

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Clayton B. McCullough, Esquire, Special Referee

Case No.: 2016-000063

RECEIVED

SEP 02 2016

SC Court of Appeals

RECEIVED

AUG 19 2016

SC Court of Appeals

Ex parte: Nationwide Mutual Fire Insurance Company Appellant

In Re: Anna Angelacci, as guardian of K.B., a minor Respondent

v.

E.U., a minor, Travis O. Felkel, and Ginger G. Ulery Defendants

RECORD ON APPEAL
VOLUME I OF II

GOODING & GOODING, PA

Mark B. Tinsley

265 Barnwell Highway

Allendale, South Carolina 29810-3703

Phone: (803) 584-7676

Attorney for Travis O. Felkel and Ginger G. Ulery

WILLSON JONES CARTER & BAXLEY, P.A.

G. Troy Thames

421 Wando Park Blvd Ste 100

Mount Pleasant, South Carolina 29464-7960

Phone: (843) 284-0832

Attorney for Travis O. Felkel and Ginger G. Ulery

SHANNON JONES LAW, LLC

Shannon Jones

3 State St

Charleston, South Carolina 29401-3308

Phone: (843) 720-3100

Guardian Ad Litem for E.U., a minor

CLAWSON & STAUBES, LLC

Samuel R. Clawson

Christy R. Fargnoli

126 Seven Farms Drive, Suite 200

Charleston, South Carolina 29492-8144

Phone: (843) 577-2026

Attorneys for Appellant

YARBOROUGH APPELATE

David B. Yarborough, Jr.

Lydia Blessing Applegate

Douglas E. Jennings

291 East Bay Street, Floor 2

Charleston, South Carolina 29401

Phone: (843) 972-0150

Attorneys for Respondent

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STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

ANNA ANGELACCI, as guardian of K.B., a minor,
Plaintiff(s)

vs.

E.U., a minor, TRAVIS O. FELKEL, and GINGER
G. ULERY,

Defendant(s)

Submitted By: Douglas E. Jennings
Address: Yarbrough Applegate LLC
291 East Bay Street, Floor 2, Charleston, SC 29401

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2014-CP - 08 - 2494

SC Bar #: 100137
Telephone #: 843-972-0150
Fax #: 843-277-6691
Other:
E-mail:

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

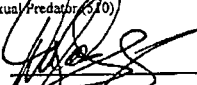
DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

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

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|---|---|---|
| ☐ Contracts | ☐ Torts - Professional Malpractice | ☐ Torts - Personal Injury | ☐ Real Property |
| ☐ Constructions (100) | ☐ Dental Malpractice (200) | ☐ Assault/Slander/Label (300) | ☐ Claim & Delivery (400) |
| ☐ Debt Collection (110) | ☐ Legal Malpractice (210) | ☐ Conversion (310) | ☐ Condemnation (410) |
| ☐ Employment (120) | ☐ Medical Malpractice (220) | ☐ Motor Vehicle Accident (320) | ☐ Foreclosure (420) |
| ☐ General (130) | ☐ Previous Notice of Intent Case # | ☐ Premises Liability (330) | ☐ Mechanic's Lien (430) |
| ☐ Breach of Contract (140) | 20 -CP- | ☐ Products Liability (340) | ☐ Partition (440) |
| ☐ Other (199) | ☐ Notice/ File Med Mal (230) | ☒ Personal Injury (350) | ☐ Possession (450) |
| | ☐ Other (299) | ☐ Wrongful Death (360) | ☐ Building Code Violation (460) |
| | | ☐ Other (399) | ☐ Other (499) |
| ☐ Inmate Petitions | ☐ Administrative Law/Relief | ☐ Judgments/Settlements | ☐ Appeals |
| ☐ PCR (500) | ☐ Reinstate Drv. License (800) | ☐ Death Settlement (700) | ☐ Arbitration (900) |
| ☐ Mandamus (520) | ☐ Judicial Review (810) | ☐ Foreign Judgment (710) | ☐ Magistrate-Civil (910) |
| ☐ Habeas Corpus (530) | ☐ Relief (820) | ☐ Magistrate's Judgment (720) | ☐ Magistrate-Criminal (920) |
| ☐ Other (599) | ☐ Permanent Injunction (830) | ☐ Minor Settlement (730) | ☐ Municipal (930) |
| | ☐ Forfeiture-Petition (840) | ☐ Transcript Judgment (740) | ☐ Probate Court (940) |
| | ☐ Forfeiture-Consent Order (850) | ☐ Lis Pendens (750) | ☐ SCDOT (950) |
| | ☐ Other (899) | ☐ Transfer of Structured Settlement Payment Rights Application (760) | ☐ Worker's Comp (960) |
| ☐ Special/Complex /Other | ☐ Pharmaceuticals (630) | ☐ Confession of Judgment (770) | ☐ Zoning Board (970) |
| ☐ Environmental (600) | ☐ Unfair Trade Practices (640) | ☐ Petition for Workers Compensation Settlement Approval (780) | ☐ Public Service Comm. (990) |
| ☐ Automobile Arb. (610) | ☐ Out-of-State Depositions (650) | ☐ Other (799) | ☐ Employment Security Comm (991) |
| ☐ Medical (620) | ☐ Motion to Quash Subpoena in an Out-of-Country Action (660) | | ☐ Other (999) |
| ☐ Other (699) | ☐ Sexual/Predator (670) | | |

Submitting Party Signature: 

Date: November 6, 2014

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

SCCA / 234 (06/2013)

Page 1 of 2

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Barnberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

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

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

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

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

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

ANNA ANGELACCI, as guardian of
K. B., a minor,

Plaintiff,

v.

E. U., a minor, Travis O. Felkel, and
Ginger G. Ulery,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2014-CP-08 - 2494

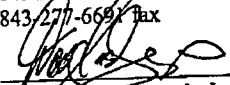
SUMMONS
(Jury Trial Demanded)

FILED
2014 NOV 10 PM 2:45
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

TO: THE ABOVE-NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED AND REQUIRED to Answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer thereto on the subscribers at their office located at 291 East Bay Street, 2nd Floor, Charleston, South Carolina 29401, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will move for entry of Default Judgment and apply to the Court for the relief sought therein.

Yarborough Applegate LLC
291 East Bay Street, 2nd Floor
Charleston, SC 29401
843-972-0150 office
843-277-6687 fax


David B. Yarborough, Jr., Esquire
Douglas E. Jennings, Esquire

Attorneys for the Plaintiff

11-5, 2014
Charleston, South Carolina

130-00
JBY

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

ANNA ANGELACCI, as guardian of
K. B., a minor,

Plaintiff,

v.

E. U., a minor, Travis O. Felkel, and
Ginger G. Ulery,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2014-CP- 08 - 2494

COMPLAINT
(Jury Trial Demanded)

FILED
2014 NOV 10 PM 2:45
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

NOW COMES THE PLAINTIFF by and through his undersigned attorneys, complaining
of the above-named Defendants, hereby alleges unto this Honorable Court as follows:

JURISDICTION AND VENUE

1. That Plaintiff, a minor, is a resident of Berkeley County, South Carolina.
2. That upon information and belief, the Defendant E. U., a minor, is a resident of Berkeley County, South Carolina.
3. That upon information and belief, Defendants Travis O. Felkel and Ginger G. Ulery are the parents or natural guardians of E.U., a minor, and are residents of Berkeley County, South Carolina.
4. That the Court has personal jurisdiction over the parties hereto and subject matter jurisdiction over the causes of action set forth herein. Venue is proper in Berkeley County.

CAUSE OF ACTION
(Negligence/Gross Negligence/Recklessness)

5. The allegations stated in Paragraphs 1 through 4 above are repeated and realleged as if fully set forth verbatim herein.
6. That on September 8, 2014, the Defendant E. U. injured Plaintiff at Goose Creek High School during gym class causing him to suffer a traumatic brain injury.

7. That Plaintiff suffered extensive and severe injuries as a result of Defendant's actions.

8. The force of impact fractured Plaintiff's skull and caused a traumatic brain injury which required surgical intervention.

9. That the personal injuries sustained by the Plaintiff were proximately caused by the willful, wanton, reckless, grossly negligent, and negligent acts of the Defendants.

10. That as a direct and proximate cause of the acts and omissions, or both, of Defendants, the Plaintiff suffered severe and extensive injuries, which have caused, and in the future will cause, the Plaintiff to suffer one or more of the following elements of damage:

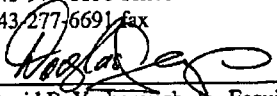
- a) physical pain;
- b) suffering;
- c) emotional distress;
- d) loss of the Plaintiff's enjoyment of life;
- e) increased susceptibility to future injury;
- f) substantial past and future expenses for medical services; and
- g) permanent scarring.

11. That due to the reckless, willful, and wanton acts and/or omissions of the Defendant, as well his violation of South Carolina statutes, the Plaintiff is entitled to actual and recover punitive damages in whatever amount the finder of fact determines.

WHEREFORE, Plaintiff prays for a trial and for the following:

- i. Judgment against Defendant for actual and punitive damages in an amount to be determined;
- ii. For the costs of this action; and
- iii. For such other and further relief as this court deems just and proper.

Yarborough Applegate LLC
291 East Bay Street, 2nd Floor
Charleston, SC 29401
843-972-0150 office
843-277-6691 fax


David B. Yarborough, Jr., Esquire
Douglas E. Jennings, Esquire

Attorneys for the Plaintiff

11-5, 2014
Charleston, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

Anna Angelacci, as guardian of K.B., a
minor,)

Plaintiffs,)

vs.)

E.U., a minor, Travis O. Felkel, and Ginger
G. Ulery,)

Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NUMBER 2014-CP-08-2494

AFFIDAVIT OF SERVICE

MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

2015 JAN 22 PM 12:54

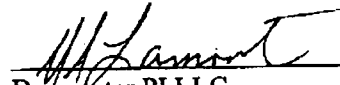
FILED

The below-signed individual, being duly sworn, states that Private Investigator Michael A. Lamont served the date-stamped SUMMONS AND COMPLAINT in the above-referenced matter on the Defendant Ginger Ulery, as Guardian for E.U. a minor, by the method described below.

- ☐ Personally served on Defendant Ryan Parker.
- ☒ Hand delivered a copy to Travis Felkel, a person of suitable age and discretion, residing at the address of Defendants Ginger Ulery and E.U., a minor.

Service was completed at 339 HOLLY AVENUE, GOOSE CREEK, SC, 29445 at 8:00 P.M. on December 2, 2014.

- ☐ Unable to locate and serve after diligent efforts to do so. The process is returned unexecuted. The following service attempts were made: n/a


Deepwater PI LLC
Michael A. Lamont
PO Box 21316
Charleston, SC 29413

Sworn to and subscribed before me on this
16 day of January, 2015,
by the affiant who is personally known to me.


Notary Public for the State of South Carolina
My Commission Expires: May 30, 2016

NOW COMES THE PLAINTIFFS, by and through their undersigned counsel, who would at this time, based on the affidavit of default contained herein, respectfully move before this honorable Clerk of Court for Entry of Default and Referral to Clayton B. McCullough, Esquire, who has consented to serve as Special Referee, to take testimony and direct entry of final judgment in this action under Rule 53, SCRCF.

Respectfully submitted,

Yarborough Applegate LLC
291 East Bay Street, 2nd Floor
Charleston, SC 29401
843-972-0150 office
843-277-6691 fax


David B. Yarborough, Jr., Esquire
Douglas E. Jennings, Esquire

Attorneys for the Plaintiff

1-7, 2015
Charleston, South Carolina

State of South Carolina)

County of Berkeley)

Anna Angelacci of KB., a minor
Dated November 10, 2014)

Plaintiff (s),)

-versus-)

E.U., a minor, TRAVIS O. FELKEL, and)
GINGER G. ULERY)

Defendant (s).)

In the Court of Common Pleas
Ninth Judicial Circuit

Case No: 2014-CP-08-2494

Affidavit of Service

Travis
Felkel
Individually

The undersigned, Michael Lamont, being duly sworn says that he served the:
Cover Sheer, Summons, and Complaint on Travis Felkel, by delivering same to:

(x) Travis Felkel Personally

And leaving with her one copy of the same at:
339 Holly Avenue Goose Creek, SC, 29445 on December 2, 2014 at 8:00 PM

Michael A. Lamont
Michael A. Lamont, Private Investigator

Sworn to before me this 3rd ^{December} day of 2014

Dora Y. Beel
Notary Public for South Carolina

My Commission expires on 3/17/2021

FILED
2014 DEC -5 AM 11:46
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC
DND

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Anna Angelacci, as guardian of K.B., a
minor,

Plaintiffs,

vs.

E.U., a minor, Travis O. Felkel, and Ginger
G. Ulery,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NUMBER 2014-CP-08-2494

AFFIDAVIT OF SERVICE

2015 JAN 22 PM 12:55
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

FILED

The below-signed individual, being duly sworn, states that Private Investigator Michael A. Lamont served the date-stamped SUMMONS AND COMPLAINT in the above-referenced matter on the Defendant Ginger Ulery, as Guardian for E.U. a minor, by the method described below.

- ☐ Personally served on Defendant Ryan Parker.
- ☒ Hand delivered a copy to Travis Felkel, a person of suitable age and discretion, residing at the address of Defendants Ginger Ulery and E.U., a minor.
- Service was completed at 339 HOLLY AVENUE, GOOSE CREEK, SC, 29445 at 8:00 P.M. on December 2, 2014.
- ☐ Unable to locate and serve after diligent efforts to do so. The process is returned unexecuted. The following service attempts were made: n/a

Michael A. Lamont
Deepwater PI LLC
Michael A. Lamont
PO Box 21316
Charleston, SC 29413

Sworn to and subscribed before me on this
16 day of January, 2015,
by the affiant who is personally known to me.

R. Blum
Notary Public for the State of South Carolina
My Commission Expires: May 30, 2016

Travis Felkel for
(Mom)
Ginger Ulery

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

Anna Angelacci, as guardian of K.B., a
minor,)

Plaintiffs,)

vs.)

E.U., a minor, Travis O. Felkel, and Ginger
G. Ulery,)

Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NUMBER 2014-CP-08-2494

AFFIDAVIT OF SERVICE

FILED
2015 JAN 22 PM 12:54
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

The below-signed individual, being duly sworn, states that Private Investigator Michael

A. Lamont served the date-stamped SUMMONS AND COMPLAINT in the above-referenced
matter on the Defendant Ginger Ulery, Individually by the method described below.

- ☐ Personally served on Defendant Ryan Parker.
- ☒ Hand delivered a copy to Travis Felkel, a person of
suitable age and discretion, residing at the address of
Defendant Ginger Ulery.

Service was completed at 339 HOLLY AVENUE, GOOSE CREEK, SC,
29445 at 8:00 P.M. on December 2, 2014.

- ☐ Unable to locate and serve after diligent efforts to do so.
The process is returned unexecuted. The following service
attempts were made: n/a

M. Lamont
Deepwater PI LLC
Michael A. Lamont
PO Box 21316
Charleston, SC 29413

Sworn to and subscribed before me on this
11th day of January, 2015,
by the affiant who is personally known to me.

A. B. Biviano
Notary Public for the State of South Carolina
My Commission Expires: May 30, 2016

Travis Felkel
for Ginger Ulery
Individually

State of South Carolina)
)
County of Berkeley)
)
Anna Angelacci of KB., a minor)
Dated November 10, 2014)
Plaintiff (s),)
)
-versus-)
)
E.U., a minor, TRAVIS O. FELKEL, and)
GINGER G. ULERY)
Defendant (s).)

In the Court of Common Pleas
Ninth Judicial Circuit.

Case No: 2014-CP-08-2494

Affidavit of Service

The undersigned, Michael Lamont, being duly sworn says that he served the:
Cover Sheer, Summons, and Complaint on Travis Felkel, by delivering same to:

(x) Travis Felkel Personally

And leaving with her one copy of the same at:
339 Holly Avenue Goose Creek, SC, 29445 on December 2, 2014 at 8:00 PM

And that the deponent knows the person so served to be Ginger Ulery (wife), the
subject mentioned and described in the pleadings, and the deponent is not a party to,
nor interested in the action.

Michael A. Lamont
Michael A. Lamont, Private Investigator

Sworn to before me this 3rd day of December 2014

Dore G. Bell
Notary Public for South Carolina

My Commission expires on 3/17/2021

2014 DEC -5 AM 11:45
CLERK OF COURT
BERKELEY COUNTY, SC
ILEED

Defendant.

AFFIDAVIT OF SERVICE

FILED

014

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
) Civil Action No. 2014-CP-08-2494

) Civil Action No. 2014-CP-08-2494

)

)

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2015 FEB -4 PM 4:00
CLERY
DEERLEY COUN

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perform all necessary acts incident to this action. Further, the Special Referee shall retain jurisdiction to hear any action contesting the validity of the judgment, necessary to enforce the judgment, and motions or actions to set aside Entry of Default or Default Judgment pursuant to the South Carolina Rules of Civil Procedure, including but not limited to Rule 60(b).

Any and all hearings shall be held in the office of Clayton B. McCullough, Special Referee for Berkeley County, located at 359 King Street, Ste. 200, Charleston, South Carolina and the final report by the Special Referee shall be filed with the Clerk of Court for Berkeley County.

IT IS SO ORDERED!

Mary P. Brown / DW
Mary P. Brown, Clerk of Court

Berkeley, South Carolina

2/4, 2015

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 2 COUNTY OF BERKELEY) CASE NO. 2014-CP-08-2494
 3
 4
 5
 6

7 ANNA ANGELACCI, as)
 8 Guardian of K.B,)
 9 a minor,)
 10)
 11 Plaintiff,)
 12 vs.)
 13 E.U., a minor, TRAVIS)
 14 O. FELKEL and GINGER)
 15 G. ULERY,)
 16)
 17 Defendant.)
 18 -----

DAMAGES HEARING

19 DATE: April 21, 2015
 20 TIME: 10:07 a.m.
 21 BEFORE: Special Referee,
 22 Clay McCullough, Esq.
 23 LOCATION: McCullough Kahn, LLC
 24 359 King Street, Suite 200
 25 Charleston, SC
 REPORTER: Margaret F. Barnett
 Court Reporter
 and Notary Public
 (843) 324-6985

Margaret F. Barnett (843) 324-6985
 marfrabar@bellsouth.net

1 APPEARANCES OF COUNSEL:

2 ATTORNEYS FOR THE PLAINTIFF
3 ANNA ANGELACCI, as guardian of
K.B., a minor:

4 YARBOROUGH APPLGATE, LLC
5 BY: DOUGLAS E. JENNINGS, ESQUIRE
291 East Bay Street, 2nd Floor
6 Charleston, SC 29401
(843) 972-0150

7

8 ALSO PRESENT:

9 (Appearing for first half of hearing):

10 Tina Manon
11 Kyle Bierlair
12 Patricia Coleman
Anna Angelacci

13

(Appearing for second half of hearing):

14 Travis Felkel
15 Ginger Ulery-Felkel

16

17

18

19

20

21

22

23

24

25

Margaret F. Barnett (843) 324-6985
marfrabar@bellsouth.net

I N D E X

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TINA MANON	
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PATRICIA COLEMAN	
BY MR. JENNINGS.....	26
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E X H I B I T S

Plaintiff's Exhibit	Description	Marked
1	Entry of Default and Order of Referral to Special Referee	6
2	9/18/2014 letter to Defendants	7
3	9/25/2014 letter to Defendants with copy of lawsuit	7

1		(Exhibits Cont.)	
2	Plaintiff's Exhibit	Description	Marked
3			
4	4	10/23/2014 letter to Defendants with Summons and Complaint	7
5	5	2/12/2015 letter to Defendants with attached Entry of Default	7
6			
7	6	4/10/2015 Notice of hearing to Defendants	8
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12	10	MUSC medical records for Kyle Bierlair	15

13 Plaintiff's Exhibits 1-10 were admitted
14 into evidence, page 30

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Margaret F. Barnett (843) 324-6985
marfrabar@bellsouth.net

1 MR. McCULLOUGH: Good morning. My name is
2 Clay McCullough, and I have been appointed as a
3 special referee. Basically what that means is we'll
4 take some brief testimony. This is a damages hearing.
5 Your lawyer will place things on the record related to
6 service, my appointment and background information.
7 We can take testimony. I might have some questions.
8 And then our court reporter is going to take down
9 everything everybody says. In a minute I'll ask
10 everybody to introduce themselves for the record and
11 state your relationship either as a party or a
12 witness, and then we'll go from there.

13 If you have any questions, by all means,
14 let me know. If you want to take a break, I don't
15 believe this will be very long, but I'm certainly
16 willing -- obviously, we'll take a break and
17 accommodate that. So again, let's just go around the
18 room again.

19 Clay McCullough. I've been appointed
20 special referee to hear the damages issues here this
21 morning.

22 Douglas, you want to kick us off?

23 MR. JENNINGS: I'm Douglas Jennings here
24 on behalf of the plaintiff. And I'll let you guys
25 introduce yourselves individually. Why don't we start

1 here.

2 MS. COLEMAN: I'm Patricia Coleman. I'm
3 the aunt of Kyle. I'm also a nurse practitioner.

4 MS. MANON: Tina Manon. I'm the mother of
5 the plaintiff.

6 MR. BIERLAIR: Kyle Bierlair, the
7 plaintiff.

8 MS. ANGELACCI: Anna Angelacci. I'm the
9 guardian, Kyle's guardian, and grandmother.

10 MR. JENNINGS: Thank you.

11 Clay, I have a couple of things I'd like
12 to mark as exhibits, such as your appointment, some
13 letters we wrote the defendants, and the Entry of
14 Default. I can mark that now and explain what it is
15 on the record?

16 MR. McCULLOUGH: Yeah.

17 MR. JENNINGS: I'd like to mark as exhibit
18 1 the Entry of Default and the appointment of Clay
19 McCullough as special referee.

20 (P-1, Entry of Default and Order of
21 Referral to Special Referee, was marked for
22 identification.)

23 MR. McCULLOUGH: You want to hand them
24 down here?

25 MR. JENNINGS: Sure. I'm going to mark as

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1 exhibit 2 a letter that was sent to the defendants on
2 September 18, 2014, asking them to contact us
3 regarding this potential lawsuit.

4 (P-2, 9/18/2014 letter to Defendants, was
5 marked for identification.)

6 MR. JENNINGS: I'm going to mark as
7 exhibit 3 a letter dated November 25, 2014, where we
8 sent the defendants a copy of the lawsuit that had
9 been filed.

10 (P-3, 9/25/2014 letter to Defendants with
11 copy of lawsuit, was marked for identification.)

12 MR. JENNINGS: I'm going to mark as
13 exhibit 4 a letter that was sent to the defendants on
14 October 23, 2014, enclosing a copy of the Summons and
15 Complaint, asking them to contact us once again.

16 (P-4, 10/23/2014 letter to Defendants with
17 Summons and Complaint, was marked for identification.)

18 MR. JENNINGS: I'm going to mark as
19 exhibit 5 a letter dated February 12, 2015, which is a
20 letter we sent to the defendants with an attached copy
21 of the Entry of Default.

22 (P-5, 2/12/2015 letter to Defendants with
23 attached Entry of Default, was marked for
24 identification.)

25 MR. JENNINGS: I'm going to mark as

1 exhibit 6 the notice of the hearing for today that was
2 served by process server on the defendants.

3 (P-6, 4/10/2015 Notice of hearing to
4 Defendants, was marked for identification.)

5 MR. JENNINGS: And then exhibit 7 is an
6 Affidavit of Service from the process server saying
7 that the defendant, Ginger Ulery, was personally
8 served on April 16 with notice of today's hearing.

9 (P-7, Affidavit of Service, was marked for
10 identification.)

11 MR. McCULLOUGH: That's 7?

12 MR. JENNINGS: This will be 8, I
13 apologize.

14 MR. McCULLOUGH: No, this is 6, I'm sorry.
15 That should be 7.

16 MR. JENNINGS: Okay. So exhibit 7,
17 Affidavit of Service from the process server.

18 MR. McCULLOUGH: Real quick. Have you
19 heard anything from any of the defendants or anything
20 on behalf of the defendants related to either filing
21 of the lawsuit, this hearing today? Have you heard
22 anything?

23 MR. JENNINGS: No, not at all. We've
24 reached out to the defendants on numerous occasions,
25 and they have not once responded to any correspondence

1 we've sent via US Mail or personal service.

2 MR. McCULLOUGH: All right, thank you.

3 MR. JENNINGS: So we can get started with
4 the damages testimony whenever you're ready.

5 MR. McCULLOUGH: Yeah. It looks like you
6 properly got the Entry of Default. I have been
7 appointed as special referee by Berkeley County. It
8 looks like you have provided notification of the
9 pleadings, of the hearing, and you've appeared to have
10 served them appropriately both by mail and by process
11 server. At this point it appears you've done what you
12 needed to do to put everybody on notice of this
13 proceeding, so at this point go ahead with your
14 damages hearing.

15 MR. JENNINGS: Thank you, sir.

16 Ms. Angelacci, let's start with you. Will
17 you state your full name for the record.

18 MS. ANGELACCI: Anna Marie Angelacci.

19 MR. McCULLOUGH: Do you want to maybe
20 swear her?

21 MR. JENNINGS: Yeah, we probably do need
22 to do that.

23 Will you swear in the witness, Meg.

24 ANNA ANGELACCI

25 being first duly sworn, testified as follows:

EXAMINATION

BY MR. JENNINGS:

Q. Ms. Angelacci, what's your relationship to Kyle?

A. I'm his grandmother and his legal guardian.

Q. How old was Kyle when he was injured?

A. Fifteen years old.

Q. Do you know when Kyle was injured?

A. Yes, September 8, 2014.

Q. What were the nature of Kyle's injuries?

A. He had bruises. He had a fractured skull, a brain bleed. He had -- he was -- from what I understood, he was out of it. He was knocked out and slammed on his head and in a lot of pain. We took him to the hospital.

Q. What hospital did he go to?

A. Trident Medical.

Q. And, then, did he go somewhere else after that?

A. After they looked at the X-rays they had done, they said that they were going to admit him for observation, and then they called us and said there's been a change, after they read the X-rays, and he needs to be Medevac'd down to the pediatric ICU at

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1 Medical University.

2 Q. How long did he stay in the pediatric ICU

3 at MUSC?

4 A. Ten days.

5 Q. Were you with him for the majority of that

6 time?

7 A. Yes. His mom and I took turns.

8 Q. Did you have some conversations with his

9 doctors during that time?

10 A. Yes, sir.

11 Q. What grade was Kyle in during that time?

12 A. I'm sorry, what?

13 Q. What grade was Kyle in in high school?

14 A. I don't understand what grade means.

15 Q. Was he in ninth grade? Tenth grade?

16 A. Oh, okay. Tenth grade.

17 Q. Tenth grade, all right. Has Kyle returned

18 to school since the injury?

19 A. No. He's on home schooling. He's trying

20 to be home schooled.

21 Q. Did his doctors tell him he cannot return

22 to school?

23 A. Not this year, no.

24 Q. Have you noticed any changes in Kyle since

25 his injury?

1 A. Yes.

2 Q. Briefly, tell us about that.

3 A. Kyle's been -- he's in a lot of pain with
4 headaches he's been having, and it makes him very
5 agitated and short fused. And when he's -- he used to
6 have a lot of friends, but he gets so short with them,
7 that they don't want to -- I mean, even with his mom
8 and I, we have a difficult time and he'll -- he also
9 has cognitive memory issues, where we'll tell him
10 something and then an hour later he'll say, "Well,
11 when are you going to let me know if I can do this?"
12 or "When are you going to let me know if we're going
13 to get pizza?" "We told you an hour ago you could go
14 see Papa. We told you an hour ago." And he'll, "Oh,
15 yeah, oh, yeah."

16 When he gets short with us, when he gets
17 agitated and gets short with us, an hour later, after,
18 he'll say, "I'm really sorry. My head was hurting so
19 bad, I really didn't mean to go off on you like that."
20 He gets really -- I don't know how to help him fix
21 that. And he's asked us, you know, "Can you help me?"

22 Q. So it's fair to say you've noticed some
23 significant changes in Kyle's cognitive functioning
24 preinjury and postinjury?

25 A. And his schoolwork, too. They're trying

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1 to help him with schoolwork, to stay in his classes
2 and in his grade and keep him so that if he gets
3 better, he can be mainstream. But he's fallen behind.
4 He gets headaches so bad, he just lays in bed and he
5 won't get his homework done. He's starting to fall
6 behind instead of staying current. And he tries
7 really hard. I mean, he had a stack of homework this
8 big that the home school teacher sent him home. He's
9 getting behind.

10 Q. I understand. Did you discuss with his
11 doctors the need for future medical care?

12 A. Yes. They called me and they said the
13 bleed was -- which they thought was supposed to have
14 stopped and gone away, that the bleeding and swelling
15 are still there, and they were saying that he probably
16 needs to have as little brain activity as possible.
17 But it's hard because he is -- he can't sleep when
18 he's in pain. He can't rest. So it's hard for him to
19 maintain. So we have been -- his mom's been trying
20 and working with him really closely and trying to keep
21 her patience.

22 Q. Did the doctors discuss with you the need
23 for future --

24 A. Yes.

25 Q. -- medical care?

1 A. Yes. They said that his head is still
2 growing and that these plates that they put in his
3 head now more than likely are going to have to be --
4 there's going to have to be adjustments. I'm not
5 exactly sure the medical terms. Patricia knows more.
6 When I asked her to fill me in on what's this -- what
7 is he talking about, Patricia was able to tell me what
8 is he looking forward to. Because he's still -- I
9 guess -- they said his head is still growing, his
10 skull is still growing around those plates.

11 Q. Do you believe that Kyle will benefit from
12 future medical care?

13 A. Absolutely. He definitely needs some
14 help. We're hoping that we can get some kind of
15 relief so we can get him the help that he needs from
16 that.

17 (P-8, Medical bills for Kyle Bierlair, was
18 marked for identification.)

19 BY MR. JENNINGS:

20 Q. I'm going to hand you what I've marked as
21 exhibit 8, and tell me if that accurately reflects the
22 medical bills that Kyle incurred as a result of this
23 injury?

24 A. This looks to be like them, yes.

25 (P-9, Medical bill summary, was marked for

1 identification.)

2 BY MR. JENNINGS:

3 Q. I'm going to hand you now what's been
4 marked as Plaintiff's Exhibit No. 9 and tell me if
5 that's an accurate summary of the bills that Kyle has
6 incurred --

7 A. Uh-huh.

8 Q. -- as a result of this injury?

9 A. Yes, this is.

10 Q. What's the total amount of medical bills
11 that Kyle has incurred as a result of this injury?

12 A. \$85,153 so far.

13 (P-10, MUSC medical records for Kyle
14 Bierlair, was marked for identification.)

15 BY MR. JENNINGS:

16 Q. I'm going to mark now Plaintiff's Exhibit
17 No. 10 and ask you if that appears to be a copy of the
18 MUSC medical records for Kyle's treatment for the ten
19 days he was hospitalized following his injury?

20 A. This looks like them.

21 MR. JENNINGS: Mr. McCullough, I don't
22 have any further questions for this witness, unless
23 you do?

24 MR. McCULLOUGH: If you don't mind, a
25 couple of quick ones.

EXAMINATION

1

2 BY MR. McCULLOUGH:

3

4 Q. You mentioned three things I wanted to ask
5 you about. You said he's still having a brain bleed
6 in areas? Did you mention that?

7 A. Yeah. That's what the doctors told me the
8 CT said.

9 Q. And that's ongoing?

10 A. And that's in general, yeah.

11 Q. Does he still have suffering -- I mean,
12 excuse me, swelling, or has the swelling gone down?

13 A. He's still -- that's what's causing the
14 headaches, is what the doctor told me. I mentioned to
15 him that he's still having headaches, what do we do?
16 And they said, Well, that's part of it.

17 Q. Have they given a timetable as to when
18 they're going to follow back up to see if the swelling
19 has decreased or the bleeding has stopped?

20 A. They told me that there's an issue with
21 his insurance, that I believe his mom is trying to
22 deal with, the insurance issue.

23 MR. McCULLOUGH: We can talk about that
24 when you're testifying.

25 MS. MANON: Okay.

MR. McCULLOUGH: Lastly, you mentioned

1 plates.

2 Tell me just physically -- don't you love
3 we're talking about you and you have to sit there.
4 But where are the plates and how many?

5 MR. BIERLAIR: They're right here and
6 there's five of them, and I have ten screws, and
7 that's all.

8 MS. MANON: They're titanium.

9 MR. BIERLAIR: Yeah, titanium. And
10 they're, I think, like right there.

11 MR. MCCULLOUGH: We can get into
12 specifics, but have they told you how long those were
13 -- are those going to be in there forever, or are
14 those coming out and bigger ones get placed as you --

15 MR. BIERLAIR: I honestly never really
16 asked them that.

17 MS. ANGELACCI: His mom and I, when we saw
18 the surgeon at the hospital, he said that those plates
19 will need to be adjusted eventually. Because what
20 happened was, he showed us a picture on his cell
21 phone, and his skull was crushed and splintered. And
22 as the swelling was getting worse, it was cutting into
23 the capillaries, so they had to cauterize the
24 capillaries to stop the bleeds, and they had to remove
25 the splintered pieces, a portion of this part of his

1 brain, and that's where the five plates had to be put
2 in. They thought eventually only two, one at the
3 bottom, one at top, whatever it was, they had to
4 remove it and he had five. He said those, as his
5 brain, as his skull grows, that it's going to have to
6 change.

7 MR. McCULLOUGH: Thank you.

8 MR. JENNINGS: Meg, will you swear in
9 Kyle.

10 KYLE BIERLAIR

11 being first duly sworn, testified as follows:

12 **EXAMINATION**

13 **BY MR. JENNINGS:**

14 Q. State your full name for the record.

15 A. Kyle Zane Bierlair.

16 Q. Kyle, how old are you?

17 A. I'm 16.

18 Q. How have the injuries you've received
19 changed your life?

20 A. Many ways. Occupation, I wanted to be in
21 the military before all this, and it's really changed
22 all that for me. Now I can't do that, and I have to
23 spend even more years searching on something to do and
24 something that I'll be able to do.

25 Q. Explain to us what happened. You went

1 through a procedure and now you have some plates and
2 screws in your head; right?

3 A. Well, yes, sir. I mean, like, I got
4 slammed on my head by the Evan kid. I don't even
5 remember what happened that specific day. I just woke
6 up in the hospital and was, like, had metal plates in
7 my head.

8 Q. Can you feel them? Can you tell that
9 they're there?

10 A. Yes, sir. I can definitely feel them,
11 every day.

12 Q. Have the doctors told you that you were
13 vulnerable to a future injury?

14 A. Yes, sir.

15 Q. Do you have limitations now that you have
16 those plates and screws in your head?

17 A. Yes, sir, definitely.

18 Q. Have you noticed any cognitive impairments
19 such as a loss of concentration or frequent headaches
20 that interfere with your daily life?

21 A. Yes, sir. I have a lot of headaches often
22 and it really -- it just slows down my work in school
23 and other things, such as just concentrating. I can't
24 even -- I get headaches whenever I read books that
25 have too small font and it just -- I can only read a

1 very short amount of time without it hurting.

2 Q. Did you have those problems prior to the
3 injury?

4 A. No, sir.

5 Q. How often do you suffer from the
6 headaches? Every day?

7 A. Every single day.

8 Q. How many times a day?

9 A. I can't even count.

10 Q. All day long?

11 A. All day long.

12 Q. If you could afford it, would you seek
13 future medical care, neurological evaluations, to try
14 to alleviate the headaches?

15 A. Most definitely.

16 Q. Have you had any other memory loss, loss
17 of concentration, as a result of the injury?

18 A. I have a little bit of short-term memory
19 loss. I mean, my parents say something or my grandma,
20 they'll tell me something, and 30 minutes, an hour
21 later, I won't even remember that they told me that or
22 that they had informed me of something. It really
23 gets aggravating.

24 Q. Understood. Now you're doing home school;
25 right?

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1 A. Yes, sir.

2 Q. And you're not surrounded by other

3 students all day?

4 A. No, sir.

5 Q. You're just doing that work on your own;

6 right?

7 A. Yes, sir.

8 Q. Is that going to put you behind when you

9 get back with your other peers at school?

10 A. A lot.

11 Q. Would you rather be at school?

12 A. I would rather -- I would rather be at

13 school, but the thing is -- I mean, I'm not sure,

14 though, because I haven't -- I haven't tried that.

15 You know, my headaches and stuff, like, I have those

16 when I'm at my house and I'm by myself, but I never --

17 I never, like, went into school with these headaches,

18 and I don't know what it would be like to go into a

19 highly populated area, you know, with loud noises

20 everywhere and people yelling and stuff. You know, I

21 mean, the school is like that.

22 Q. Does that give you anxiety --

23 A. A little bit.

24 Q. -- thinking about that?

25 A. Yes, sir.

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1 Q. So you're not sure how that transition is
2 going to be; right?

3 A. Yes, sir. I'm a little bit scared about
4 that.

5 MR. JENNINGS: Mr. McCullough, I don't
6 have any more questions for this witness.

7 **EXAMINATION**

8 **BY MR. McCULLOUGH:**

9 Q. When did this happen?

10 A. This happened on the 8th of I think it was
11 August, September.

12 MR. JENNINGS: September 8, 2014.

13 **BY MR. McCULLOUGH:**

14 Q. So you basically will lose a year of
15 school?

16 A. Yes, sir.

17 Q. It's your hope to go back next year, back
18 to --

19 A. That's what my doctor said, and, yes, I
20 would love to go back to school next year.

21 Q. Will you go back as a sophomore or a
22 junior?

23 A. A junior, if I do pass this year.

24 Q. But it's going to be close?

25 A. Yes, sir.

1 Q. That's all I've got. Thank you very much.

2 MR. JENNINGS: Will you swear in the next
3 witness.

4 TINA MANON

5 being first duly sworn, testified as follows:

6 **EXAMINATION**

7 **BY MR. JENNINGS:**

8 Q. Will you please state your full name for
9 the record.

10 A. Oh. Tina Manon. I'm Kyle's mother.

11 Q. And there's no need to repeat a lot of
12 what --

13 A. Right.

14 Q. -- has already been stated for the record,
15 but are there any changes that you've noticed in Kyle
16 that have not already been discussed?

17 A. The doctor specifically said low to no
18 brain stimulation for the first three to six months
19 because it would irritate his brain and the swelling
20 and the injury, and for that to happen, he would have
21 to not do anything, which is basically what they're
22 saying. But I mean, he's a 16-year-old boy; that
23 can't happen. Plus, he's got school, and he is
24 actually behind. The first semester he was getting
25 100s and 98s, and now he's down to zeros and sixes.

1 I've noticed his sleeping patterns are
2 off. Sometimes he sleeps; sometimes he doesn't.
3 Sometimes he sleeps all day. His moods, he does have
4 a very short fuse. I can ask him, Hey, will you pick
5 that up? and he instantly flies off the handle. Which
6 he never used to do that before. And he is very
7 skeptical; he's kind of sketched out by everybody.
8 Any new face is a possible threat to him. Meeting new
9 friends and having any type of social life is nil.
10 Like, he goes through the house at night and locks
11 every single door, every single window, in fear of
12 something else happening to him.

