v. Oubre, 547 So. 2d 1320, 1326 (La. App. 5th Cir. 1989) writ denied, 550 So. 2d 634 (La. 1989), the Court of Appeal of Louisiana held that "[a]nguish of the parents as well as the children is a reasonably anticipated consequence of child molestation." Id. (citing Blackwell v. Oser, 436 So.2d 1293, 1299 (L.A. App. 4 Cir. 1983); Stone, Louisiana Tort Doctrine: Emotional Distress Occasioned by Another's Peril, 48 Tul.L.Rev. 782 (1974)). In finding a cognizable claim for mental anguish damages, the Louisiana Court of Appeal distinguished the availability of such damages where, as in the instant case, there was prior knowledge by the defendant of the risk of harm. The court reasoned that a defendant's prior knowledge of sexually abusive conduct establishes a "foreseeable plaintiff" and a "foreseeable risk." Id.

Here, as in Oubre, The Citadel had prior knowledge of ReVille's predilection for child sexual abuse so as to establish an independent duty to Plaintiff, a parent and foreseeable plaintiff subjected to the foreseeable risk of harm. It is within the realm of reasonable foreseeability that The Citadel's failure to take appropriate action in response to such knowledge about ReVille—to disclose the information to the respective authorities, potential employers, parents of children exposed to ReVille, and others—would result in Mother Doe A's emotional distress arising out of her son's abuse. Given The Citadel's role in concealing ReVille's known history of sexual abuse, the evidence, viewed in the light most favorable to the Plaintiff, supports a cognizable claim for loss of services, including intangible and tangible damages measures.

III. MOTHER DOE A'S CLAIMS ARE TIMELY UNDER THE DISCOVERY RULE AND DOE V. BISHOP OF CHARLESTON.

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Mother Doe A's complaint, filed within one month of discovery of her child's sexual abuse, is timely. The Citadel's assertion to the contrary overlooks the application of the discovery rule as well as the Court of Appeals recent holding in Doe v. Bishop of Charleston.

The discovery rule is applicable to actions brought under the Tort Claims Act. Bayle v. S. Carolina Dep't of Transp., 344 S.C. 115, 123, 542 S.E.2d 736, 740 (Ct. App. 2001). According to the discovery rule, the statute of limitations begins to run when a cause of action reasonably ought to have been discovered. Dean v. Ruscon Corp., 321 S.C. 360, 468 S.E.2d 645 (1996). The statute runs from the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct. Id. The date on which discovery of the cause of action should have been made is an objective, rather than subjective, question. Bayle, 344 S.C. at 123, 542 S.E.2d at 740. "In other words, whether the particular plaintiff actually knew he had a claim is not the test. Rather, courts must decide whether the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another party might exist." Young, 333 S.C. at 719, 511 S.E.2d at 416.

Applying this framework to the instant case, the time for Mother Doe A to initiate suit began when a cause of action *against The Citadel* reasonably ought to have been discovered, Dean v. Ruscon Corp., 468 S.E.2d 645 (1996), meaning when Plaintiff either knew or should have known by the exercise of reasonable diligence that a cause of action against The Citadel had arisen from the wrongful conduct. See id. Mother Doe A's filing of the instant action within two months of learning of ReVille's abuse satisfies this standard. Specifically, Plaintiff filed this action on December 14, 2011, less than two months after receiving a call from the Mount Pleasant Police informing her that ReVille confessed to molesting her son. Prior to

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receiving this call, Mother Doe A had no knowledge of her son's abuse. (Exhibit 32, Deposition of Mother Doe A at 99-101).

Plaintiff's action is likewise timely pursuant to the Supreme Court's holding in John Doe v. The Bishop of Charleston, which found deliberate acts of deception and concealment of knowledge of sexual abuse by employees, such as in the instant case, would toll the limitations period. Id., 754 S.E.2d 494, 500-501 (2014). As outlined herein, the evidence leads to the reasonable inference that The Citadel deliberately undertook to conceal and cover-up ReVille's abuses at the summer camp. The Citadel's concealment began in 2001 and ended in 2011 when ReVille was finally apprehended. ReVille had access to Plaintiff's child only because The Citadel assisted ReVille in obtaining employment in the community through maintaining an inaccurate and unblemished Citadel record, despite its awareness that ReVille had sexually abused multiple children.