13 Q. Did he do that before the injury?

14 A. No. We used to sleep with our front door
15 unlocked.

16 Q. Did the doctors discuss the need for
17 future medical care with you?

18 A. Yes, they did.

19 Q. Do you believe that Kyle will benefit from
20 future medical care?

21 A. Yes, he will.

22 Q. If your family could afford it, would you
23 seek that future medical care?

24 A. Oh, yes, without a doubt.

25 MR. JENNINGS: I don't have any further

1 questions for this witness.

2 **EXAMINATION**

3 **BY MR. McCULLOUGH:**

4 Q. I think I know the answer to this, but
5 just to maybe flesh that out a little bit. Those
6 future medicals would include not only a potential
7 surgical procedure to readjust the plates, but
8 presumably some counseling?

9 A. Yes.

10 Q. Continued medications, testing,
11 presumably, periodically?

12 A. Yes.

13 Q. Neurological testing and probably
14 psychological counseling/testing?

15 A. Yes, sir.

16 Q. Coping mechanisms, all of those types of
17 things?

18 A. Yes, sir.

19 MS. ANGELACCI: His aunt has been helping
20 us trying to figure out what he's going to need, too.

21 MR. JENNINGS: The next witness has that
22 knowledge.

23 MR. McCULLOUGH: My goal is to jump ahead
24 of things at every possible curb.

25 MS. MANON: From what I was told, they

1 told me that there is a potential that he would have
2 to have another surgery. They did find a second
3 bleed. There's two bleeds on the brain. And like she
4 said, when his skull got fractured, it fractured and
5 kind of opened like a clamshell, so it was cutting
6 other capillaries in his brain underneath the dermis
7 of the brain, and they said that that bleed is
8 continuing to bleed. It's a slow bleed, it's not a
9 major threat, but it could potentially be. So he
10 might have to have another surgery. He might have to
11 have the plates readjusted. And then, like you said,
12 the mental part of it, psychologically.

13 MR. McCULLOUGH: Sure, okay, thank you.

14 MR. JENNINGS: Can you swear the next
15 witness.

16 **PATRICIA COLEMAN**

17 being first duly sworn, testified as follows:

18 **EXAMINATION**

19 **BY MR. JENNINGS:**

20 Q. Will you please state your full name for
21 the record?

22 A. Patricia Mae Coleman.

23 Q. Ms. Coleman, what do you do?

24 A. I'm a nurse practitioner.

25 Q. Where do you work?

1 A. I'm currently not working. My previous
2 job was at AOH Occupational Health.

3 Q. Do you have any experience working with
4 patients with neurological disorders and brain
5 injuries?

6 A. I worked at MUSC on the neurosurgery floor
7 from 2006 to 2008.

8 Q. What's your relationship with Kyle?

9 A. He's my nephew.

10 Q. Have you continuously observed and
11 attempted to assist him since he was injured in
12 September of last year?

13 A. Yeah. I was there that night and since
14 then.

15 Q. I know some of the changes in Kyle have
16 already been expressed, but from your understanding of
17 the medical procedures that he has gone through, can
18 you briefly describe what that process is and what's
19 your understanding of any future medical care that you
20 think he may need that hasn't already been discussed?

21 A. That hasn't already been discussed?

22 Q. Right.

23 A. You know, typically, patients with this
24 kind of injury will need serial MRIs, serial
25 follow-ups with neurosurgeons. They can have a

1 variety of complications, like hydrocephalus,
2 seizures, fluid on the brain, anything like that.
3 That's usually going to be the case with kids who have
4 this type of injury, because their bones aren't done
5 growing and they don't ossify until age 25. So he's
6 got nine more years of bone growth. One would expect
7 the plates to, you know, need changing or adjusting,
8 in my opinion.

9 Q. Did you talk with any of the doctors at
10 the hospital about the need for that future medical
11 care?

12 A. Briefly, there was -- I think the
13 attending came around once while I was there, and he
14 said that that's probably the case and that, you know,
15 seizures would be -- he would be at risk for seizures
16 and cognitive changes. Especially while, you know,
17 the blood vessels and the nerves around the area are
18 regenerating, there would be headaches involved and,
19 you know, risk for more swelling.

20 Q. With your understanding of the nature of
21 Kyle's brain injury, what concerns you the most about
22 his future?

23 A. The worst thing about this whole thing is
24 the cognitive issues, like the constant fear and
25 anxiety. I think that's going to take more frequent

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1 visits and work, you know, counseling with a
2 psychiatrist and a therapist. I think that's going to
3 be a huge component of recovery for him. The physical
4 part of it, you know, which could be another surgery
5 or that kind of thing, could further exacerbate that
6 or, you know, cause more problems in that area. But I
7 think if things were to stay right as they are right
8 now, I think the psychological component would be the
9 most.

10 Q. Do you think Kyle suffered permanent
11 impairment?

12 A. Yeah, yes.

13 Q. You agree he has limitations in the
14 future?

15 A. Yes.

16 Q. You have observed some of these
17 impairments firsthand?

18 A. Yes. He's always had -- like, always
19 having the headaches now, decreased motivation, the
20 increased anxiety. For the most part, those are,
21 like, the three biggest things.

22 MR. JENNINGS: I think that's all the
23 questions I have for this witness as well.

24 MR. McCULLOUGH: No questions, thank you.

25 MR. JENNINGS: For the record, I don't

1 know that it's necessary, but I'll move all those
2 exhibits that I marked into evidence.

3 MR. McCULLOUGH: Okay.

4 (Plaintiff's Exhibits 1-10, were admitted
5 into evidence.)

6 MR. McCULLOUGH: Yeah, I mean, at this
7 point I think you have established -- liability,
8 obviously, was established before you got here. You
9 established clear damages, not only past but future
10 physical, emotional, mental. You plan on just
11 submitting a proposed order?

12 MR. JENNINGS: Yeah. I was going to say,
13 based on the testimony we just heard, I will go --
14 draft a proposed order and send that to you within the
15 next two to three days.

16 MR. McCULLOUGH: That's fine. Just e-mail
17 it to me. And go ahead, I'll put this on the record.

18 I definitely find that the actual damages
19 are, I mean, pretty clearly appropriate based on the
20 amount of time you spent in the hospital, and from not
21 only past experience but from the testimony, I would
22 anticipate futures, not only future surgical
23 procedures but, you know, put in there counseling,
24 periodic MRI checkups, psychiatry. There are -- the
25 future damages, obviously, can be significant, not to

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1 mention the social aspects of missing a year in
2 school, things of that nature.

3 Thank you for your time. I hate that
4 you're here under these circumstances but I wish you
5 the best of luck.

6 MR. BIERLAIR: Sir, thank you.

7 MR. JENNINGS: Thank you.

8 (The hearing was adjourned at 10:37 a.m.)

9 (A recess transpired.)

10 (The hearing was resumed at 10:56 a.m.)

11 MR. McCULLOUGH: My name is Clay
12 McCullough. I'm a lawyer in Charleston, and I was
13 appointed by the Berkeley County Clerk of Court as
14 special referee. Basically what that means is after a
15 lawsuit has been filed, which the plaintiff filed in
16 this case, it was served, an answer was not entered,
17 and so the plaintiff moved for Entry of Default, which
18 has been marked as Exhibit 1; and then simultaneous
19 with the Entry of Default, they moved to have me
20 appointed as special referee. That was signed by the
21 Clerk of Court, Mary Brown, in February 2015.

22 And then we've got exhibit 2, 3, 4, 5, 6
23 that go through the -- maybe 7 as well, and 7 -- about
24 service on you guys about the default and the hearing
25 here today. And so we started a little while ago at

1 about 10:05 and actually just finished it up at about
2 10:45 and took testimony from four different
3 witnesses. But I'm glad you guys are here.

4 MS. ULERY-FELKEL: I apologize. We got a
5 little lost.

6 MR. McCULLOUGH: That's okay. Basically
7 where we are now, this is a damages hearing, and the
8 purpose of today -- the default's been entered, so
9 liability has been concluded, and the purpose of today
10 is to ascertain the amount of damages awardable to the
11 plaintiff against the defendants that are over the age
12 of majority, which I believe are you two. So that
13 being said, I'll turn it over. The record is still
14 open.

15 Douglas, I'll let you proceed.

16 MR. JENNINGS: Okay, thank you. I'm
17 Douglas Jennings. I represent Kyle Bierlair and his
18 family. He's the kid who was injured at school --

19 MS. ULERY-FELKEL: Yes.

20 MR. JENNINGS: -- with Evan. Like I said,
21 we served -- we tried numerous times to reach out to
22 you guys and sent you numerous letters and sent people
23 by the house to deliver papers, asking you to call,
24 and we never could get in touch with you. Then we
25 filed a Complaint. Nobody -- y'all didn't answer it,

1 and, then, so we put you in default.

2 MS. ULERY-FELKEL: Oh. Okay. I didn't
3 realize that Complaint was, like, you know, binding us
4 to --

5 MR. JENNINGS: Yeah, it was an official --

6 MS. ULERY-FELKEL: Okay, gosh.

7 MR. JENNINGS: We were pretty clear about
8 that in our letters, that you had 30 days to answer.

9 MS. ULERY-FELKEL: Okay.

10 MR. JENNINGS: We did that, and then after
11 you got put into default, liability is no longer
12 contested in the case. And it was about damages, and
13 so we had the damages hearing earlier today. And Kyle
14 and his -- he had three people along with him: his
15 mother, his guardian, his aunt. They all came and
16 testified, and, you know, had you been here during
17 that time, you would have had the opportunity to
18 cross-examine him on damages. You know, I will still
19 give you an opportunity now to put that -- put
20 anything you have on the record. But I would like to
21 ask you a couple of questions.

22 Meg, will you swear her under oath.

23 GINGER ULERY-FELKEL

24 being first duly sworn, testified as follows:

25 MR. JENNINGS: We'll start with you.

1 (To Mr. Felkel): And we'll go to you
2 next.

3 **EXAMINATION**

4 **BY MR. JENNINGS:**

5 Q. What's your full name?

6 A. It's Ginger Gail Ulery-Felkel.

7 Q. You're Evan's mother?

8 A. I am.

9 Q. And you live at the house where we have
10 been sending all this correspondence?

11 A. I do.

12 Q. Is there any reason you didn't respond?

13 A. Well, at that time we did get legal advise
14 from our attorneys, but we just financially are, you
15 know, not in a position to, you know, to afford
16 retainer fees right now.

17 Q. So you did consult with an attorney?

18 A. We did, we did, yes. We just didn't, you
19 know, move along with it just because, you know, we
20 just didn't have enough money.

21 Q. I understand. Which attorney did you
22 speak with?

23 A. Chris Lizzi.

24 Q. Did you ever inform your insurance company
25 that you received a Summons and Complaint?

1 MS. ULERY-FELKEL: Did you, Travis?
2 MR. FELKEL: Yes.
3 BY MR. JENNINGS:
4 Q. Who is your insurance company? Or does
5 Travis know that more than you?
6 A. It's --
7 THE WITNESS: What is it again?
8 MR. FELKEL: Nationwide.
9 MS. ULERY-FELKEL: Nationwide.
10 BY MR. JENNINGS:
11 Q. Nationwide provides you insurance on your
12 home?
13 A. Excuse me? Is that our insurance company
14 for our home? Yes.
15 Q. Nationwide?
16 A. Yes.
17 MR. JENNINGS: Travis, you called
18 Nationwide?
19 MR. FELKEL: I went and saw our --
20 MR. JENNINGS: Local agent?
21 MR. FELKEL: Yes, sir.
22 MR. JENNINGS: What's their name?
23 MR. FELKEL: John Herndon.
24 MR. JENNINGS: When did you go see
25 Mr. Herndon?

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1 MR. FELKEL: Before Christmas.

2 MR. JENNINGS: After receiving a copy of
3 the Summons and Complaint?

4 MR. FELKEL: Yes, sir.

5 MR. JENNINGS: And you provided him a copy
6 of it?

7 MR. FELKEL: Yes.

8 MR. JENNINGS: What did he do in response?

9 MR. FELKEL: He told me I needed to have
10 Evan get on the phone with the corporate office.

11 MR. JENNINGS: Did Evan do that?

12 MR. FELKEL: I failed to make that happen,
13 yes.

14 MR. JENNINGS: But you told John Herndon
15 that, Hey, I'm insured with you, Nationwide, and a
16 Summons and Complaint has been filed against me?

17 MR. FELKEL: Yes.

18 MR. JENNINGS: Did he ask you to leave a
19 copy with him?

20 MR. FELKEL: He made copies of the
21 paperwork and told me he would hold onto it and wait
22 until I made the -- filed the claim with the corporate
23 office..

24 MR. JENNINGS: Did anyone from Nationwide
25 ever reach out to you?

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1 MR. FELKEL: No, sir.

2 MR. JENNINGS: After your conversation
3 with John Herndon?

4 MR. FELKEL: Not that I'm aware of.

5 MR. JENNINGS: Do you remember, you said
6 you met with John Herndon before Christmas; right?

7 MR. FELKEL: That's correct.

8 MR. JENNINGS: Did you take the Summons
9 and Complaint and the letters we sent with you?

10 MR. FELKEL: The last summons that I
11 received I took, the papers that I was served with.

12 MR. JENNINGS: And where is John Herndon's
13 office?

14 MR. FELKEL: It's in West Ashley over by
15 the BI-LO.

16 MR. JENNINGS: Do you know how much
17 homeowner's insurance you have?

18 MR. FELKEL: Not right offhand, no. I
19 know it's not a whole lot.

20 MR. JENNINGS: How much is your home
21 worth?

22 MR. FELKEL: It appraised for 70, I think,
23 or 80.

24 MR. JENNINGS: Seventy or eighty thousand
25 dollars?

1 MR. FELKEL: Somewhere in there, yeah.
2 MR. JENNINGS: And is there a mortgage on
3 that house?
4 MR. FELKEL: Yes, sir.
5 MR. JENNINGS: What's the balance of the
6 mortgage, approximately?
7 MR. FELKEL: Thirty-five.
8 MR. JENNINGS: Thirty-five thousand?
9 MR. FELKEL: Yes, sir.
10 MR. JENNINGS: So there's about 50 percent
11 equity in the house?
12 MR. FELKEL: Yes, sir.
13 MR. JENNINGS: John Herndon didn't say,
14 you know, your policy lapsed or anything; right?
15 MR. FELKEL: No. We have escrow accounts.
16 MR. JENNINGS: What's your cell phone
17 number?
18 MR. FELKEL: (843) 329 -- I'm sorry,
19 901-7764.
20 MR. JENNINGS: What about you,
21 Ms. Ulery-Felkel?
22 MS. ULERY-FELKEL: Do I have to provide
23 you my cell phone number?
24 MR. JENNINGS: No, you don't have to.
25 MS. ULERY-FELKEL: Okay, all right. I'll

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1 just give you Travis's, then.

2 MR. JENNINGS: That'll work.

3 So you never heard any word back from

4 Nationwide?

5 MR. FELKEL: No, I did not. Not on this

6 matter, no.

7 MR. JENNINGS: What's that?

8 MR. FELKEL: Not on this matter, no.

9 MR. JENNINGS: Not on this matter?

10 MR. FELKEL: No.

11 MR. JENNINGS: Did you hear from them on a

12 different matter?

13 MR. FELKEL: No. I mean, other than

14 getting our annual tax information. That's all I got.

15 MR. JENNINGS: You understand you have

16 been put in default because the Summons and Complaint

17 was not answered?

18 MS. ULERY-FELKEL: Yes. Could you explain

19 what that means for us, please?

20 MR. JENNINGS: Sure. Default under the

21 rules of Civil Procedure, you --

22 MS. ULERY-FELKEL: Certain things are out

23 of --

24 MR. JENNINGS: You have 30 days to respond

25 to a Summons and Complaint, and that is essentially a

1 lawsuit. We filed a lawsuit against the two of you as
2 parents or guardians of Evan Ulery, who's a minor.

3 Okay?

4 MS. ULERY-FELKEL: Yeah.

5 MR. JENNINGS: So we filed that lawsuit,
6 and we served it on you numerous times. And then once
7 that lawsuit is served, you have 30 days to answer the
8 lawsuit. And when no answer was provided, the Clerk
9 of Court enters -- does an Entry of Default saying
10 that you've missed your deadline to respond to the
11 allegations in the Complaint, and so the allegations
12 in the Complaint are essentially admitted.

13 MS. ULERY-FELKEL: Admitted? We hadn't
14 even been to court yet. How is that?

15 MR. JENNINGS: Because you have to answer.

16 MR. FELKEL: We didn't show up.

17 MR. JENNINGS: You didn't answer it.

18 MS. ULERY-FELKEL: We did not show up for
19 something.

20 MR. JENNINGS: You were provided
21 numerous letters --

22 MS. ULERY-FELKEL: We had an appointment
23 today. We had a hearing today that we showed up for.
24 We did not show up for a thing.

25 MR. FELKEL: Is the default appealable?

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1 MS. ULERY-FELKEL: I know certain things
2 that are -- certain rights, certain things are, you
3 know. You're not --

4 MR. JENNINGS: I understand. Look, I'll
5 just tell you this. My interests are adverse to
6 yours, so I'm not giving you --

7 MS. ULERY-FELKEL: Yes, sir.

8 MR. JENNINGS: I'm not giving you advice.
9 There is an avenue that you can pursue to lift the
10 default, but you probably need to contact Nationwide
11 in order to get that taken care of. When you tell
12 your insurance company, Hey, I got served with a
13 Summons and Complaint, then they have a duty under
14 that insurance contract to hire counsel to defend you
15 in that complaint, and it doesn't sound like
16 Nationwide defended you, you know, stepped up to
17 defend their insured in this case.

18 MS. ULERY-FELKEL: Yeah.

19 MR. JENNINGS: And so, follow up with
20 Nationwide and tell them that you're in default and
21 you came to this hearing today and that they need to
22 appear on behalf of you and defend you in this case.
23 It's your best chance of having the default lifted.
24 But today is a damages hearing and you had an
25 opportunity to contest my client's testimony about his

1 damages. He suffered a traumatic brain injury. He
2 has multiple plates and ten screws in his head. The
3 doctors have said that he is going to need extensive
4 future medical care.

5 MS. ULERY-FELKEL: Oh, my god.

6 MR. JENNINGS: And so, you know, today, if
7 you want to dispute any of that, the records, the
8 medical records are there, you have an opportunity to
9 put that on the record here today.

10 MS. ULERY-FELKEL: Okay. No, I wouldn't
11 mind viewing that, but, no, I don't dispute that he
12 had extensive injuries and stuff.

13 MR. JENNINGS: Okay.

14 MR. McCULLOUGH: I have not -- the record
15 is still open and I'm definitely willing and
16 interested to hear. Again, I'm neutral in this, and
17 Douglas is right, he's an adverse party, so he can't
18 advise you.

19 MS. ULERY-FELKEL: Yes. Okay, I realize
20 that now.

21 MR. McCULLOUGH: I will absolutely tell
22 you that talking to a lawyer would be helpful to
23 understand the issue with regards to paying for it. I
24 would strongly encourage you to respond to
25 communications. Even though he's adverse, from the

1 correspondence that I reviewed, there were numerous
2 efforts to get you to turn it over to your carrier so
3 that y'all could try to come to some consensus as to
4 whether there was coverage. I do have a number of
5 documents in the record where it appears that the
6 plaintiffs were making very significant efforts to try
7 to get your help.

8 That being said, what I really -- for the
9 purposes of today, because a default has been entered,
10 basically everything they say in the Complaint is
11 deemed admitted. So what we're here today to do is to
12 determine the plaintiff's damages. I'll show you
13 exhibit No. 9, is a summary of the medical bills,
14 which were approximately \$85,000. We have got a
15 packet of MUSC medical bills, and then there was
16 testimony about future medical bills.

17 As he continues to grow, he's 16, he'll
18 have to possibly have his plates -- he's got five
19 plates with ten screws -- moved or replaced. He still
20 has a brain bleed and brain swelling. He'll need
21 periodic MRIs.

22 MS. ULERY-FELKEL: He does, still?

23 MR. MCCULLOUGH: Yes, ma'am.

24 MS. ULERY-FELKEL: Oh, my gosh, uh, uh,
25 uh.

1 MR. McCULLOUGH: He will need counseling,
2 psychiatric counseling, presumably medications. At
3 least from what I've heard today, it appears to be a
4 serious injury, serious past, present and future
5 damages. Now is your opportunity, and I would
6 certainly welcome the opportunity to listen to you, if
7 you have anything to say with regards to Plaintiff's
8 injuries, Plaintiff's damages or your request as to
9 what I do with this information, now is certainly your
10 opportunity and I welcome you to take that opportunity
11 to tell me what you think.

12 MS. ULERY-FELKEL: Okay, thank you, sir.
13 If there's any way that we could maybe, you know, I
14 guess -- I mean, do we have to make a decision right
15 now or can we --

16 MR. McCULLOUGH: No, ma'am. I'm not
17 asking you to make a decision. We've got a court
18 reporter here. If you've got anything you want to
19 tell me.

20 MS. ULERY-FELKEL: I understand.

21 MR. McCULLOUGH: And I will say this: a
22 proposed order will be submitted, and if you've got an
23 e-mail address, I would encourage you to provide it to
24 all of us; if not, it will come to your mailing
25 address. I would encourage you to be responsive, and

1 responsive would include, as of today, communications
2 with your Nationwide agent, potentially talking to a
3 lawyer about what rights you have, things of that
4 nature. I can't offer you legal advice, but I would
5 encourage you to investigate what legal rights you
6 have as promptly as you can.

7 MS. ULERY-FELKEL: Yes, sir. We did, but
8 we just didn't -- weren't in a position, you know, to
9 pursue it right then. I didn't think -- I'll speak
10 for myself, I didn't think that we were doing anything
11 wrong, because we did not show up for court, you know,
12 or something.

13 MR. McCULLOUGH: Yes, ma'am. And the
14 trouble --

15 MS. ULERY-FELKEL: Didn't mean to ignore
16 it.

17 MR. McCULLOUGH: Yes, ma'am. Once those
18 legal pleadings are filed, it's critical that there's
19 a response. We're here as a result of that. And I do
20 think, again, prompt communications with Nationwide to
21 figure out what happened would be warranted here.

22 MS. ULERY-FELKEL: We should have been
23 more proactive about that.

24 MR. McCULLOUGH: But again, turning to the
25 damages, do you have anything you want to say or put

1 on the record with regards to the injuries the
2 plaintiff suffered, the claims made, anything along
3 those lines?

4 MS. ULERY-FELKEL: Well, I haven't had a
5 chance to view anything, and I've never met the child.

6 MR. McCULLOUGH: And I do want to put on
7 record, honestly, had we known you were going to be
8 late, we would have waited, but we had -- they were
9 here promptly at 9:45, and we took about 45 minutes'
10 worth of testimony, and I'm sorry you missed an
11 opportunity to engage in that. If you want to --

12 MS. ULERY-FELKEL: Me too.

13 MR. McCULLOUGH: -- take some time to look
14 through the medical records, we'll certainly provide
15 you that opportunity. We're not in any rush. I want
16 to make sure you have whatever time you need.

17 MS. ULERY-FELKEL: Okay. To --

18 MR. McCULLOUGH: You want to take a minute
19 and look at the exhibits?

20 MS. ULERY-FELKEL: Okay. I also wanted to
21 let you know that ever since -- see, what was it --
22 end of September, beginning of October, Evan hasn't
23 been living with us. Well, no, it was closer to -- it
24 was October.

25 MR. JENNINGS: After this incident?

1 MS. ULERY-FELKEL: Uh-huh.
2 MR. JENNINGS: He moved out after this
3 incident?
4 MS. ULERY-FELKEL: Uh-huh. And then,
5 since he turned 17, like, he thinks he doesn't have to
6 listen to us and he can be on his own.
7 MR. McCULLOUGH: Understood.
8 MR. JENNINGS: He moved in with his
9 grandmother?
10 MS. ULERY-FELKEL: He did.
11 MR. JENNINGS: He did?
12 MS. ULERY-FELKEL: Yeah. How did you know
13 that?
14 MR. JENNINGS: Just in working on this
15 case.
16 MR. FELKEL: He's not going to tell you.
17 MS. ULERY-FELKEL: What? We're
18 representing ourselves. I can ask questions.
19 MR. JENNINGS: Evan was -- on September 8,
20 2014, Evan still resided in your house?
21 MS. ULERY-FELKEL: September 8?
22 MR. JENNINGS: Yeah.
23 MS. ULERY-FELKEL: Yeah.
24 MR. JENNINGS: I'll echo what Mr.
25 McCullough said. We can take a short break. If you

1 want to flip through that, let you look through it. I
2 mean, if you want to.

3 MS. ULERY-FELKEL: Sure. Can I ask you a
4 question?

5 MR. JENNINGS: Sure.

6 MS. ULERY-FELKEL: What's the significance
7 of September 8? I'm just curious.

8 MR. JENNINGS: That's when this incident
9 occurred. That's when Evan injured Kyle.

10 MS. ULERY-FELKEL: Okay. I didn't realize
11 -- I didn't even realize the date of the incident,
12 okay? I mean, it's just pretty shocking, pretty --

13 MR. JENNINGS: I understand. Did you know
14 about it?

15 MS. ULERY-FELKEL: Yeah, yeah. I mean,
16 yes, absolutely.

17 MR. JENNINGS: I mean, Evan's in criminal
18 trouble, right?

19 MS. ULERY-FELKEL: I'm sure he will be,
20 possibly. But I mean, I just didn't remember the
21 date, okay? But, yeah, I picked him up.

22 MR. JENNINGS: Why don't we take a
23 two-minute break and let you look through --

24 MS. ULERY-FELKEL: All right.

25 MR. JENNINGS: -- those right there, and

1 we'll come and wrap it up.

2 MS. ULERY-FELKEL: So you would like us to
3 make a decision on whether we dispute any of this
4 today, or just to give us an opportunity to look at
5 it?

6 MR. McCULLOUGH: Yes, ma'am. Now is your
7 opportunity to dispute any and everything. Basically
8 all I'm asking is for you to tell us -- if you want to
9 put anything on the record. Ultimately, I've got to
10 make a decision on damages, and the only thing I'm
11 considering are the damages, and the only thing I can
12 consider is what's in the record. And, so far, what's
13 in the record are these exhibits, testimony from the
14 individual plaintiff that was injured, his mother, his
15 grandmother and his aunt, together with these
16 documents. And again, focused solely on the damages
17 he has suffered. I am certainly more than welcome to
18 listen to anything that you'd like to tell me to rebut
19 any of that and anything else you want to tell me.

20 Let's do this. I know you just kind of
21 walked in here and been surrounded by a bunch of
22 people. We'll give you a minute and you tell us when
23 you're ready. Okay?

24 MR. FELKEL: Okay.

25 MS. ULERY-FELKEL: Okay, I appreciate

1 that. Thank you, sir.

2 (A recess transpired.)

3 MR. McCULLOUGH: Just for the record, we I
4 guess broke for maybe 15, 20 minutes. We gave you an
5 opportunity to review the exhibits that have been
6 submitted. And again, I just want to reiterate, my
7 job is to listen and look at everything that is
8 provided to me on this issue, and so I would, again,
9 welcome -- you know, you take the opportunity to tell
10 me anything you want to about this matter, Plaintiff's
11 damages, injuries or anything you've got to add.

12 MS. ULERY-FELKEL: Yes, sir. I didn't see
13 any billing statements in here that showed -- that
14 reflect, you know, this right here.

15 MR. McCULLOUGH: We have got what's been
16 submitted in exhibit 8.

17 MS. ULERY-FELKEL: Okay.

18 MR. McCULLOUGH: I believe that the actual
19 bills, and you can obviously testify to this, my
20 understanding is exhibit 8 is the bills, exhibit --

21 MR. JENNINGS: 9.

22 MR. McCULLOUGH: -- 9 is the summary, and
23 exhibit 10 are the medical records. Did I get that
24 right?

25 MR. JENNINGS: That's correct.

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1 MS. ULERY-FELKEL: And what was the name
2 of his condition?

3 MR. McCULLOUGH: The testimony was that he
4 had a fractured skull. That his skull was crushed,
5 and then as a result of the pieces of the skull being
6 crushed, that it either crushed or broke capillaries,
7 blood vessels in his brain, so there was a brain bleed
8 and then his brain was swollen as a result of it being
9 jarred.

10 MS. ULERY-FELKEL: Yeah. And then they
11 have to relieve pressure and everything. I was just
12 wondering because I saw -- I came across that page and
13 it was kind of blocked out a little bit. I was
14 curious.

15 MR. McCULLOUGH: And it's my
16 understanding, again, this is just from the testimony
17 this morning, was that they put five plates and I
18 believe ten screws in to stabilize that portion of his
19 head/skull, and as he grows, there's the potential it
20 might shift, and so they'll either have to move and
21 fix those plates, readjust them. And if I didn't say
22 this before, the testimony was that it would be
23 anticipated that there would be, I think the
24 description was, serial MRIs. I would presume, I
25 think the testimony was periodic appointments with

1 neurologists and then medications and then therapy,
2 both physical/psychological therapy related to dealing
3 with cognitive injuries, things of that nature.

4 MR. JENNINGS: Anything else?

5 MS. ULERY-FELKEL: So you said he still
6 has a bleed in his head, though?

7 MR. McCULLOUGH: The testimony was that
8 the -- and again, this is my recollection of the
9 testimony this morning. That he still had I believe
10 it was a minor bleed. Some of the capillaries were
11 continuing to bleed. I think the physician said,
12 again, the testimony was, that it was not urgent,
13 that, presumably, that would improve, but as of today,
14 there was still a slight bleed. I believe the
15 testimony was there was also still some swelling.

16 MS. ULERY-FELKEL: Wow.

17 MR. McCULLOUGH: And that he was having --

18 MR. JENNINGS: Constant headaches.

19 MR. McCULLOUGH: -- headaches.

20 MR. JENNINGS: That interfere with his
21 cognitive functioning.

22 MS. ULERY-FELKEL: Okay. We don't dispute
23 the boy has medical bills. So, I mean, I just wanted
24 to see, because I didn't see it in there. However, we
25 didn't realize we were doing anything wrong by not

1 responding to that, you know? We didn't all go to law
2 school, you know. Just saying.

3 MR. McCULLOUGH: And I will encourage you
4 emphatically, as I know now today, to communicate --

5 MS. ULERY-FELKEL: Yes, sir.

6 MR. McCULLOUGH: I mean, I would get in
7 the car and drive to your Nationwide office, and I
8 would explain the circumstance to him. I would take
9 him whatever documentation you have received and
10 encourage as strongly as humanly possible that he hire
11 -- Nationwide get involved and hire an attorney or do
12 something to protect your rights. If they don't, I
13 would encourage you to -- I can't give you legal
14 advice. I will just tell you that -- I would tell
15 anybody, friend, family or everything else, always try
16 to get an attorney to help you in a legal proceeding,
17 and you are in a legal proceeding.

18 MS. ULERY-FELKEL: Yes.

19 MR. McCULLOUGH: Either through your
20 insurance company, or I know financially it can be
21 tough, but you need to try to get counsel not only for
22 yourself but for your son. Who's also a defendant.

23 MS. ULERY-FELKEL: My son is not a senior,
24 either. It said in here he's a senior. He's not.

25 MR. McCULLOUGH: Okay. What year is he

1 now?

2 MS. ULERY-FELKEL: He is in 11th grade.
3 Also, I don't know if I can ask this, but, you know, I
4 do see that the boy has Medicaid, so doesn't Medicaid
5 pay his -- I mean, isn't that -- if you have
6 insurance, then why do -- why do you need your medical
7 bills paid if you have insurance?

8 MR. McCULLOUGH: I can't get into all
9 that. It's certainly something that you could --

10 MS. ULERY-FELKEL: Well, then, I mean, I
11 would dispute that then, sir. You know. I mean, pain
12 and suffering, maybe, you know, but, you know, as far
13 as medical bills, if you have medical insurance, then,
14 yeah.

15 MR. McCULLOUGH: I'm sorry, I'm here to
16 listen. I'm not going to --

17 MS. ULERY-FELKEL: Yes. Well, no, I was
18 letting you know that, you know. You wanted to know
19 what we thought.

20 MR. McCULLOUGH: Yes, ma'am.

21 MS. ULERY-FELKEL: So that's what I'm
22 telling you.

23 MR. McCULLOUGH: Okay. Understood.

24 MS. ULERY-FELKEL: As far as -- as far as
25 paying for medical bills, if his insurance is paying

1 for it, you know, then I don't agree with that. Plus,
2 you know, we don't have \$85,000.

3 MR. McCULLOUGH: I understand. Is there
4 anything else you would like to provide me, any
5 testimony, any documentation, any records or anything
6 of that nature?

7 MS. ULERY-FELKEL: No. No, sir.
8 Travis?

9 MR. FELKEL: No, I'm good.

10 MS. ULERY-FELKEL: Can you think of any
11 documentation that we have failed to provide?

12 MR. FELKEL: No.

13 MR. JENNINGS: Travis, if I could, you
14 talked earlier on the record. But will you put your
15 full name on the record so we'll have it on the
16 transcript?

17 MR. FELKEL: Travis O'Brien Felkel.

18 MR. JENNINGS: The relationship, are you
19 Evan's father?

20 MR. FELKEL: I'm not custodial parent.

21 MR. JENNINGS: Can you explain that just
22 briefly for the record?

23 MR. FELKEL: I do not have any custody of
24 him.

25 MS. ULERY-FELKEL: You're his stepfather.

1 MR. FELKEL: I am his stepfather by
2 marriage, but I have no custody, is all I'm saying.

3 MR. JENNINGS: Is that currently, or is
4 that before he moved out back in September?

5 MR. FELKEL: Excuse me?

6 MR. JENNINGS: Back in September, before
7 he moved out, you were his stepfather and he was
8 living with the two of you? And you're his natural
9 mother; correct?

10 MS. ULERY-FELKEL: I am. And he's been
11 his -- he's been his father since birth, so.

12 MR. JENNINGS: But you're not his natural
13 father?

14 MS. ULERY-FELKEL: That's right.

15 MR. JENNINGS: Go ahead.

16 MR. FELKEL: Okay. She is Evan's mother.
17 He has a biological father. That's all I said by I'm
18 not the custodial. He has custody. I do not.

19 MR. JENNINGS: I understand. What I'm
20 going to do is I'm going to send a proposed order over
21 to Clay McCullough by e-mail just summarizing the
22 testimony here today, and if you want to receive a
23 copy of that order, I could e-mail it to you as well,
24 and then Mr. McCullough can decide if he'll accept my
25 draft or if he'll accept any changes or suggestions

Margaret F. Barnett (843) 324-6985
marfrabar@bellsouth.net

1 that you all have. Would you give me your e-mail so I
2 can copy you on that? Or one of you, it doesn't
3 matter.

4 MR. FELKEL: Do you have a pen?

5 MR. JENNINGS: And I'll write it down
6 here.

7 MR. FELKEL: Okay. It is
8 tfelkell1979@hotmail.com.

9 MR. JENNINGS: I don't have anything else.

10 MR. McCULLOUGH: Any questions for me
11 before we close the record?

12 MS. ULERY-FELKEL: Is there any way we
13 could get copies of anything?

14 MR. McCULLOUGH: Yeah, absolutely.

15 MS. ULERY-FELKEL: I mean, I understand,
16 you know --

17 MR. McCULLOUGH: Yes, ma'am.

18 MS. ULERY-FELKEL: I'm not asking for a
19 copy of the child's complete medical records, but I
20 guess our attorney would be able to get possession of
21 that, or we could as well? I mean, I'm not asking for
22 his medical records. I wouldn't mind having a copy of
23 the billing statements.

24 MR. McCULLOUGH: Why don't we do this. I
25 will make you -- exhibit 10 is the medical records,

1 which are extensive. I'll make you copies of exhibits
2 1 through 9, if you're comfortable with that, and I'll
3 print a copy of the Complaint.

4 MR. JENNINGS: It's in there. It would be
5 included in exhibits 1 through 9.

6 MR. McCULLOUGH: The Complaint was?

7 MR. JENNINGS: Yeah. It's attached to
8 those letters.

9 MR. McCULLOUGH: Okay. That way you'll
10 have a packet to take with you.

11 MS. ULERY-FELKEL: Okay. Thank you very
12 much.

13 MR. McCULLOUGH: And you're right, it's
14 attached to exhibit 3 which is also -- so this would
15 be a good starting place.

16 Again, I'm not going to offer you advice,
17 but I will -- I guess this is advice. I would
18 recommend you to communicate with Mr. Jennings here.
19 If you get something, don't ignore it. That would be
20 my charge to you, is just to respond, and by all means
21 seek counsel on these issues, okay? And I'll make you
22 copies of this.

23 MR. JENNINGS: If you don't mind, can you
24 redact from those bills any Social?

25 MR. McCULLOUGH: Why don't we do this.

1 I'm going to make a copy of everything but the medical
2 records, medical bills. Why don't you e-mail him
3 redacted copies of medical bills.

4 Are you comfortable with that?

5 MS. ULERY-FELKEL: Excuse me, what did you
6 say, I'm sorry?

7 MR. MCCULLOUGH: I'm going to give you
8 copies of exhibits 1 through 9, excluding 8. He's
9 going to redact the Social Security number and the
10 information that we're not allowed to provide based on
11 a number of issues just to give out.

12 MS. ULERY-FELKEL: Oh, absolutely.

13 MR. MCCULLOUGH: And then he'll e-mail
14 that to you later today. Are you comfortable with
15 that?

16 MS. ULERY-FELKEL: Well, we don't have a
17 printer.

18 MR. FELKEL: Yes.

19 MR. MCCULLOUGH: He'll look at exhibit 8
20 and figure that out.

21 MR. JENNINGS: Give me two seconds.

22 MS. ULERY-FELKEL: Yes. I wasn't trying
23 to be difficult, I understand.

24 (The hearing was concluded at 11:53 a.m.)

25

1 CERTIFICATE OF REPORTER

2
3 I, Margaret F. Barnett, Court Reporter and
4 Notary Public for the State of South Carolina at
5 Large, do hereby certify that the foregoing transcript
6 is a true, accurate, and complete record of the
7 testimony of the witness and of all objections made at
8 the time of the examination.

9 I further certify that I am neither related to
10 nor counsel for any party to the cause pending or
11 interested in the events thereof.

12 Witness my hand, I have hereunto affixed my
13 official seal this 27th day of April, 2015 at
14 Charleston, Charleston County, South Carolina.
15
16
17

18 Margaret F. Barnett
19 Professional Court Reporter
20 My Commission expires
February 22, 2020
21
22
23
24
25

Margaret F. Barnett (843) 324-6985
marfrabar@bellsouth.net

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

ANNA ANGELACCI, as guardian of
K. B., a minor,

Plaintiff,

v.