Indeed, when ReVille began abusing Mother Doe A's child in 2007 and 2008, only The Citadel had knowledge that ReVille had a sexual interest in children and had sexually abused young boys. Knowing her child would be spending time with ReVille through the Mt. Pleasant Recreation Department as his tennis coach, Mother Doe A researched The Citadel website to verify ReVille's background and found nothing to contradict his claims that he was "an outstanding, upstanding Citadel cadet." (Exhibit 32, Deposition of Mother Doe A at 76:10—77:2). There is no evidence to suggest that Mother Doe A had any knowledge of her child's sexual abuse until October 2011, when she received the call from the Mount Pleasant Police informing her that ReVille had confessed to molesting her son. (Exhibit 32, Deposition of Mother Doe A at 101:17-21). Until his arrest on October 28, 2011, ReVille had told no one that

he was molesting children. Until the police called Mother Doe A in October, 2011, her son had disclosed nothing to her. (Exhibit 32, Deposition of Mother Doe A at p. 101).

By 2011, Mother Doe A and her children were living out of state. (Exhibit 32, Deposition of Mother Doe A at p. 98). Subsequent to the arrest, and after Mother Doe A learned that her son had been sexually abused, The Citadel, through General Rosa, issued a press release assuring the public that ReVille's record at The Citadel was "clean" (Exhibit 33, Media Advisory (stating "we checked his personnel files and found no other complaints.") The misleading public statement implies, falsely, that The Citadel had no knowledge of ReVille's sexual interest in children, when in fact, The Citadel on repeated occasions had failed to act on, or to even record, the multiple instances where ReVille had violated Citadel policy, procedure, and state and federal law. Not until November 2011, through subsequent press reports disputing The Citadel's claims of innocence, did Mother Doe A discover that complaints about ReVille had been made at The Citadel as early as 2002 or 2003. (Exhibit 32, Deposition of Mother Doe A at p. 178). Consequently, Plaintiff filed the instant action on December 14, 2011, one month after learning that The Citadel was less than truthful in its public statements.

In challenging the timeliness of the Complaint, The Citadel necessarily argues that Mother Doe A should have known or discovered about ReVille what multiple officials of The Citadel knew and had affirmatively acted to conceal. In other words, The Citadel essentially argues that Mother Doe A should have known before November, 2011, that The Citadel was fraudulently concealing ReVille's actual record at The Citadel. Not only is there no objective evidence that Plaintiff had any reason to know what The Citadel had affirmatively concealed regarding ReVille, and regarding the college itself, the record construed favorably to Plaintiff, as

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it must be, prohibits the inference from being drawn, in part because of the active and fraudulent concealment by The Citadel. See Bishop of Charleston, 754 S.E.2d at 501.

The limitation period commences under the discovery rule only when the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises. Bayle, 542 S.E.2d 736, 740 (Ct. App. 2001). The record supports no inference that Plaintiff has not acted with reasonable diligence. The Citadel's fraudulent concealment of ReVille's known past raises fact issues that must be resolved by the jury. See True v. Monteith, 489 S.E.2d 615 (1997) (fact issues made summary judgment inappropriate for suit filed 17 years after fraudulent concealment). "A systematic practice of secrecy and concealment of their knowledge of sexual abuse by employees, including the employee who appellants allege committed the abuse at issue" tolls the statute of limitations for negligent supervision claims. Bishop of Charleston, 754 S.E.2d at 501.

Viewed favorably to the Plaintiff, the evidence establishes that numerous individuals at The Citadel deliberately undertook to conceal and cover-up ReVille's sexual interest in children and his sexual misconduct with children, and did so despite Citadel policies, procedures and state and federal law. That fraudulent concealment began in 2001 and extended even after ReVille's October 2011 arrest, when The Citadel publicly claimed that ReVille's record at The Citadel was clean, implying they had no ground to anticipate he would molest any child. In fact, The Citadel knew that ReVille's record was clean only because The Citadel collaborated to keep it clean by disregarding its own rules, state law, and federal law.

Construed favorably to the Plaintiff, the record reflects facts from which a jury could reasonably find the limitations period was tolled as to Mother Doe A's complaint until after October of 2011, when the most recent act of affirmative concealment by The Citadel, i.e.