E. U., a minor, Travis O. Felkel, and
Ginger G. Ulery,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2014-CP-08-2494

**ORDER OF DEFAULT JUDGMENT
AGAINST DEFENDANTS TRAVIS
FELKEL AND GINGER ULERY**

HEARING DATE: April 21, 2014

PRESIDING JUDGE: Special Referee Clayton B. McCullough,
Esq.

PLAINTIFFS' ATTORNEYS: David B. Yarborough, Jr.
Douglas E. Jennings, Esq.

DEFENDANTS' ATTORNEYS: None Present.

THIS MATTER comes before this Court on referral by the Clerk of Court following an Entry of Default for a Damages Hearing Pursuant to Rule 55(b)(2) of the South Carolina Rules of Civil Procedure ("SCRCPP"). A damages hearing was held on April 21, 2015 at 10:00 a.m.

The Civil Action Coversheet, Summons and Complaint in this action were filed on November 10, 2014, and Defendants were each served via process server. The Affidavits of Service for Defendants have all been filed with this Court.

Having failed to answer or otherwise defend the Complaint, Defendants E.U., a minor, Travis Felkel and Ginger Ulery (the "Defendants in Default") were declared in default by Order of this Court dated February 4, 2015 and filed on that same day. Thereafter, Plaintiff's served

their Notice of Damages Hearing upon Defendants, pursuant to Rule 55(b)(2), SCRCP on April 11, 2015, via process server. The Notice and Affidavit of Service were marked as exhibits during the hearing.

With the Defendants Travis Felkel and Ginger Ulery in Default and having been duly served with all pleadings as well as the notice of this hearing, this matter is now properly before the Court to determine Plaintiffs' damages as prayed for in the Complaint. As for E.U. a minor, Rule 55(b)(2), SCRCP requires that a guardian ad litem be appointed for a minor before any default judgment is entered against him. It does not appear that a guardian ad litem has been appointed for E.U., a minor, and therefore the damages award will be reserved as to E.U. until such time as a guardian ad litem is appointed and appears on his behalf. The damages hearing proceeded against Defendants Travis Felkel and Ginger Ulery.

The Plaintiffs were present and represented by Douglas E. Jennings, Esq. of the law firm Yarborough Applegate, LLC. Testimony was taken, evidence has been received, and having considered the entire record of this case, I make the following Findings of Fact and Conclusions of Law as required by Rule 52, SCRCP. Any Finding of Fact, which is more appropriately denominated as a Conclusion of Law shall be treated as such, and vice-versa.

This Court heard testimony from Plaintiff K.B., Anna Angelacci (the minor Plaintiff's grandmother and legal guardian), Tina Manon (the minor Plaintiff's mother), and Patricia Coleman (the minor Plaintiff's aunt who is a Registered Nurse). All four witnesses provided extensive testimony as to the Plaintiff K.B.'s damages, the permanency of his injuries, the nature of his medical treatment, and the need and desire for future medical treatment.

After the conclusion of the damages hearing and after the Plaintiffs had departed, Defendants Travis Felkel and Ginger Ulery, parents of E.U. a minor, appeared at the hearing location. The court reporter was asked to return and a record was made where these Defendants were given the opportunity to explain their absence from the damages hearing and contest the damages. They were allowed adequate time to review all of the medical records, medical bills, and correspondence that were marked as exhibits and given the opportunity to provide testimony on the record.

FINDINGS OF FACT

1. I FIND that each of the above sentences in this Order are incorporated herein by reference as if they were reproduced verbatim, and that each are deemed to be findings of fact by this Court.

2. I FIND that the parties hereto and the subject matter hereof are within the jurisdiction of this Court.

3. I FIND that the Plaintiffs are all residents of the State of South Carolina and were so residing at the commencement of this action.

4. I FIND that Defendants are all residents of the State of South Carolina and were so residing at the commencement of this action.

5. I FIND that service of process of the Summons and Complaint was proper as to all Defendants.

6. I FIND that Defendants failed to timely respond and that the Entry of Default was proper.

7. I FIND that this damages hearing was properly noticed and served upon Defendants and that it satisfies the requirements of Rule 55(b)(2), SCRCP.

8. I FIND that, based on the medical bills and records for Plaintiff that he sustained the following injuries and damages:

- a. Plaintiff K.B. was injured on September 8, 2014 when his head struck a concrete floor;
- b. Plaintiff underwent a CT Scan of his brain, \$1,988.00, which revealed a right temporal subdural hematoma;
- c. Plaintiff underwent an MRI of the brain, \$898.00;
- d. Plaintiff underwent 4 CT scans of his head and brain without contrast, \$1,384.00;
- e. Plaintiff underwent an X-Ray of his cervical spine, 2 views, \$84.00;
- f. Plaintiff was admitted to the pediatric ICU at MUSC for ten days following the injury;
- g. Plaintiff's brain was bleeding in two locations following the injury;
- h. Plaintiff underwent anesthesia \$3,120.00;
- i. Plaintiff underwent a right temporal craniotomy for evacuation of the epidural hematoma, his head was shaved, a linear incision was made and a skull fracture was revealed, active bleeding noted, the epidural blood clot was resected, two pieces of skull were reattached using titanium plates and screws, sutures were applied and Plaintiff's head was wrapped in a pressure bandage to prevent any postoperative hematoma, \$74,323.00;
- j. Plaintiff continues to suffer from a traumatic brain injury;
- k. Plaintiff continues to suffer severe cognitive impairments following the injury;
- l. Plaintiff suffers daily headaches which have prevented him from returning to school;

- m. Plaintiff is now home-schooled;
- n. Plaintiff suffers a future loss of earning capacity and will be challenged in finding gainful employment;
- o. Plaintiff exhibits emotional and behavioral impairments following the injury that were not present prior to the injury;
- p. Plaintiff has short-term memory loss;
- q. Plaintiff will require and benefit from future medical care;
- r. Plaintiff is currently 16 years of age; and
- s. As a result of the injury, Plaintiff will require, among other things, future neurological evaluation and treatment, future neuropsychological evaluation and treatment, future imaging studies, future medications, future therapy and behavioral counseling, and future surgery to readjust the hardware in his skull.

9. I FIND that the Plaintiffs filed the Complaint to seek redress for the personal injuries suffered as a result of Defendants' actions.

10. I FIND that, as a result of the Entry of Default, the Plaintiffs are entitled to recover the following damages prayed for in their Complaint: (a) actual damages, (b) special damages, (c) consequential damages sufficient to compensate them fully for all losses and damages, past, present, and future.

11. I FIND that, based on the medical bills and other bills entered into evidence, Plaintiff Anna Angelacci, guardian of K.B. minor, incurred the following medical bills, medication, and expenses related to personal injuries to K.B. and the actions of the Defendants in Default:

Trident Medical Center

\$5,344.00

Medical University of SC

Children's Hospital

\$79,809.00

TOTAL

\$85,153.00

12. I FIND that the Plaintiffs have proven by a preponderance of evidence that they are entitled to damages for their personal injuries and other expenses already incurred connected to the actions of the Defendants in Default.

13. I FIND that both the past medical treatment and bills were reasonable and necessary based on the injuries sustained by Plaintiff.

14. I FIND that substantial expenses related to the cost of future medical care more likely than not will be incurred and that Plaintiff would benefit from future medical care.

15. I FIND that Plaintiff K.B. has proven by a preponderance of evidence that he is entitled to recover for future loss of earning capacity, permanent impairment to his brain and skull that results in severe cognitive and behavioral defects, permanent and persistent pain and suffering, past and future loss of enjoyment of life, and mental suffering due to the negligence of the Defendants in Default, and that the Plaintiff has offered testimony and presented evidence in support of same.

CONCLUSIONS OF LAW

1. "[B]y suffering a default, the defaulting party is deemed to have admitted the truth of the plaintiff's allegations and have conceded liability." Austin v. Specialty Transp. Servs., Inc., 358 S.C. 298, 319 (Ct. App. 2004) (quoting Roche v. Young Bros., 332 S.C. 75, 81 (1998)). Therefore, since the Defendants in Default have been entered into Default by this Court, all of the Plaintiff's factual allegations of the Complaint (and all exhibits thereto) relating to their liability as well as all causes of action directed at the Defendants in Default must be taken as

true. Additionally, it appears to this Court that by a preponderance of the evidence, the Defendants in Default proximately caused the injuries and damages to the Plaintiff set forth above.

2. Finding that the essential elements of Plaintiff's claim for negligent conduct has been established as to the Defendants in Default, the Court now addresses the amount of damages to fairly compensate the Plaintiff for the injuries suffered. As set forth above, the evidence shows that the Plaintiff was injured as a result of Defendants' conduct. As such, this Court concludes that the Plaintiff's injuries, the attendant pain and suffering, and the Plaintiff's incurring medical expenses for past and future treatment all result from the Defendants in Default's negligence.

3. "The purpose of actual or compensatory damages is to compensate a party for injuries suffered or losses sustained. The goal is to restore the injured party, as nearly as possible through the payment of money, to the same position her or she was in before the wrongful injury occurred." Clark v. Cantrell, 339 S.C. 369, 378 (2000).

4. The Plaintiff, a minor, has incurred medical expenses totaling \$85,153.00. K.B's guardian, Anna Angelacci, is responsible for these charges and the future expenses until he is eighteen (18) years old.

5. The South Carolina Supreme Court has held as follows regarding future damages: "an injured party may also recover for such future damages as it is reasonably certain will of necessity result from the injury received. The principal underlying compensation for future damages is that only one action can be brought, and, therefore, only one recovery had. It is proper to include in the estimate of future damages compensation for pain and suffering which will with reasonable certainty result." Boan v. Blackwell, 343 S.C. 498, 500 (2001).

6. Plaintiff is also entitled to damages for "loss of enjoyment of life" and "pain and suffering." See Boan v. Blackwell, 343 S.C. 498, 499 (2001). These are two separately compensable elements of damages. See, id. "Pain and suffering compensates the plaintiff for the physical discomfort and the emotional response to the sensation of pain caused by the injury itself." Id. at 501-502. Damages for loss of enjoyment of life, "compensate for the limitations, resulting from the defendant's negligence, on the injured person's ability to participate in and derive pleasure from the normal activity of daily life, or for the individual's ability to pursue his talents, recreational interests, hobbies, or avocations." Id. at 502. Recovery for mental suffering is also recoverable. Holtzscheiter v. Thompson Newspapers, Inc., 332 S.C. 502, 506 S.E.2d 497 (1998). There is no definite standard by which to compensate a Plaintiff for loss of enjoyment of life, pain and suffering, and mental suffering. The Court must award damages that are just and reasonable in light of the testimony and evidence presented.

7. Given the foregoing, a preponderance of the evidence convinces this Court that the injuries and damages sustained by the Plaintiff were a direct and proximate result of the negligence of the Defendants in Default and that the amounts reasonably required to fairly and justly compensate the Plaintiffs for actual and noneconomic damages are as follows:

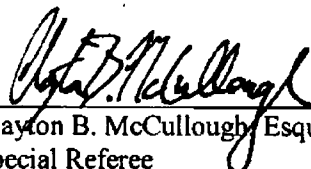
BASED UPON THE FOREGOING,

IT IS ORDERED, ADJUDGED and DECREED that the Plaintiff Anna Angelacci should be, and is hereby awarded judgment against Defendants Travis Felkel and Ginger Ulery, jointly and severally, in the total amount of \$150,000.

IT IS ORDERED, ADJUDGED and DECREED that the Plaintiff K.B. should be, and is hereby awarded judgment against Defendants Travis Felkel and Ginger Ulery, jointly and severally, in the total amount of \$5,000,000.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that the Clerk of this Court shall enter judgment in the foregoing amount against Travis Felkel and Ginger Ulery in the Judgment Rolls of Berkeley County, South Carolina.

AND IT IS SO ORDERED.



Clayton B. McCullough Esquire
Special Referee
Ninth Judicial Circuit

DATE: 4-23-15
Charleston, South Carolina

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP-08-2491

ANNA ANGELACCI, as guardian of K.B., a minor,

E.U., a minor, Travis O. Felkel, and Ginger G. Ulery

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: David B. Yarborough, Jr.

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: A Guardian ad Litem now having been appointed and appeared at the Default Judgment hearing for Evan Ulery, a minor over the age of fourteen, I adopt the findings of fact and conclusions of law set forth in my Order of Default Judgment Against Travis Felkel and Ginger Ulery signed on April 23, 2015, and for the same reasons, enter judgment against Evan Ulery in the amount \$5,150,000. The Defendants Travis Felkel, Ginger Ulery and Evan Ulery are now jointly and severally responsible for the entire judgment.

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)
Anna Angelacci	Evan Ulery	\$150,000.00
K.B., a minor	Evan Ulery	\$5,000,000.00
		\$

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.

Act 3. McInally
Circuit Court Judge
Special Referee

Judge Code

6-25-15
Date

For Clerk of Court Office Use Only

This judgment was entered on the 25 day of June 2015 and a copy mailed first class or placed in the appropriate attorney's box on this 25 day of June 2015 to attorneys of record or to parties (when appearing pro se) as follows:

David B. Yarborough, Jr.
291 East Bay Street, Floor 2
Charleston, S.C. 29401

ATTORNEY(S) FOR THE PLAINTIFF(S)

Shannon P. Jones, as GAL. for Evan Uery
3 State Street
Charleston, SC 29401

ATTORNEY(S) FOR THE DEFENDANT(S)

Sharon P. Brown
CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE

(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.
2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).
4. The "Information for the Judgment Index" section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the "Judgment in Favor of" column, enter the name of the party to whom the judgment is awarded. In the "Judgment Against" column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the "Judgment Amount" column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate "N/A" in one of the boxes in this section of the form.
5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.
6. The section "For the Clerk of Court Office Use Only" should be completed by the clerk as it has been with the previous version of Form 4.
7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.
8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block.

9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.
10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.
11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.
12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.
13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.
14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO.: 2014-CP-08-2494

ANNA ANGELACCI, as guardian of
K. B., a minor,

Plaintiff,

vs.

E. U., a minor, Travis O. Felkel, and Ginger G.
Ulery,

Defendants.

**MOTION FOR DEFAULT
JUDGMENT AGAINST E.U., A MINOR
OVER THE AGE OF FOURTEEN AND
NOTICE OF HEARING**

2015 JUN 12 AM 11:45
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

FILED

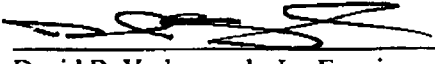
TO: E.U. A MINOR AND HIS GUARDIAN AD LITEM SHANNON JONES, TRAVIS
FELKEL; AND GINGER ULERY

The Plaintiffs, by and through their undersigned attorneys, hereby move the Special Referee of the Berkeley County Court of Common Pleas for an Order of Default Judgment against E.U., a minor over the age of fourteen, who has now been appointed a Guardian ad Litem, pursuant to Rule 55 of the South Carolina Rules of Civil Procedure. The Entry of Default against E.U., which was entered by this court on February 4, 2015, and a damages hearing, was held on April 21, 2015 at which time judgment against E.U. was reserved until a Guardian ad Litem could be appointed for E.U. due to the fact that he is a minor over the age of fourteen. On June 8, 2015 a Guardian ad Litem was appointed by this court and Plaintiffs now request judgment be entered against E.U.

Plaintiffs also hereby give notice to Defendants that a hearing on this matter will occur at the office of Clayton B. McCullough, Special Referee for Berkeley County, located at 359 King Street, Ste. 200, Charleston, South Carolina on June 25, 2015 at 10:00 a.m.

A copy of this Notice and Motion has been served upon Shannon Jones, the Guardian ad Litem for E.U., as well as his co-defendants and parents Travis Felkel and Ginger Ulery.

Yarborough Applegate LLC
291 East Bay Street, Floor 2
Charleston, SC 29401
843-972-0150 office
843-277-6691 fax


David B. Yarborough, Jr., Esquire
Douglas E. Jennings, Esquire

Attorneys for the Plaintiff

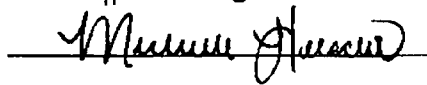
June 9, 2015
Charleston, South Carolina

FILED
2015 JUN 12 AM 11:46
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing 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 9th day of June, 2015



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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP-08-2494

ANNA ANGELACCI, as guardian of K.B., a minor,

E.U., a minor, Travis O. Felkel, and Ginger
G. Ulery

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: David B. Yarbrough, Jr.

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: A Guardian ad Litem now having been appointed and appeared at the Default Judgment hearing for Evan Ulery, a minor over the age of fourteen, I adopt the findings of fact and conclusions of law set forth in my Order of Default Judgment Against Travis Felkel and Ginger Ulery signed on April 23, 2015, and for the same reasons, enter judgment against Evan Ulery in the amount \$5,150,000. The Defendants Travis Felkel, Ginger Ulery and Evan Ulery are now jointly and severally responsible for the entire judgment.

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)
Anna Angelacci	Evan Ulery	\$150,000.00
K.B., a minor	Evan Ulery	\$5,000,000.00
		\$

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.

Dr. B. McElroy
Circuit Court Judge
Spaid Rehm

Judge Code _____ Date 6-25-15

For Clerk of Court Office Use Only

This judgment was entered on the 25 day of June 2015 and a copy mailed first class or placed in the appropriate attorney's box on this 25 day of June 2015 to attorneys of record or to parties (when appearing pro se) as follows:

David B. Yarborough, Jr.
291 East Bay Street, Floor 2
Charleston, S.C. 29401
ATTORNEY(S) FOR THE PLAINTIFF(S)

Shannon P. Jones, as GAL for Evan Ulerly
3 State Street
Charleston, SC 29401
ATTORNEY(S) FOR THE DEFENDANT(S)

ORC Mary P Brown IDW
CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

(This section contains horizontal lines for additional information.)

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE

(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.
2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).
4. The "Information for the Judgment Index" section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the "Judgment in Favor of" column, enter the name of the party to whom the judgment is awarded. In the "Judgment Against" column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the "Judgment Amount" column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate "N/A" in one of the boxes in this section of the form.
5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.
6. The section "For the Clerk of Court Office Use Only" should be completed by the clerk as it has been with the previous version of Form 4.
7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.
8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block.

9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.
10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.
11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.
12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.
13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.
14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Anna Angelacci, as guardian of K.B., a
minor,

Plaintiff,

vs.

E.U., a minor, Travis O. Felkel, and Ginger
G. Ulery,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2014-CP-08-02494

NATIONWIDE MUTUAL FIRE
INSURANCE COMPANY'S RULE 24
MOTION TO INTERVENE

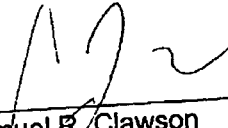
FILED
2015 OCT -6 PM 9:51
NATIONWIDE MUTUAL FIRE
INSURANCE COMPANY
CLERK OF COURT
BERKELEY COUNTY, SC

TO: **DAVID B. YARBOROUGH, JR. & DOUGLAS E. JENNINGS, ATTORNEYS
FOR PLAINTIFF**

PLEASE TAKE NOTICE that Nationwide Mutual Fire Insurance Company, by and through its undersigned counsel, shall, and hereby does, respectfully move this Honorable Court for an Order permitting it to intervene in this action on the grounds that it is entitled to intervene as of right pursuant to S.C.R.C.P. 24(a). Nationwide Insurance Company provides a policy of homeowner's insurance to the Defendants in this matter. Thus, substantial interests are at stake in this action and the disposition of this matter impairs and/or impedes Nationwide's ability to protect its interests. Alternatively, Nationwide should be allowed permissive intervention under S.C.R.C.P. 24(b) because Nationwide's claims and defenses arise from this same incident that is the subject of this action.

This Motion is based upon pleadings in the within action, memorandum in support of this motion and attachments/exhibits thereto, upon Rule 24 of the South Carolina Rules of Civil Procedure, and upon such additional law and argument as shall be appropriate.

CLAWSON AND STAUBES, LLC



Samuel R. Clawson
Christy R. Fagnoli
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492-8144
Phone: (843) 577-2026
Fax: (843) 722-2867
sclawson@clawsonandstaubes.com
cfagnoli@clawsonandstaubes.com

Attorneys for Nationwide Insurance Company

Moncks Corner, South Carolina

September 1, 2015
October

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Anna Angelacci, as guardian of K.B., a
minor,

Plaintiff,

vs.

E.U., a minor, Travis O. Felkel, and Ginger
G. Ulery,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2014-CP-08-02494

NATIONWIDE MUTUAL FIRE
INSURANCE COMPANY'S
MEMORANDUM IN SUPPORT OF
MOTION TO INTERVENE

2015 OCT -6 AM 9:51
MAINTENANCE
CLERK OF COURT
BERKELEY COUNTY

FILED

Nationwide Mutual Fire Insurance Company ("Nationwide"), by and through the undersigned counsel, respectfully submits the following memorandum in support of its Motion to Intervene pursuant to Rule 24 of the South Carolina Rules of Civil Procedure.

FACTS

Plaintiff alleges that, on or about September 8, 2014, minor Defendant E.U. injured Plaintiff at Goose Creek High School during gym class resulting in a head injury. (Ex. A, Compl.; Ex. B, Incident Reports). Plaintiff brought a negligence/gross negligence/recklessness cause of action against minor Defendant E.U. (Ex. A, Compl.). The Complaint does not include any causes of action against Defendants Travis Felkel and Ginger Ulery. (Ex. A, Compl.). The only factual allegation as to Defendants Travis Felkel and Ginger Ulery is that they are the parents or natural guardians of minor Defendant E.U. (Ex. A, Compl.).

PROCEDURAL HISTORY

Plaintiff alleges that all Defendants were properly served with the Summons and Complaint on December 2, 2014. (Ex. C, Affidavits of Service; Ex. D, Suit Against

Nationwide). This is disputed. On February 4, 2015, Plaintiff obtained an Entry of Default Against all Defendants and an Order of Referral to a Special Referee. (Ex. E, Entry of Default & Order of Reference). A damages hearing was held on April 21, 2015. (Ex. F, Transcript of Damages Hearing). Nationwide was not provided with any notice of the Entry of Default or the damages hearing. On April 23, 2015, the Special Referee issued an Order of Default Judgment against Defendants Travis Felkel and Ginger Ulery. (Ex. G, Order of Default Judgment). In his Order, the Special Referee noted that Rule 55(b)(2) requires that a guardian ad litem be appointed for a minor before a default judgment is entered against him. (Ex. G, Order of Default Judgment). Thus, the Special Referee held that a damages award as to E.U. be reserved until such time as a guardian ad litem is appointed and appears. (Ex. G, Order of Default Judgment). However, the damages hearing against Defendants Travis Felkel and Ginger Ulery proceeded and a judgment of Five Million One Hundred and Fifty Thousand Dollars (\$5,150,000.00) was entered against them. (Ex. F, Damages Hearing Transcript; Ex. G, Order of Default Judgment).

On June 8, 2015, Shannon Jones was appointed as E.U.'s guardian ad litem. (Ex. H, Order Appointing GAL). On June 9, 2015, Plaintiff filed a Motion for Default Judgment Against E.U. and Notice of Hearing, which stated that the damages hearing was to occur on June 25, 2015. (Ex. I, Motion for Default as to E.U. & Notice of Hearing). Nationwide was not provided with any notice of this damages hearing. On June 25, 2015, the Special Referee issued a Form 4 Order, which adopts the findings of fact and conclusions of law set forth in the April 23, 2015 Order of Default. (Ex. J, Form 4 Order). The Special Referee ordered that all Defendants are jointly and severally

responsible for the entire judgment of \$5,150,000.00. (Ex. J, Form Order).

On July 27, 2015, a paralegal employed by Yarborough Applegate, LLC called the Nationwide Sales Solution Agency concerning this suit. (Ex. K, Aff. Of Rash). The gentleman who answered the phone for Nationwide Sales Solution informed Nationwide's legal department. This was Nationwide Insurance Company's first notice of this action and its first notice of the judgment. It should be noted that Plaintiff's notice to Nationwide was 32 days after the default judgment was entered against minor Defendant E.U.

On July 27, 2015, Plaintiff, as assignee¹, filed suit against Nationwide Mutual Insurance Company, CP-2015-08-1759. (Ex. D, Suit Against Nationwide). The suit alleges bad faith, amongst other causes of actions, and seeks payment of the \$5,150,000.00 judgment, in addition to other damages. (Ex. D, Suit Against Nationwide). This suit alleges that Nationwide is solely responsible for the judgment. (Ex. D, Suit Against Nationwide).

ARGUMENT

Nationwide seeks to intervene in this action to file a Rule 60(b) Motion to Set Aside the Judgments. Under the circumstances of this case, Rule 24 intervention is Nationwide's only avenue to challenge the judgments. See Narruhn v. Alea London Ltd., 404 S.C. 337, 745 S.E.2d 90 (2013); McClurg v. Deaton, 380 S.C. 563, 671

¹ On April 24, 2015 (one day after the Order of Default Judgment), Defendants Travis Felkel and Ginger Ulery executed an Assignment of Claims on behalf of themselves and minor Defendant E.U. On June 25, 2015 (the same day as E.U.'s damages hearing and Order of Default), GAL Shannon Jones executed an Assignment of Claims and Springing Covenant Not to Execute on behalf of minor Defendant E.U. (Ex. L, Assignments of Claims).

S.E.2d 87 (Ct. App. 2008). Thus, Nationwide should be permitted to intervene in order to file a Rule 60(b) Motion and be given the opportunity to protect its interests.

The South Carolina Supreme Court has recognized that intervention under Rule 24 should be liberally granted. Berkeley Elec. Co-op., Inc. v. Town of Mt. Pleasant, 302 S.C. 186, 189, 394 S.E.2d 712, 714 (1990). Rule 24 must be liberally interpreted and courts "must consider the pragmatic consequences of a decision to permit or deny intervention and avoid setting up rigid applications of Rule 24(a)(2)." Id. Intervention may be of right or permissive. SCRCP 24. Intervention of right is governed by Rule 24(a), while permissive intervention is governed by Rule 24(b). Id.

I. Nationwide Is Entitled to Intervene as of Right Under Rule 24(a).

Rule 24(a)(2) provides that "[u]pon timely application anyone shall be permitted to intervene in an action: . . . (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties." SCRCP 24(a)(2). Thus, a proposed intervenor must: "(1) establish timely application; (2) assert an interest relating to the property or transaction which is the subject of the action; (3) demonstrate that it is in a position such that without intervention, disposition of the action may impair or impede its ability to protect that interest; and (4) demonstrate that its interest is inadequately represented by other parties." Berkeley Elec. Co-op., Inc., 302 S.C. at 189, 394 S.E.2d at 714.

Here, Nationwide requests that the Court recognize that, as the party whose real interests are at stake, Nationwide is entitled to intervene as of right to protect its

own interests. The Order of Default Judgment, the assignment of the insureds' purported claims against Nationwide, and the subsequent suit against Nationwide leave no doubt that Nationwide is an interested party in this litigation. Further, these issues make clear that the insureds' interests in having the default set aside pale in comparison to Nationwide's interests.

A. Nationwide's Motion to Intervene is Timely

Nationwide's Motion to Intervene is timely. Our courts have set forth a four part test to determine the timeliness of such a motion: (1) the time that has passed since the applicant knew or should have known of his or her interest in the suit;² (2) the reason for the delay; (3) the stage to which litigation has progressed; and (4) the prejudice the original parties would suffer from granting intervention and the applicant would suffer from denial. Davis v. Jennings, 304 S.C. 502, 504, 405 S.E.2d 601, 603 (1991) (reversing trial court's denial of newspaper's motion to intervene for the limited purpose of challenging a protective order and rejecting respondents' contention that the motion was untimely).

Nationwide was not provided with any notice of this suit or the judgments until July 27, 2015. Since learning of the judgment, Nationwide has acted with promptness in bringing this Motion. Nationwide seeks to intervene to file a Rule 60(b) Motion to attempt to set aside the judgments against its insureds. The deadlines to file the Rule 60(b) Motion do not expire until April 2015 (as to Defendants Felkel and Ulery) and June 2015 (as to minor Defendant E.U.).

² The passage of time is not the only factor or the most important factor in deciding whether a motion to intervene is timely. Rather, "the most important consideration...is whether the delay in moving for intervention...will prejudice the existing parties to the case." United States v. Thorson, 219 F.R.D. 623, 628 (W.D. Wis. 2003) (citing People Who Care v. O'Brien, 68 F.3d 172, 176 (7th Cir. 1995)).

The fact that a default judgment has been granted does not impact the court's ability to allow Nationwide to intervene. See Davis v. Jennings, 304 S.C. 502, 405 S.E.2d 601 (1991) ("the fact that a motion to intervene is filed after judgment may prove relevant to the merits of the intervenor's access claim . . . But the applicant need not plead extraordinary circumstances to show that the intervention motion itself was timely" (quoting Mokhiber v. Davis, 537 A.2d 1100 (D.C. 1988))). Courts in other jurisdictions have allowed intervention even after judgment had been rendered. See, e.g., Redmond v. Devine, 504 N.E.2d 138, 143 (Ill. App. 1987) (affirming the granting of a motion to intervene filed twenty months after entry of a default judgment because it was necessary to protect the intervenor's rights); Morton Regent Enterprises, Inc. v. Leadtec California, Inc., 74 Cal. App. 3d 842, 846 (Cal. App. 1917) (holding that "[a]n aggrieved person may intervene after judgment for the purposes of vacating a default judgment that is void."); Western Heritage Ins. Co. v. Superior Court, 199 Cal. App. 4th 1196 (Cal. App. 2d Dist. 2011) (insurance carrier allowed to intervene when insured was in default). Further, The South Carolina Supreme Court has acknowledged that a motion to intervene is a prerequisite for an insurance company to directly challenge an order under Rule 60(b) arising out of a case against its insured. See Narruhn v. Alea London Ltd., 404 S.C. 337, 745 S.E.2d 90 (2013).

Moreover, Plaintiffs will suffer no cognizable prejudice if Nationwide is allowed to intervene. By this Motion, Nationwide does not seek to deprive Plaintiff of any substantive rights, or to delay the proceedings. All it seeks is to have the issue of whether this case will be decided upon the merits of the facts and law, or

instead based upon forfeiture as Plaintiffs urge, resolved on a full record, which cannot be complete without Nationwide's active participation.

Lack of prejudice in this context has been summarized by a well-known commentator as follows:

Prejudice is not significant unless it is something greater than would be experienced by the ordinary litigant in being required to litigate on the merits. Some delay will necessarily result when a default is reopened, but delay in gaining judgment is not considered by itself, to be undue prejudice that would justify denying relief.

10 JAMES WM MOORE ET AL., MOORE'S FEDERAL PRACTICE § 55.70[2][c] (3d ed. 2010). Thus, granting this Motion will not result in any valid "prejudice" to Plaintiff, as Nationwide simply seeks to have this case decided on its merits. However, a denial of Nationwide's Motion to Intervene would unfairly impede its ability to protect its interest, as discussed in detail below.

B. Nationwide has a Direct and Substantial Interest Relating to this Action.

Nationwide has a significant financial stake in this litigation, which is a legally protectable interest that will be substantially affected if the default is not set aside. Nationwide's insureds, as well as Plaintiff, are contending that Nationwide is absolutely and solely liable for the \$5,150,000 judgment. Thus, it is clear that Nationwide is the real party in interest in this action. "A real party in interest . . . ordinarily is one who has a real, actual, material, or substantial interest in the subject matter of the action, as distinguished from one who has only a nominal, formal, or technical interest in, or connection with, the action." Dockside Ass'n, Inc. v. Detyens, Simmons and Carlisle, 285 S.C. 565, 568-69, 330 S.E.2d 537, 539 (Ct. App. 1985), aff'd as modified by 287 S.C. 287, 337 S.E.2d 887 (1985).

The South Carolina Court of Appeals has recognized that a large financial interest and possible responsibility for paying the judgment constitutes sufficient basis for granting intervention. See McClurg v. Deaton, 380 S.C. 563, 570, 671 S.E.2d 87 (Ct. App. 2008). In McClurg, the carrier was permitted to intervene for the purpose of filing a Rule 60(b) motion – which is precisely what Nationwide seeks to do in this action. Id. Other courts have recognized, and likewise permitted, intervention where the intervenor has a financial interest at stake. See, e.g., Utica Mut. Ins. Co. v. Hamilton Supply Co., 2007 U.S. Dist. LEXIS 84370 (N.D. Cal. Nov. 5, 2007) (intervention permitted because insurer had sufficient financial interest which was not being adequately protected by parties where insured was in default). Therefore, Nationwide has a direct and substantial interest in this action, as has been recognized by our courts.

C. Denial of Nationwide's Motion to Intervene Will Impair and Impede Its Ability to Protect its Interests.

There can be no doubt that denial of this Motion will impair and impede Nationwide's ability to protect its substantial interests in this action. As set forth above, because default judgment has been entered, this Motion is Nationwide's only avenue to attempt to protect its interests. See Narruhn v. Alea London Ltd., 404 S.C. 337, 745 S.E.2d 90 (2013); McClurg v. Deaton, 380 S.C. 563, 671 S.E.2d 87 (Ct. App. 2008). There is no other mechanism or procedure by which Nationwide can challenge the judgment to address the jurisdictional and procedural defects in the judgment.

In order to show that its interest will be impaired or impeded, "a party need not prove that it would be bound in a *res judicata* sense by the judgment, only that it would have difficulty adequately protecting its interests if not allowed to

intervene." Berkeley Electric, 302 S.C. at 189, 394 S.E.2d at 714. Thus, if Nationwide is not permitted to intervene, it would be precluded from protecting its financial interest as it would have no meaningful way to attempt to affect the outcome of the case, including the liability of the insured and damages awarded to the Plaintiff. Nationwide's substantial interest in having this matter litigated on its merits rather than through forfeiture will be set in stone if this Motion is denied. It is Nationwide which stands to lose substantial sums of money in that eventuality. That these substantial interests are likely to be impaired without Nationwide's direct involvement in this aspect of the litigation is demonstrated below. Therefore, this Motion should be granted to give Nationwide the opportunity to address the jurisdictional and procedural defects in the judgments against its insureds.

D. Nationwide's Interests cannot be Adequately Represented by Other Parties.

Nationwide's interest cannot be, and are not, represented by any other party to this action. South Carolina's appellate courts have repeatedly recognized that "South Carolina's policy favor[s] the disposition of issues on their merits rather than on technicalities." Micronics, Inc. v. South Carolina Dep't of Revenue, 345 S.C. 506, 511, 548 S.E.2d 223, 226 (Ct. App. 2001) (emphasis added); Columbia Pools, Inc. v. Galvin, 288 S.C. 59, 61, 339 S.E.2d 524, 524 (Ct. App. 1986) (recognizing that "[w]e favor trial of issues on merit over securing judgment by slight technicalities" and reversing the denial of relief from default under the stricter standard for default judgments).

"Factors to consider in determining whether the existing representation is adequate include: (1) whether the existing parties will undoubtedly make all of the intervenor's arguments; (2) whether the existing parties are capable and willing

to make such arguments; and (3) whether the intervenor offers different knowledge, experience, or perspective on the proceeding that would otherwise be absent. Berkeley Electric, 302 S.C. at 191. "This burden is minimal and the applicant need only show that the representation of his interests may be inadequate." Id.

Here, Nationwide clearly meets this minimal burden. The default judgment could possibly leave Nationwide responsible for a substantial judgment in excess of its policy limits, and in order to protect itself from this potential exposure, Nationwide must have independent representation. Further, in seeking to set aside the default judgment, Nationwide's counsel will bring to bear different incentives, focus, and additional time to discern and articulate arguments that demonstrate mistake, and inadvertance, and excusable neglect. See SCRCP 60(b); Rouvet v. Rouvet, 388 S.C. 301, 696 S.E.2d 204 (Ct. App. 2010) (setting forth Rule 60(b) standards).

Under the circumstances of this case, there can be no doubt that Nationwide's interests in this action cannot be adequately represented by other parties. First and foremost, the case is in default, Defendants are unrepresented, and Plaintiff's interests are clearly adverse to Nationwide. Thus, currently, Nationwide's interests are not being represented in any capacity whatsoever. Second, the insureds have executed Assignments of Claims to Plaintiff. Plaintiff, as assignee, has brought suit against Nationwide alleging bad faith, among other causes of action. Thus, at this stage, there is a conflict of interest between Nationwide and its insureds because the insureds take the position that Nationwide, and Nationwide alone, is responsible for payment of the

\$5,150,000 judgment. Granting this Motion is crucial in ensuring that Nationwide's financial interests, which are substantial, are adequately represented.

Other courts have recognized that the potential for a conflict is real and that this alone is justification for intervention by the carrier. Faced with a similar issue, the court in Guaranty Nat'l Ins. Co. v. Pittman, aptly observed:

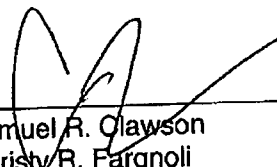
It may be true that Hardin also was seeking to set aside the default judgment. In this technical sense the legal interests of GNIC and Hardin were similar. Rule 24, however, as indicated above, mandates sensitivity to practical considerations. The almost certain inability of Hardin to pay a \$400,000.00 judgment or any substantial portion thereof -- back on June 26, 1985 -- rendered it highly unlikely that his protection of the common interest of GNIC and himself would be with the same vigor as has been brought to the matter by GNIC, which we assume is quite solvent.

501 So. 2d 377, 385 (Miss. 1987). See also Ross v. Marshall, 426 F.3d 745 (5th Cir. 2005) ("While this interest is also contingent upon an adverse finding in a separate suit, Allstate may minimize or eliminate this exposure by contesting the judgment against Mathews on appeal. In sum, we conclude that Allstate has a sufficient interest in the present suit to merit intervention as of right for the purpose of appealing the judgment against its insured.").

Given the "minimal" burden of demonstrating inadequacy of representation, these reasons clearly show that the representation of Nationwide's interests by counsel for Insureds "may be inadequate." In South Carolina Tax Comm'n v. Union County Treasurer, 295 S.C. 257, 368 S.E.2d 72 (Ct. App. 1988), the court held that the existing representation was inadequate despite the intervenor and the existing party sharing the same goal, where the intervenor pleaded additional defenses and had relevant experience and perspective. The same logic applies with equal force here. Additionally, the public policy of South

intervention be granted). Nationwide further moves that no further rulings in this matter take place until this Court rules on the intervention motion.