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General Rosa's less than truthful media advisory, was committed. At a minimum, facts are in dispute about The Citadel's active concealment, and summary judgment must be denied accordingly. As in Bishop of Charleston, such acts of concealment by The Citadel toll the limitations period so as to render Plaintiff's claims timely.

Likewise, for these same reasons, The Citadel is estopped from asserting the statute of limitations as a defense because its conduct and representations induced Plaintiff to delay in filing suit. See Kleckley v. Northwestern Nat'l Cas. Co., 338 S.C. 131, 136, 526 S.E.2d 218, 220 (2000) (quoting Black v. Lexington Sch. Dist. No. 2, 488 S.E.2d 327 (1997) ("Under South Carolina law, a defendant may be estopped from claiming the statute of limitations as a defense if the delay that otherwise would give operation to the statute had been induced by the defendant's conduct.")).

IV. PLAINTIFF IS ENTITLED TO RECOVERY FOR THE TORT OF OUTRAGE.

Plaintiff has asserted that The Citadel is liable for the tort of outrage based on its reckless conduct in concealing multiple acts of child sexual abuse by ReVille and by enabling ReVille's continued access to children in the community despite the reasonable foreseeability that ReVille would sexually abuse the Plaintiff's child. The tort of outrage includes the following elements:

- (1) the defendant intentionally or recklessly inflicted severe emotional distress, or was certain, or substantially certain, that such distress would result from his conduct;
- (2) the conduct was so "extreme and outrageous" so as to exceed "all possible bounds of decency" and must be regarded as "atrocious, and utterly intolerable in a civilized community;"
- (3) the actions of the defendant caused plaintiff's emotional distress; and
- (4) the emotional distress suffered by the plaintiff was "severe" such that "no reasonable man could expect to endure it."

Argoe v. Three Rivers Behavioral Health, L.L.C., 392 S.C. 462, 475, 710 S.E.2d 67, 74 (2011) (quoting Hansson v. Scalise Builders of S.C., 374 S.C. 352, 356, 650 S.E.2d 68, 70 (2007)).

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a. Plaintiff's outrage claim is not barred by the South Carolina Tort Claims Act.

Defendant maintains that the South Carolina Tort Claims Act ("SCTCA") bars Plaintiff's claim of outrage against The Citadel based on S.C. Code § 15-78-30(f), which concerns the definition of "loss" pertaining to actual damages recoverable in an action for negligence:

"Loss" means bodily injury, disease, death, or damage to tangible property, including lost wages and economic loss to the person who suffered the injury, disease, or death, pain and suffering, mental anguish, and any other element of actual damages recoverable in actions for negligence, but does not include the intentional infliction of emotional harm.

S.C. Code Ann. § 15-78-30. A plain reading of the unambiguous language of 15-78-30(f) reveals the term "loss" as contemplated under the SCTCA refers only to the specific type of damages recoverable in actions against a state entity for negligence. While excluding "intentional infliction of emotional harm" as an element of damages for negligence, such a reference has no bearing on a Plaintiff's right of recovery under the tort of outrage. Indeed, state entities "are liable for their torts in the same manner and to the same extent as a private individual under like circumstances." S.C. Code Ann. § 15-78-40.

Moreover, South Carolina courts recognize that under the SCTCA, a government entity that is found to have acted in a grossly negligent manner is liable for its torts as if it were a private individual. See Duncan v. Hampton Cnty. Sch. Dist. No. 2, 335 S.C. 535, 517 S.E.2d 449 (Ct. App. 1999) (holding that where a government entity or employee's discretion is exercised in a grossly negligent manner, the government entity is liable for its torts as if it were a private individual.). "South Carolina courts have long recognized that an individual's negligent conduct can be so gross as to amount to recklessness." Bass v. S. Carolina Dep't of Soc. Servs., 403 S.C. 184, 193, 742 S.E.2d 667, 672 (Ct. App. 2013) (citing Berberich v. Jack, 392 S.C. 278, 287, 709 S.E.2d 607, 612 (2011); Jeffers v. Hardeman, 231 S.C. 578, 582, 99 S.E.2d 402, 404

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(1957)). The juxtaposition of this principle mandates an individual's conduct cannot be reckless

where it was not at least grossly negligent. ~~Id.~~ (citing 18 S.C. Jur. Negligence § 9 (2012))

("Recklessness is a higher degree of negligence than gross negligence.")). That the SCTCA permits liability for gross negligence is indicative of its intent to likewise permit claims of outrage premised on reckless behavior.