CLAWSON AND STAUBES, LLC



Samuel R. Clawson
Christy R. Fagnoli
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492-8144
Phone: (843) 577-2026
Fax: (843) 722-2867
sclawson@clawsonandstaubes.com
cfagnoli@clawsonandstaubes.com

Attorneys for Nationwide Mutual Fire Insurance
Company

Moncks Corner, South Carolina

October 1, 2015

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true copies of the foregoing Nationwide Mutual Fire Insurance Company's Rule 24 Motion to Intervene and Memorandum in Support of Motion to Intervene were served upon the following parties on the 7 day of October, 2015, via:

X	United States Postal Service
	Facsimile
X	Electronic Email

Douglas Jennings
Yarborough Applegate, LLC
291 E Bay St Fl 2
Charleston, SC 29401-1601
Email Address: douglas@yarboroughapplegate.com

Shannon Jones
Shannon Jones Law, LLC
3 State St
Charleston, SC 29401-3008
Email Address: shannon@shannonjoneslaw.com

Clayton McCullough
McCullough Kahn, LLC
359 King St Ste 200
Charleston, SC 29401-1438
Email Address: clay@mklawsc.com

G. Thames
Turner Padgett Graham & Laney, P.A.
PO Box 22129
Charleston, SC 29413-2129
Email Address: tthames@turnerpadgett.com

David Yarborough
Yarborough Applegate, LLC
291 E Bay St #2
Charleston, SC 29401-1601
8439720150
8432776691
david@yarboroughapplegate.com

Travis Felkel
339 Holly Ave
Goose Creek, SC 29445-3051

Ginger Ulery
339 Holly Ave
Goose Creek, SC 29445-3051

A handwritten signature in black ink, appearing to read "Ulery", written over a horizontal line.

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

Anna Angelacci, as guardian of K.B., a
minor,

Plaintiff,

vs.

E.U., a minor, Travis O. Felkel, and Ginger
G. Ulery,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2014-CP-08-02494

**INTERVENOR NATIONWIDE MUTUAL
FIRE INSURANCE COMPANY'S
NOTICE OF MOTION AND MOTION TO
LIFT/SET ASIDE DEFAULT
JUDGMENTS**

**TO: DAVID B. YARBOROUGH, JR. & DOUGLAS E.
JENNINGS, ATTORNEYS FOR PLAINTFF**

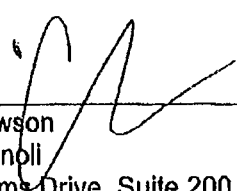
PLEASE TAKE NOTICE that the above-named Intervenor, Nationwide Mutual Fire Insurance Company, by and through undersigned attorney, shall, and hereby does, move this Honorable Court for an Order setting Orders of Default Judgments entered in the above-captioned case. This Motion is made pursuant to Rules 54(b), 55(d) and 60(b), SCRCP, and for good cause shown, as more fully set forth in a supporting Memorandum and exhibits filed with the Court.

PLEASE BE PRESENT TO ARGUE, IF SO MINDED.

[signature page follows]

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BERKELEY COUNTY, SC

CLAWSON and STAUBES, LLC



Samuel R. Clawson
Christy R. Fargnoli
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492-8144
Phone: (843) 577-2026
Fax: (843) 722-2867
Email: cfargnoli@clawsonandstaubes.com

Attorneys for Nationwide Mutual Fire Insurance
Company

Charleston, South Carolina

October 1, 2015

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Anna Angelacci, as guardian of K.B., a
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E.U., a minor, Travis O. Felkel, and Ginger
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IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 2014-CP-08-02494

**INTERVENOR NATIONWIDE MUTUAL
FIRE INSURANCE COMPANY'S
MEMORANDUM IN SUPPORT OF
MOTION TO SET ASIDE ENTRY OF
DEFAULT AND DEFAULT JUDGMENT**

Intervenor Nationwide Mutual Fire Insurance Company ("Nationwide"), by and through the undersigned counsel, and pursuant to South Carolina Rule of Civil Procedure 54, 55, and 60, respectfully submits this Memorandum to the Court in support of its Motion to Set Aside Entry of Default and Default Judgment ("Motion to Set Aside"). Nationwide is asking this Court to set aside the Entry of Default and Default Judgment, and requests that it be permitted to answer the Complaint and proceed accordingly so that this case may be decided on the merits.

FACTS

This case arises from an alleged physical altercation between minor Plaintiff K.B. and minor Defendant E.U. that occurred on September 8, 2015. (Ex. A, Compl.). By way of background, on September 7, 2014 – the day before this incident – minor Defendant E.U. was walking down Stephanie Drive in Goose Creek, SC with his friend when three males began chasing him, one of them carrying a baseball bat. (Ex. B, Incident Reports). Minor Defendant E.U. ran from these three males until they ultimately caught up with him, tackled him, and began to severely beat him. (Ex. B,

Incident Reports). They punched him and kicked him all over and stomped on his head. (Ex. B, Incident Reports). They also beat him repeatedly with the baseball bat, striking him in his torso and legs. (Ex. B, Incident Reports). After severely beating E.U., the three males disappeared from the scene before the authorities arrived. (Ex. B, Incident Reports). Minor Plaintiff K.B. is believed to be one of these assailants. (Ex. B, Incident Reports).

Plaintiff alleges that, on or about September 8, 2014, minor Defendant E.U. injured Plaintiff at Goose Creek High School during gym class resulting in a head injury. (Ex. A, Compl.; Ex. B, Incident Reports). Shortly thereafter, minor Defendant moved out of his house with his mother and stepfather and moved in with his grandmother, sometime in late September or early October. (Ex. F, Damages Hearing Transcript, pp. 46-7).

Plaintiff brought a negligence/gross negligence/recklessness cause of action against minor Defendant E.U. (Ex. A, Compl.). The Complaint does not include any causes of action against Defendants Travis Felkel and Ginger Ulery. (Ex. A, Compl.). The only factual allegation as to Defendants Travis Felkel and Ginger Ulery is that they are the parents or natural guardians of minor Defendant E.U. (Ex. A, Compl.).

PROCEDURAL HISTORY

The alleged incident occurred on September 8, 2014. (Ex. A, Compl.; Ex. B, Incident Reports). On September 18, 2014, Plaintiff's counsel sent a letter to Defendants Travis Felkel and Ginger Ulery with a request to contact Plaintiff's counsel regarding this incident. (Ex. F, Damages Hearing Transcript Exhibit). On October 23, 2014, Plaintiff's counsel sent a second letter to Defendants Travis Felkel and Ginger

Ulery with a request to contact Plaintiff's counsel regarding this incident with a copy of a proposed summons and complaint. (Ex. F, Damages Hearing Transcript Exhibit). On November 10, 2014 Plaintiff filed a Summons and Complaint with the court. (Ex. A, Compl.).

Plaintiff alleges that all Defendants were properly served with the Summons and Complaint on December 2, 2014. (Ex. C, Affidavits of Service; Ex. D, Suit Against Nationwide). This is disputed, as discussed below. On February 4, 2015, Plaintiff obtained an Entry of Default Against all Defendants and an Order of Referral to a Special Referee. (Ex. E, Entry of Default & Order of Reference). On February 12, 2015, a copy of the Entry of Default was mailed to Defendants Travis Felkel and Ginger Ulery. (Ex. F, Damages Hearing Transcript Exhibit).

On April 10, 2014, Defendants Travis Felkel and Ginger Ulery were served with notice of a damages hearing. (Ex. F, Damages Hearing Transcript Exhibit). A damages hearing was held on April 21, 2015. (Ex. F, Transcript of Damages Hearing). Nationwide was not provided with any notice of the Entry of Default or the damages hearing. On April 23, 2015, the Special Referee issued an Order of Default Judgment against Defendants Travis Felkel and Ginger Ulery. (Ex. G, Order of Default Judgment). In his Order, the Special Referee noted that Rule 55(b)(2) requires that a guardian ad litem be appointed for a minor before a default judgment is entered against him. (Ex. G, Order of Default Judgment). Thus, the Special Referee held that a damages award as to E.U. be reserved until such time as a Guardian ad Litem is appointed and appears. (Ex. G, Order of Default Judgment). However, the damages hearing against Defendants Travis Felkel and Ginger Ulery proceeded and a judgment of Five Million One Hundred

and Fifty Thousand Dollars (\$5,150,000.00) was entered against them. (Ex. F, Damages Hearing Transcript; Ex. G, Order of Default Judgment).

During the damages hearing, the Defendants Travis Felkel and Ginger Ulery were told repeatedly by both Plaintiff's counsel and the Special Referee that they needed to communicate with Nationwide and retain counsel. (Ex. F, Transcript of Damages Hearing, p. 34-58). The Special Referee was emphatic in his statements to Defendants Travis Felkel and Ginger Ulery that they must contact Nationwide and explain the situation to them. (Ex. F, Transcript of Damages Hearing, p. 45, 53). Despite this, the Defendants Travis Felkel and Ginger Ulery never contacted Nationwide regarding this lawsuit.

On June 8, 2015, Shannon Jones was appointed as E.U.'s Guardian ad Litem. (Ex. H, Order Appointing GAL). On June 9, 2015, Plaintiff filed a Motion for Default Judgment against E.U. and Notice of Hearing, which stated that the damages hearing was to occur on June 25, 2015. (Ex. I, Motion for Default as to E.U. & Notice of Hearing). Nationwide was not provided with any notice of this damages hearing. Furthermore, minor Defendant E.U. was not provided with notice of this hearing. On June 25, 2015, the Special Referee issued a Form 4 Order, which adopts the findings of fact and conclusions of law set forth in the April 23, 2015 Order of Default. (Ex. J, Form 4 Order). It is unclear whether a damages hearing as to E.U. actually took place, as the Order as to E.U. contains no new findings of fact or conclusions of law. (Ex. J, Form 4 Order). The Special Referee ordered that all Defendants are jointly and severally responsible for the entire judgment of \$5,150,000.00. (Ex. J, Form Order).

On July 27, 2015, a paralegal employed by Yarborough Applegate, LLC called the Nationwide Sales Solution Agency concerning this suit. (Ex. K, Aff. Of Rash). The gentleman who answered the phone for Nationwide Sales Solution informed Nationwide's legal department. This was Nationwide Insurance Company's first notice of this action and its first notice of the judgment. It should be noted that Plaintiff's notice to Nationwide was conveniently, or inconveniently, 32 days after the default judgment was entered against minor Defendant E.U.

On July 27, 2015, Plaintiff, as assignee¹, filed suit against Nationwide Mutual Insurance Company, CP-2015-08-1759. (Ex. D, Compl. Against Nationwide). The suit alleges bad faith, amongst other causes of actions, and seeks payment of the \$5,150,000.00 judgment, in addition to other damages. (Ex. D, Compl. Against Nationwide). This suit alleges that Nationwide is solely responsible for the judgment. (Ex. D, Compl. Against Nationwide).

ARGUMENT

~~Nationwide brings this Motion to Set Aside the Entry of Default and Default Judgments against all Defendants so that it has the ability to do nothing more and nothing less than what justice requires – to allow the case to be decided on the merits.~~

1. Standard for Setting Aside Default Judgment

South Carolina's appellate courts have repeatedly recognized that "South Carolina's policy favor[s] the disposition of issues on their merits rather than on

¹ On April 24, 2015 (one day after the Order of Default Judgment), Defendants Travis Felkel and Ginger Ulery executed an Assignment of Claims on behalf of themselves and minor Defendant E.U. On June 25, 2015 (the same day as E.U.'s damages hearing and Order of Default), GAL Shannon Jones executed an Assignment of Claims and Springing Covenant Not to Execute on behalf of minor Defendant E.U. (Ex. L, Assignments of Claims).

technicalities." Micronics, Inc. v. South Carolina Dep't of Revenue, 345 S.C. 506, 511, 548 S.E.2d 223, 226 (Ct. App. 2001) (emphasis added); See also Columbia Pools, Inc. v. Galvin, 288 S.C. 59, 61, 339 S.E.2d 524, 524 (Ct. App. 1986) (recognizing that "[w]e favor trial of issues on merit over securing judgment by slight technicalities" and reversing the denial of relief from default under the stricter standard for default judgments). Further, it is South Carolina policy that the South Carolina Rules of Civil Procedure ("SCRCP") relating to setting aside default should be "liberally construed to promote justice and dispose of cases on the merits." Dixon v. Besco Eng'g, 320 S.C. 174, 178, 463 S.E.2d 636, 638 (Ct. App. 1995). As Supreme Court Justice Hearn succinctly stated: "the law favors the resolution of disputes based upon all parties having their day in court." McClurg v. Deaton, 671 S.E.2d 87, 380 S.C. 563 (Ct. App. 2008)-(Hearn, C.J., dissenting).

Under Rule 60(b), the court may relieve a party from a final judgment, order, or proceeding for the following reasons: "(1) mistake, inadvertence, surprise, or excusable neglect; . . . or (4) the judgment is void." S. C. R. Civ. P. 60(b). "In determining whether to grant a motion under Rule 60(b), the trial judge should consider: (1) the promptness with which relief is sought, (2) the reasons for the failure to act promptly, (3) the existence of a meritorious defense, and (4) the prejudice to the other party." Micronics, Inc. v. S.C. Dep't of Revenue, 345 S.C. 506, 548 S.E.2d 223 (Ct. App. 2001) (citing New Hampshire Ins. Co. v. Bey Corp., 312 S.C. 47, 50, 435 S.E.2d 377, 379 (Ct. App. 1993)).

II. Nationwide Passes the Rule 60(b) Threshold Tests

The Court should grant Nationwide's Motion to Set Aside because its Motion is timely, Nationwide can prove the existence of a meritorious defense, and there is no cognizable prejudice to Plaintiffs.

A. Nationwide's 60(b) Motion to Set Aside is Timely

Nationwide's 60(b) Motion to Set Aside is timely. Such a motion must be made within a reasonable time, but not more than one year after the entry of default judgment if brought pursuant to Rule 60(b)(1), (2), or (3). SCRCP 60(b). Here, the Default Judgment was entered against Defendants Travis Felkel and Ginger Ulery on April 23, 2015, and was entered against minor Defendant E.U. on June 25, 2015. (Ex. G, Order of Default Judgment; Ex. J, Form 4 Order). Nationwide filed its Motion to Set Aside On October 1, 2015, less than six months after judgment against the Defendants Felkel and Ulery and approximately three months after judgment was entered against the minor Defendant E.U. Therefore, Nationwide's motion is timely under Rule 60(b).

Additionally, Nationwide's motion is also made within a reasonable time from the standpoint of practicality. Nationwide was not notified of this action until July 27, 2015, but quickly took all necessary actions to gather the requisite information to enable it to file prompt, informed motions. Nationwide has not yet been granted the benefits of formal discovery, but has still been able to, in a very short amount of time, collect enough information relating to the underlying case to educate itself and file appropriate motions relevant to the available legal remedies. Such actions by Nationwide demonstrate not only a thoughtful and deliberate response upon discovery of default by its insureds, but also that this motion was made promptly and within a reasonable time.

See Narruhn v. Alea London Ltd., 404 S.C. 337, 340, 745 S.E.2d 90 (2013) (insurer's motion, pursuant to Rule 60(b), made more than nine months after the order "was clearly timely.").

B. Nationwide and each Defendant has a Meritorious Defense to the Lawsuit

In order to justify relief under Rule 60(b)(1), "a party must establish that he has a meritorious defense and that the judgment was taken against him by mistake, inadvertence, surprise or excusable neglect." Thompson v. Hammond, 299 S.C. 116, 119, 382 S.E.2d. 900 (1989). "The complainant does not have to establish he would prevail on the merits, but only that his defense is meritorious." Id. "[A] meritorious defense need not be perfect nor one which can be guaranteed to prevail at a trial. It need be only one which is worthy of a hearing or judicial inquiry because it raises a question of law deserving of some investigation and discussion or a real controversy as to real facts arising from conflicting or doubtful evidence." Id. (quoting Graham v. Town of Loris, 272 S.C. 442, 248 S.E.2d 594 (1978)). Lastly, "an allegation that the amount of damages could be different from what was awarded under the default judgment is sufficient to satisfy the meritorious defense requirement." McClurg v. Deaton, 380 S.C. 563, 671 S.E.2d 87 (Ct. App. 2008) (Hearn, C.J., dissenting) (citing numerous supportive cases from other jurisdictions).

1. Defendants Travis Felkel and Ginger Ulery have a Meritorious Defense

Defendants Travis Felkel and Ginger Ulery have a meritorious defense on the grounds that the Plaintiffs' Complaint fails to allege any facts or causes of action that would entitle Plaintiffs to relief against these Defendants. The South Carolina Rules of

Civil Procedure require that a complaint must contain a "short and plain statement of the facts showing that the pleader is entitled to relief." SCRCP 8(a)(2).

Plaintiffs' Complaint contains no facts showing that they are entitled to relief against Felkel and Ulery. The only time Felkel and Ulery are mentioned or referenced in the Complaint is in paragraph 3 which states "That upon information and belief, Defendants Travis O. Felkel and Ginger G. Ulery are the parents or natural guardians of E.U., a minor, and are residents of Berkeley County, South Carolina." (Ex. A, Compl.). This allegation is entirely insufficient to put Felkel and Ulery on notice of any wrongdoing by them, and is also insufficient to put them on notice of any affirmative defenses they would be required to assert in a responsive pleading. Thus, these Defendants have a meritorious defense in that Plaintiff has not alleged any valid claims against them or any factual wrongdoing by them. Their only involvement in this incident is that Ulery is E.U.'s mother and Felkel is his step-father. If this case is decided on its merits, it is possible, and potentially likely, that a jury would not enter a verdict against them for these reasons:

Furthermore, Plaintiffs failed to meet the requirement of Rule 8(a)(2) that they plead "facts showing that the pleader is entitled to relief" against Defendants Travis Felkel or Ginger Ulery, as discussed in detail below. Accordingly, Defendants Ulery and Felkel meet the threshold requirement of establishing a meritorious defense.

As a further defense, Ulery and Felkel are also entitled to the statutory protections contained within Section 63-5-60 of the South Carolina Code, which provides in pertinent part as follows:

an individual . . . is entitled to recover damages in an amount
not to exceed five thousand dollars in a civil action in a court

of competent jurisdiction from the parents or legal guardian of the person of a minor under the age of eighteen years and residing with the parents or the legal guardian of the person who maliciously or wilfully causes personal injury to the individual

S.C. Code Ann. § 63-5-60 (emphasis added). Under this provision, Felkel cannot be held vicariously liable for the acts of E.U. since he is not the parent of E.U. (Ex. F, Damages Hearing Transcript, pp. 55-6). Furthermore, based upon the factual allegations of the Complaint, neither Ulery nor Felkel can be liable for any damages which exceed \$5,000.

2. Minor Defendant E.U. has a Meritorious Defense

E.U. has a meritorious defense based on the facts of this incident. As described above, E.U. was chased, attacked, and beaten by the minor Plaintiff and his friends the day before this incident. The Incident Report from this incident states that, prior to E.U. having allegedly injured the minor Plaintiff, the minor Plaintiff "got into [the minor Defendant's] face." Based upon the fact that E.U. was attacked and beaten by Plaintiff and his friends only 1 day before this incident, it is entirely reasonable to conclude that E.U. likely feared for his health, safety, and life in the moment that Plaintiff "got in his face" in gym class and that E.U. simply acted in self-defense. Accordingly, self-defense, comparative negligence, and other similar affirmative defenses are all meritorious defenses that E.U. can reasonably assert in this case, satisfying the threshold for justifying relief under Rule 60(b).

Furthermore, as will be discussed in more detail below, Defendant E.U. has the defense that this court lacks personal jurisdiction over him on the grounds of improper service of process, and that therefore all judgments against him are void.

3. Nationwide and All Defendants have a Meritorious Defense as to Damages

Nationwide, along with all of the Defendants, has a meritorious defense as to the amount of damages awarded to the Plaintiffs. At the time of the damages hearing, minor Plaintiff K.B.'s medical bills relating to this incident totaled a little over \$85,000.00. The damages awarded to the minor Plaintiff were \$5,000,000.00 – which is 58 times (58x) more than the medical specials in the record at the hearing. Plaintiff presented only approximately thirty (30) minutes of testimony at the hearing; none of which included testimony from K.B.'s treating physicians or nurses, or any experts such as life-care planners, vocational rehabilitation experts, or the like. There is simply no testimony or evidence in the record that adequately supports this substantial judgment. This damages award was speculative, arbitrarily decided upon, is unreasonable, and is not supported by sufficient testimony and evidence. Thus, if this Motion to Set Aside is granted and the case is ultimately decided on its merits, it is entirely possible, if not probable, that through discovery, the use of experts, and cross-examination, Nationwide and the Defendants can demonstrate that the true amount of damages sustained by the minor Plaintiff is far less than the \$5,000,000 judgment.

Therefore, Nationwide and all Defendants have a meritorious defense as to the damages award because it is likely, or at least possible, that the amount of the damages award would be different if this case is ultimately decided on its merits. There can be little doubt that a full, fair opportunity to challenge the damages award will yield a different result than a hearing that lasted less than thirty (30) minutes and included no medical or expert testimony.

C. There is No Unfair Prejudice to Plaintiffs if the Motion to Set Aside is Granted.

Nationwide must next demonstrate that there is no unfair prejudice to Plaintiffs if the Motion to Set Aside is granted. Nationwide asserts that there simply is no prejudice to Plaintiffs. Lack of prejudice in this context has been summarized by a well-known commentator as follows:

Prejudice is not significant unless it is something greater than would be experienced by the ordinary litigant in being required to litigate on the merits. Some delay will necessarily result when a default is reopened, but delay in gaining judgment is not considered by itself, to be undue prejudice that would justify denying relief.

10 JAMES WM MOORE ET AL., MOORE'S FEDERAL PRACTICE § 55.70[2][c] (3d ed. 2010). Thus, granting this Motion will not result in any valid "prejudice" to Plaintiff, as Nationwide simply seeks to have this case decided on its merits.

The only "prejudice" that Plaintiffs could possibly point to is that a grant of this Motion would require the Plaintiffs to litigate this case exactly as they expected to when they originally filed suit – which is not sufficient to establish prejudice in this context. This incident occurred only approximately 1 year ago, so Plaintiffs would not be in danger of having lost important evidence needed for this litigation. Further, even if Plaintiffs could point to a miniscule amount of prejudice against them if this Motion is granted, that prejudice would be entirely outweighed by the prejudice to Nationwide if this Motion is not granted. Nationwide only asks that it has a chance to answer Plaintiffs Complaint and pursue this litigation as Plaintiffs originally intended when they filed suit. That cannot reasonably be construed as a prejudice to Plaintiffs.

III. Nationwide is Entitled to Relief Under Rule 60(b)(4).

"Rule 60(b)(4), SCRPC provides the court may relieve a party or his legal representative from a final judgment, order, or proceeding if the judgment is void. The definition of 'void' under the rule only encompasses judgments from courts which failed to provide proper due process, or judgments from courts which lacked subject matter jurisdiction or personal jurisdiction." Linda Mc Co. v. Shore, 390 S.C. 543, 703 S.E.2d 499 (2010) (citing McDaniel v. U.S. Fid. & Guar. Co., 324 S.C. 639, 644, 478 S.E.2d 868, 871 (Ct. App. 1996)).

A. The Judgment Against Minor Defendant E.U. is Void for Lack of Personal Jurisdiction.

"Rule 4, SCRPC serves at least two purposes. It confers personal jurisdiction on the court and assures the defendant of reasonable notice of the action." Moore v. Simpson, 322 S.C. 518, 523, 473 S.E.2d 64, 66 (Ct. App. 1996). An "inquiry must be made as to whether the plaintiff has sufficiently complied with the rules such that the court has personal jurisdiction of the defendant and the defendant has notice of the proceedings." Id. There is a presumption of proper service when the civil rules on service are followed. Id. It is the plaintiff's burden to show that the court has personal jurisdiction over the defendant. Jensen v. Doe, 292 S.C. 592, 594, 358 S.E.2d 148, 148 (Ct. App. 1987).

According to SCRPC 4, "[s]ervice shall be made as follows: (1) *Individuals*. Upon an individual other than a minor under the age of 14 years . . . by delivering a copy of the summons and complaint to him personally or by leaving copies thereof at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, or by delivering a copy to an agent authorized by appointment or

by law to receive service of process." SCRCP 4(d)(1). South Carolina has not defined "dwelling house or place of abode." Fassett v. Evans, 364 S.C. 42, 610 S.E.2d 841 (Cl. App. 2005). One's dwelling or place of abode is determined by the particularized facts of each case. Id.

SCRCP also states that "[s]ervice shall be made as follows: (2) *Minors, Incompetents and Persons Confined*. . . . If the individual upon whom service is made is a minor between the ages of 14 and 18, who lives with a parent or guardian, a copy of the summons and complaint shall likewise be served upon said parent or guardian." SCRCP 4(d)(2).

In the underlying action, if the minor Defendant E.U. was not properly served with the Summons and Complaint, then this court never had personal jurisdiction over him. If this court never had jurisdiction over him, any judgment against him is void.

The rule states that IF the minor is between the ages of 14 and 18, AND lives with a parent or guardian, then that minor is properly served by leaving a copy of the summons and complaint with said parent or guardian. Plaintiffs allege E.U. was served by serving the Summons and Complaint on Travis Felkel at 339 Holly Avenue, Goose Creek, SC, 29445. However, E.U. did not reside at this address at the time of service and Travis Felkel is not E.U.'s parent or guardian. (Ex. H, Transcript of Damages Hearing, pp. 46-7, 55-6).

Specifically, here, E.U. was 17 years old at the time Plaintiffs attempted service upon him. However, at the time that Travis Felkel attempted to accept service on behalf of E.U. on December 2, 2014, E.U. did NOT live at 339 Holly Avenue, Goose Creek, SC, 29445, the residence where his mother and Travis Felkel lived. (Ex. H, Transcript of

Damages Hearing, p. 46-7; Ex. C, Affidavits of Service). According to testimony given by Defendant Ginger Ulery (E.U.'s mother), minor Defendant E.U. moved out of that residence approximately two months prior to the invalid attempt to effect service of process upon minor Defendant E.U. by leaving the Summons and Complaint with Defendant Felkel. (Ex. H, Transcript of Damages Hearing, p. 46-7). The testimony indicates that E.U. moved out of that residence after the underlying incident, and that "since he turned 17 . . . he thinks he doesn't have to listen to [Travis Felkel and Ginger Ulery] and he can be on his own." (Ex. H, Transcript of Damages Hearing, p. 47). E.U. was living with his grandmother at that time of purported service of process. (Ex. H, Transcript of Damages Hearing, p. 47). Further, Travis Felkel is neither the legal guardian nor a parent of E.U., which is a requirement to accept service for a minor aged 14-18 under the rule. (Ex. H, Transcript of Damages Hearing, pp. 55-6). Therefore, service under Rule 4(d)(2) was ineffective and improper as to minor Defendant E.U. and, as a result, the judgment against him is void and should be set aside pursuant to Rule 60(b)(4).

Service is improper under Rule 4(d)(1) as well. E.U. was not personally served, nor was service effected by leaving copies of the Summons and Complaint at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. There is no allegation by Plaintiffs or any evidence to suggest that they served E.U. personally, nor that they left copies with his grandmother, with whom he was living at the time, or anyone else of suitable age at E.U.'s grandmother's address.

The only evidence in the record signifying that E.U. had any notice of this action against him is an Affidavit of Service that was improperly served upon Travis Felkel, but there is nothing in the record to indicate that E.U. had actual notice of this action. Pursuant to South Carolina common law, this lack of evidence requires the judgment to be set aside. See Laurens Trust Co. v. Copeland, 154 S.C. 390, 151 S.E. 617 (S.C. 1930) (In a suit against husband and wife, and despite the presence of an Affidavit of Service upon the wife, when the court was unable to find any testimony in the record that the wife was ever served or that she had any notice that the action was pending against her, the South Carolina Supreme Court directed the trial court to set aside the judgment as to her).

Therefore, because minor Defendant E.U. was not properly served with the Summons and Complaint in this case, the court never had personal jurisdiction over him. Without personal jurisdiction over the minor Defendant E.U., any judgment rendered against him is void. See, e.g., SCRPC 60(b)(4); Linda Mc Co. v. Shore, 390 S.C. 543, 703 S.E.2d 499 (2010). Accordingly, pursuant to Rule 60(b)(4), Nationwide asks the Court to set aside the judgment against the minor Defendant E.U.

B. Pursuant to Rule 54(b), Default Judgment was Entered Prematurely as to Travis Felkel and Ginger Ulery and Therefore Is Void and Must Be Set Aside as to All Defendants

Pursuant to the terms of South Carolina procedural law, the April 23, 2015 judgment against Travis Felkel and Ginger Ulery was prematurely entered, does not constitute a final determination, and, thus are void. Accordingly, the judgments against all Defendants should be set aside.

Rule 54(b) of the South Carolina Rules of Civil Procedure—as well as the comparable Federal Rule—permits a court, in cases involving multiple parties, to direct final

judgment against "one or more, but fewer than all" parties only upon an express finding "that there is no just reason for delay." SCRCP 54(b) (emphasis added). Specifically, Rule 54(b), SCRCP, with language nearly identical to the Federal Rule, provides:

Judgment Upon Multiple Claims or Involving Multiple Parties. When more than one claim for relief is presented in an action . . . or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

SCRCP 54(b) (emphasis added).

The judgment in this matter does not expressly include such a finding that there was "no just reason for delay," and case law interpreting this Rule unequivocally shows that under these facts, there was just reason for delay. An 1872 United States Supreme Court opinion, Frow v. De La Vega, 82 U.S. 552 (1872), is the seminal case on this issue. There, the plaintiff sued 14 defendants alleging each was jointly liable for fraud in connection with a land transaction. All defendants except Frow filed answers denying liability. A final decree was issued against Frow, holding that the plaintiff had proper title to the land. In a trial against the remaining defendants, however, it was found that no fraud had occurred and title rested with defendants. Frow thus appealed the ruling against him. The Court held it was "unseemly and absurd" to enter a final decree on the merits against one defendant whose alleged liability was joint as to the answering defendants. It held that no final decree should have been issued until the case was disposed of with regard to all of the defendants. Frow, 82 U.S. at 554. Thus, the Supreme Court held that a final decree on the merits could not be made separately against one defendant where a joint charge was still pending

against others. Id. It was this rationale expressed in Frow that subsequently gave rise to Rule 54(b) of the states' and Federal Rules of Civil Procedure, permitting a court, in cases involving multiple parties, to direct final judgment against "one or more, but fewer than all," parties only upon an express finding "that there is no just reason for delay."

Frow applies even when co-defendants are alleged to be closely interrelated. United States ex rel. Hudson v. Peerless Ins. Co., 374 F.2d 942 (4th Cir. 1962). As noted by the district court for the Eastern District of Virginia,

if Frow still stands for anything, it explicates a cautionary warning to the courts: logically inconsistent judgments resulting from an answering defendant's success on the merits and another defendant's suffering of a default judgment are to be avoided. Thus, the avoidance of logically inconsistent judgments in the same action and factually meritless default judgments provide "just reason for delay" within the meaning of Rule 54(b).

Jefferson v. Briner, Inc., 461 F.Supp.2d 430, 434-35 and n.6 (E.D.Va. 2006).

Here, ~~the~~ Order of Default Judgment does not include an express finding of the Court that there was "no just reason for delay" and, thus, is not in compliance with Rule 54(b), Frow, and its progeny. Indeed, due to the fact that Felkel and Ulery were named ~~presumptively~~ in this suit in a vicarious capacity, the danger of potentially inconsistent ~~results was very real in this case.~~ There was no logical, practical, or compelling reason to proceed against Felkel and Ulery and enter judgments against them prior to doing so against E.U. Doing so was, quite simply, premature. Therefore, pursuant to Rule 54(b), the Default Judgments against Felkel and Ulery on April 23, 2015 are void and should be set aside under Rule 60(b).

Additionally, because the default judgment against E.U. merely adopts all findings of fact and conclusions of law from the judgment against Felkel and Ulery and contains no new findings or conclusions, the default judgment against E.U. is also void and should be set aside. In other words, the judgment as to E.U. simply adopts the Order as to Felkel and

Ulery. Thus, to the extent the judgment against Felkel and Ulery is void pursuant to 54(b), the judgment as to E.U. must also be void because the two (2) sentence Form Order as to E.U. is insufficient if the underlying Order of Default that it purports to adopt is void.

Therefore, Nationwide requests that all judgments and damages awards be set aside pursuant to Rule 60(b)(4) on the grounds that they are void.

C. The Judgment as to Minor Defendant E.U. is Void Because He Was Not Given Proper Notice of his Damages Hearing

The Plaintiffs' failure to provide proper notice to minor Defendant E.U. of the June 25, 2015 Damages Hearing in accordance with Rule 55(b)(2) renders the Order and damages award void. Though South Carolina Rules of Civil Procedure provide that service of a Summons and Complaint may be made by "delivering a copy to an [authorized] agent," its requirement for notice of an unliquidated damages hearing is different, in that it requires the plaintiff to send notice directly to the party himself who will be affected by the ruling. Pursuant to Rule 55(b)(2), "notice of any trial or hearing on unliquidated damages shall also be given to parties in default by first class mail to the last known address of such party whether or not any such party has appeared in the action."

South Carolina courts require strict compliance with the provisions of this Rule. In a recent case with facts analogous to those presently at issue, the South Carolina Court of Appeals held that the plaintiffs' notice of the damages hearing was insufficient such that the damages award was deemed of no effect. McCall v. IKON, 611 S.E.2d 315 (S.C. Ct. App. 2005). In McCall, the plaintiffs' mailing notice of a default damages hearing in one letter addressed to two different defendants at one address resulted in the matter being sent back for a new hearing. The court held that the requirement that notice be given to each party by mail to its last known address "does not arise from an arcane or highly technical application

of the rules. Rather, this requirement serves an essential function—ensuring that notice is properly received by all entitled to it.” Id.

In the present matter, no notice was mailed via first class mail to minor Defendant E.U. at his last known address. This court and the Plaintiffs were aware that E.U. was living with his grandmother at that time and no notice of the damages hearing was mailed to that address. (Ex. F, Damages Hearing Transcript, p. 47). Although the Guardian ad Litem was given notice of the hearing, this is equivalent to delivering to an “authorized agent,” which is insufficient regarding an unliquidated damages hearing, pursuant to rule 55(b)(2). See SCRPC 55(b)(2); McCall v. IKON, 611 S.E.2d 315 (S.C. Ct. App. 2005). Because the Plaintiffs failed to provide adequate notice required by law, both the Order and damages award are void and must be set aside.

D. The Judgment Against Minor Defendant E.U. is Void for Lack of Due Process

“Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution.” The requirements of due process not only include notice, but also include an opportunity to be heard in a meaningful way, and judicial review. Grannis v. Ordean, 234 U.S. 385, 394, 58 L. Ed. 1363, 34 S. Ct. 779 (1914) (“The fundamental requisite of due process of law is the opportunity to be heard.”); S.C. Dep’t of Soc. Servs. v. Holden, 319 S.C. 72, 78, 459 S.E.2d 846, 849 (1995).

As noted above, a violation of due process renders a judgment against a Defendant void. Here, minor Defendant E.U. was never given an opportunity to be heard. In fact, it is unclear as to whether he was ever even given notice of the lawsuit

against him or notice of the default judgment and damages hearings. The record is completely devoid of any evidence related to the default judgment hearing dated June 25, 2015 other than the 1-paragraph form order written by the Special Referee. (Ex. J, Form 4 Order). There is no transcript of this hearing, there are no new findings of fact or conclusions of law, and it appears that no court reporter was even present at the hearing. Further, there is no indication that minor Defendant E.U. was in attendance at this hearing or that he was ever given notice of its existence and his opportunity to be heard before having a \$5,000,000 verdict summarily adjudged against him.

Additionally, Nationwide submits that the actions and omissions of E.U.'s Guardian ad Litem ("Guardian") were a direct violation of S. C. Code Ann. § 63-3-830 and therefore provide independent grounds for this judgment to be set aside for a lack of due process. Simcox-Adams v. Adams, 408 S.C. 252, 758 S.E.2d 206, (Ct. App. 2014). In Simcox-Adams, the court addressed wife's contention that the Guardian's failure to comply with § 63-3-830 was a violation of wife's due process rights. Id. at 264. Although the court declined to decide the issue because wife failed to preserve it for appeal, the South Carolina Court of Appeals recognized that a Guardian's failure to comply with her statutory responsibilities can amount to a violation of her ward's constitutional right to due process. Id.

§ 63-3-830 states that (A) The responsibilities and duties of a guardian ad litem include, but are not limited to:

- (1) representing the best interest of the child;
- (2) conducting an independent, balanced, and impartial investigation to determine the facts relevant to the situation of the child and the family. An investigation must include, but is not limited to:
 - (a) obtaining and reviewing relevant documents . . .

- (b) meeting with and observing the child on at least one occasion; . . .
- (d) interviewing parents, caregivers, school officials, law enforcement, and others with knowledge relevant to the case; . . . and
- (f) considering the wishes of the child, if appropriate;

S. C. Code Ann. § 63-3-830 (emphasis added). Nationwide submits that the Guardian ad Litem in this case failed to comply with the statutory requirements of § 63-3-830 in violation of minor Defendant E.U.'s constitutional right to due process. The Guardian in this case could not act in the best interests of E.U. because, upon information and belief, she never met with E.U., despite a direct mandate in the statute to do so. Because she did not meet or speak with E.U. it was impossible for her to consider his wishes, which would also evidence what may be in his best interests. Further, to our knowledge, she did not meet with E.U.'s parents, grandmother, or any other person with knowledge relevant to the case, and she failed to obtain and review any relevant documents.

Again, with reference to the statute's requirement that the Guardian represent the best interests of the child, it is Nationwide's contention that she was not acting in E.U.'s best interests when she allowed a default judgment in excess of \$5 Million to be entered against E.U. without putting up any type of defense. At the time of the Guardian's appointment, E.U.'s Entry of Default could potentially have been lifted for "good cause" but the Guardian took no action on behalf of E.U. Further, the Guardian was aware that Nationwide insured E.U. for the underlying claims, that Nationwide had not appeared or attempted to defend its insureds in any way in this action, and that Nationwide had failed to do so because it was unaware of this action, and yet the Guardian did not notify Nationwide of the impending \$5 Million judgment about to be entered against its insureds. Nationwide further contends that if the Guardian testifies that she did not

know this information, her lack of knowledge can only be attributed to a willful abandonment of her statutorily prescribed duties as Guardian ad Litem and her fiduciary duties as an attorney.

Finally, Nationwide submits that if, assuming *arguendo*, the Court decides that it is in the child's best interests to allow a \$5 Million default judgment to be entered against him so that he may then immediately assign a bad faith claim to the underlying Plaintiffs (which is denied), then in this case the Guardian still failed to act in E.U.'s best interests because the assignment is not a full release of any claims that the underlying Plaintiffs may have against E.U. for the judgment. Per the terms and conditions of the assignment, E.U. could be one hundred percent liable to the Plaintiffs for the \$5,150,000.00 verdict against him even with the assignment, despite the Guardian's opportunities prior to judgment to take available legal and practical action in the representation of E.U. to prevent this from happening. Specifically, the assignment makes clear that Plaintiffs will mark the judgment as satisfied and will agree not to execute against E.U.'s personal assets only "if and when, and only if and when, the Defendant's insurance carrier . . . or any other responsible party pays and satisfied the judgment plus any accumulated interest, costs, and fees[.]" Thus, the protections set forth in the assignment are expressly contingent upon the entire judgment being paid. This does not provide adequate protection to E.U. such that it would be in his best interests to enter into this agreement in lieu of attempting to adjudicate this matter on its merits – particularly when the Guardian could have taken action to attempt to set aside the Entry of Default under the much less stringent standard of "good cause." At the very least, the Guardian could have contacted Nationwide to ensure that E.U. had legal

representation in some capacity. However, she failed to do so, and to our knowledge, E.U. never had the benefit of legal representation.

Therefore, due to the lack of due process afforded to the minor Defendant E.U. throughout the underlying action, the judgment against him is void and he is entitled to relief from that judgment, pursuant to Rule 60(b)(4).

E. The Judgments Against Travis Felkel and Ginger Ulery are Void Because the Judgment Against Minor Defendant E.U. is Void.

Due to the nature of the pleadings in this case, the resolution of the judgments against Felkel and Ulery are inextricably tied to the fate of the judgment against E.U. Felkel and Ulery's alleged liability is assumed to be in a vicarious capacity as no independent basis for their liability is alleged. In circumstances such as this, "the liability of [Felkel and Ulery] depends upon the liability of the child. Therefore, the judgment must be valid against both or it is valid against neither." Jordan v. Payton, 305 S.C. 537, 539; 409 S.E.2d 793, 794 (Cl. App. 1991). In Jordan, a minor and legal guardian were sued for damages caused by the minor driving an automobile. Id. The guardian was joined as a defendant based on allegations that she was the legal guardian of the child and provided him the car for "family purposes." Id. When the judgment against the minor was declared void for a violation of Rule 55(b)'s Guardian ad Litem requirements, the court set aside the judgment as to the legal guardian as well pursuant to the reasoning described immediately above. Id. See also Johnson v. Atlantic Coast Line R. Co., 142 S.C. 125, 133, 140 S.E. 443, 445 (1927) ("When the master and the servant are sued together for the same act of negligence or willful tort, and the master's liability rests solely upon the servant's conduct, a verdict against the

master alone is illogical and cannot stand."); Medlin v. Church, 157 Ga. App. 876, 278 S.E.2d 747 (1981) (Judgment reversed as to father when judgment against the child was void because of improper service).

Therefore, and because the judgment against minor Defendant E.U. is void for the reasons set forth above, the judgments against Felkel and Ulery should also be set aside on the basis that they are void.

III. Nationwide is Entitled to Relief Under Rule 60(b)(1)

Upon motion, the court may relieve a party from a final judgment pursuant to Rule 60(b)(1), SCRCP, where the moving party demonstrates the judgment or order was induced by, among other things, mistake, inadvertence, surprise, or excusable neglect. Honorage Nursing Home of Florence, S.C., Inc. v. Florence Convalescent Ctr., Inc., 367 S.C. 108, 623 S.E.2d 853 (Ct. App. 2005).

A. ~~Due to the Insufficiency of Allegations in the Complaint, Defendants Travis Felkel and Ginger Ulery Have Admitted to Nothing More Than Being the Parents of E.U. and Therefore, Any Judgments Against Them Come by Way of Surprise, Mistake or Excusable Neglect.~~

As noted above, Plaintiffs' Complaint merely alleges that Travis Felkel and Ginger Ulery are the parents or legal guardians of E.U. This is the only factual allegation against Felkel and Ulery. Thus, this is the only allegation they are deemed to admit pursuant to an Entry of Default. This allegation is insufficient to put them on notice that they would or could be personally susceptible to a monetary judgment for E.U.'s actions (which occurred at school) because, by defaulting, they have only admitted to being E.U.'s parents. Because the only action committed by these Defendants on the date of the incident was sending their teenage child to high school,

something required by law, pursuant to South Carolina Code of Laws 59-65-10, *et seq.*, these Defendants cannot be reasonably deemed to have been on notice that they would be susceptible to receiving a \$5,000,000 judgment against them.

Furthermore, the only theory of liability in South Carolina by which Felkel and Ulery can be held personally responsible for E.U.'s actions in this instance merely for being his "parents or guardians" is pursuant to S.C. Code Ann. § 63-5-60. "Citizens are presumed to know the law," Am. Legion Post 15 v. Horry County, 381 S.C. 576, 674 S.E.2d 181, (Ct. App. 2009). And, as previously discussed, this statute caps the available damages pursuant to a civil action under these circumstances at five thousand dollars (\$5,000). Therefore, Felkel and Ulery did not expect a judgment against them one thousand and thirty times (1030 x) greater than the statutorily prescribed limits, and were definitely surprised at the outcome. Thus, the judgment against Felkel and Ulery should be set aside on the grounds that this issue constitutes surprise, mistake, and/or excusable neglect because it is inconsistent with the allegations set forth in the pleadings and South Carolina law.

Additionally, it should be noted that Travis Felkel, per his admission, is neither E.U.'s parent nor his guardian. (Exhibit F, Transcript of Damages Hearing, pp. 55-6). At the damages hearing, Felkel testified, "I'm not custodial parent . . . I am his step father by marriage, but I have no custody[.]" (Exhibit F, Transcript of Damages Hearing, p. 56). Yet, despite this testimony, which is undisputed, a substantial judgment was rendered against Felkel. In addition to the issues set forth above, the judgment against Felkel should be set aside because he is not E.U.'s parent or guardian and there is no

theory of liability in South Carolina by which a step-father can or should be held legally responsible for a \$5,000,000 judgment due to the actions of his step-son.

Therefore, whether the court decides that the judgment awarded against these Defendants is relieved by reason of surprise, mistake, or excusable neglect, this judgment was awarded in error and, pursuant to Rule 60(b)(1), should be set aside.

B. The Action (and, More Importantly, Inaction) of Defendants Travis Felkel and Ginger Ulery Constitutes Mistake, Inadvertence, Surprise, and/or Excusable Neglect on the Part of Nationwide.

Nationwide never received notice of this suit due to the actions or inactions of Defendants Felkel and Ulery and such constitutes mistake, inadvertence, surprise, and/or excusable neglect on the part of Nationwide and the Defendants. Upon being served, Defendant Travis Felkel claims that sometime "before Christmas," he took a copy of the Summons and Complaint to his local insurance agent, John Herndon. (Ex. F, Transcript of Damages Hearing, pp. 35-6). Felkel claims he provided a copy to Mr. Herndon and that in response, Mr. Herndon "told me I needed to have [E.U.] get on the phone with the corporate office." (Ex. F, Transcript of Damages Hearing, p. 36). When questioned whether he ever had E.U. communicate with Nationwide's corporate office, Felkel admitted that he "failed to make that happen." (Ex. F, Transcript of Damages Hearing, p. 36). Felkel also failed to communicate directly with Nationwide, despite explicit instructions from Herndon to do so. (Ex. F, Transcript of Damages Hearing, p. 36). Herndon made photocopies of the Summons and Complaint when Felkel brought them to him, but Herndon also deliberately and explicitly made clear to Felkel that he was simply going to hold onto them, not do anything with them, and wait until Felkel

filed the claim with the corporate office before acting on this information. (Ex. F,

Transcript of Damages Hearing, p. 36). Specifically, Felkel testified:

MR. JENNINGS: And you provided him [John Herndon] with a copy of it [Summons and Complaint]?

MR. FELKEL: Yes.

MR. JENNINGS: What did he do in response?

MR. FELKEL: He told me I needed to have Evan get on the phone with the corporate office?

MR. JENNINGS: Did Evan do that?

MR. FELKEL: I failed to make that happen, yes.

MR. JENNINGS: Did he [John Herndon] ask you to leave a copy [of the Summons and Complaint] with him?

MR. FELKEL: He made copies of the paperwork and told me he would hold onto it and wait until I made the – filed the claim with the corporate office.

(Ex. F, Transcript of Damages Hearing, p. 36) (emphasis added). Felkel never contacted Nationwide. Thus, the undisputed testimony demonstrates that Mr. Herndon specifically told Felkel that he would hold onto the Summons and Complaint until such time as Felkel notified Nationwide's corporate claims office. It is further undisputed that, despite these instructions, Felkel failed to ever attempt to contact Nationwide's corporate claims office.

As noted above, the first time Nationwide heard a word about this incident and suit was from a paralegal working with Plaintiff's counsel on July 27, 2015. Nationwide had no notice whatsoever until this date. The testimony and exhibits at the damages hearing suggests that Plaintiffs' counsel made several attempts to contact Defendants

Travis Felkel and Ginger Ulery throughout this process, even before filing suit. Multiple letters were sent to them prior to the filing of the action requesting them to contact Plaintiff's counsel. When these attempts to communicate failed, Plaintiffs ultimately brought suit against the Defendants. Thus, not only did Felkel and Ulery fail to notify Nationwide after suit was filed, they had multiple opportunities to do so prior to suit being filed and failed to take any action whatsoever.

Therefore, the following is undisputed and constitutes mistake, inadvertence, surprise, and/or excusable neglect on the part of Nationwide: Felkel and Ulery did not contact Nationwide prior to suit being filed, despite receiving multiple letters from Plaintiffs' counsel. Felkel and Ulery did not contact Nationwide after Herndon explicitly instructed them to. Felkel and Ulery did not retain counsel or contact Nationwide after accepting service of process. Felkel and Ulery did not answer the Complaint. Felkel and Ulery, upon receiving notice of the Entry of Default in the mail, did nothing. Upon being served with notice of the damages hearing, Felkel and Ulery, for the first time, decided to act in this case. Unfortunately, they did not take the action of notifying Nationwide. Instead, they acted too late and arrived late to the damages hearing, thereby losing any chance they had to cross-examine the Plaintiff and witnesses. At the hearing, Felkel and Ulery, were told repeatedly to contact Nationwide. They, again, failed to act and did not contact Nationwide.

Even at such a late hour in the lawsuit, had Felkel and Ulery contacted Nationwide after their damages hearing, minor Defendant E.U. would have been represented by counsel appointed by Nationwide before his default judgment hearing and before default judgment was entered against him. Surprisingly, they failed to take

action even after explicitly being told by the Special Referee to promptly contact Nationwide – an action which could have resulted in the Entry of Default against E.U. being set aside or, at the very least, representation of E.U. at his damages hearing, including an opportunity to cross examine witnesses. Specifically, the relevant testimony is as follows:

MR. MCULLOUGH: . . . And I do think, again prompt communications with Nationwide to figure out what happened would be warranted here.

MS. ULERY-FELKEL: We should have been more proactive about that.

(Ex. F, Transcript of Damages Hearing, p. 45) (emphasis added). Incredibly, even after Ulery's admission that she and Felkel should have been "more proactive" in contacting Nationwide, they again failed to contact Nationwide after the April 21, 2015 damages hearing. Instead, Nationwide was not notified of any of this until an inconvenient 32 days after default judgment was entered against E.U. and Nationwide was never notified by Felkel and/or Ulery despite explicit, unambiguous instructions to do so by their agent, Mr. Herndon, and by the Special Referee.

The above clearly establishes mistake, inadvertence, surprise, and/or excusable neglect on the part of Nationwide. Additionally, even if Nationwide is responsible for any neglect in this case, imputed to it through its agent John Herndon (which is denied), this neglect is clearly excusable. At the most, there was a misunderstanding between Herndon and Felkel, as the undisputed testimony clearly demonstrates that Herndon specifically told Felkel to call the corporate claims office and that Herndon would hold onto the suit papers until such time as Felkel completed this task. Instead, Defendants Felkel and Ulery did everything in their power not to notify Nationwide about this matter,

despite being instructed to do so by everyone they talked to about it. And, as discussed above, it remains unclear whether the minor Defendant E.U. ever knew about any of this.

Nationwide submits that the judgments and damages awards should be set aside and that this case be decided on its merits, as the above demonstrates and establishes mistake, inadvertence, surprise, and/or excusable neglect under Rule 60(b)(1).

IV. Nationwide Meets the Good Cause Requirement of Rule 55(c) with Respect to Setting Aside an Entry of Default

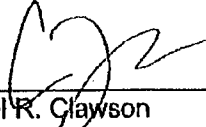
Rule 55(c) provides that the court may set aside an entry of default for good cause. S.C. R. Civ. P. 55(c). In comparing the "good cause" standard in Rule 55 to the requirements of rule 60(b), our courts have observed that the "good cause" standard is a "less stringent standard" and that Rule 55(c) should be "liberally construed to promote justice and dispose of cases on the merits." Limehouse v. Hulsey, 2011 S.C. App. LEXIS 124 (Ct. App. 2011); Dixon v. Besco Eng'g, 320 S.C. 174, 178, 463 S.E.2d 636, 638 (Ct. App. 1995).

Therefore, Nationwide submits that because it has met the more "stringent" standard of Rule 60(b) for setting aside the judgment, it has also met the "good cause" standard for setting aside an entry of default under Rule 55(c), and thereby asks the court to set aside the entry of default as to all Defendants.

CONCLUSION

For the reasons set forth above, Intervenor Nationwide respectfully asks this Court to set aside the Entry of Default and Default Judgments against all Defendants in this case pursuant to Rule 55(c) and Rule 60(b).

CLAWSON AND STAUBES, LLC



Samuel R. Clawson
Christy R. Fargnoli
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492-8144
Phone: (843) 577-2026
Fax: (843) 722-2867
sclawson@clawsonandstaubes.com
cfargnoli@clawsonandstaubes.com

Attorneys for Nationwide Mutual Fire Insurance
Company

Moncks Corner, South Carolina

October 1, 2015

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true copies of the foregoing Nationwide Mutual Fire Insurance Company's Motion to Lift/Set Aside Default Judgments and Memorandum in Support of Motion to Lift/Set Aside Default Judgments were served upon the following parties on the 1 day of October, 2015, via:

X	United States Postal Service
	Facsimile
X	Electronic Email

Douglas Jennings
Yarborough Applegate, LLC
291 E Bay St Fl 2
Charleston, SC 29401-1601
Email Address: douglas@yarboroughapplegate.com

Shannon Jones
Shannon Jones Law, LLC
3 State St
Charleston, SC 29401-3008
Email Address: shannon@shannonjoneslaw.com

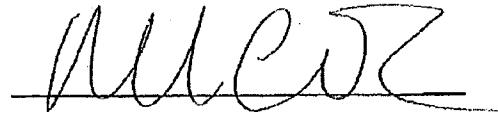
Clayton McCullough
McCullough Kahn, LLC
359 King St Ste 200
Charleston, SC 29401-1438
Email Address: clay@mklawsc.com

G. Thames
Turner Padget Graham & Laney, P.A.
PO Box 22129
Charleston, SC 29413-2129
Email Address: tlhames@turnerpadget.com

David Yarborough
Yarborough Applegate, LLC
291 E Bay St #2
Charleston, SC 29401-1601
8439720150
8432776691
david@yarboroughapplegate.com

Travis Felkel
339 Holly Ave
Goose Creek, SC 29445-3051

Ginger Ulery
339 Holly Ave
Goose Creek, SC 29445-3051

A handwritten signature in black ink, appearing to read 'M. Ulery', written over a horizontal line.

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Anna Angelacci, as guardian of K.B., a
minor,

Plaintiff,

vs.

E.U., a minor, Travis O. Felkel, and Ginger
G. Ulery,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2014-CP-08-02494

**MOTION TO REMOVE CASE
FROM SPECIAL REFEREE AND
REFER CASE BACK TO CIRCUIT
COURT JUDGE**

HARRY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

NOV 10 PM 4:33

FILED

**TO: DAVID B. YARBOROUGH, JR. & DOUGLAS E. JENNINGS, ATTORNEYS
FOR PLAINTIFF**

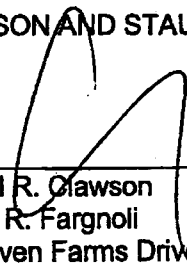
PLEASE TAKE NOTICE that Nationwide Mutual Fire Insurance Company ("Nationwide"), by and through its undersigned counsel, shall, and hereby does, respectfully move this Honorable Court for an Order transferring this case back to a Circuit Court Judge, thereby removing it from the Special Referee provided for in an Order dated February 4, 2015.

This Motion is made upon the following grounds, and such other grounds as may be raised in Nationwide's Memorandum in Support of Motion to Remove Case from Special Referee to Circuit Court Judge, to be filed at a later date: The Plaintiffs did not obtain proper service on Defendant E.U. pursuant to South Carolina Rule of Civil Procedure 4(d)(2) and therefore the matter was not properly before the Special Referee when it was heard. Despite the insufficiency of process, the Special Referee entered Default Judgment in excess of five million dollars against the Defendants. Additoinally, Nationwide currently has motions pending to Intervene and to Set Aside the Default

Judgment. Nationwide requests that these motions be heard by a circuit court judge, rather than the Special Referee, as Nationwide was not a party to this case when default was entered and when the Order of Reference was issued. Due process requires the removal of this matter from the Special Referee in order to provide a fair and impartial hearing on Nationwide's motions and the resulting action if Nationwide is permitted to Intervene.

This Motion is based upon the pleadings in the within action, memorandum in support of this motion and attachments/exhibits thereto (to be filed later), the South Carolina Rules of Procedure, and upon such additional law and arguments as shall be appropriate.

CLAWSON AND STAUBES, PLLC



Samuel R. Clawson
Christy R. Fagnoli
126 Seven Farms Drive, Suite 200
Charleston, SC 29492-8144
Phone: (843) 577-2026
Fax: (843) 722-2867
sclawson@clawsonandstaubes.com
cfagnoli@clawsonandstaubes.com

Attorneys for Nationwide Insurance Company

Monks Comer, South Carolina

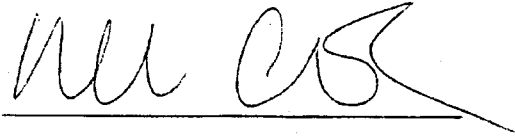
NOVEMBER 6, 2015

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing Motion to Remove from Special Referee was served upon the following parties on the 6 day of November, 2015, via:

☒	United States Postal Service
☐	Facsimile
☐	Electronic Email
☐	Via Hand Delivery

Douglas Jennings
Yarborough Applegate LLC
291 E Bay St 2nd Flr
Charleston, SC 29401-1604
Email Address: douglas@yarboroughapplegate.com
Attorney For: Anna Angelacci, as guardian of K.B., a minor



FILED
15 NOV 10 PM 4:33
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

FILED

15 DEC -4

PM 3:57

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2014-CP-08-2494

ANNA ANGELACCI, as guardian of
K. B., a minor,
CLERK OF COURT
BERKELEY COUNTY, S.C.

Plaintiff,

v.

E. U., a minor, Travis O. Felkel, and
Ginger G. Ulery,

Defendants.

MEMORANDUM IN OPPOSITION
TO NATIONWIDE MUTUAL FIRE
INSURANCE COMPANY'S MOTION
TO INTERVENE AND MOTION TO
SET ASIDE DEFAULT JUDGMENT

Nationwide Mutual Fire Insurance Company, Inc. ("Nationwide") has filed a motion to intervene in this action pursuant to Rule 24, SCRPC, so that this court may entertain Nationwide's motion to set aside the default judgment entered against its insureds. Although Nationwide admits its captive agent, John T. Herndon, III, timely received the Summons and Complaint from its insureds, Nationwide failed to investigate or defend this matter or file an Answer to the Plaintiff's Complaint. The individual Defendants themselves have not moved to set-aside the default judgment. Instead, the individual defendants opted to protect themselves from further financial harm by assigning their rights and claims against Nationwide to the Plaintiff in exchange for a covenant not to execute judgment. Now, nine months after Defendants' Answer became due, Nationwide seeks to intervene so that it may move to set aside the default judgment against its insureds. Notably, Nationwide took the time to send a full reservation of rights letter to its insureds before it moved to intervene or set aside default.

For the reasons explained below, Nationwide does not meet the standard for either intervention as of right or permissive intervention under Rule 24, and Nationwide's motion to intervene must be denied. Additionally, even if Nationwide is permitted to intervene,

Vannorugh

Nationwide's motion to set aside entry of default and default judgment must be denied as it cannot provide a "satisfactory explanation" for the default much less establish the "mistake, inadvertence, excusable neglect, or surprise" required to set aside a default judgment under Rule 60(b), SCRCP.

FACTUAL BACKGROUND

E.U., a minor over the age of fourteen, Travis Felkel (E.U.'s stepfather) and Ginger Ulery (E.U.'s mother) (hereinafter "Ulery-Felkel family") are the named defendants in this lawsuit. The Ulery-Felkel defendants were insured by Nationwide through a homeowners insurance policy sold to them by John T. Herndon, III at the Herndon Insurance Agency. Herndon was a captive agent for Nationwide, and was specifically named in the Policy as Nationwide's agent, to whom notice of loss claims could be provided by the insured. *See* Deposition of John Herndon, III, p.14, lines 18-19 and p. 81, lines 19-22, attached as Exhibit A.¹

The Ulery-Felkel Defendants were served on December 2, 2014. *See* Affidavits of Travis Felkel and Mike Lamont, attached as Exhibits C and D, respectively. Shortly thereafter, Travis Felkel personally delivered the Summons and Complaint to John Herndon at his Charleston office. *See* Ex. A, p.30, lines 4-7. Herndon admits he received the lawsuit, and made a copy of the lawsuit papers. *Id.*

Despite having notice of the lawsuit through its agent John Herndon, Nationwide did not defend or investigate the lawsuit, and failed to advise its insureds that it would not be defending the lawsuit. The lawsuit was never answered, the clerk of court signed an entry of default and

¹ In at least three places in the Policy documents and declarations, Nationwide lists John Herndon as "your Nationwide agent" or "your Nationwide representative" and provides Herndon's Charleston telephone number as the contact point for Nationwide. Moreover, the policy states and Herndon admits he was Nationwide's agent and that he was authorized by Nationwide to accept notice of a lawsuit from an insured. *See* Ex. A, p. 39, lines 19-25; *See* Homeowner Policy, at Customer Notice and Declarations and page J1, attached as Exhibit B.

referral to a special referee was ordered. The Special Referee entered default judgments against each of the three defendants, jointly and severally, in the amount of \$5,150,000 in favor of Plaintiffs Anna Angelacci and K.B., a minor over the age of fourteen. See Judgments, attached as Exhibit E.

After default judgments were entered against the Ulery-Felkel defendants, they assigned any and all claims they may have against Nationwide for mishandling of the lawsuit to the Plaintiffs in the underlying action in exchange for a stay of execution of the judgments and the possibility of having the judgments vacated if satisfied by Nationwide. (Felkel, Ulery, and Minor E.U. Assignments, attached as Exhibit F). Importantly, after receiving the assignments from the insureds, Plaintiffs' paralegal called Nationwide's insurance agency and was informed by a Nationwide agent that the lawsuit was, in fact, uploaded into their system, but apparently had never been forwarded to the claims department by the prior agent who had since retired. See Affidavit of Lindsey Rash, attached as Exhibit G.

Thereafter, on July 27, 2015, the Plaintiffs, in their own right and as assignees of Travis Felkel, Ginger Ulery and E.U., filed suit against John T. Herndon, Herndon Insurance Agency, Inc., Nationwide Mutual Ins. Co., and Nationwide Mutual Fire Ins. Co. alleging negligence, bad faith breach of contract and misrepresentation arising out of Nationwide's failure to defend its insureds in this action.² Nationwide was served with this bad faith lawsuit on July 28, 2015. Instead of immediately moving to intervene, set aside default, and file and answer, Nationwide waited two months to address the default judgments against its insureds. Then, Nationwide's

² See Anna Angelacci, individually and as guardian of K.B., a minor over the age of fourteen, as assignee of Travis Felkel, Ginger Ulery and E.U., a minor over the age of fourteen, by his Guardian ad Litem Shannon P. Jones v. John T. Herndon, III, Herndon Insurance Agency, INC. Nationwide Mutual Insurance Company, and Nationwide Mutual Fire Insurance Company, Case No. 2015-CP-08-1759. For ease of reference, this lawsuit will be referred to as the bad faith litigation and the Complaint (without attachments) is attached as Exhibit H.

first step was to protect itself by sending a full reservation of rights letter to its insureds. Only after it reserved its rights and it let another month pass, did Nationwide move to intervene and set aside default. To date, Nationwide has not filed a motion for leave to extend time to file a late answer.

LEGAL ANALYSIS

I. MOTION TO INTERVENE

Nationwide is not a party to this action. Nationwide's insureds hand-delivered a copy of the lawsuit to Nationwide's designated agent within thirty days of being served, but Nationwide failed to file an Answer on their behalf. This failure resulted in entry of default and default judgment against its insureds. As a non-party, Nationwide has no standing to challenge this default and so it has moved to intervene in the action. Based on a long line of precedent, however, Nationwide's motion to intervene should be denied.

A. Nationwide's Motion to Intervene Should Be Denied On Grounds That Nationwide Does Not Have A Cognizable Interest In the Underlying Litigation For Purposes of Rule 24.

Intervention is a procedural device whereby a third party who is not a named party in an existing lawsuit, but who has an interest in its outcome, may become a party to the action. *Ex Parte Horry County State Bank*, 361 S.C. 503, 604 S.E.2d 723 (Ct. App. 2004)(citing *Black's Law Dictionary* 826 (7th ed. 1999)). Intervention may be of right or permissive, and is governed respectively by Rule 24(a) and (b), SCRPC, both of which are modeled after the federal rule 24. *Id.* Generally, intervention should be liberally granted, but "this does not mean that intervention should always be granted." *Id.* at 507, 604 S.E.2d at 725. Instead, the court must consider the pragmatic consequences of a decision to permit or deny intervention, and must examine each case in the context of its unique facts and circumstances. *Id.* (citing *Berkeley Elec. Coop, Inc. v. Town of Mt. Pleasant*, 302 S.C. 186, 394 S.E.2d 712(1990)). A majority of jurisdictions refuse

to allow insurers to intervene in the underlying tort suit against their insureds because other mechanisms, like declaratory judgment actions, exist to protect the insurers' rights vis-à-vis coverage issues. 1 *Law and Prac. of Ins. Coverage Litig.* § 12:17.

1. Intervention as of Right Under Rule 24(a)

The courts have established a four-part test for intervention under Rule 24(a)(2). A party must establish each of the following: (1) timely application; (2) an interest relating to the property or transaction which is the subject of the action; (3) that it is in a position such that without intervention, disposition of the action may impair or impede its ability to protect that interest; *and* (4) that its interest is inadequately represented by the parties. *Ex Parte Horry County State Bank.*

The majority of courts that have analyzed the ability of an insurer to intervene in underlying tort litigation pending against their insureds under this test have denied insurers motions to intervene based on the second prong, which requires that the insurer have an "interest" in the litigation. The Supreme Court of South Carolina has followed this trend. In 2007, our Court denied an insurer's motion to intervene in an "underlying suit" on grounds that the insurer could not satisfy the second prong of the above cited test, as it did not have "an interest relating to the property or transaction which is the subject of the action" as required by Rule 24(a)(2). *Ex Parte Government Employee's Insurance Company*, 373 S.C 132, 138, 644 S.E.2d 699, 702 (2007) (citing *Bailey v. Bailey*, 312 S.C. 454, 458, 441 S.E.2d 325, 327 (1994)).

In that case, GEICO wished to intervene in a family court action instituted to obtain an order validating the common law marriage of an individual, Ronnie Cooper, to a GEICO insured driver, Yolanda Goethe. *Id.* at 134, 644 S.E.2d at 700. Cooper was injured in an accident and sought to stack underinsured motorist coverage provided by Goethe's GEICO policy on grounds that he was a Class I insured as Goethe's common law spouse. *Id.* After GEICO denied

Cooper's claim to stack coverage, Cooper filed the family court action seeking an order validating his common law marriage to Goethe. *Id.* The Supreme Court denied GEICO's motion to intervene, holding that GEICO "has no real interest in whether Cooper and Goethe have a valid common law marriage." *Id.* at 138, 644 S.E.2d at 702. Significantly, the Court went on to explain, "GEICO's interest is in the financial implications of the family court's decision, which is peripheral to the subject matter before the court." *Id.* at 138-39, 644 S.E.2d at 702 (emphasis added). Thus, even though GEICO argued that the decision of the family court "would impact GEICO's ability to protect its interests under the insurance policy issued to Goethe," the Supreme Court found any such interest was not "sufficiently related to the subject matter of the action" to warrant intervention. *Id.* at 134-35, 139, 644 S.E.2d at 700, 703.

The South Carolina Supreme Court's holding in the GEICO case is in line with the majority of federal courts, including the District of South Carolina, which have denied insurers the right to intervene in underlying tort suits on grounds that the insurers' interests are not sufficient to support intervention under Rule 24(a)(2), FRCP,³ particularly where the insurer has reserved the right to deny coverage. See, e.g., *Travelers Indem. Co. v. Dingwell*, 884 F.2d 629 (1st Cir. 1989); *Restor-A-dent Dental Laboratories, Inc. v. Certified Alloy Products, Inc.*, 725 F.2d 871 (2d Cir. 1984); *Lewis v. Excel Mechanical, LLC*, 2013 WL 3762904 (D.S.C. 2013).

In the First Circuit's *Travelers* case, Travelers' insured, Richard Dingwell, owned and operated a plant in the business of cleaning petroleum and chemical storage tanks. Dingwell received a notice from the EPA that his plant was being shut down for illegal dumping at the site. *Travelers*, 884 F.2d at 631. In addition, Dingwell was notified, along with the generators and transporters of the waste to his facility, that he and his customers were Potentially Responsible

³ Rule 24, SCRCF, was based on the federal rule, and the language of both rules is identical. See Notes to Rule 24, SCRCF.

Parties ("PRPs") under CERCLA, and were strictly, jointly and severally liable for all costs incurred in site investigation and clean up. *Id.* Travelers agreed to pay Dingwell's legal expenses in connection with these administrative proceedings, but expressly reserved their right to deny indemnification for any and all damages. *Id.* To avoid protracted litigation, Dingwell and the other PRPs signed a proposed consent decree with the EPA in which they were obligated to spend roughly \$12.5 million in the clean-up effort. Some of the PRPs then sought to negotiate a settlement of their claims for contribution and indemnity against Dingwell. *Id.* Dingwell's insurers refused to participate in the negotiations, and reiterated their reservation of rights to deny coverage. *Id.* at 632. The negotiations went forward and Dingwell and the group of PRPs reached an agreement: Dingwell would assume 65% of the clean-up costs, join the Consent Decree and assign to the PRPs his indemnification rights against his insurers. *Id.* In return, the PRPs agreed to seek satisfaction of Dingwell's obligations solely from assets that might be available under his insurance policies. *Id.*

Subsequently, the PRPs filed suit against Dingwell, and the PRPs moved for consent judgment against him pursuant to the terms of their settlement agreement with him. Dingwell planned to consent to judgment, and the insurers filed a motion to intervene in order to oppose the entry of judgment. *Id.* at 632. The district court denied the insurers' motion to intervene both as of right and permissively, and the First Circuit affirmed that decision on appeal. In affirming the denial of the motion to intervene, the First Circuit held "[w]e agree with the district court's conclusion that the insurers failed to satisfy the second requirement – an interest relating to the property or transaction which is the subject of the action." *Id.* at 638. Although the court recognized that the insurers had a potential interest in minimizing Dingwell's liability to the PRPs, it was a *contingent* interest. "When the insurer offers to defend the insured but reserves the right to deny coverage, . . . the insurer's interest in the liability phase of the proceeding is

contingent on the resolution of the coverage issue.” *Id.* at 639. As it was merely contingent, the First Circuit found it was “not cognizable for the purposes of Rule 24(a)(2).” *Id.*

Significantly, the First Circuit found the insurers’ interest to be “contingent” even though its insured was consenting to judgment and the amount of damages would thereby be fixed, just as they are for an insured in default. The “contingency” lies in whether or not the insurer who has reserved their rights to deny coverage, will be obligated to pay those damages under the terms of the its policy, and that question is appropriately addressed in separate coverage litigation, not in the underlying tort suit.

Recently, the District of South Carolina followed this line of cases when it denied an insurer’s motion to intervene in an underlying tort suit on the same grounds after the insurer reserved its rights to deny coverage, finding that the insurer’s interests in the tort litigation were contingent on the outcome of the coverage dispute and thereby insufficient. *Lewis. v. Excel Mechanical, LLC*, 2013 WL 3762904 (D.S.C. 2013).

Penn National does not have an interest in the subject matter of this action, that is, [Defendant’s] allegedly negligent operation of the Boat, that, in turn, led to [Plaintiff’s] tort claim for damages against Defendants. Instead, Penn National’s interest is in the amount it may have to pay . . . if Plaintiff wins. Stated differently, Penn National’s interest is in how much of any future award may be attributable to damages contemplated by the policy.

Id. at 2 (emphasis added). The district court found the above-described interest was not cognizable for purposes of Rule 24.

In this case, Nationwide is situated similarly to the insurers in the cases discussed herein. Nationwide’s interest in the underlying tort action is not in the subject matter of that action, which relates to the negligence of its insured that caused injury to the plaintiff, but in the amount it *may* have to pay *if* its insureds prevail in the bad faith litigation. Because Nationwide has reserved its right to deny coverage altogether, its interest in the underlying litigation is

contingent on the resolution of the coverage issue, just as the insurers' interest was contingent in *Travelers*, where the insurer had reserved its right to deny coverage. The fact that the amount of the judgment has been determined here by means of a default does not affect the contingency, just as the fact that the insured "Dingwell" had entered into a consent judgment did not affect the contingency of Travelers' interest in the underlying litigation. Similarly, as GEICO's interest in the financial implications of the family court's decision to recognize common law marriage was peripheral to the subject matter of the family court action and insufficient to warrant intervention, Nationwide's interest in the financial implications of the underlying suit are peripheral and insufficient to warrant intervention.

Significantly, Nationwide has failed to cite a single South Carolina case in which the court has allowed an insurer to intervene in an underlying tort case. Nationwide cites to *McClurg v. Deaton*, 380 S.C.563, 671 S.E.2d 87 (Ct. App. 2008) for this proposition, but Nationwide misstates the facts of that case. In that case, the *employer* of the individual defendant (not the "carrier" as stated in Nationwide's brief) moved to intervene because the employer was vicariously liable for the defendant employee's negligence, and both the employee and the employer then moved to set aside default. Accordingly, *McClurg* does not stand for the proposition that an insurer has a sufficient interest to intervene in an underlying tort suit. Based on the South Carolina authority and authority from the federal courts cited, Nationwide cannot meet its burden to establish it has a sufficient interest *in the subject matter of this tort litigation* to support intervention of right under Rule 24(a)(2).

Moreover, Nationwide finds itself in the unhappy position of trying to intervene in an action in which it has already squandered an opportunity to participate and offer a defense by hiring counsel for its insured when its insured provided Nationwide with a copy of the lawsuit before the Answer was due. Under these circumstances, Nationwide's complaint that its

interests are not adequately represented by the insureds, who are in default solely because of the negligence of Nationwide, rings hollow.

2. Permissive Intervention under Rule 24(b), SCRCF

Under Rule 24(b)(2), permissive intervention is appropriate where (1) “an applicant’s claim or defense and the main action have a question of law or fact in common” *and* (2) intervention does not “unduly delay or prejudice” the rights of the original parties. Rule 24(b), SCRCF. The court has broad discretion in granting or declining to grant permissive intervention, and reversal of a denial of permissive intervention on grounds of abuse of discretion “is so unusual to be unique.” *Travelers*, 884 F.2d at 641 (citations omitted); *see also Excel Mechanical*, 2013 WL 3762904 (holding that the court enjoys broad discretion on the issue of permissive intervention).

Here, there is no question of law or fact in the underlying tort litigation that is common to Nationwide’s claim that its policy does not cover Plaintiff’s injuries. Nationwide is already a party to the bad faith litigation instituted by its insureds and will litigate any coverage defenses it has in that case. Just as its financial interest is “peripheral” to the underlying tort claims, so is any claim that Nationwide shares common questions of law or fact with those raised in the underlying suit. For that reason, the First Circuit affirmed the district court’s refusal to allow permissive intervention on the same grounds that it had denied intervention of right. *Travelers*, 884 F.2d at 633.

Moreover, allowing Nationwide to intervene, after liability and damages have already been determined, would prejudice plaintiffs and, potentially, Nationwide’s own insureds, as it could force them to oppose the insurer who may be inclined to contest their factual assertions to the extent those assertions impacted the insurer’s coverage. *See Excel Mechanical*. In order to avoid this possibility as well as the injection of issues of insurance coverage into this underlying

action, Plaintiffs respectfully urge this court to exercise its broad discretion to deny permissive intervention as the courts did in *Travelers* and *Excel Mechanical* when faced with similar factual scenarios.

II. MOTION TO SET ASIDE DEFAULT

As discussed at-length above, Nationwide's motion to intervene should be denied. If that motion is denied, Nationwide has no standing to file a motion to set aside default, and, accordingly, its motion to set aside default should be denied. Assuming *arguendo*, however, that Nationwide is permitted to intervene, Nationwide's motion to set aside default should be denied for the reasons expressed below. As Nationwide's agent John Herndon has now testified, he received the summons and complaint at least one week and probably more before the Answer was due, yet Nationwide failed to provide a defense for its insured or advise the insured that they were not providing a defense. With the complaint in hand, Nationwide was in a position to protect its insured, but Nationwide failed to do so and has offered no satisfactory explanation by Affidavit or otherwise as to why it failed to do so.

A. Nationwide Cannot Meet The Rigorous Rule 60(b) Standard For Setting Aside A Default Judgment When Its Agent Received The Summons and Complaint But Failed To Hire Counsel Or File An Answer On Behalf of Its Insured.

Once a default judgment has been entered, a party seeking to be relieved must do so under Rule 60(b), SCRPC. The standard for granting relief from a default judgment under Rule 60(b) is more rigorous than the "good cause" standard established in Rule 55(c) for an entry of default. *Sundown Operating Company, Inc. v. Intedje Industries, Inc.*, 383 S.C. 601, 681 S.E. 2d 885 (2009). The Rule 55(c) "good cause" standard for relief from entry of default requires the applicant to provide an explanation for the default and the reasons why vacation of the entry of default would serve the interests of justice. "Once a party has put forth a satisfactory explanation

for the default, the trial court must also consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted. *Sundown*, 383 S.C 607-08, 681 S.E.2d at 888 (emphasis added)(citing *Wham v. Shearson Lehman Bros., Inc.* 298 S.C. 462, 381 S.E.2d 499 (Cl.App. 1989)(hereinafter referred to as the “Wham factors”). It is not necessary for the trial court to make specific findings of fact for each factor if there is sufficient evidentiary support for the finding of lack of good cause. *Id.* (citations omitted).

After a default judgment has been entered, however, Rule 60(b) requires “a more particularized showing of mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation, or “other misconduct of an adverse party.” *Id.* at 608, 681 S.E. 2d at 888-89. Indeed, “the different standards under the two rules underscore the clear intent to make it more difficult for a party to avoid default once the court has entered a judgment, which carries greater finality, and often occurs later than, a clerk’s entry of default.” *Id.* As noted in *Sundown*, if no satisfactory explanation is given, then there is no need to conduct the “good cause” analysis in the case of an entry of default or the more rigorous 60(b) factors in the case of a default judgment. *Sundown*. A motion to set aside default is addressed to the sound discretion of the trial court. *Id.*

In *Sundown*, the corporate defendant was served on August 28, 2001, and notified its insurance agent of the lawsuit on September 14, 2001 and sent him a copy of the lawsuit on October 1, 2001. On October 2nd, the insurance agent requested an extension of time to respond to the complaint, but he was too late and default was entered that day. The defendant then moved to set aside entry of default, arguing that it had established “good cause” by showing that the default was caused by the negligence of its insurance agent and because (1) it promptly

moved for relief; (2) it had a meritorious defense; and (3) plaintiffs would suffer no prejudice if the court set aside entry of default. *Sundown* (citing *Wham* factors).