A finding that Plaintiff's outrage claim survives summary judgment is likewise consistent with recent South Carolina jurisprudence. In Bass v. S.C. Dept. of Social Services, 403 S.C. 184, 742 S.E.2d 667, the Court of Appeals considered an analogous argument concerning the SCTCA definition of "loss" in reference to the trial court's denial of a directed verdict motion on the plaintiff's outrage claim. While ultimately reversing the denial of the motion, the Court of Appeals based its decision not on the SCTCA's limitation of damages, but rather, on the lack of evidence establishing recklessness. Specifically, the Court reasoned that because the evidence did not establish gross negligence, the claim of outrage was likewise doomed to failure as conduct cannot be reckless where it is not at least grossly negligent. By containing an analysis of the merits of the outrage claim, the Bass opinion impliedly instructs that the SCTCA does not exempt outrage liability. Indeed, if such liability was exempt, the Court of Appeals would never have analyzed the merits of the claim to determine whether the elements of outrage were satisfied. Consequently, despite The Citadel's argument to the contrary, Plaintiff's claim of outrage is not limited by the SCTCA's definition of loss.

b. Plaintiff's outrage claim is not barred by other potential available remedies.

Defendant improperly suggests Plaintiff's outrage claim is barred due to other potential available remedies. While the tort of outrage "was conceived as a remedy for tortious conduct where no remedy previously existed," there is no rule permitting a claim of outrage only in the

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absence, and to the exclusion, of other torts. Todd v. S. Carolina Farm Bureau Mut. Ins. Co.,

~~321 S.E.2d 602, 613 (S.C. App. 1984) writ granted in part, 328 S.E.2d 479 (S.C. 1985) and~~

quashed on other grounds, 336 S.E.2d 472 (1985). Rather, such a proposition would be contrary to South Carolina jurisprudence, which permits alternative theories of recovery.

Here, as an alternate basis for recovery, Mother Doe A has asserted the tort of outrage due to the extreme, outrageous and intolerable actions of The Citadel in concealing a known and dangerous child sexual predator. The evidence cited herein (and reiterated below) sets forth sufficient facts from which a reasonable inference could be drawn that The Citadel recklessly inflicted emotional distress through extreme and outrageous conduct. It is on a review of this evidence that Plaintiff's claim of outrage must be weighed—not on the basis that there may exist other potential available remedies. See Argo, 710 S.E.2d at 74 (reviewing whether material issue of fact existed to establish claims of false imprisonment, defamation and outrage); Todd, 321 S.E.2d at 612-13 (reviewing evidence to determine whether defendant's conduct may reasonably be regarded as outrageous even though another tort may remedy the conduct).

c. Plaintiff has presented sufficient evidence that The Citadel acted with the requisite level of culpability to support Plaintiff's outrage claim.

The evidence establishes that The Citadel's conduct may be reasonably regarded as so extreme and outrageous as to permit recovery, rendering the question of liability as one for the jury. See Todd v. S.C. Farm Bureau Mutual Insurance Co., 321 S.E.2d 602, 609 (Ct. App. 1984) writ granted in part, 285 S.C. 84, 328 S.E.2d 479 (1985) and decision quashed, 287 S.C. 190, 336 S.E.2d 472 (1985). At a minimum, there exists an issue of fact as to whether The Citadel's conduct in concealing a known sexual predator constitutes "recklessness" or rises to the level of "extreme and outrageous." While The Citadel contends there is no evidence it acted to