The Supreme Court denied Defendant's motion to set aside the mere entry of default, holding that the insurance agent's negligence could not be a satisfactory explanation for the default based on the long-standing principle that the insurance company's negligence is imputed to the client: "the law is clear that an insurance company's misconduct is imputable to the client." *Id.* at 609, 681 S.E. 2d at 889. Based on these facts, the Court found that the defendant did not meet "even the most minimal showing of good cause." *Id.* at 607, 681 S.E.2d at 888. The Court did not make specific findings regarding each of the three *Wham* factors, as a trial court is not required to do so "if there is sufficient evidentiary support [in] the record for the finding of lack of good cause." *Id.* at 608, 681 S.E.2d at 888.

Within a week of deciding the *Sundown* case, in *Richardson v. P.V., Inc.*, 383 S.C. 610, 682 S.E. 2d 263 (2009), the Court re-emphasized its holding that negligence of an insurance company to timely retain defense counsel and answer a complaint is imputed to a defaulting litigant and cannot constitute good cause to relieve the litigant from an entry of default under Rule 60(b). *See also* *Roberts v. Peterson*, 292 S.C. 149, 355 S.E.2d 280 (Ct.App.1987) (observing that the "courts of this state have consistently held that the negligence of an attorney or insurance company is imputable to a defaulting litigant") and *Williams v. Vanvolkenburg*, 312 S.C. 373, 440 S.E.2d 408 (Ct.App. 1994) (imputing an attorney's negligence to a defaulting litigant).

In the present case, the insurer's conduct was even more egregious than in *Sundown*. In *Sundown*, the insured placed the insurer on verbal notice of the lawsuit but did not provide a copy to the insurer until after the due date for the Answer had passed. Here, the insured hand-delivered a copy of the lawsuit to his Nationwide insurance agent John Herndon after he was

served on December 2, 2014 sometime before Christmas, which would have been a week or more before an Answer was due. Herndon Depo, p.53, line 25 – p.54, lines 1-2, Ex. A. Mr. Herndon admits that he was Nationwide's agent, that he made a copy of the lawsuit papers, and that delivery of the lawsuit constituted proper notice by the insured under the terms of the policy. Herndon Depo p. 44, lines 17-20, Ex. A. Nationwide has not attempted to provide an explanation for its agent's failure to ensure the Complaint was answered, perhaps because there is no satisfactory one,⁴ and confuses the test for relief from judgment with the test for relief from entry of default by failing to make a "particularized showing of mistake, inadvertence, excusable neglect." Instead, Nationwide launches directly into the good cause analysis through the three *Wham* factors. *Sundown* makes clear that this is the test for relief from **entry** of default, **not** the test for relief from default **judgment**. ("The different standards under *the* two rules underscore the clear intent to make it more difficult for a party to avoid a default once the court has entered a judgment, which carries greater finality.").

Even under the less rigorous standard for motions to set aside entries of default, under facts that are very similar to those of this case, our Supreme Court found the defendant could not establish the good cause necessary to set aside entry of default. As Nationwide's misconduct in failing to answer the Complaint would not satisfy even Rule 55's lesser "good cause" standard, it

⁴ Section II(3) of the Policy "Liability Conditions," requires the insured, in case of a loss, "to give notice to us or our agent as soon as practicable." See Policy, at p. J1, Ex. B. It is undisputed that the insureds did provide notice to Nationwide via their agent as contemplated by the policy. Nationwide's only argument for why its agent did nothing after receiving a copy of the Summons and Complaint is that the agent told the insured to go home and call the claims department 1-800 number. This does not erase the fact that Nationwide already had "notice" of the lawsuit under the terms of the policy, but, in any event, it does not assist Nationwide in lifting the default, because even if that somehow absolved Nationwide from receiving notice, which it doesn't, it merely shows negligence on the part of the insured in addition to the negligence of the insurer, and neither stands as a satisfactory explanation for the default. See *Sundown*.

certainly does not rise to the more rigorous Rule 60(b) standard of "mistake, inadvertence, surprise or excusable neglect."

In an attempt to show "surprise" under Rule 60(b), Nationwide argues that Defendants Travis and Ginger Ulery-Felkel were "surprised" by the default judgment against them because S.C. Code Ann. 63-5-60 *limits* recovery of an amount not to exceed \$5,000 from the parents of a minor who "maliciously or willfully" causes personal injury to the individual. This Code Section appears to *entitle* entities and individuals injured by minors to a form of strict liability for willful and malicious actions; however, it does not limit the liability of parents to \$5,000 for the *negligent* actions of the children or of the parents as it relates to the supervision of their children. Indeed, Part (D) expressly states "[t]he liability of this section is in addition to and not in lieu of other liability which may exist by law." Moreover, Part (D) also states that "[t]he liability of parents or legal guardians under subsection (A) is joint and several with the minor for the injury ... as long as the minor would have been liable for the injury . . . if the minor had been an adult." Accordingly, Section 63-5-60 does not operate to limit the liability of guardians for negligently supervising their children or the negligent acts of their children, and supports the basis for liability of the minor's parents here by defeating any argument that the parents of a minor could be "surprised" by a finding of joint and several liability for the acts of their child.⁵ Further, it does not insulate negligent parents who fail to warn others of their children's propensity for aggressive behavior.

Finally, the last section of Nationwide's memorandum is devoted to the argument that the Defendants are in default due to their own negligence in failing to place Nationwide on notice,

⁵ The Complaint alleges that Travis and Ginger are the guardians of the minor defendant E.U. It also alleges in paragraphs 9 and 10 that the injuries to Plaintiff were caused by their negligence in addition to the negligence of E.U. When the Defendants failed to answer the Complaint and default was entered against them, those facts and allegations of independent negligence against them were deemed admitted.

and that the Defendants' negligence somehow constitutes "mistake, inadvertence, surprise and/or excusable neglect on the part of Nationwide." See Nationwide's Memorandum, at p. 30. Nationwide's argument ignores what has now been admitted by Nationwide's agent John Herndon: Defendant Travis Felkel hand-delivered a copy of the summons and complaint to Nationwide agent John Herndon on behalf of him, his wife Ginger and his step-son E.U. a week or more prior to the date the Answer was due, thereby, placing Nationwide on notice of the lawsuit in a timely fashion. Herndon Depo., p. 31, lines 3-5 Ex. A. Given this fact, and the long-established rule that the negligence of the insurance agent is imputed to the insured for purposes of default, this argument does not further Nationwide's cause in any way.

In sum, as Nationwide cannot show good cause much less the more rigorous excusable neglect or mistake required by Rule 60(b), Nationwide's motion to set aside default judgment must be denied.

B. NATIONWIDE IS NOT ENTITLED TO RELIEF UNDER RULE 60(b)(4)

Rule 60(b)(4), SCRCP, allows for relief from a judgment if the judgment is void. "The definition of 'void' under the rule only encompasses judgments from courts which failed to provide due process...or lacked subject matter jurisdiction or personal jurisdiction." *Linda Mc Co. v. Shore*, 390 S.C. 543, 703 S.E.2d 499 (2010). Here, Nationwide argues that the judgment against Minor Defendant E.U. is void for lack of personal jurisdiction, for lack of due process, and pursuant to Rule 54(b). For the reasons explained below, Nationwide's arguments lack merit, and Nationwide cannot establish that the judgments are void under Rule 60(b)(4).

1. Minor Defendant E.U. was properly served and the court had personal jurisdiction over him.

Rule 4, SCRCP serves at least two purposes. "It confers personal jurisdiction on the court and assures the defendant of reasonable notice of the action." *Fassett v. Evans*, 364 S.C.

42, 46, 610 S.E.2d 841, 843 (Ct.App. 2005) (citing *Moore v. Simpson*, 322 S.C. 518, 523, 473 S.E.2d 64, 66 (Ct. App. 1996). “Exacting compliance with the rules is not required to effect service of process. Rather, inquiry must be made as to whether the plaintiff has sufficiently complied with the rules such that the court has personal jurisdiction of the defendant and the defendant has notice of the proceedings.” *Id.* Further, an officer’s return of process creates the legal presumption of process that cannot be impeached by the mere denial of service by the defendant. *Id.* (citations omitted); *McClurg v. Deaton*, 380 S.C. 563, 579, 671 S.E.2d 87,96 (2008).

Rule 4(d)(1), SCRPC, provides the method for proper service on individuals.

Upon an individual other than a minor under the age of 14 years or an incompetent person, by delivering a copy of the summons and complaint to him personally or by leaving copies thereof at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, or by a copy to an agent authorized by appointment or by law to receive service of process.

(emphasis added). For minors between the ages of 14 and 18, who live with a parent or guardian, such as defendant minor E.U., Rule 4(d)(2) provides further that “a copy of the summons and complaint shall likewise be served upon said parent or guardian.” (emphasis added).

In this case, service was perfected on Defendant Minor E.U. pursuant to both Rule 4(d)(1) and (2) when the summons and complaint was hand-delivered to Defendant Travis Felkel on December 2, 2014 at his home, which was also the home of his wife, Ginger Ulery, and step-son Minor Defendant E.U. Indeed, Nationwide does not dispute that service was proper on both Travis and Ginger on December 2, 2014, as Travis Felkel is a person of suitable age and discretion to accept service on his wife and step-son’s behalf. Nationwide also does not dispute that Ginger is the parent and legal guardian of Minor E.U. Accordingly, E.U.’s parent, Ginger,

was “served” with a copy of the summons and complaint when her husband opened the door and accepted the summons and complaint from the process server. It follows, then, that Minor Defendant E.U.’s parent was “served” for purposes of Rule 4(d)(2).

Nationwide’s only remaining argument regarding service is that Minor Defendant E.U. was not served at his “dwelling place or usual place of abode.” As a preliminary matter, this is not a case his is not a case in which the defendant himself denies service. Rather, Nationwide’s argument is based entirely on the statement of Mrs. Ulery-Felkel at the damages hearing that her son started living with his grandmother sometime following this incident. The damages hearing occurred on April 21, 2015, almost six months after the date of service. Ms. Ulery-Felkel first said that her son moved out in September, then she said October, and Mr. Felkel never said when the minor moved out. Now, Mr. Felkel has clarified by Affidavit that E.U. was “home” with he and his wife on December 2, 2014, when Mr. Felkel accepted service, and that all three of them reviewed the lawsuit papers that night. *See Felkel Affidavit*, at ¶ 1, Ex. C. Moreover, the process server has testified via Affidavit that the minor answered the door at the family home on December 1, 2014, the day before service was effectuated. *See Lamont Affidavit*, at ¶ 2, Ex. D. Accordingly, the only evidence in the record is that the minor was at home on the day before and day of service, and that he received actual notice of the lawsuit on the night it was served. *See Ex. C.*

Further, as acknowledged by Nationwide, one’s dwelling or place of abode for purposes of Rule 4 is determined by the particularized facts of each case. *Fassett v. Evans*, 364 S.C 42, 610 S.E.2d 841 (Ct.App. 2005). In the *Fasset* case, the defendant claimed he became separated from his wife and had moved out of the marital home shortly before his wife accepted service on his behalf at their marital home. Despite this testimony, the court found that the marital abode remained his usual place of abode for purposes of Rule 4 because of the presumption created

when the sherriff's deputy left the complaint with defendant's wife, and the lack of evidence that he had established a new permanent dwelling place or that he had no intention to return to the dwelling home. In this case, unlike *Fassett*, there is no testimony from the minor defendant himself to contradict the Affidavit that he was "home" with his mother and step-father at the time of service, or to contradict the statement that he received actual notice of the lawsuit. See Felkel and Lamont Affidavits, Ex. C and D. Nationwide's argument is based entirely on off the cuff testimony at the damages hearing regarding dates, that was not provided by the minor defendant himself, and which has now been clarified by specific testimony in the context of the date of service. This speculation, raised by Nationwide, not the actual defendant who was served, is insufficient to rebut the presumption of proper service.

Because service was effected properly on the minor defendant, Nationwide's arguments that the judgment against him is void for lack of personal jurisdiction is without merit.

2. All Three Defendants Were in Default and Were Afforded the Due Process To Which They Were Entitled as Parties in Default Who Had Not Appeared in The Action

Nationwide argues that the Guardian-ad-litem appointed for minor defendant E.U. failed to comply with the responsibilities for Guardians provided under S.C. Code Ann. § 63-3-380. Nationwide's reliance on this Code section is misguided, however, as this section applies to custody and visitation proceedings in family court. Section 63-3-810 makes clear that it regulates the appointment of guardians "[i]n a private action before the family court in which custody or visitation of a minor child is an issue." Section 63-3-820 lays out the "Qualifications" for guardians appointed under this Section, and § 63-3-830, upon which Nationwide relies, lists the "Responsibilities" for guardians appointed under this Article. As this action is not pending in

Family Court and does not involve the custody or visitation of a minor child, Section 63-3-380 does not apply to this civil suit pending in Circuit Court.⁶

A guardian was appointed for minor defendant E.U. in this case pursuant to Rule 55(b)(2), SCRCP, which requires that a guardian ad litem be appointed to represent minors or incompetents prior to entry of a default judgment. In this case, Shannon Jones, Esquire, was appointed to act as guardian ad litem for defendant minor E.U. and she appeared at the damages hearing on his behalf. Accordingly, the guardianship requirements of Rule 55(b)(2) were met in this case: “no judgment by default shall be entered against a minor or incompetent person unless represented in an action by a guardian ad litem who has appeared herein.” (emphasis added).

Nationwide also argues that the judgment against minor defendant E.U. should be set aside because notice of the damages hearing was not mailed to him at his “last known address,” which Nationwide argues was his grandparents’ house. Nationwide’s argument fails, however, for several reasons. First, none of the defendants, including the minor E.U., claim that he did not receive notice of the April or the June hearing. Second, there is no evidence that E.U. was living with his grandparents at the time of the June hearing or that his grandparents’ house constitutes his “last known address.” Finally, it is undisputed that notice of the hearing was mailed to the minor’s court-appointed guardian ad litem as well as to him at his mother’s home, and that his mother attended the April damages hearing on his behalf and that the guardian ad litem actually attended the June hearing on his behalf. See Plaintiff’s Notices of Hearing for the April and June default judgment hearings and related Affidavits of Service, attached as Exhibit I.

In support of its argument, Nationwide cites to *McCall v. IKON*, 363 S.C. 646, 611 S.E.2d 315 (2005). The *IKON* case is easily distinguishable from the case at hand, however, in

⁶ Indeed, the only case cited by Nationwide as applying Section 63-3-830 was a child custody dispute in Family Court. See *Simcox-Adams v. Adams*, 408 S.C. 252, 758 S.E.2d 206 (2014).

at least two major particulars: (1) the defendant itself asserted that it did not receive notice of the damages hearing; and (2) the defendant did not show up for the damages hearing. *Id.* Here, as stated above, the minor defendant does not assert that he did not receive notice. To the contrary, his step-father has attested that all three defendants received notice of the damages hearing. In addition, and perhaps most importantly, the court-appointed guardian ad litem appeared at the damages hearing on the minor defendant's behalf, and this is not a case, like *IKON*, where no one appeared at the damages hearing to represent the defaulting defendant's interests due to lack of notice. As such, there is simply no evidence to support Nationwide's argument that notice was not provided to minor defendant E.U. in compliance with Rule 55(b)(2).

3. Rule 54(b), SCRCP, Has No Application To The Judgments In This Case

Nationwide argues that the default Judgments against Travis Felkel and Ginger Ulery-Felkel and Minor Defendant E.U. are void because they were not all entered on the same day. In support of this argument, Nationwide points to Rule 54(b), but Rule 54(b) has no application in this case where the judgments rendered against all three defendants, each of whom was properly in default, are joint and several and equal. Rule 54(b) is intended to prevent "inconsistent judgments," and there are no inconsistent judgments against the defendants here.

At this point, judgment has now been rendered against all parties on all claims, and all Rule 54(b) does is mandate that

any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights of all the parties.

According to the plain language of Rule 54(b), then, at best, the judgments against Travis Felkel and Ginger Ulery-Felkel, which were filed on April 28, 2015, "did not terminate the action" and

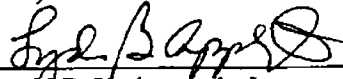
were "subject to revision at any time prior to the entry of judgment" against the remaining defendant, minor defendant E.U.. While the judgments against Travis and Ginger were arguably subject to revision prior to entry of judgment against their son E.U., consistent, joint and several, judgments against all three defendants in default have now been entered. As noted in Nationwide's own brief, the purpose of this rule is to prevent "logically inconsistent judgments resulting from an answering defendant's success on the merits and another defendant's suffering of a default judgment." See Nationwide's Memorandum in Support of Motion to Set Aside Default, at p. 17 (citing *Jefferson v. Briner, Inc.*, 461 F.Supp.2d 430, 434-35 (E.D.Va. 2006)(discussing *Frow v. De La Vega*, 82 U.S. 552 (1872))). Here, with all three defendants in default, and a joint and several judgment existing against all three defendants, there are no inconsistent judgments or partial judgments to which Rule 54(b) could apply. Accordingly, Rule 54(b) does not provide a basis for relief from the default judgments in this case.

CONCLUSION

For the foregoing reasons, Nationwide's motions to intervene and to set aside default must be denied.

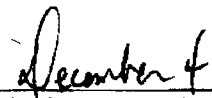
Respectfully submitted,

YARBOROUGH APPELATE LLC
291 East Bay Street, Floor 2
Charleston, South Carolina 29401
(843) 972-0150 Office
(843) 277-6691 Fax



David B. Yarborough, Jr.
Lydia Blessing Applegate
Douglas E. Jennings

ATTORNEYS FOR PLAINTIFFS


December 4, 2015
Charleston, South Carolina

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY) CASE NO. 2015-CP-08-1759

ANNA ANGELACCI, INDIVIDUALLY)
AND AS GUARDIAN OF K.B., A)
MINOR OVER THE AGE OF)
FOURTEEN, AS ASSIGNEE OF)
TRAVIS FELKEL, GINGER ULERY)
AND E.U., A MINOR OVER THE)
AGE OF FOURTEEN, BY HIS)
GUARDIAN AD LITEM SHANNON P.)
JONES,)

Plaintiff,)

vs.)

JOHN T. HERNDON, III, HERNDON)
INSURANCE AGENCY, INC.,)
NATIONWIDE MUTUAL INSURANCE)
COMPANY, and NATIONWIDE)
MUTUAL FIRE INSURANCE)
COMPANY,)

Defendants.)

* * * * *

VIDEOTAPED

DEPOSITION OF: JOHN T. HERNDON, III

DATE TAKEN: Tuesday, November 10, 2015

TIME: 11:53 a.m.

PLACE: Yarborough Applegate
291 East Bay Street, Floor 2
Charleston, South Carolina

REPORTED BY: EVE WILBANKS
Registered Professional
Reporter, Certified LiveNote
Reporter and Notary Public

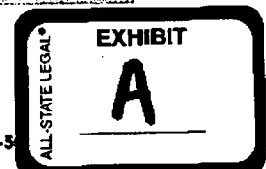
* * * * *

POST OFFICE BOX 21784
CHARLESTON, SOUTH CAROLINA 29413-1784

CAROLINA REPORTING
843.832.0801 * www.carolina-reporting.com

Electronically signed by Eve Wilbanks (101-177-349-6970)

aeB4a5de-5



1 page of that. It looks like 49, page 1 of 2, at
2 least -- is that one of the addendums, Agent
3 Growth Plus Addendum?

4 A. Yes. And that was -- yes.

5 Q. Were both addendums similar to this
6 Agent Growth Plus Addendum?

7 A. I don't remember.

8 Q. Okay. Under this Agent's Agreement,
9 Nationwide appoints you as its agent to represent
10 Nationwide Insurance Company in South Carolina,
11 correct?

12 A. Say that one more time.

13 Q. Under this Agent's Agreement, Nationwide
14 was appointing you as their agent or
15 representative in South Carolina to sell and
16 service their insurance policies, correct?

17 A. Correct.

18 Q. And you were a captive agent?

19 A. Correct.

20 Q. All right. Exclusive to Nationwide?

21 A. No.

22 Q. Or Nationwide companies?

23 A. No.

24 Q. What does it mean that you were a
25 captive agent?

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1 served upon he and his family and delivered it to
2 you in December of 2014, correct?

3 A. Correct.

4 Q. And he actually physically brought the
5 papers to your office and handed them to you,
6 correct?

7 A. That is correct.

8 Q. And so he did what had been instructed
9 to him by his policy and what he was required to
10 do by Nationwide in serving you, Nationwide's
11 agent, with the notice of claim?

12 MR. SLIGH: Object to the form of the
13 question.

14 Q. Correct?

15 A. You need to -- give me that question one
16 more time so I answer it correctly.

17 THE COURT REPORTER: "And so he did what
18 had been instructed to him by his policy and what
19 he was required to do by Nationwide in serving
20 you, Nationwide's agent, with the notice of
21 claim?"

22 A. He has -- that is one of the options,
23 yeah, that's correct.

24 Q. Okay. And when he brought you those
25 papers -- do you know the exact date that he

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1 brought you those papers?

2 A. No.

3 Q. All right. But you do know that it was
4 in December, before Christmas, correct?

5 A. As much as I remember, yes.

6 Q. All right. And that was -- if he was
7 served with the lawsuit around December the 2nd,
8 that would have been within the 30-day time period
9 to answer the lawsuit, correct?

10 A. That is correct.

11 Q. And you understand that, that once
12 someone is served with a lawsuit, they have 30
13 days to respond, correct?

14 A. That is correct.

15 Q. And it's Nationwide's responsibility
16 during that time period, once the papers are
17 served upon them, to investigate and, if
18 appropriate, to defend those claims, correct?

19 A. If they were served -- if they got
20 notification, yes.

21 Q. Right, right. And you, as their
22 representative and as their agent, are, as we
23 talked about, aware of the consequences of failing
24 to answer a lawsuit, correct?

25 A. That is correct.

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1 A. Now, wait a minute. I don't know that.
2 I know him when he walks in the office, makes his
3 payment. Other than that, I don't know how
4 sophisticated he is.

5 Q. And is he actually one of those people
6 that makes their payment by dropping it off at the
7 office?

8 A. No. He had it in escrow.

9 Q. Okay. But -- so -- but not a person
10 that you would consider terribly sophisticated?

11 A. I probably haven't seen Travis since he
12 bought that policy -- three times.

13 Q. So, again, one of those things that, not
14 knowing that, all the more important for you, as
15 the agent, to make sure that he's protected,
16 correct?

17 A. I am to give him the information that I
18 have, what I suggest that he do.

19 Q. Right. But, again, you were Nationwide,
20 and you were designated --

21 A. I am Nationwide.

22 Q. -- by Nationwide to accept his notice of
23 claims and notice of lawsuit, correct?

24 MR. SLIGH: Object to the form.

25 A. Yes.

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1 A. It's not my responsibility.

2 Q. Even though the policy designates you as
3 the person to report these claims to?

4 MR. SLIGH: Object to the form.

5 A. I'm not designated as the person to
6 report those claims to. I'm one of the options.
7 They can call the 800 number.

8 Q. Okay. All right. But you are one of
9 the options?

10 A. You've got it, yeah.

11 Q. And as we've already talked about, Mr.
12 Felkel, he complied with the term of the policy
13 under that option, the option of giving the
14 lawsuit and reporting the claim to you, correct?

15 MR. SLIGH: Object to the form.

16 A. He complied partially, yes.

17 Q. Okay. And then once you got it, you
18 made a copy of it, and you uploaded it into your
19 computer system, correct?

20 A. Uploaded it into EasyFile, yes.

21 Q. And then you did nothing else, correct?

22 A. No.

23 Q. Is that correct?

24 A. That is correct.

25 Q. All right. And you did nothing to

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1 A. That is correct. His son was not there.

2 Q. And as we've already talked about, there
3 was no explanation to him at that time of the
4 consequences of not calling in and giving -- and
5 letting his son give a recorded statement?

6 A. I did not discuss the consequences, no.
7 But he knew the consequences of not reporting the
8 file (sic). He knew he had to report it.

9 Q. Well, you don't know what he knew, do
10 you?

11 A. Yes, he did. Because I told him he had
12 to report it.

13 Q. Okay. Well, you told him he had to
14 report it.

15 A. That is correct.

16 Q. You told him that his son needed to give
17 the particulars, correct?

18 A. That is correct.

19 Q. All right. But, again, no talk about --

20 A. Lawsuit papers, no.

21 Q. Okay. And when you scan those in to
22 your system -- well, first of all, let me go back.
23 Do you remember what day of the week that was?

24 A. No.

25 Q. You just know that it was in December

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1 sometime before Christmas?

2 A. Yes.

3 Q. Do you remember who else was there that
4 day with you when he came in?

5 A. My secretary, Debbie.

6 Q. And remind me, where does Debbie work
7 now.

8 A. She works for another Nationwide agent.

9 Q. Which one?

10 A. Tommy Aydlette.

11 Q. How long had she worked with you?

12 A. Ten years.

13 Q. Have you talked to her about this
14 incident?

15 A. No.

16 Q. Do you know if she was present when you
17 had this conversation with Mr. Felkel?

18 A. She wouldn't have been in my office, no.

19 Q. Just the two of you all in that day?

20 A. If I remember correctly, yes.

21 Q. Do you --

22 A. Now, that's been a year from now, so
23 you've got to --

24 Q. I do. And only what you remember.

25 A. Right.

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Certification

I, Lolita Johnson-Ondatto, as a duly authorized Nationwide Insurance associate entrusted with oversight of the system of record from which this copy was produced, based upon information and belief, certify under penalty of perjury that this attached copy of policy **6139HO 708143** was made at or near the time of certification, as part of regularly conducted business activities, and is a true and accurate copy of the official record kept as part of regular business activities.

Lolita Johnson-Ondatto

Signature

Date: August 3, 2015

Lolita Johnson-Ondatto

Print Name

Sr. Processor, Imaging

Title





30332002177012

JOHN T HERNDON
SUITE B
1200 SAM RITTENBERG BLVD
CHARLESTON SC 29407

How to Contact Us

Nationwide Representative:

JOHN T HERNDON
AGENT NUMBER : 0014635
843-556-6088

61 39 HO 708143

HOMEOWNER CUSTOMER NOTICE

Policy Number 61 39 HO 708143	Date Prepared JUL 11, 2014

TRAVIS D FELKEL
339 HOLLY AVE
GOOSE CREEK SC 29445-3051

See back of your statement for important phone numbers and other information about your insurance.

Note:

Enclosed is your Homeowner Policy Renewal Declarations for property described on the Declarations.

Please read it carefully. The Mortgagee has been billed for the amount listed below. Thank you for insuring with Nationwide.

Total Billed To MORTGAGEE

\$ 1,891.00

RETAIN THIS PORTION FOR YOUR RECORDS

At Nationwide, customer service is a top priority. Whether you are a long time customer or new, we want you to know the high value we place on your business. We consider it a privilege to serve you.

NATIONWIDE MUTUAL FIRE INSURANCE COMPANY

*****THIS IS NOT A BILL*****

NATIONWIDE 24-HOUR CLAIMS NUMBER: 1-800-421-3535

IMPORTANT INFORMATION:

Nationwide now has a new homeowners program. Policyholders may or may not receive lower rates in this new homeowners program. Please contact your Nationwide Agent if you are interested in further details.

Your credit report will only be ordered at the start of your policy with Nationwide unless you request an update. You may request a new credit-based insurance score once each year to be used to rate your policy. To request an updated insurance score, please contact us at 1-877-669-6877.

******* SPECIAL NOTICE *******

Please notify your agent immediately if the mortgage company shown on the Declarations is not correct.

A Message From Your Nationwide Agent:

Your policy does not cover flood loss. You can get protection through the National Flood Insurance Program. If you wish to find out more about this protection, please contact your Nationwide Agent.

Your policy premium may be reduced by \$ 190.00 if you were to insure your Auto with a qualifying Nationwide Auto policy. Please contact your Nationwide Agent.

Your premium may be reduced, if you have a qualifying Nationwide Life/Annuity policy. Please contact your Nationwide Agent for more information.

Nationwide values your business. Our first priority is to serve you. As your insurance provider, we like to keep you informed. With this renewal you will notice a change in your premium. Premium changes vary based on factors such as the amount for which homes are insured and discounts that may apply. Your Nationwide Agent is available to answer any questions you may have about the change in your premium. Thank you for choosing Nationwide as your insurance provider.

Life comes at you fastSM — be ready with Nationwide[®].

For Questions About Your Insurance, Call Your Nationwide Agent: **JOHN T. HERNDON**
843-656-6088

For Hearing Impaired: TTY 1-800-622-2421

AGENT NUMBER 14635

Nationwide Regional Office: 1-877-669-6877



HOMEOWNER POLICY DECLARATIONS

Non-Assessable

Page 1 of 3

These Declarations are a part of the policy named above and identified by policy number below. They supersede any Declarations issued earlier. Your Homeowner Policy will provide the insurance described in this policy in return for the premium and compliance with all applicable policy provisions. See policy for details regarding the other coverages and additional coverage options.

Policy Number:
51 39 HO 708143

Issued:
JUL 11, 2014

Policyholder:
(Named Insured)
TRAVIS O FELKEL
339 HOLLY AVE
GOOSE CREEK SC 29445-3051

Policy Period From:

AUG 10, 2014 to AUG 10, 2015 but only if the required premium for this period has been paid, and only for annual renewal periods if premiums are paid as required. Each period begins and ends at 12:01 A.M. standard time at the Residence Premises.

The Following Change(s) Have Been Made To Your Policy:

You may notice a change in premium since your last billing. Residence Premises information has been changed.

The deductible for your policy Section I Property Coverage is revised.

The limit of liability for Section I Coverage A Dwelling is revised.

Limits of Liability for Policy Option Q Earthquake is changed.

THIS POLICY CONTAINS A SEPARATE DEDUCTIBLE FOR HURRICANE OR WIND/HAIL LOSSES, WHICH MAY RESULT IN HIGH OUT-OF-POCKET EXPENSES TO YOU. THE EXAMPLE ON PAGE A1 OF YOUR POLICY ILLUSTRATES HOW THE DEDUCTIBLE MIGHT AFFECT YOU.

Residence Premises information:

339 HOLLY AVE
GOOSE CREEK
SC 294453051

ONE FAMILY
MASONRY VENEER DWELLING
YEAR OF CONSTRUCTION 1971

PROTECTION CLASS 2
TAX CODE 00013
FD GOOSE CREEK
FS GOOSE CREEK FS 1
PROTECTION TERRITORY 058
BERKELEY COUNTY

SECTION I

Property Coverages	Limits Of Liability	Deductible: \$1,500 ALL PERILS
COVERAGE-A-DWELLING	\$ 141,200	In case of a loss under Section I, we cover only that part of each loss over the deductible stated.
COVERAGE-B-OTHER STRUCTURES	\$ 14,120	
COVERAGE-C-PERSONAL PROPERTY	\$ 103,925	EXCEPTIONS
COVERAGE-D-LOSS OF USE	\$ 141,200	3% WIND AND HAIL DEDUCTIBLE
		10% EARTHQUAKE DEDUCTIBLE APPLIES SEPARATELY TO EACH SECTION I COVERAGE LIMIT OF LIABILITY WITH A MINIMUM DEDUCTIBLE OF \$250

H5300

HOMEOWNER POLICY DECLARATIONS

Page 2 of 3

SECTION II

Liability Coverages	Limits Of Liability
COVERAGE-E-PERSONAL LIABILITY FOR EACH OCCURRENCE: PROPERTY DAMAGE AND BODILY INJURY	\$ 100,000
COVERAGE-F-MEDICAL PAYMENTS TO OTHERS EACH PERSON	\$ 1,000

OTHER COVERAGES/OPTIONS APPLICABLE

See Policy or Endorsements for details regarding the Other Coverages and Options that apply to your policy.

Other Coverages	Limits of Liability
INFLATION PROTECTION BOECKH INDEX 0735.8	APPLIES
BIOLOGICAL DETERIORATION/DAMAGE CLEAN UP	\$ 5,000
FIRE DEPARTMENT SERVICE CHARGE	\$ 500
CREDIT CARD - FORGERY	\$ 1,000

Options Applicable	
OPTION-J-EXTENDED REPLACEMENT COST PERSONAL PROPERTY (BRAND NEW BELONGINGS)	APPLIES
OPTION-K-REPLACEMENT COST PLUS DWELLING	APPLIES
OPTION-L-PROTECTIVE DEVICE CREDIT LOCAL FIRE OR SMOKE ALARM SYSTEMS FIRE EXTINGUISHERS DEADBOLT LOCKS ON ALL EXTERIOR ENTRYWAYS	APPLIES
OPTION-Q-EARTHQUAKE OPTION R-BROAD WATER BACKUP WATER BACKUP DEDUCTIBLE \$1500	\$ 5,000

SPECIAL PROVISIONS

STATE OF SOUTH CAROLINA VALUATION CLAUSE, VALUE OF DWELLING IS \$ 141,200

PREMIUM SUMMARY

Premium Based On	Premium Amount
POLICY PREMIUM	\$ 1,457.00
EARTHQUAKE	\$ 417.00
WATER BACKUP	\$ 17.00
Annual Renewal Premium	\$ 1,891.00

Annual Renewal Premium Includes Discounts For:

LONG TERM
HOME PROTECTIVE DEVICE**IMPORTANT NOTICE**

The property insured on this policy is located in territory 059. The average percent of the premium in this territory that is related to the perils of wind and hail (including tornado and hurricane) is 76.2%. This information is provided in accordance with the South Carolina Act 290, the Insurance Modernization Act, of 2004.

FORMS and ENDORSEMENTS MADE PART OF POLICY

HO 39-A

Homeowners Policy



HOMEOWNER POLICY DECLARATIONS

Non-Assessable
Page 3 of 3

Policy Number:
61 39 HO 708143

Policyholder:
(Named Insured)
TRAVIS FELKEL

Issued:
JUL 11, 2014

Policy Period From:
AUG 10, 2014 TO AUG 10, 2015

H-8178-A

Amendatory Endorsement (South Carolina)

ADDITIONAL INTERESTS

FIRST MORTGAGEE

SOUTH CAROLINA STATE
HOUSING FIN
AUTHORITY ATTN: MRTG
SERVICING/ESCROW
ISAOA ATIMA
300 OUTLET POINTE
BLVD STE C
COLUMBIA SC 29210-5652
LOAN #17041

Issued By: NATIONWIDE MUTUAL FIRE INSURANCE COMPANY
Countersigned At: RALEIGH, NC
Prior Declaration Issued: JUL 11, 2013

Home Office - Columbus, Ohio
By: JOHN T HERNDON

IMPORTANT PHONE NUMBERS

Nationwide 24-Hour Claims Number: 1-800-421-3535

For QUESTIONS About Your Policy, Call Your NATIONWIDE AGENT: JOHN T HERNDON
843-556-8088

For Hearing Impaired: TTY 1-800-822-2421

Nationwide Regional Office: 1-877-669-6877



Amendatory Endorsement (South Carolina)

Please attach this important addition to your policy.

It is agreed that the policy is amended as follows:

Under the Insuring Agreement, the second paragraph is deleted and replaced by the following:

The applicable limits of liability and optional coverages you have chosen are shown on the Declarations. We may change the amount of coverage shown on the Declarations Page to reflect current costs and values when reconstruction cost estimates are conducted or when the policy renews. To maintain an appropriate amount of coverage, it is your duty to advise us of additions, alterations, or renovations to your dwelling. This policy applies only to loss which occurs while the policy is in force.

Under General Policy Conditions, 4. NON-RENEWAL b. is deleted and replaced by:

- b) If we elect not to renew, we will mail written notice to the named insured, at the address shown in this policy at least:
 - (1) 60 days before the expiration date of this policy if such date is on or after November 1 and before June 1; or
 - (2) 90 days before the expiration date of this policy if such date is on or after June 1 and before November 1.

The notice will include the precise reason for nonrenewal. Proof of mailing shall be proof of notice.

Under General Policy Conditions, 5. CANCELLATION DURING POLICY PERIOD b. and c. are deleted and replaced by:

- b) When this policy has been in effect less than 120 days and is not a renewal with us, we may cancel for any reason by giving notice at least 30 days before cancellation takes effect.
- c) When this policy has been in effect 120 days or more, or at any time if it is a renewal, we may cancel if:
 - (1) there has been a material misrepresentation of fact which if known to us would have caused us not to issue this policy, or caused us to issue or renew this policy at a higher premium;
 - (2) the risk has changed substantially since the policy was issued; or
 - (3) there have been substantial breaches of contractual duties, conditions, or warranties; or
 - (4) there has been a loss of our reinsurance covering all or a significant portion of the particular policy insured, or where continuation of the policy would imperil our solvency or place us in violation of the laws of South Carolina.

This can be done by giving notice at least 30 days before cancellation takes effect.

All other provisions of the policy apply.

This endorsement is issued by the company shown on the Declarations as the issuing company.

Nationwide Mutual Insurance Company and Affiliated Companies
One Nationwide Plaza Columbus, OH 43215-2220
Hearing or Voice Impaired: 1-800-622-2421 (TTY only)
nationwide.com

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H-6178-A

THIS POLICY MAY CONTAIN A SEPARATE DEDUCTIBLE FOR HURRICANE OR WIND/HAIL LOSSES, WHICH MAY RESULT IN HIGH OUT-OF-POCKET EXPENSES TO YOU. THE EXAMPLE ON PAGE A1 ILLUSTRATES HOW THE DEDUCTIBLE MIGHT AFFECT YOU.

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HO-39-A

How Your Wind/Hail or Hurricane Deductible is Applied

The wind/hail deductible or hurricane deductible is on your Declarations page if it applies to this policy.

If you have a wind/hail deductible, the events that trigger application of this deductible are: wind, wind gust, hail, rain, tornadoes, cyclones, or snow.

If you have a hurricane deductible, the events that trigger application of this deductible are a hurricane, as defined in the Hurricane Coverage and Deductible Provision endorsement.

The hurricane deductible does not apply to any storm not declared by the National Hurricane Center/Tropical Prediction Center.

The deductible is based on a percentage of your Coverage A dwelling limit. Your deductible amount is determined by multiplying the percentage deductible by the Coverage A-Dwelling limit of liability at the time of loss. The resulting dollar amount is your deductible. The deductible applies to the total of all covered loss under Coverage A—Dwelling, Coverage B—Other Structures, Coverage C—Personal Property, and Other Coverages.

As mentioned earlier, the percentage deductible is on the Declarations page. The following are examples of how the deductible is applied:

These examples assume that at the time of loss, the Coverage A-Dwelling limit of liability is \$100,000 and the percentage deductible is 1%, with the resulting deductible amount being \$1000 (1% X \$100,000).