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intentionally harm Plaintiff's child, there is ample evidence to the contrary. Not only does the evidence establish knowledge-by-The Citadel of ReVile's multiple acts of child sexual abuse against multiple children, it also establishes a concerted effort to conceal ReVile's sexual abuse from potential employers, potential victims in the community, and from the public at-large. Citadel officials were apprised of ReVile's abusive acts by telephone on April 24, 2007, and again via Doe's transcribed statement on July 1, 2007. (See Exhibit 9, May 16, 2007 Letter to IRF; Exhibit 10, July 1, 2007 Statement of Doe; and Exhibit 12, Deposition of Brandenburg at 151:18—152:13). General Rosa, President of The Citadel, was informed of these acts on May 16, 2007, via written correspondence to The Citadel's insurer, the IRF. (See Exhibit 9, May 16, 2007 Letter with carbon copy to General Rosa). The Citadel had knowledge of the names of victims, the identity of an eyewitness, and Doe's allegations that the abusive conduct occurred on many occasions with numerous other campers. (See Exhibit 10, July 1, 2007 Statement). However, despite this knowledge, The Citadel never informed Public Safety, the Charleston Police, SLED or even its own staff equipped to handle complaints of sexual assault and abuse. Moreover, none of the victims identified in Doe's statement were interviewed, no recorded victim statements were taken, the victim's parents were never contacted (some former campers identified may have still been minors in 2007), and, apart from sending one email, none of the victims were even contacted. (Exhibit 12, Deposition of Brandenburg at 151:18—152:13). What's more, The Citadel never even attempted to interview the eyewitness—a Citadel cadet residing on campus. (Exhibit 12, Deposition of Brandenburg at 139:22—145:23)

Furthermore, the risks posed by serial sexual predators were well-known to The Citadel. In fact, The Citadel, having only recently recovered from the aftermath of the Arpaio abuse litigation, had a heightened sense of awareness of these risks. Yet, even with this heightened

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awareness, The Citadel failed in every instance to take appropriate action. Instead, The Citadel's response contravened established Citadel policy and procedure, and disregarded the moral and ethical codes embodied by The Citadel's Code of Conduct. (Exhibit 12, Deposition of Brandenburg at 259:1—267:11). Such actions support a finding of an intentional cover-up by The Citadel of a report of multiple acts of child sexual abuse against multiple young boys, and at the very least, demonstrate an indifference to the very real risk of sexual abuse against others in the community and to the lasting injuries suffered by the victims reported by Doe. (Exhibit 27, Deposition of Jennifer Shiel at 36:3-20; 46:6-20; 49:1—50:23). Undoubtedly, a jury could find this conduct "outrageous and intolerable in a civilized society." McSwain v. Shei, 304 S.C. 25, 29, 402 S.E.2d 890, 892 (1991). Consequently, there being ample evidence creating a genuine issue of fact, summary judgment as to Plaintiff's outrage claim is inappropriate.

V. SUMMARY JUDGMENT ON THE ISSUE OF A SINGLE OCCURRENCE IS IMPROPER AND PREMATURE.

Another critical factual dispute at issue concerns the determination of the number of "occurrences" of negligence by The Citadel under the South Carolina Tort Claims Act ("SCTCA"). Defendant maintains that the instant matter involves only one single occurrence, limiting Plaintiff's damages to the \$300,000/\$600,000 limit of the SCTCA. Importantly, to the extent the determination of the number of "occurrences" requires a finding of proximate cause, the issue is one of fact not appropriately resolved at summary judgment. See Hurd v. Williamsburg Cnty., 363 S.C. 421, 427-28, 611 S.E.2d 488, 492 (2005) ("Ordinarily, the question of proximate cause is one of fact for the jury and the trial judge's sole function regarding the issue is to inquire whether particular conclusions are the only reasonable inferences that can be drawn from the evidence."); see also Chastain v. AnMed Health Found., 388 S.C.

170, 174, 694 S.E.2d 541, 543-44 (2010) (affirming verdict reduction where jury was not

~~instructed on issue of occurrences and number of occurrences could not be ascertained from jury~~

verdict). Nonetheless, contrary to Defendant's assertion, the evidence presented by Plaintiff reveals numerous separate and distinct acts of negligence warranting a finding of multiple occurrences in this case.

- a. A finding of multiple occurrences is supported by the SCTCA's statutory scheme and by South Carolina jurisprudence.

The limitations on liability imposed by the SCTCA are found in Section 15-78-120, which provides, in part, that "no person shall recover in any action or claim brought hereunder a sum exceeding three hundred thousand dollars because of loss arising from a single occurrence regardless of the number of agencies or political subdivision involved." S.C. Code § 15-78-120(a)(1). The SCTCA defines "occurrence" as "an unfolding sequence of events which proximately flow from a single act of negligence." S.C. Code § 15-78-30(g). That the SCTCA contemplated recovery against a single entity for multiple occurrences is demonstrated in the statute's use of the term "single act of negligence" in defining "occurrence." If the legislature sought to impose a limit based on whether a plaintiff had brought a single claim or had suffered a single injury, it could have employed such language in expressing the limit in § 15-78-120(a)(1) or in defining "occurrence" in § 15-78-30(g). It did not. Instead, the legislature chose to limit liability in the SCTCA by using the term "occurrence" and by defining that term by focusing on each negligent act from which proximately flowed an unfolding sequence of events giving rise to the claim or action.