- Your dwelling loss is \$15,000 and your personal property loss is \$5,000 for a total loss of \$20,000. You are responsible for the first \$1000 of the loss due to the deductible. Nationwide is responsible for the balance of the loss or \$19,000.
- Your dwelling loss is \$500 and there is no personal property loss. You are responsible for the first \$1000 of the loss. Since the total loss amount is less than the deductible, you would be responsible for the loss.

This example is the same whether your policy has a Hurricane Deductible or a Wind/Hail Deductible.

Insuring Agreement

We will provide the insurance described in this policy, which includes the Declarations and attached endorsements or schedules, in return for the premium and fees, and compliance with all the policy provisions.

The applicable limits of liability and optional coverages you have chosen are shown on the Declarations. This policy applies only to loss which occurs while the policy is in force.

Definitions

Certain words and phrases used in this policy are defined as follows:

1. "WE", "US" and "OUR" refer to the company shown on the Declarations as the Issuing company.
2. "YOU" and "YOUR" refer to the named Insured shown in this policy who resides at the residence premises. These terms also mean your spouse who resides at the same residence premises.
3. "BUSINESS" includes trade, profession, occupation, or employment including self-employment, performed on a full-time, part-time, or temporary basis. Business also includes any occasional business pursuits of an Insured, including ownership of rental property. It includes home care services regularly provided to a person or persons, other than Insureds or Insureds' relatives, for which there is monetary or other compensation. A mutual exchange of home care services is not considered compensation. Exceptions, if any, are noted on the Declarations.

4. "INSURED" means you and the following if residents of your household at the residence premises:
 - a) your relatives.
 - b) any other person under age 21 and in the care of you or your relatives.
5. "INSURED LOCATION" means:
 - a) the residence premises.
 - b) the part of any other premises, structures, and grounds used by you as a residence and shown in the policy; also any of these acquired by you during the policy period for your use as a residence.
 - c) a premises you use with premises defined in 5. a) or 5. b).
 - d) a part of a premises, not owned by an insured, where an insured is temporarily living.
 - e) vacant land, other than farm land, owned by or rented to an insured.
 - f) land, other than farm land, owned by or rented to an insured on which a one or two-family dwelling is being built as a residence for an insured.
 - g) cemetery plots or burial vaults of an insured.
 - h) a part of a premises rented on occasion to an insured for purposes other than business.
6. "MOTOR VEHICLE" means:
 - a) a motorized land vehicle or conveyance, including motorized bicycles or mopeds, designed for travel on public roads or subject to motor vehicle registration.
 - b) a trailer or semi-trailer designed for travel on public roads and subject to motor vehicle registration.
 - c) any vehicle while being towed by or carried on a vehicle defined in 6. a) or 6. b).
7. "RESIDENCE PREMISES" means the one, two, three or four-family dwelling, other structures and grounds located at the mailing address shown on the Declarations unless otherwise indicated.
8. "AIRCRAFT" means any machine or device capable of atmospheric flight, except models.
9. "ACTUAL CASH VALUE" means the amount it would cost to repair or replace covered property with material of like kind and quality, less allowance for physical deterioration and depreciation, including obsolescence.
10. "FOUNDATION" means a building's substructure including substructural walls, i.e., basement walls, crawl space walls, etc.
11. "BIOLOGICAL DETERIORATION OR DAMAGE" meaning damage or decomposition, breakdown, and/or decay of manmade or natural material due to the presence of fungi, algae, lichens, slime, mold, bacteria, wet or dry rot, and any by-products of these organisms, however produced. Fungi as used above include, but are not limited to: yeasts, mold, mildew, rust, smuts, or fleshy fungi such as mushrooms, puffballs and coral fungi.

Other words are also defined. All defined words are in bold print.



Section I **Property Coverages**

Coverage Agreements

COVERAGE A – DWELLING

We cover:

1. the dwelling on the residence premises used mainly as your private residence, including attached structures and attached wall-to-wall carpeting.
2. materials or supplies on or adjacent to the residence premises for use in construction, alteration or repair of:
 - a) the dwelling; or
 - b) Coverage B – Other Structures.

We do not cover land or the replacement, rebuilding, restoration, stabilization or value of such land.

COVERAGE B – OTHER STRUCTURES

We cover other structures on the residence premises. They must be separated from the dwelling by clear space. Structures connected to the dwelling by only a fence, utility line, or similar connection are considered other structures.

We do not cover:

1. other structures used in whole or in part for business purposes.
2. other structures rented or held for rental to anyone, unless used solely as a private garage.
3. land or the replacement, rebuilding, restoration, stabilization or value of such land.

COVERAGE C – PERSONAL PROPERTY

We cover personal property owned or used by an insured at the residence premises. At your request, we will cover personal property owned by others. It must be on the part of the residence premises occupied by an insured. This extension of coverage does not increase the limit of liability.

Our limit of liability for personal property while away from the residence premises is 10 percent of the limit of liability for Coverage C or \$1,000, whichever is greater. This 10 percent limitation does not apply to personal property:

1. removed from the residence premises due to a covered loss;
2. in transit to and from, or while in a newly acquired principal residence for 30 days. The 30 days start right after you begin to move the property; or
3. stored in a commercial storage facility up to 180 days. The 180 days start when you begin to move the property. A commercial storage facility does not include a self-storage unit.

SPECIAL LIMITS OF LIABILITY. Certain property is subject to special limits which do not increase the personal property limits of liability. The special limit, shown below for each numbered category, is the total limit for each loss for all property in that category.

Section I - Property Coverages

The following special limits apply only to theft losses:

1. \$1,000 for jewelry, watches, furs, and precious and semi-precious stones.
2. \$1,000 for guns, including accessories.
3. \$1,000 for cameras (film, digital or video), including accessories. It does not include cameras used in business.
4. \$2,500 for silverware, silver-plated ware, goldware, gold-plated ware, and pewterware.
5. \$1,000 for tools not used in business. This limit does not apply to lawn and garden tools used to service the residence premises.

The following special limits apply to all covered losses:

6. \$200 for money, bank notes, bullion, gold other than goldware, silver other than silverware, platinum, coins, stored value cards, smart cards, gift certificates and medals.
7. \$1,000 for securities, accounts, bills, deeds, documents, evidences of debt, letters of credit, notes other than bank notes, passports, stamps and tickets.
8. \$3,000 for computers, including hardware and software accessories, operating software, application software or other similar software, which can be replaced with like kind and quality on the retail market. This includes electronic storage media such as, but not limited to, tapes or diskettes. Stored data is not covered.
9. \$500 for business property on the residence premises except computers including their hardware and software described above.
10. \$1,000 for watercraft and outboard motors, including trailers, furnishings and equipment.
11. \$1,000 for utility type trailers not used with watercraft.
12. \$1,000 for manuscripts, regardless of the medium.

PROPERTY NOT COVERED. We do not cover:

1. articles separately described and specifically insured in this or any other insurance.
2. animals, birds or fish.
3. house or travel trailers.
4. motor vehicles or all other motorized land conveyances including the following, whether furnished by the manufacturer or an individual:
 - a) their parts or equipment, whether attached to or separated from the motor vehicle or motorized land conveyance; or
 - b) accessory equipment; or
 - c) any device or instrument, including accessories or antennas, for the transmitting, receiving, recording or reproduction of sound or picture which can be operated by the power from the electrical system of the motor vehicle or motorized land conveyance. Tapes, discs, reels, cassettes or similar items, including carrying cases for any of these, while in a motorized land vehicle shall not be considered accessory equipment. The most we will pay is \$200 in any one loss, regardless of the number of such items. The loss must be caused by a covered peril.

We do cover vehicles or conveyances not subject to motor vehicle registration which are:

- a) used solely to service the insured's residence;
 - b) designed to assist the handicapped; or
 - c) a motorized golf cart while being operated to or from, or on the premises of a golf course.
5. aircraft and parts.
 6. property of roomers, boarders, and other tenants. Personal property, at the residence premises, belonging to roomers and boarders related to an insured is covered.

7. property in an apartment regularly rented or held for rental to others by an insured.
8. property rented or held for rental to others away from the residence premises.
9. business property away from the residence premises.

COVERAGE D -- LOSS OF USE

We cover, subject to the coverage limit which is the total limit, all of the following:

1. **Additional Living Expense.** If a covered loss requires you to leave the residence premises, we will pay the required increase in living expenses you incur to maintain your normal standard of living. Payment will be for the shortest time required to repair or replace the premises; or, if you permanently relocate, for the shortest time required for your household to settle elsewhere. Payment will not exceed the limit of liability shown on the Declarations or 12 months, whichever occurs first. This period of time is not limited by the end of the policy period; and
2. **Fair Rental Value.** If a loss covered under this section requires occupants to leave that part of the residence premises rented to others or held for rental, we will pay its fair rental value. Payment will be for the shortest time required to repair or replace this part of the premises. This does not include expense that does not continue while the part of the residence premises is uninhabitable. Payment will not exceed the limit of liability shown on the Declarations or 12 months, whichever occurs first. This period of time is not limited by the end of the policy period; and
3. **Prohibited Use.** If a civil authority prohibits your use of the residence premises because of direct damage to neighboring premises by a peril insured against in this policy, we will pay the resulting loss, for up to two weeks while use is prohibited, for:
 - a) Additional Living Expense; and
 - b) Fair Rental Value.

We do not cover loss or expense due to cancellation of a lease or agreement.

This coverage does not apply to an insured's business, whether conducted on or off any insured location.

No deductible applies to this coverage.

Additional Property Coverages

These additional property coverages are subject to the policy deductible except as noted. In no event will the deductible be applied more than once to any one loss.

1. **Debris Removal.** We will pay reasonable expense you incur removing debris of covered property, if the peril causing the loss is covered. This includes debris of trees that cause damage to covered property or covered structures, or that obstruct access to covered structures if such access is necessary to repair or replace the structure. We will pay only to move away from, or off of, covered property or covered structures, the debris of trees that cause damage to covered property or restrict access. An additional five (5) percent of the limit of liability for the damaged property will be available when the amount payable for the property loss plus the debris removal expense exceeds the limit of liability.
2. **Live Tree Debris Removal.** In the event of a loss, we will also pay the reasonable expense you incur for the removal of live tree debris from the residence premises, that does not cause damage to covered property or covered structures. The most we will pay is \$500, regardless of the number of trees requiring removal, for any one loss. Loss must be the result of a Coverage C Perils Insured Against. This is an additional amount of coverage.

Section I – Property Coverages

3. **Reasonable Repairs.** We will pay reasonable cost you incur for necessary repairs made solely to protect covered property from further damage, if the peril causing the loss is covered. This expense is included in the limit of liability applying to the damaged property.
4. **Trees, Shrubs, Plants, and Lawns.** We cover trees, shrubs, plants, or lawns on the residence premises for loss caused by the following perils: fire and lightning; explosion; riot and civil commotion; aircraft; vehicles not owned or operated by a resident of the residence premises; vandalism or malicious mischief; collapse of a building; or, theft. Liability is limited to five (5) percent of the Coverage A limit of liability for all trees, shrubs, plants and lawns. It is limited to \$500 for one tree, shrub or plant. This coverage may increase the limit of liability.
We do not cover property grown for business purposes.
5. **Fire Department Service Charge.** We will pay up to the amount stated on the Declarations for your liability under contract or agreement for customary fire department charges. This applies when the charges result from the fire department being called to save or protect covered property from a covered peril. No deductible applies to this coverage.
6. **Property Removed.** Covered property removed from a premises because it is in danger from a covered peril is covered for direct loss from any cause. The property is covered while being removed and for 30 days while removed. After 30 days the property is covered for direct loss from a peril insured against. This does not change the coverage limit.
7. **Credit Card, Electronic Fund Transfer Card, Access Device and Forgery Coverage.** We will pay up to the amount stated on the Declarations for:
 - a) the legal obligation of an insured to pay theft or unauthorized use of credit cards (including Electronic Fund Transfer Cards or Access Devices) issued to or registered in an insured's name. However, we do not cover use by a resident of your household, a person entrusted with the credit card (Electronic Fund Transfer Card or Access Device), or any person if an insured has not complied with all terms and conditions under which the credit card (Electronic Fund Transfer Card or Access Device) is issued.
 - b) loss to an insured caused by forgery or alteration of a check or negotiable instrument.
 - c) loss to an insured through good faith acceptance of counterfeit United States or Canadian paper currency.

All losses resulting from a series of acts committed by any one person or groups of persons or in which any one person or groups of persons is concerned or implicated is considered one loss. This is regardless of the period of time over which the acts occur.

We do not cover loss arising out of the business pursuits, or dishonesty of an insured. We do not cover loss arising out of identity theft or identity fraud including a covered act as outlined in subsections a), b), or c) of this section.

No deductible applies to this coverage.

We may make any investigation and settle any claim or suit as we decide is appropriate. Our obligation to defend a claim or suit ends when the amount we pay for the loss equals our limit of liability.

If a claim is made or a suit is brought against an insured for liability under the Credit Card, Electronic Fund Transfer Card, Access Device and Forgery Coverage, we will provide defense at our expense by counsel of our choice.

We may defend at our expense an insured or an insured's bank against a suit for the enforcement of payment under the forgery coverage.

Our duty to defend does not apply to identity theft or identity fraud.

8. **Inflation Protection Coverage.** If the Declarations show this coverage applies, we will adjust the limit of liability on the Declarations for Section I - Coverages. The limit of liability will change as the appropriate index, shown on the Declarations, changes.

We will compare the latest available index to the index as of the effective date of this policy. We will adjust the limit of liability by the percentage change in the index. It is further agreed that the premium for this policy at the next anniversary date shall be for the adjusted limits of liability.

If you request a change in the dwelling limit of liability, the effective date of this coverage will be amended to the effective date of that change.

This coverage will not reduce our limit of liability during the current policy period below that for which premium has been paid.

9. **Consequential Loss.** We cover insured personal property in a building at the residence premises for loss due to temperature change resulting from power interruption. There must be damage to the residence premises caused by a covered peril.

10. **Refrigerated Property.** If a power interruption occurs, off the residence premises, we will pay up to a maximum of \$500 for loss of contents in a freezer or refrigerator due to temperature changes. You must use all reasonable means to protect the covered property from damage or this coverage is void.

11. **Lock Replacement.** We will pay up to \$100 to replace the exterior door locks on your residence premises with deadbolt locks or to rekey the lock cylinders of existing deadbolt locks, whichever is less. This coverage applies only if the keys to your residence premises are stolen.

No deductible applies to this coverage.

12. **Collapse.** We cover direct physical loss to covered property described in Coverages A, B and C caused by the complete collapse of a building structure or any part of a building structure. Collapse means an abrupt falling down or caving in of a building or other structure or any part of a building or other structure with the result that it cannot be occupied for its intended purpose. A building or other structure or part of a building or other structure is not considered in a state of collapse if:

- a) it is standing but in danger of falling down or caving in;
- b) it is standing but has separated from any other part of the building;
- c) it is standing even if it shows signs of settling, cracking, shifting, bulging, sagging, bowing, bending, leaning, shrinkage, or expansion.

The collapse must be sudden and accidental and caused by one or more of the following:

- a) one of the Coverage C - Personal Property perils insured against;
- b) hidden decay of a supporting or weight bearing building structural member;
- c) hidden insect or vermin damage of a supporting or weight bearing building structural member;
- d) weight of:
 - (1) contents, equipment, animals or people; or
 - (2) rain, ice, sleet or snow which collects on the roof; or
- e) defective material or methods used in the construction, repair or remodeling or renovation if the collapse occurs in the course of work being done.

The presence of any decay, insect or vermin damage must be unknown to an insured prior to collapse.

Loss to an awning, fence, patio, swimming pool, underground pipe, flue, drain, cesspool, septic tank, foundation, retaining wall, bulkhead, pier, wharf, or dock is not included under items b), c), d), or e) unless the loss is a direct result of the collapse of a building.

The limit of liability applying to the covered property is not increased by this coverage.

Section I – Property Coverages

13. **Household Supplies.** We will pay up to a maximum of five (5) percent of the Coverage A – Dwelling coverage limit for direct physical loss to property described in Coverages A and B arising out of any interior or exterior presence, use, discharge, dispersal, release, migration, seepage, leakage, or escape of household supplies on the residence premises. Household supplies includes items currently in use or in your possession at the residence premises, in normal household quantities such as household cleaning supplies, pesticides, and other similar items.

Section I – Property Exclusion 1.) does not apply to any loss covered under this Additional Property Coverage, Household Supplies. In no event, however, will we ever cover:

- a) loss arising out of materials containing asbestos, lead, formaldehyde, fuel or petroleum products; or
 - b) any fee, assessment or expense of any governmental authority; or
 - c) loss arising out of household supplies possessed or used:
 - (1) for business purposes;
 - (2) for illegal purposes;
 - (3) by contractors; or
 - (4) on driveways or walkways.
14. **Biological Deterioration or Damage Clean Up and Removal.** In the event that a covered cause of loss results in biological deterioration or damage to property covered under Coverages A, B, and C, we will pay, up to the amount shown on the Declarations, for:
- a) the cost to clean up, remove and dispose of the biological deterioration or damage to covered property;
 - b) the cost to tear out and replace any part of the building or other covered property needed to gain access to the biological deterioration or damage;
 - c) the cost of testing which is performed in the course of clean up and removal of the biological deterioration or damage from the residence premises; and
 - d) additional living expenses you may incur, as outlined under Coverage D, that results from items a), b) or c) above.

The coverage amount shown on the Declarations for this Additional Property Coverage is the most we will pay for all loss or costs payable under this Additional Coverage. Such costs are payable only if you report the biological deterioration or damage to us within 180 days of having first discovered the biological deterioration or damage.

The covered cause of loss that causes or results in biological deterioration or damage to covered property must have occurred during the policy period.

This is an additional amount of coverage.

Perils Insured Against

(Section I)

Covered Causes of Loss

COVERAGE A – DWELLING and COVERAGE B – OTHER STRUCTURES

We cover accidental direct physical loss to property described in Coverages A and B except for losses excluded under Section I – Property Exclusions.

COVERAGE C – PERSONAL PROPERTY

We cover accidental direct physical loss to property described in Coverage C caused by the following perils except for losses excluded under Section I – Property Exclusions:

1. fire or lightning.
2. windstorm or hail.
Direct loss caused by rain, snow, sleet, sand or dust driven through roof or wall openings made by direct action of wind, hail, or other insured peril is covered. This peril includes loss to:
 - a) rowboats and canoes inside or outside a building.
 - b) other watercraft and outboard motors, including their trailers, furnishings, and equipment, while inside a fully enclosed building.
3. explosion.
4. riot or civil commotion.
5. aircraft, missiles propelled and spacecraft.
6. vehicles.
7. sudden and accidental damage from smoke. This does not include loss due to smoke from farm or industrial operations.
8. vandalism and malicious mischief.
This peril does not include loss to property on the residence premises if the dwelling has been vacant for more than 30 consecutive days immediately before the loss. A dwelling under construction is not considered vacant.
9. theft, including attempted theft. Loss of property from a known location when it is likely the property was stolen is covered. Loss of precious or semi-precious stones from their settings is not covered. This peril does not include loss caused by any theft:
 - a) committed by an insured.
 - b) in or to a dwelling under construction, or of materials and supplies for use in the construction, until the dwelling is completed and occupied.
 - c) of money, securities, stamps, jewelry, watches, gems, articles of gold, silver, or platinum from any part of a residence premises usually occupied solely by an insured while rented to other than an insured.

Section I - Perils Insured Against

This peril does not include loss caused by theft that occurs away from the residence premises of:

- a) property while at any other residence owned by, rented to, or occupied by an Insured, except while an Insured is temporarily living there. Property of an insured student is covered at a residence away from home if the student has been there within 45 days prior to the loss.
- b) trailers and campers.
- c) watercraft and outboard motors, including their furnishings and equipment.

10. falling objects. This peril does not include loss to:

- a) property in a building, unless the roof or an exterior wall of the building is first damaged by a falling object.
- b) the falling object itself.

11. weight of ice, snow, or sleet which causes damage to property in a building.

12. accidental discharge or overflow of water or steam from within a plumbing, heating, air conditioning or automatic fire protective sprinkler system or from within a household appliance. This peril does not include loss:

- a) caused by or resulting from water that backs up from outside the dwelling's plumbing system and enters through sewers or drains; or water entering or overflowing a sump pump, sump pump well or other system designed to remove subsurface water drained from the foundation area except as may be provided elsewhere in this policy or by endorsement.
- b) due to continuous or repeated seepage or leakage of water, steam or moisture which occurs over a period of time and results in deterioration, corrosion, or rust.
- c) due to freezing except as provided by the peril of freezing.
- d) to the system or appliance from which the water, steam or moisture escaped.

13. accidental electrical damage to electrical appliances, devices, fixtures and wiring. This peril does not include loss to transistors and tubes including picture tubes.

14. sudden and accidental tearing apart, cracking, bursting, burning or bulging of:

- a) a steam or water heating system.
- b) a fire protective sprinkler system.
- c) an air conditioning system.
- d) an appliance for heating water.

Freezing is not covered under this peril.

15. freezing of a plumbing, heating, air conditioning, or automatic fire protective sprinkler system or of a household appliance. This peril does not include loss on the residence premises while unoccupied, vacant or under construction unless you have used reasonable care to:

- a) maintain heat in the building; or
- b) shut off the water supply and drain the system and appliances of water.

Property Exclusions

(Section I)

1. We do not cover loss to any property resulting directly or indirectly from any of the following. Such a loss is excluded even if another peril or event contributed concurrently or in any sequence to cause the loss.
 - a) Earth Movement and Volcanic Eruption. Earth movement means: earth movement due to natural or unnatural causes, including mine subsidence; earthquake; landslide; mudslide; earth shifting, rising or sinking. Volcanic eruption means: eruption; or discharge from a volcano.
Resulting direct loss by fire, explosion, theft or breakage of glass which is part of the building is covered.
 - b) Water or damage caused by water-borne material. Loss resulting from water or water-borne material damage described below is not covered even if other perils contributed, directly or indirectly to cause the loss. Water and water-borne material damage means:
 - (1) flood, surface water, waves, tidal waves, overflow of a body of water, spray from these, whether or not driven by wind.
 - (2) water or water-borne material which:
 - (a) backs up through sewers or drains from outside the dwelling's plumbing system; or
 - (b) overflows a sump pump, sump pump well or other system designed to remove subsurface water or water-borne material from the foundation area.
 - (3) water or water-borne material below the surface of the ground, including water or water-borne material which exerts pressure on, seeps or leaks through a building, sidewalk, driveway, foundation, swimming pool, or other structure.Resulting direct loss by fire, explosion, or theft is covered.
 - c) Neglect, meaning neglect of the insured to use all reasonable means to save and preserve property at the time of and after a loss, or when property is endangered by a covered peril.
 - d) War or Warlike Acts. This includes insurrection, rebellion or revolution. Discharge of a nuclear weapon is considered a warlike act even if accidental.
 - e) Nuclear Hazard, meaning any nuclear reaction, discharge, radiation, or radioactive contamination, at whether controlled or not or however caused, and any consequence of any of these. Loss caused by nuclear hazard is not considered loss caused by fire, smoke, or explosion, whether these perils are specifically named in or otherwise included as a covered peril in Section I.
 - f) Increased Hazard, meaning any loss occurring while hazard is increased by a means within the control and knowledge of an insured.
 - g) Intentional Acts, meaning loss resulting from an act committed by or at the direction of an insured that may reasonably be expected to result from such acts, or is the intended result from such acts. Intentional acts include criminal acts. Such acts exclude coverage for all insureds.
 - h) Ordinance or Law, meaning enforcement of any ordinance or law regulating the construction, repair or demolition of a building or other structure.
 - i) Collapse, except as provided by Section I — Additional Property Coverages — Collapse.

Section I – Property Exclusions

- j) Contamination or Pollution, meaning any interior or exterior presence or use, discharge, dispersal, release, migration, seepage, leakage, or escape of:
 - (1) solid, liquid, gaseous, or thermal irritants or contaminants, except smoke arising solely from a hostile fire or the sudden and accidental discharge from a fireplace or furnace;
 - (2) vapors, soot, fumes, acids, alkalis, toxic chemicals, toxic liquids, toxic gases, or waste;
 - (3) fuel oil and other petroleum products; or
 - (4) any other waste materials or other irritants, contaminants or pollutants.
 - k) Loss Assessments, unless, optional loss assessment coverage is purchased; and then only up to the limit of liability shown for that optional coverage.
 - l) Government Acts, meaning any loss caused by seizure, destruction, or confiscation by order of any government or public entity.

Loss caused by acts ordered by any government or public entity at the time of a fire to prevent its spread is covered if the loss caused by fire would be covered under this policy.
 - m) Biological deterioration or damage, except as provided by Section I – Additional Property Coverages – Biological Deterioration or Damage Clean Up and Removal.
2. We do not cover loss to any property resulting directly or indirectly from the following if another excluded peril contributes to the loss:
- a) A fault, weakness, defect or inadequacy in the:
 - (1) specifications, planning, zoning;
 - (2) design, workmanship, construction, materials;
 - (3) surveying, grading, backfilling;
 - (4) development or maintenance;of any property on or off the residence premises, whether intended or not.
 - b) Acts or decisions of any person, group, organization or governmental body, whether intentional, negligent, wrongful or without fault. This includes the conduct or failure to act or decide by any of the aforementioned.
 - c) Weather conditions, if contributing in any way with an exclusion listed in paragraph 1. of this Section.
3. We do not cover loss to property described in Coverages A and B resulting directly from any of the following:
- a) freezing of a plumbing, heating, air conditioning or automatic fire protection sprinkler system or of a household appliance, or by discharge, leakage or overflow from within the system or appliance caused by freezing.

This exclusion applies only while the dwelling is vacant, unoccupied or being constructed unless you have used reasonable care to:

 - (1) maintain heat in the building; or
 - (2) shut off the water supply and drained the system and appliance of water.
 - b) freezing, thawing, pressure or weight of water, snow or ice, whether driven by wind or not, to a:
 - (1) fence, pavement, patio or swimming pool;
 - (2) foundation, retaining wall, or bulkhead; or
 - (3) pier, wharf or dock.

- c) theft in or to a dwelling under construction, or of materials and supplies for use in the construction until the dwelling is completed and occupied.
- d) vandalism and malicious mischief or breakage of glass and safety glazing materials if the dwelling has been vacant for more than 30 consecutive days immediately before the loss. A dwelling under construction is not considered vacant.
- e) continuous or repeated seepage or leakage of water or steam over a period of time from a heating, air conditioning or automatic protective sprinkler system; household appliance; or plumbing system that results in deterioration or rust. Continuous or repeated seepage or leakage from, within, or around any shower stall, shower tub, tub installation or other plumbing fixture, including their walls, ceilings or floors, is also excluded.

If loss caused by water or steam is not otherwise excluded, we will cover the cost of tearing out and replacing any part of the building necessary to repair or replace the system or appliance. We do not cover loss to the system or appliance from which the water or steam escaped.

- f) (1) wear and tear, marring, deterioration;
- (2) inherent vice, latent defect, mechanical breakdown;
- (3) smog, rust;
- (4) smoke from agricultural smudging or industrial operations;
- (5) release, discharge, or dispersal of contaminants or pollutants;
- (6) settling, cracking, shrinking, bulging or expansion of pavements, patios, foundations, walls, floors, roofs or ceilings;
- (7) birds, vermin, rodents, insects or domestic animals. Resulting breakage of glass constituting part of a covered building is covered;
- (8) root growth, movement or action;
- (9) mismatch of color between undamaged material and new material used to replace faded, weathered or oxidized damaged material; or
- (10) mismatch between undamaged material and new material used to repair or replace damaged material due to outdated, obsolete or discontinued products.

If any of items f)(1) through (8) cause water to escape from a plumbing, heating, air conditioning or fire protective sprinkler system or household appliance, we cover loss caused by the water not otherwise excluded. We also cover the cost of tearing out and replacing any part of a building necessary to repair the system or appliance. We do not cover loss to the system or appliance from which the water escaped.

Under exclusions 3.a) through 3.f), any loss that follows is covered unless it is specifically excluded.

Property Conditions

(Section I)

1. **Insurable Interest and Limit of Liability.** Even if more than one person has an insurable interest in the property covered, we will not be liable:
 - a) to the insured for more than the insured's interest.
 - b) for more than the limit of liability.
2. **Deductible.** The deductible amount shown on the Declarations or endorsements attached to this policy is the amount of loss paid by the insured. We pay for covered loss above the deductible amount.
3. **Your Duties after Loss.** In case of loss, you must:
 - a) give immediate notice to us or our agent; and also to the police in case of theft. In case of loss under the credit card coverage, also notify the credit card (Electronic Fund Transfer Card) company. If loss is caused by or results from the peril of hail, loss must be reported to us or our agent within 6 months of the loss event.
 - b) protect the property from further damage. You must make repairs required to protect the property and keep a record of repair expenses.
 - c) as often as we reasonably require:
 - (1) show us the damaged property; and
 - (2) provide records and documents we request and permit us to make copies.
 - (3) submit to examinations under oath and sign same. At your or our request, the exams will be conducted separately and not in the presence of any other persons except legal representation.
 - d) submit to us, within 60 days after we request, your signed, sworn proof of loss which sets forth, to the best of your knowledge and belief:
 - (1) the time and cause of loss.
 - (2) interest of the insured and all others in the property involved and all liens on the property.
 - (3) other insurance that may cover the loss.
 - (4) changes in title or occupancy of the property during the term of the policy.
 - (5) specifications of any damaged property and detailed estimates for repair of damage.
 - (6) a list of damaged personal property showing in detail the quantity, description, actual cash value, and amount of loss. Attach all bills and receipts that support the figures.
 - (7) receipts for additional living expenses and records supporting the fair rental value loss.
 - (8) evidence or affidavit supporting a claim under the Credit Card, Electronic Fund Transfer Card, Access Device and Forgery Coverage. It should state the amount and cause of loss.
4. **Loss Settlement.** Covered losses will be settled, up to the applicable limit of liability, by us paying:
 - a) actual cash value at the time of loss, the amount not to exceed actual cash value, needed to repair or replace:
 - (1) personal property and structures that are not buildings;
 - (2) carpeting (including wall-to-wall) and cloth awnings;

Section I -- Property Conditions

- (3) outdoor antennas, whether or not attached to the building;
- (4) home appliances, unless built in as a part of the dwelling.
- b) the cost to repair or replace without deduction for depreciation for buildings in Coverage A or B based on equivalent construction and use on the same premises except:
 - (1) we will pay no more than the actual cash value of the damage until the repair or replacement is made when the cost to repair or replace the damage is more than \$1,000 or more than 5 percent of the amount of insurance in this policy on the building, whichever is less.
 - (2) when you claim loss or damage to buildings on an actual cash value basis. You may make claim within 180 days after the loss for any added loss based on the cost to repair or replace.
 - (3) if you choose not to repair or replace, we will pay only the actual cash value of the damaged building, not to exceed the applicable limit of liability.
- 5. **Loss Payment.** We will pay all losses as outlined in the above Loss Settlement Condition 4, subject to the following:
 - a) In case of loss to a pair or set, we may elect to:
 - (1) repair or replace a part to restore the pair or set to its value before the loss; or
 - (2) pay the difference between actual cash value of the property before and after the loss.
 - b) At our option, we may repair or replace any part of the damaged property with equivalent property, providing we give you written notice within 30 days after receiving your signed, sworn proof of loss.
 - c) We will pay you unless some other person is named in this policy to receive payment. Payment will be made within 60 days after we receive your proof of loss and:
 - (1) reach agreement with you; or
 - (2) there is an entry of a final judgment; or
 - (3) there is a filing of an appraisal award with us.
 - d) After we have paid for a loss by theft or disappearance of covered property, we have the right to all or part of any recovered property. You must protect these rights and inform us of any recovery. If you wish to retain the recovered property, our loss payment will be adjusted by the value of such property.
 - e) After we have paid for a loss, we have the right to all or part of any salvageable property. We may permit you to keep the damaged property but we will reduce the amount of the loss paid to you by the value of the retained damaged property.
- 6. **Appraisal.** If you and we fail to agree on the amount of loss, either can demand that the amount be set by appraisal. If either makes a written demand for appraisal, each will select a competent, independent appraiser and notify the other of the appraiser's identity within 20 days of receipt of the written demand. The two appraisers will then select a competent, impartial umpire. If the two appraisers cannot agree on an umpire within 15 days, you or we can ask a judge of a court of record in the state where the residence premises is located to select a competent, impartial umpire.

The appraisers will then set the amount of loss. If the appraisers submit a written report of an agreement to us, the amount agreed upon will be the amount of the loss. If the appraisers fail to agree within a reasonable time, they will submit their differences to the umpire. Written agreement signed by any two of these three will set the amount of the loss. Each appraiser will be paid by the party selecting that appraiser. Other expenses of the appraisal and the compensation of the umpire

will be paid equally by you and us. Any fees for expert witnesses or attorneys will be paid by the party who hires them. Neither the umpire nor the appraisers will have a financial interest that is conditioned on the outcome of the specific matter for which they are called to serve.

This is not a provision providing for or requiring arbitration. The appraisers and umpire are only authorized to determine the actual cash value, replacement cost, or cost to repair the property that is the subject of the claim. They are not authorized to determine coverage, exclusions, conditions, forfeiture provisions, conditions precedent, or any other contractual issues that may exist between you and us. The appraisal award cannot be used by either you or us in any proceeding concerning coverage, exclusions, forfeiture provisions, conditions precedent, or other contractual issues. However, once contractual liability is admitted or determined, the appraisal award is binding upon you and us. This appraisal process and authority granted to the appraisers and the umpire can only be expanded or modified by written mutual consent signed by you and us.

7. **Other Insurance.** If a loss covered by this policy is also covered by other insurance, we will pay only the proportion of the loss that the limit of liability that applies under this policy bears to the total amount of insurance covering the loss.
8. **Suit Against Us.** No action can be brought against us unless there has been full compliance with the policy provisions. Any action must be started within three years after the date of loss or damage.
9. **Abandonment of Property.** We need not accept property abandoned by an insured.
10. **Mortgage Clause.** The word "mortgagee" includes trustee. If a mortgagee is named in this policy, a loss payable under Coverage A or B will be paid to the mortgagee and you, as interests appear. If more than one mortgagee is named, the order of payment will be the same as the order or precedence of the mortgages. If we deny your claim, that denial will not apply to a valid claim of the mortgagee, if the mortgagee:
 - a) notifies us of change in ownership, occupancy, or substantial change in risk of which the mortgagee is aware.
 - b) pays premium due under this policy on our demand, if you neglected to pay the premium.
 - c) submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so. Policy conditions relating to Your Duties after Loss, Loss Payment, Appraisal, and Suit Against Us apply to the mortgagee.If we cancel the policy, we will notify the mortgagee at least 10 days before the cancellation takes effect. If we pay the mortgagee for loss and deny payment to you:
 - a) we are subrogated to all the rights of the mortgagee granted under the mortgage on the property; or
 - b) at our option, we may pay to the mortgagee the whole principal on the mortgage plus accrued interest. In this event, we will receive a full assignment and transfer of the mortgage and all securities held as collateral to the mortgage debt. Subrogation will not impair the right of the mortgagee to recover the full amount of the mortgagee's claim.
11. **No Benefit to Bailee.** This insurance does not benefit a person or organization that is caring for or handling your property for a fee.
12. **Glass Replacement.** We will replace covered glass using safety glazing materials when required by ordinance or law.



Section II

Liability Coverages

ADDITIONAL DEFINITIONS APPLICABLE TO THESE COVERAGES

For purposes of these coverages only:

1. "BODILY INJURY" means bodily harm, including resulting care, sickness or disease, loss of services or death. Bodily injury does not include emotional distress, mental anguish, humiliation, mental distress or injury, or any similar injury unless the direct result of bodily harm.
2. "PROPERTY DAMAGE" means physical injury to or destruction of tangible property. This includes its resulting loss of use.
3. "RESIDENCE EMPLOYEE" means an employee of an insured who performs duties in connection with maintenance or use of the residence premises. This includes household or domestic services or similar duties elsewhere not in connection with the business of an insured.
4. "OCCURRENCE" means bodily injury or property damage resulting from an accident, including continuous or repeated exposure to the same general condition. The occurrence must be during the policy period.
5. "INSURED" means you and the following persons if residents of your household at the residence premises:
 - a) your relatives;
 - b) any other person under age 21 and in the care of you or your relatives;
 - c) a person or entity legally responsible for animals or covered watercraft that are either owned by or in the custody of an insured. A person or entity using or having custody of these animals or watercraft in the course of business, or without permission of the owner, is not an insured.
 - d) any person operating, utilizing, or maintaining a covered vehicle while engaged in your employment or that of an insured.

Coverage Agreements

COVERAGE E – PERSONAL LIABILITY

We will pay damages an insured is legally obligated to pay due to an occurrence resulting from negligent personal acts or negligence arising out of the ownership, maintenance or use of real or personal property. We will provide a defense at our expense by counsel of our choice. We may investigate and settle any claim or suit. Our duty to defend a claim or suit ends when the amount we pay for damages equals our limit of liability.

This coverage is excess over other valid and collectible insurance. It does not apply to insurance written as excess over the applicable limits of liability.

COVERAGE F – MEDICAL PAYMENTS TO OTHERS

We will pay the necessary medical and funeral expenses incurred within three years after an accident causing bodily injury. This coverage does not apply to you. It does not apply to regular residents of your household. It does apply to residence employees. Payment under this coverage is not an admission of our or an insured's liability. This coverage applies as follows:

1. to a person on the insured location with consent of an insured.
2. to a person off the insured location, if the bodily injury:
 - a) arises out of a condition in the insured location.
 - b) is caused by the activities of an insured.
 - c) is caused by a residence employee of an insured.
 - d) is caused by an animal owned by or in the care of an insured.

Additional Liability Coverages

We will pay the following in addition to the limits of liability. These additional coverages are not subject to the Section II Liability Exclusions.

1. **Claims Expenses.** We will pay:
 - a) expenses we incur and costs taxed against an insured in a legal action we defend.
 - b) premiums on bonds required in a suit we defend. This does not include bond amounts greater than the Coverage E limit of liability. We are not obligated to apply for or furnish a bond.
 - c) reasonable expenses incurred by an insured at our request. This includes actual loss of earnings (but not loss of other income) up to \$100 per day for assisting us in the defense of a claim or suit.
 - d) post-judgment interest. This must accrue after entry of the judgment. It must accrue before we pay or deposit in court that part of the judgment which does not exceed the coverage that applies.
2. **First Aid Expenses.** We will pay expenses for first aid to others incurred by an insured for bodily injury covered under this policy. We will not pay for first aid to you or any other insured.
3. **Damage to Property of Others.** We will pay for property damage to property of others caused by an insured regardless of legal liability. We will pay up to \$1,000 per occurrence, but not more than the smallest of the replacement cost or the cost to repair the damaged property. We will not pay for property damage:
 - a) to property covered under Section I.
 - b) caused intentionally by an insured who is age 13 or older.
 - c) to property owned by or rented to an insured, a tenant of an insured, or a resident in your household.
 - d) arising out of:
 - (1) business pursuits.
 - (2) an act or omission in connection with a premises owned, rented, or controlled by an insured, other than an insured location.
 - (3) the ownership, maintenance or use of a motor vehicle, aircraft, or watercraft.