South Carolina courts similarly interpret the SCTCA as permitting recovery for multiple occurrences. Specifically, in Boiter v. S. Carolina Dep't of Transp., 393 S.C. 123, 132, 712

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S.E.2d 401, 405 (2011), the South Carolina Supreme Court addressed the issue of occurrences

~~where two separate entities were accused of committing two separate and distinct acts of~~
negligence causing the plaintiff's injury. Relying on the statutory scheme's focus on "wrongful act" as opposed to injury, the Boiter court found multiple occurrences based on two independent acts of negligence. Id. In so finding, the court specifically rejected respondent's argument equating the number of occurrences with the number of injuries sustained. Id. at 133-34, 712 S.E.2d at 406. Rather, the Boiter court focused on the number of independent and separate acts of negligence. Id. at 134. In other words, as applied in Boiter, the SCTCA dictates a finding of multiple "occurrences" where multiple independent acts of negligence are found to proximately cause an injury. Id.

Also instructive is Williamson v. South Carolina Insurance Reserve Fund, which involved occurrences of negligence as to two different physicians who examined the plaintiff during childbirth and failed to take necessary steps at different times during the delivery to prevent harm to the child. See 355 S.C. 420, 422, 586 S.E.2d 115, 116 (2003). The circuit court found two occurrences had been established for purposes of the SCTCA because the negligent acts of each doctor were entirely independent and not the result of the other doctor. See id. at 423, 586 S.E.2d at 116. Although the Supreme Court declined to address the issue of occurrences on appeal, the circuit court's holding is nonetheless instructive. Cases in other jurisdictions similarly find multiple occurrences by a single government entity. See Brooks v. Memphis & Shelby County Hosp. Auth., 717 S.W.2d 292 (Tenn. App. 1986) (finding two occurrences when one employee negligently failed to prevent patient from falling off a stretcher and a second employee negligently administered an overdose of medication, resulting in patient's death).

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Here, as in Boiter, this is a case of multiple occurrences. In particular, Plaintiff has alleged, and Citadel witnesses and experts have admitted, multiple separate acts of negligence resulting in Plaintiff's injuries. Notably, The Citadel's independent acts of gross negligence span a period of ten years beginning in 2001 and extending all the way to 2011. Throughout this period, the evidence presented by Plaintiff has established numerous independent acts of negligence by numerous employees, agents, and officials of The Citadel, including General Rosa, Mark Brandenburg, Colonel Trez, Colonel Lackey, Major Bates, Jennifer Garrott, and the Board of Visitors. This evidence more than supports the reasonable inference that these Citadel officials, employees, and/or agents engaged in reckless and wrongful neglect of their duties and of Citadel policies and procedures as well as state and federal law and failed, on hundreds of occasions between 2001 and 2011 to make any report to law enforcement, Citadel Public Safety, The Citadel Title IX Coordinator, child protective services, or to employers about ReVille. As discussed below, these actions did not combine to form one single occurrence of negligence. Rather, the separate and distinct acts of negligence by The Citadel and its officials, employees and/or agents from 2001 to 2011, as in Boiter, constitute separate occurrences of negligence as contemplated by the SCTCA.

- b. The evidence establishes multiple separate "occurrences" of negligence by The Citadel, entitling Plaintiff to recovery of the limit of liability for each separate occurrence.**

The evidence supports a finding that in 2001, 2002, 2003, 2005 and 2007, The Citadel had numerous opportunities to put an end to ReVille's abuse by reporting him to law enforcement. It neglected this opportunity on countless occasions, each resulting in a separate occurrence of negligence. Specifically, as early as August 6, 2001, The Citadel was in receipt of a letter from Sergeant Middleton of the Charleston Police Department which highlighted several

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concerning practices occurring at The Camp, including that "[s]ome of the counselors are allowing certain campers to leave their rooms . . . to go into camp counselor's room[s], watch movies, and fall asleep in the same bed with counselors until the following morning." (Exhibit 1, Middleton Letter, August 6, 2001). The letter also noted that "[s]ome of the counselors engage in sexual conversation in the presence of the campers." (Exhibit 1). Notably, upon receipt of this letter, The Citadel took no action whatsoever. Indeed, ReVille has admitted to abusing nearly eight campers during the 2001 Summer Camp. To do so, he lured campers into his room at night with food and movies—the very practice highlighted in Middleton's letter. (Exhibit 34, ReVille Affidavit, Sept. 20, 2013). Had The Citadel taken action in response to Sergeant Middleton's letter, whether by interviewing counselors and campers or by implementing various safety practices such as random and frequent room checks, ReVille's sexual abuse would have been discovered or, in the alternative, ReVille would have stopped having campers in his room for fear of being caught and fired. (Exhibit 34, ReVille Affidavit, Sept. 20, 2013).

Consistent with the lack of response to Sergeant Middleton's letter, The Citadel failed to take any action in response to ReVille's 2001 "Counselor Evaluation" which notes that ReVille was "senior counselor material if learns to *distance himself from campers*." (Exhibit 3, 2001 Counselor Evaluation). The Citadel's failure to take action in response to red-flags regarding ReVille continued throughout 2002 and 2003 as well.

In 2002, Camp Director Jennifer Garrott walked in on ReVille with a camper alone in his room, a violation of Camp policy warranting termination. (Exhibit 34, ReVille Affidavit, Sept. 20, 2013). Garrott took no action in response ReVille's policy violation, neglecting to even document the offense in ReVille's employment file. In 2003, Director Garrott again walked in

ReVille

on ReVille alone with a minor, Camper Doe 6, and ReVille was rubbing "Icy-Hot" on Doe 6's

~~leg. Garrett took no action and Camper Doe 6 was abused by ReVille shortly thereafter.~~

(Exhibit 34, ReVille Affidavit, Sept. 20, 2013). Also in 2003, Garrett's assistant spoke to ReVille four to five times about having minors alone in his room; however, no further action was taken. Colonel Lackey similarly received a report from a counselor that ReVille was having minors in his room. On none of these occasions was ReVille terminated, nor were the infractions documented in ReVille's file, despite camp policies and procedures requiring such action. (Exhibit 34, ReVille Affidavit, Sept. 20, 2013). Instead, ReVille was permitted to continue serving as The Camp's Senior Counselor entrusted with the responsibility of the safety and well-being of the very boys he was abusing.

In 2005, The Citadel neglected yet another opportunity to put an end to ReVille's abuse when Director Garrett, knowing Camper Doe 6 was about to report ReVille, terminated him instead of receiving the report of sexual abuse Doe 6 was prepared to make. (Exhibit 8, Deposition of Camper Doe 6, p. 142-144). By failing to act in accordance with its policies, duties and accepted professional standards, The Citadel provided ReVille the mechanisms that enabled him to pursue his pedophile activities. (Exhibit 23, Deposition of Col. Trez, Vol. I, p. 154-55, agreeing that The Citadel provided ReVille the mechanisms that enabled him to pursue his pedophile activities). On each of these separate occasions, the evidence supports the reasonable inference that The Citadel acted recklessly, negligently and wantonly in failing to perform the duties undertaken by its policies and by accepted professional standards.

Furthermore, ReVille—a former Citadel employee—even admitted that it was a separate occurrence of negligence: (1) each time he abused a camper; and (2) each time he was caught violating Citadel rules and Citadel staff failed to follow or enforce Citadel policy. (Exhibit 2,

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Deposition of ReVille, Vol. III, 597:16—598:4). Moreover, ReVille further conceded that if he ~~had been fired or if Citadel staff had followed the rules, he would have been prevented from~~ abusing other children at The Citadel Summer Camp. (Exhibit 2, Deposition of ReVille, Vol. III, 598:5-18).

As to the April 23, 2007 report of sexual abuse by Camper Doe, The Citadel could have put an end to ReVille's abuse by simply adhering to its own policies and the requirements of state and federal law regarding mandatory reporting of sexual abuse to law enforcement. This simple act would have resulted in an investigation by trained professionals and a conviction. (Exhibit 35, ReVille Guilty Plea, Scarlett Wilson Testimony). ReVille even stated he would have confessed to the multiple acts of sexual abuse if interviewed by law enforcement in 2007. (Exhibit 36, ReVille Affidavit, Sept. 20, 2013(2)).

The very next day after the report of sexual abuse by Doe, Brandenburg and Colonel Trez met with ReVille on The Citadel campus and alerted him of the allegations. Notice of the allegations not only gave ReVille an opportunity to revise his tactics to remain undetected, it also allowed him to contact two of the victims referenced in Doe's report and urge them to pledge their silence if questioned by Brandenburg. These victims, who happened to be current cadets on The Citadel campus, were former campers abused by ReVille at the Citadel Summer Camp. Notably, Brandenburg neither spoke with nor interviewed these cadet victims. (Exhibit 12, Brandenburg Deposition, Vol. I, p. 139-140, 142, 144).

In addition to alerting ReVille of the allegations, The Citadel engaged in a deliberate attempt to cover-up the matter. Specifically, Jennifer Shiel, Assistant to Mark Brandenburg in 2007, has testified that there was a concerted effort to cover up Doe's report of sexual abuse regarding ReVille from the very beginning. (Exhibit 27, Shiel Deposition, January 21, 2014, pp.

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36:9-20; 46:12-20). Her testimony reveals that the cover up was instituted by President Rosa and the matter was labeled "close hold";

Q. And during the time period from when the report was made until the time that you left the Citadel, having lived through it, do you believe there was a conscious effort to cover up or conceal this report of sexual abuse?

[Mr. Kovach: Objection.]

A. Yes.

Q. And was President Rosa in charge ultimately of making sure that this report was concealed and covered up?

[Mr. Kovach: Objection.]

A. In my opinion, yes.

* * *

Q. Having worked in the President's office during this time period, was there ever any doubt in your mind that President Rosa wanted this report of sexual abuse to be kept under wraps?

[Mr. Kovach: Objection.]

A. No. It was very clear that- the term that was used about it was "close hold." I mean only people that needed to know about it were supposed to know about it. That was it.

(Exhibit 27, Shiel Deposition, p. 46:12-20). The Citadel's negligent acts in effecting a cover-up extends to each independent actor who neglected their duties to report and to warn by colluding in the cover up. These include President Rosa, Mark Brandenburg, Colonel Trez, and others within the chain of command who were aware of the report of sexual abuse and failed to take the necessary action mandated by Citadel policies and by state and federal law.

In furtherance of the cover-up, The Citadel permitted ReVille to leave Citadel employment with no record of the sexual abuse; endorsed ReVille as an educator and coach in the Charleston community; allowed ReVille to continue trading on his reputation at the Citadel

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to secure continued employment with children; and allowed ReVille to remain at large preying
~~on and sexually abusing the Plaintiff's child and other boys despite the foreseeability of~~
continued child sexual abuse by ReVille. Each of these actions in derogation of The Citadel's
duties as a state actor, standing alone, could constitute a separate occurrence of negligence giving
rise to the abuses suffered by Plaintiff and her child.

That these numerous separate negligent acts caused the injuries suffered by Plaintiff are
supported by Defendant's own expert witness testimony. In fact, Defendant's expert, Gary
Margolis, opined as to the foreseeability that a child sexual predator such as ReVille will
continue to abuse children where he works:

Q. Do you agree with me, Dr. Margolis, that child sexual predators create risk
of harm to children in their communities?

A. Yes, sir. I do.

Q. And why?

A. They pose a risk to the health and safety of children.

Q. If a child sexual predator is accused of abusing 11-to-15-year-old boys in
the past, in your opinion, is it foreseeable that he will abuse 11-to-15-year-
old boys near where he lives and works in the future?

A. Again, based on my law enforcement experience, not any psychological
experience as such, I would agree with that, more likely than not, it would.

Q. Would you agree, based on your law enforcement experience and your
academic background and education, that if you became aware in 2007
that a man has sexually abused children in 2002 and 2003 at a summer
camp where he worked, would you agree that it would be foreseeable that
any victims he was to have from 2004 through 2007 and 2007 through
2011 would occur where he worked and spent his time?

A. I would agree that it would predispose me to believe that he would be
offending again and would have offended again.