Liability Exclusions

(Section II)

1. Coverage E – Personal Liability and Coverage F – Medical Payments to Others do not apply to bodily injury or property damage:

- a) caused intentionally by or at the direction of an Insured, including willful acts the result of which the Insured knows or ought to know will follow from the Insured's conduct.

This exclusion 1.a) does not apply to corporal punishment of pupils.

- b) caused by or resulting from an act or omission which is criminal in nature and committed by an Insured.

This exclusion 1.b) applies regardless of whether the Insured is actually charged with, or convicted of a crime.

- c) arising out of business pursuits of an insured.

This exclusion 1.c) does not apply to:

- (1) activities normally considered non-business.
- (2) occasional or part time self-employed business pursuits of an Insured under age 19 years old (age 23 if a full-time student).
- (3) an office, school, studio, barber or beauty shop on the residence premises if noted on the Declarations.
- (4) home care services provided by or at the direction of an Insured on or from the residence premises if noted on the Declarations.

- d) arising out of the rental or holding for rental of any part of any premises by an insured. Exceptions, if any, are noted on the Declarations.

This exclusion 1.d) does not apply to the rental or holding for rental of part of your residence premises:

- (1) occasionally for the exclusive use as a residence.
- (2) unless intended as a residence by more than two roomers or boarders.
- (3) as a private garage.

- e) arising out of any professional liability except teaching.

- f) arising out of premises owned or rented to an Insured but not an Insured location.

This exclusion 1.f) does not apply to bodily injury to any residence employee arising out of and in the course of employment by an Insured.

- g) arising out of the ownership, maintenance or use of, or loading or unloading of; entrustment or the negligent supervision by an Insured of; or statutorily imposed liability on an Insured related to the use of:

- (1) an aircraft.
- (2) a motor vehicle or all other motorized land conveyance owned by or operated by, or rented or loaned to an Insured.

This exclusion 1.g)(2) does not apply to:

- (a) a vehicle owned by an Insured and designed for recreation off public roads while on an insured location.

Section II — Liability Exclusions

- (b) a motorized golf cart while being operated to or from, or on the premises of a golf course.
- (c) a vehicle not subject to motor vehicle registration which is:
 - i) used to service an insured's residence; or
 - ii) designed for assisting the handicapped.
- (d) a vehicle in dead storage on an insured location. Dead storage means physically prepared for long term storage.
- (e) a boat, camp, home or utility trailer not being towed or carried on a vehicle defined in general Definition 6.a).
- (f) bodily injury to any residence employee arising out of and in the course of employment by an insured.
- (3) a watercraft owned or operated by, or rented or loaned to an insured:
 - (a) if the watercraft is a personal watercraft powered by an internal combustion engine and utilizing a water jet pump or has inboard, inboard-outdrive or outboard motor power of more than 50 horsepower.
 - (b) if it is a sailing vessel, with or without auxiliary power, 26 feet or more in overall length.
 - (c) while rented to others.
 - (d) while being used to carry persons or property for a fee.
 - (e) while being used without an insured's permission.
 - (f) while being used in an official race or speed test. This exclusion does not apply to sailboats.
 - (g) if it is an airboat, air cushion or similar type watercraft.

This exclusion 1.g)(3) does not apply:

- (1) while the watercraft is stored.
- (2) when an insured rents or borrows a nonowned outboard motor boat for eight (8) or less consecutive days.
- (3) to bodily injury to any residence employee arising out of and in the course of employment by an insured.
- h) caused by war or warlike acts, including insurrection, rebellion or revolution. Discharge of a nuclear weapon is a warlike act, even if accidental.
- i) resulting from an insured transmitting a communicable disease.
- j) arising from the ingestion, inhalation or absorption of lead or lead compounds.
- k) arising out of any interior or exterior presence, use, discharge, dispersal, release, migration, seepage or escape of:
 - (1) solid, liquid, gaseous, or thermal irritants or contaminants, including smoke (except smoke arising solely from a hostile fire or the sudden and accidental discharge from a fireplace or furnace), vapors, soot, fumes, acids, alkalis, toxic chemicals and wastes, toxic liquids or toxic gases;
 - (2) fuel oil and other petroleum products; or
 - (3) any other waste materials or other irritants, contaminants or pollutants.

This exclusion 1.k) does not apply to bodily injury arising out of routine lawn and garden care of an insured location.

- l) resulting from acts or omissions relating directly or indirectly to sexual molestation, physical or mental abuse, harassment, including sexual harassment, whether actual, alleged or threatened.

- m) resulting from the use, sale, manufacture, delivery, transfer or possession by a person of a controlled substance(s) as defined by Federal Food and Drug Law (21 U.S.C.A Sections 811 and 812). Controlled substances include but are not limited to: cocaine; LSD; marijuana; and all narcotic drugs.

This exclusion 1.m) does not apply to the legitimate use of prescription drugs by a person following orders of a licensed physician.

- n) bodily injury to a person eligible to receive any benefits required to be provided or voluntarily provided by any insured under:

- (1) a workers' compensation;
- (2) an unemployment compensation;
- (3) a non-occupational or occupational disease;
- (4) a disability benefits;

or any similar law.

- o) caused by any of the following animals owned by or in the care of an insured:

- (1) the following types of pure bred dogs or a mix breed including one of these types:

- (a) American Staffordshire Terriers, American Pit Bull Terriers, or Staffordshire Bull Terriers, all commonly known as Pit Bulls;
- (b) Doberman Pinschers;
- (c) Rottweilers;
- (d) Chow Chows; or
- (e) Presa Canarios;

- (2) wolf hybrids;

- (3) dogs that have been trained to attack persons, property or other animals; or dogs that have been trained to guard persons or property.

- (4) any dog, used in any manner, as a fighting dog or bred specifically for fighting.

- (5) any dog with a prior history of:

- (a) causing bodily injury to a person; or
- (b) attacking or biting another animal;

established through insurance claims records, or through the records of local public safety, law enforcement or other similar regulatory agency.

- p) arising out of biological deterioration or damage.

2. Coverage E — Personal Liability does not apply to:

- a) liability under any loss assessment contract or agreement unless optional loss assessment coverage is purchased; and then only up to the limit of liability shown for that optional coverage.

- b) liability assumed under any unwritten contract or agreement, or by contract or agreement in connection with any business of an insured.

- c) property damage to property owned, produced or distributed by an insured.

- d) property damage to property rented to, occupied or used by, or in the care of an insured.

This exclusion 2.d) does not apply to property damage:

- (1) caused by fire, smoke, or explosion; or
- (2) to house furnishings or premises rented to, occupied or used by or in the care of an insured for which the insured is legally liable.

Section II — Liability Exclusions

- e) **bodily injury or property damage** for which an insured under this policy is also an insured under a nuclear energy liability policy, or would be an insured but for its termination upon exhaustion of its limit of liability.
 - f) **bodily injury to an insured** as defined in Section II — Liability Definitions 5.a) and 5.b).
3. **Coverage F — Medical Payments to Others** does not apply to bodily injury:
- a) **to a residence employee** if it occurs off the insured location. It does apply if the bodily injury arises out of the residence employee's employment by an insured.
 - b) **from a nuclear reaction, radiation or radioactive contamination, or a consequence of any of these.** It does not matter that these are controlled or uncontrolled.

Liability Conditions

(Section II)

1. **Limits of Liability.** Our total liability under Coverage E for all damages resulting from one occurrence will not exceed the limit for Coverage E shown on the Declarations. This is true regardless of the number of insureds, claims made or persons injured.
Our total liability under Coverage F for all medical expense for bodily injury to one person resulting from one accident will not exceed the limit for Coverage F shown on the Declarations.
2. **Severability of Insurance.** This insurance applies separately to each insured. This condition does not increase our limit of liability for one occurrence.
3. **Duties after Loss.** In case of a loss, you must perform the following duties. You must cooperate with us in seeing that these duties are performed.
 - a) give notice to us or our agent as soon as practicable setting forth:
 - (1) identity of the policy and insured.
 - (2) time, place, and facts of the accident or occurrence.
 - (3) names and addresses of the claimants and witnesses.
 - b) immediately forward to us every document relating to the accident or occurrence.
 - c) at our request, assist in:
 - (1) making settlement.
 - (2) enforcing a right of contribution or indemnity against a person or entity who may be liable to an insured.
 - (3) conducting suits, and attending hearings and trials.
 - (4) giving evidence and asking witnesses to attend.
 - d) under the coverage – Damage to Property of Others:
 - (1) submit to us, within 60 days after the loss, a sworn proof of loss; and
 - (2) exhibit the damaged property, if within the insured's control.
 - e) the insured shall not, except at the insured's own cost, voluntarily make a payment, assume an obligation, or incur an expense other than for first aid to others at the time of the bodily injury.
4. **Duties of an Injured Person – Coverage F – Medical Payments to Others.** The injured person or someone on behalf of the injured person will:
 - a) give us written proof of claim, under oath if required, as soon as possible.
 - b) authorize us to obtain copies of medical reports and records. The injured person will submit to physical examination by a physician we select. This may be as often as we require with good reason.
5. **Suit Against Us.** No action can be brought against us unless there has been full compliance with the policy provisions. No one has a right to join us as party to an action against an insured. No action with respect to Coverage E can be brought against us until the obligation of the insured has been determined by final judgment or agreement signed by us.
6. **Bankruptcy of an Insured.** Bankruptcy or insolvency of an insured will not relieve us of our obligations under this policy.

Policy Coverage Options

The following options apply only if they are indicated on the Declarations. They are subject to all provisions of this policy except as modified herein.

Option A. Jewelry. The coverage for jewelry, watches and furs is amended as follows:

We will pay for accidental direct physical loss except that caused by:

1. wear and tear or mechanical breakdown.
2. gradual deterioration or inherent vice.
3. insects or vermin.
4. losses excluded under Section I — Property Exclusions that apply to personal property.

Option B. Guns. The coverage for guns, including accessories is amended as follows:

We will pay for accidental direct physical loss except that caused by:

1. wear and tear, mechanical breakdown or gradual deterioration.
2. insects or vermin.
3. refinishing, renovating or repairing.
4. dampness or temperature extremes, rust, fouling or explosion.
5. inherent defect or faulty manufacture.
6. breakage, marring, scratching, tearing, or denting; unless caused by fire, thieves or vehicular accident.
7. losses excluded under Section I — Property Exclusions that apply to personal property.

Option C. Cameras. The coverage for cameras (film, digital or video), including accessories, is amended as follows:

We will pay for accidental direct physical loss except that caused by:

1. wear and tear, mechanical breakdown or gradual deterioration.
2. renovating or repairing, rust, dampness or temperature extremes.
3. inherent defect or faulty manufacture, insect or vermin.
4. breakage, marring, scratching, tearing, or denting; unless caused by fire, thieves or vehicular accident.
5. losses excluded under Section I — Property Exclusions that apply to personal property.

The limits of liability for property covered by Options A, B or C are amended as follows:

The option's limit of liability is shown on the Declarations. Other than loss by theft, it is in addition to the Coverage C — Personal Property limit of liability for losses by a Coverage C — Personal Property Perils Insured Against. It is the total limit, with a \$1,000 maximum for any one item, for loss by:

1. theft; or
2. a covered peril other than the Coverage C — Personal Property Perils Insured Against.

Policy Coverage Options

Option D. Silverware. The coverage and limits of liability for silverware, silver-plated ware, goldware, gold-plated ware and pewterware is amended as follows:

We will pay for accidental direct physical loss except that caused by:

1. wear and tear, mechanical breakdown or gradual deterioration.
2. renovating or repairing, rust, dampness or temperature extremes.
3. Inherent defect or faulty manufacture, insect or vermin.
4. breakage, marring, scratching, or denting; unless caused by fire, thieves or vehicular accident.
5. losses excluded under Section I — Property Exclusions that apply to personal property.

This option's limit of liability is shown on the Declarations. Other than loss by theft, it is in addition to the Coverage C — Personal Property limit of liability for losses by a Coverage C — Personal Property Perils Insured Against. It is the total limit for loss by:

1. theft; or
2. a covered peril other than the Coverage C — Personal Property Perils Insured Against.

Option E. Tools. The special limit of liability applying to tools is increased to the amount shown on the Declarations.

Option F. Money. The special limit of liability on money, bank notes, bullion, gold (other than goldware), silver (other than silverware), platinum, coins, stored value cards, smart cards, gift certificates and medals is increased to the amount shown on the Declarations.

Option G. Securities. The special limit of liability on securities, accounts, bills, deeds, documents, evidences of debt, letters of credit, notes other than bank notes, passports, stamps and tickets is increased to the amount shown on the Declarations.

Option H. Computers. The special limit of liability on computers, including hardware and software accessories is increased to the amount shown on the Declarations.

Option I. Business Property. The special limit of liability on business property is increased to the amount shown on the Declarations. It includes up to \$250 of coverage for business property off the residence premises.

Option J. Extended Replacement Cost Coverage. Option J does not increase the policy's limit of liability.

1. Loss to the following property shall be settled at replacement cost or the full cost to repair without deduction for depreciation:

- a) property covered under Coverage C — Personal Property.
- b) outdoor antennas, carpeting (including wall-to-wall), home appliances, and awnings.

"Replacement cost" means the cost, at the time of loss, of a new article identical to the one damaged or stolen. When the identical article is no longer available, replacement cost shall mean the cost of a new article similar to that damaged or stolen. It must be of comparable quality and usefulness.

Our liability for loss under this coverage shall be the lesser of:

- a) replacement cost at the time of loss;
- b) full cost of repair;

- c) any special limits of liability described in this policy or attached by endorsement; or
- d) our cost to repair or replace any part of the damaged or stolen property with equivalent property.

We will not pay more than the actual cash value of the damaged or stolen property until it has been repaired or replaced.

2. You may elect not to repair or replace some or all of the damaged or stolen property. In this event, settlement will be based on the smallest of the repair cost, replacement cost, any special limit of liability that applies or the actual cash value of those items. If you later decide to repair or replace those items, you may make an additional claim within 180 days after the loss for any difference between the amount paid and the amount payable if repaired or replaced. The actual repair or replacement of the property need not be completed within the 180 days, but payment will not be made until proof of repair or replacement is provided to us.
3. This coverage does not apply to:
 - a) manuscripts, antiques or fine arts which by their inherent nature cannot be replaced with new articles.
 - b) memorabilia, souvenirs, collectors' items, and other items whose age and history contribute substantially to their value.
 - c) property not maintained in good or workable order.
 - d) property which is obsolete or useless to you at the time of loss.

The actual cash value provisions of this policy apply to the preceding items 3.a) through 3.d).

Option K. Replacement Cost Plus (Dwelling) (Increased Coverage A Limit). When a loss covered by this policy occurs to the dwelling in which you live, located at the residence premises, we will settle losses, subject to applicable deductibles, according to the policy provisions.

If the amount actually and necessarily spent to repair or replace the dwelling is more than the Coverage A — Dwelling Limit of Liability, we will pay up to a maximum of an additional 20% of the Coverage A limit for the additional cost. This additional amount applies only to the dwelling insured under this policy identified as the residence premises on the Declarations. This coverage does not increase or affect any other coverage limit or limit of liability in this policy. This additional payment is subject to the following provisions:

SPECIAL CONDITIONS:

You must:

1. insure the dwelling in which you live, located at the residence premises, to 100% of the cost to repair or replace it; and
2. accept the annual adjustment in the Coverage A — Dwelling limit of liability due to Inflation Protection Coverage and pay the premium charged; and
3. notify us within 90 days of the start of any physical improvements or additions which increase the replacement cost value of your dwelling by \$5,000 or more and pay any additional premium due.

You must comply with these special conditions or we will pay no more than the policy limit in effect on the date of loss, less applicable deductibles.

ORDINANCE OR LAW EXCLUSION

The additional amount provided by this option does not cover any increased cost resulting from enforcement of any ordinance or law regulating the construction, use or repair of any property, or requiring the tearing down of any property, including the cost of removing such debris.

Option L. Protective Device Credit. For a premium credit, we acknowledge the installation of qualified protection devices on the residence premises.

You agree to:

1. maintain these devices in working order; and
2. notify us promptly, of any changes made in the devices or if they are removed.

Option M. Personal Injury Coverage under Coverage E – Personal Liability, the definition of bodily injury is amended to include personal injury.

Personal Injury means injury as a result of:

1. false arrest, false imprisonment, wrongful eviction, or wrongful entry;
2. wrongful detention, malicious prosecution, or humiliation;
3. libel, slander, defamation of character; or
4. invasion of rights of privacy.

Section II – Liability Exclusions do not apply to personal injury. Personal injury coverage does not apply to:

1. liability assumed by an insured under a contract or agreement;
2. injury caused by violation of a penal law or ordinance if committed by or with the knowledge or consent of an insured;
3. injury sustained by a person as a result of an offense directly or indirectly related to that person's employment by the insured;
4. injury arising out of or in connection with business pursuits of an insured;
5. injury arising out of any professional liability;
6. injury resulting from an insured transmitting a communicable disease, including injury arising from the possibility of such transmission;
7. civic or public activities performed for pay, other than reimbursement of expenses, by an insured; or
8. injury to an insured as defined in general Definitions 4.a) and 4.b).

Option N. Loss Assessment Coverage.

We agree to pay your share of an assessment charged against all members of the Association. "Association" means the management body of the property owners. They must have common property interest with you. The common property must be part of the housing development where you live, as shown on the Declarations. We will pay up to the limit, shown for this option on the Declarations, in effect at the time of the loss which results in an assessment.

The assessment must be the result of:

1. a direct loss to property collectively owned by the Association. It must be caused by a peril covered under Section I of this policy;

2. an event of the type covered by Section II of this policy; or
3. damages the Association is legally obligated to pay due to personal injury as a result of:
 - a) false arrest, false imprisonment, wrongful eviction, or wrongful entry;
 - b) wrongful detention, malicious prosecution, misrepresentation, or humiliation;
 - c) libel, slander, defamation of character; or
 - d) invasion of rights of privacy.

This coverage is excess over other valid and collectible insurance covering the Association. Loss under subparagraph 1. is subject to the Section I deductible shown on the Declarations.

Option O. Building Ordinance or Law Coverage.

We agree to cover the increased cost resulting from any ordinance or law regulating the:

1. construction;
2. repair;
3. renovation;
4. remodeling; or
5. demolition;

of covered building structures damaged by a Peril Insured Against.

LIMIT OF PAYMENT

The amount of ordinance or law coverage is shown on the Declarations. It is a percentage of the Coverage A — Limit of Liability shown on the Declarations at the time of loss. This is additional coverage.

The damaged or destroyed building structure must be repaired or replaced at the residence premises.

SPECIAL EXCLUSIONS

We will not pay costs:

1. required to replace, repair, regrade, remove, stabilize, change the contour of, or otherwise alter land, unless under or immediately surrounding the damaged building structure;
2. resulting from the enforcement of any ordinance or law involving construction, repair, remodeling or demolition of that portion of the undamaged building structure.

However, this exclusion does not apply if the total damage to the covered building structure is more than 50% of the building's replacement cost, less any ordinance or law expenses, at the time of the loss.

Option P. Limited Water Back up of Sewers or Drains Coverage. We will pay up to a maximum of \$5,000 for all damage to:

1. the Coverage A — Dwelling; and
2. the following personal property:
 - a) clothes washers and dryers;
 - b) food freezers and the food in them;
 - c) refrigerators;

- d) ranges;
- e) portable dishwashers; and
- f) dehumidifiers;

caused by or resulting from water or water-borne material which:

- a) backs up through sewers or drains from outside the dwelling's plumbing system; or
- b) overflows from a sump pump, sump pump well or other system designed to remove subsurface water or water-borne material from the foundation area.

EXCLUSIONS

We do not cover:

- 1. other personal property not specified above;
- 2. loss caused by the negligence of an insured; or
- 3. if the loss occurs or is in progress within the first five (5) days of the inception of this coverage unless added at renewal.

All other damage resulting from water or water-borne material not mentioned above is excluded as stated in Section I — Property Exclusion 1.b).

DEDUCTIBLE

We will pay for that part of the covered loss that is above the Section I — Deductible shown on the Declarations, or \$500, whichever is greater.

All other provisions of this policy, including Section I — Deductible, apply.

Option Q. Earthquake and Volcanic Eruption Coverage. We insure for direct physical loss to property covered under Section I — Property Coverages caused by earthquake or volcanic eruption. Volcanic eruption means:

- 1. eruption;
- 2. explosion; or
- 3. discharge;

from a volcano.

One or more earthquake shocks or volcanic eruptions that occur within a 72-hour period will constitute a single earthquake or volcanic eruption.

This coverage does not increase the limits of liability stated in the policy.

DEDUCTIBLE

The earthquake and volcanic eruption deductibles are shown on the Declarations. It replaces any other deductible provision in this policy for covered earthquake and volcanic eruption loss.

We will pay only that part of the loss over the earthquake deductible percentage shown on the Declarations. The percent deductible applies separately to each coverage limit and applies separately to loss under each Section I coverage. This includes Building Additions and Alterations Coverage if included in the policy. The deductible amount will not be less than the earthquake dollar deductible on the Declarations for any one loss.

SPECIAL EXCLUSIONS

We do not cover loss resulting directly or indirectly from flood of any nature or tidal wave, whether caused by, resulting from, contributed to, or aggravated by earthquake or volcanic eruption.

Option R. Broad Water Back up of Sewers or Drains Coverage. We will pay up to the limit of liability, shown on the Declarations for this option, at the time of loss, for direct damage to covered property caused by or resulting from water or water-borne material which:

1. backs up through sewers or drains from outside the dwelling's plumbing system; or
2. overflows from a sump pump, sump pump well or other system designed to remove subsurface water or water-borne material from the foundation area.

This is the most we will pay for all covered property under Coverage A — Dwelling, Coverage B — Other Structures and Coverage C — Personal Property.

EXCLUSIONS

We do not cover:

1. loss caused by the negligence of an insured; or
2. If the loss occurs or is in progress within the first five days of the inception of this coverage unless added at renewal.

All other damage resulting from water or water-borne material not mentioned above is excluded as stated in Section I — Property Exclusion 1.b).

DEDUCTIBLE

We will pay for that part of the covered loss that is above the Section I — Deductible shown on the Declarations or \$500, whichever is greater.

All other provisions of this policy, including Section I — Deductible, apply.



General Policy Conditions

1. HOW YOUR POLICY MAY BE CHANGED

- a) Any part of this policy, which may be in conflict with statutes of the state in which this policy is issued, is hereby amended to conform.
- b) Any insured will automatically have the benefit of any broadening of coverage in this policy, as of the effective date of the change, provided it does not require more premium.
- c) A waiver or change of a part of this policy must be in writing by us to be valid. Our request for an appraisal or examination does not waive our rights.
- d) The premium for the coverage provided by this policy and attached endorsements is based on information in our possession. Any change or correction in this information will allow us to make an adjustment of the premium.

2. CONCEALMENT OR FRAUD

- a) This policy is void as to all insureds if you or any other insured has intentionally misrepresented any material fact or circumstance which would have caused us not to issue or renew this policy.
- b) This policy does not provide coverage for all insureds if you or any other insured, either before or after a loss, has:
 - (1) intentionally concealed or misrepresented any material fact or circumstance; or
 - (2) committed any fraud or made false statements relating to such loss.

3. RENEWAL

This policy is written for a specific policy period as shown on the Declarations. We will renew it for successive policy periods subject to the following conditions:

- a) Renewal will be in accordance with the policy forms, rules, rates and rating plan in use by us at the time.
- b) All premiums, premium installment payments and fees must be paid when due.
- c) Prior to the expiration of a policy period for which premium has been paid, we will mail a notice to the named insured for the premium required to renew or maintain the policy in effect. We will mail this notice to the address last known to us.
- d) You agree to an interior inspection of your home by one of our representatives to determine your continued eligibility. Such inspection will not be performed more than once a year with prior advance notice. Failure to allow an interior inspection in accordance with these terms may result in nonrenewal of your policy.

4. NON-RENEWAL

- a) At the end of each policy period, we will have the right to refuse to renew this policy.
- b) If we elect not to renew, we will mail written notice to the named insured, at the address shown in this policy, at least 30 days before the renewal date of this policy. The notice will include the precise reason for nonrenewal. Proof of mailing shall be proof of notice.
- c) For nonpayment of renewal premium, coverage will terminate without notice at the end of the last policy period for which premium was paid.

5. CANCELLATION DURING POLICY PERIOD

Any named insured may cancel this policy at any time by returning it to us or by notifying us in writing of the future date cancellation is to take effect.

We may cancel this policy only for the reasons stated in this condition by notifying the named insured in writing of the date cancellation takes effect. This cancellation notice will be mailed to the named insured at the address shown in the policy. The notice will include the precise reason for cancellation. Proof of mailing will be proof of notice.

General Policy Conditions

- a) When premium has not been paid, whether payable to us or our agent or under a finance or credit plan, we may cancel at any time by giving notice at least 10 days before cancellation takes effect.
- b) When this policy has been in effect 90 days or less and is not a renewal with us, we may cancel for any reason by giving notice at least 30 days before cancellation takes effect.
- c) When this policy has been in effect for more than 90 days, or at any time if it is a renewal, we may cancel if:
 - (1) there has been a material misrepresentation of fact which if known to us would have caused us not to issue this policy, or caused us to issue or renew this policy at a higher premium;
 - (2) the risk has changed substantially since the policy was issued; or
 - (3) the property or other interest has been transferred to another person, unless the transfer is permissible under the terms of this policy.
 - (4) there have been substantial breaches of contractual duties, conditions, or warranties; or
 - (5) there has been a loss of our reinsurance covering all or a significant portion of the particular policy insured, or where continuation of the policy would imperil our solvency or place us in violation of the laws of South Carolina.

This can be done by giving notice at least 30 days before cancellation takes effect.

- d) When this policy is written for a period longer than one year, we may cancel for any reason at its anniversary by giving notice at least 30 days before cancellation takes effect.

When this policy is cancelled, the premium for the period from the date of cancellation to the premium payment date will be refunded. The return premium will be pro rata. If the return premium is not refunded with the notice of cancellation or when the policy is returned to us, we will refund it within a reasonable time after cancellation takes effect.

6. POLICY TRANSFER

This policy may be transferred to another only with our written consent.

7. SUBROGATION

- a) When we have paid you for a loss covered under this policy and you also receive payment for the same loss from another person, entity or organization, the amount received will be held by you in trust for us and reimbursed to us to the extent of our payment.
- b) An insured may, before loss occurs, waive in writing all rights of recovery against any person. The insured will provide us with proof of the waiver, when requested by us. If not waived, when we pay a loss, an insured's right to recover from someone else becomes ours up to the amount we paid. An Insured must protect these rights and help us enforce them. This condition does not apply to "Medical Payments to Others" or the "Damage to Property of Others" protection.

8. DEATH

If you die, we continue to insure:

- a) the legal representative of the deceased, only with respect to the premises and property of the deceased covered under this policy at the time of death.
- b) a member of your household who is an insured at the time of death, but only while a resident of the residence premises.
- c) with respect to your property, the person having proper custody of the property until appointment of a legal representative.

9. ADDITIONAL INSURED - NON OCCUPANT

An additional insured may be named in this policy. The additional insured's interest in the residence premises is protected under Coverage A and Coverage B. The additional insured is also protected under Coverage E for liability from the ownership, maintenance, or use of the residence premises. This provision does not increase the amount of insurance.

10. OPTIONAL PAYMENT OF PREMIUM IN INSTALLMENTS

The first named insured may pay the premium for this policy in installments, under the terms and conditions approved where required by the Department of Insurance. For each separate installment payment there is an installment premium payment charge. Your agent or sales representative can provide more information.

11. DIVIDENDS

The first named insured is entitled to any dividends which are declared by the Board of Directors and are applicable to coverages in this policy.

MUTUAL POLICY CONDITIONS

(Applicable only to policies issued by Nationwide Mutual Insurance Company — Nationwide Mutual Fire Insurance Company.)

If this policy is issued by Nationwide Mutual Insurance Company or Nationwide Mutual Fire Insurance Company, the first named insured is a member of the company issuing the policy while this or any other policy issued by one of these two companies is in force. While a member, the first named insured is entitled to one vote only — regardless of the number of policies issued to the first named insured — either in person or by proxy at meetings of members of said company.

The annual meeting of members of the Nationwide Mutual Insurance Company will be held at the Home Office at Columbus, Ohio, at 10 a.m. on the first Thursday of April. The annual meeting of members of the Nationwide Mutual Fire Insurance Company will be held at the Home Office at Columbus, Ohio, at 9:30 a.m. on the first Thursday in April. If the Board of Directors of either of the above companies should elect to change the time or place of meeting, that company will mail notice of the change to the first named insured at the address last known to it. The company will mail this notice at least 10 days in advance of the meeting date.

This policy is non-assessable, meaning the first named insured is not subject to any assessment beyond the premiums the above companies require for each policy term.

IN WITNESS WHEREOF: Nationwide Mutual Insurance Company, Nationwide Mutual Fire Insurance Company, or Nationwide Property and Casualty Insurance Company, whichever is the issuing company as shown in the Declarations, has caused this policy to be signed by its President and Secretary, and countersigned as may be required by a duly authorized representative of the company.

Robert W. Herman

Secretary

Nationwide Mutual Insurance Company
Nationwide Mutual Fire Insurance Company

Mark A. Goff

President

Nationwide Mutual Insurance Company
Nationwide Property & Casualty Insurance Company
Nationwide Mutual Fire Insurance Company

Carmel A. Goff

Secretary

Nationwide Property & Casualty Insurance Company

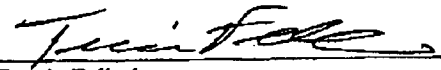


Nationwide Mutual Insurance Company
Nationwide Mutual Fire Insurance Company
Nationwide Property and Casualty Insurance Company
Home Office: Columbus, Ohio 43215-2220

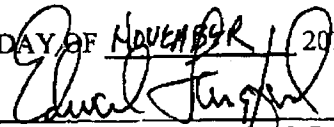
AFFIDAVIT OF TRAVIS FELKEL

I, Travis O. Felkel, am over the age of eighteen, have been duly sworn, and swear to the following:

1. Me, Ginger and my step-son Evan were served with the lawsuit by Kyle Bierlair and his guardian Anna Angelacci on December 2, 2014 at my house at 339 Holly Ave., Goose Creek, SC. On that day all three of us were home and all three of us received and looked at the lawsuit.
2. When I delivered the lawsuit to my Nationwide Agent John Herndon in December I did so on behalf of myself, Evan and Ginger.
3. When I was at the damages hearing in April, I was confused on some of the dates that were being mentioned about when Evan moved in with his grandparents. We all received notice of the April damages hearing that was sent to us so Ginger and I went to appear there for all of us.


Travis Felkel

SWORN TO ME BEFORE THIS 24

DAY OF NOVEMBER 2015,
 (SEAL)
NOTARY PUBLIC FOR S.C.
COMMISSION EXPIRES: _____

My Commission Expires 9/7/2017



Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
Civil Action No. 2014-CP-08-2494

SWORN TO ME BEFORE THIS 25th

DAY OF November 2015,

Dore Y. Boel (SEAL)

NOTARY PUBLIC FOR S.C.

COMMISSION EXPIRES: 9/17/2021

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

ANNA ANGELACCI, as guardian of
K. B., a minor,

Plaintiff,

v.

E. U., a minor, Travis O. Felkel, and
Ginger G. Ulery,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2014-CP-08-2494

**ORDER OF DEFAULT JUDGMENT
AGAINST DEFENDANTS TRAVIS
FELKEL AND GINGER ULERY**

CLERK OF COURT
BERKELEY COUNTY, SC

2015 APR 28 AM 9:19

FILED

HEARING DATE: April 21, 2014

PRESIDING JUDGE: Special Referee Clayton B. McCullough,
Esq.

PLAINTIFFS' ATTORNEYS: David B. Yarborough, Jr.
Douglas E. Jennings, Esq.

DEFENDANTS' ATTORNEYS: None Present.

THIS MATTER comes before this Court on referral by the Clerk of Court following an Entry of Default for a Damages Hearing Pursuant to Rule 55(b)(2) of the South Carolina Rules of Civil Procedure ("SCRCP"). A damages hearing was held on April 21, 2015 at 10:00 a.m.

The Civil Action Coversheet, Summons and Complaint in this action were filed on November 10, 2014, and Defendants were each served via process server. The Affidavits of Service for Defendants have all been filed with this Court.

Having failed to answer or otherwise defend the Complaint, Defendants E.U., a minor, Travis Felkel and Ginger Ulery (the "Defendants in Default") were declared in default by Order of this Court dated February 4, 2015 and filed on that same day. Thereafter, Plaintiff's served



their Notice of Damages Hearing upon Defendants, pursuant to Rule 55(b)(2), SCRCF on April 11, 2015, via process server. The Notice and Affidavit of Service were marked as exhibits during the hearing.

With the Defendants Travis Felkel and Ginger Ulery in Default and having been duly served with all pleadings as well as the notice of this hearing, this matter is now properly before the Court to determine Plaintiffs' damages as prayed for in the Complaint. As for E.U. a minor, Rule 55(b)(2), SCRCF requires that a guardian ad litem be appointed for a minor before any default judgment is entered against him. It does not appear that a guardian ad litem has been appointed for E.U., a minor, and therefore the damages award will be reserved as to E.U. until such time as a guardian ad litem is appointed and appears on his behalf. The damages hearing proceeded against Defendants Travis Felkel and Ginger Ulery.

The Plaintiffs were present and represented by Douglas E. Jennings, Esq. of the law firm Yarrowburgh Applegate, LLC. Testimony was taken, evidence has been received, and having considered the entire record of this case, I make the following Findings of Fact and Conclusions of Law as required by Rule 52, SCRCF. Any Finding of Fact, which is more appropriately denominated as a Conclusion of Law shall be treated as such, and vice-versa.

This Court heard testimony from Plaintiff K.B., Anna Angelacci (the minor Plaintiff's grandmother and legal guardian), Tina Manon (the minor Plaintiff's mother), and Patricia Coleman (the minor Plaintiff's aunt who is a Registered Nurse). All four witnesses provided extensive testimony as to the Plaintiff K.B.'s damages, the permanency of his injuries, the nature of his medical treatment, and the need and desire for future medical treatment.

After the conclusion of the damages hearing and after the Plaintiffs had departed, Defendants Travis Felkel and Ginger Ulery, parents of E.U. a minor, appeared at the hearing location. The court reporter was asked to return and a record was made where these Defendants were given the opportunity to explain their absence from the damages hearing and contest the damages. They were allowed adequate time to review all of the medical records, medical bills, and correspondence that were marked as exhibits and given the opportunity to provide testimony on the record.

FINDINGS OF FACT

1. I FIND that each of the above sentences in this Order are incorporated herein by reference as if they were reproduced verbatim, and that each are deemed to be findings of fact by this Court.
2. I FIND that the parties hereto and the subject matter hereof are within the jurisdiction of this Court.
3. I FIND that the Plaintiffs are all residents of the State of South Carolina and were so residing at the commencement of this action.
4. I FIND that Defendants are all residents of the State of South Carolina and were so residing at the commencement of this action.
5. I FIND that service of process of the Summons and Complaint was proper as to all Defendants.
6. I FIND that Defendants failed to timely respond and that the Entry of Default was proper.
7. I FIND that this damages hearing was properly noticed and served upon Defendants and that it satisfies the requirements of Rule 55(b)(2), SCRPC.

8. I FIND that, based on the medical bills and records for Plaintiff that he sustained the following injuries and damages:

- a. Plaintiff K.B. was injured on September 8, 2014 when his head struck a concrete floor;
- b. Plaintiff underwent a CT Scan of his brain, \$1,988.00, which revealed a right temporal subdural hematoma;
- c. Plaintiff underwent an MRI of the brain, \$898.00;
- d. Plaintiff underwent 4 CT scans of his head and brain without contrast, \$1,384.00;
- e. Plaintiff underwent an X-Ray of his cervical spine, 2 views, \$84.00;
- f. Plaintiff was admitted to the pediatric ICU at MUSC for ten days following the injury;
- g. Plaintiff's brain was bleeding in two locations following the injury;
- h. Plaintiff underwent anesthesia \$3,120.00;
- i. Plaintiff underwent a right temporal craniotomy for evacuation of the epidural hematoma, his head was shaved, a linear incision was made and a skull fracture was revealed, active bleeding noted, the epidural blood clot was resected, two pieces of skull were reattached using titanium plates and screws, sutures were applied and Plaintiff's head was wrapped in a pressure bandage to prevent any postoperative hematoma, \$74,323.00;
- j. Plaintiff continues to suffer from a traumatic brain injury;
- k. Plaintiff continues to suffer severe cognitive impairments following the injury;
- l. Plaintiff suffers daily headaches which have prevented him from returning to school;

- m. Plaintiff is now home-schooled;
- n. Plaintiff suffers a future loss of earning capacity and will be challenged in finding gainful employment;
- o. Plaintiff exhibits emotional and behavioral impairments following the injury that were not present prior to the injury;
- p. Plaintiff has short-term memory loss;
- q. Plaintiff will require and benefit from future medical care;
- r. Plaintiff is currently 16 years of age; and
- s. As a result of the injury, Plaintiff will require, among other things, future neurological evaluation and treatment, future neuropsychological evaluation and treatment, future imaging studies, future medications, future therapy and behavioral counseling, and future surgery to readjust the hardware in his skull.

9. I FIND that the Plaintiffs filed the Complaint to seek redress for the personal injuries suffered as a result of Defendants' actions.

10. I FIND that, as a result of the Entry of Default, the Plaintiffs are entitled to recover the following damages prayed for in their Complaint: (a) actual damages, (b) special damages, (c) consequential damages sufficient to compensate them fully for all losses and damages, past, present, and future.

11. I FIND that, based on the medical bills and other bills entered into evidence, Plaintiff Anna Angelacci, guardian of K.B. minor, incurred the following medical bills, medication, and expenses related to personal injuries to K.B. and the actions of the Defendants in Default:

Trident Medical Center

\$5,344.00

Medical University of SC

Children's Hospital	\$79,809.00
TOTAL	\$85,153.00

12. I FIND that the Plaintiffs have proven by a preponderance of evidence that they are entitled to damages for their personal injuries and other expenses already incurred connected to the actions of the Defendants in Default.

13. I FIND that both the past medical treatment and bills were reasonable and necessary based on the injuries sustained by Plaintiff.

14. I FIND that substantial expenses related to the cost of future medical care more likely than not will be incurred and that Plaintiff would benefit from future medical care.

15. I FIND that Plaintiff K.B. has proven by a preponderance of evidence that he is entitled to recover for future loss of earning capacity, permanent impairment to his brain and skull that results in severe cognitive and behavioral defects, permanent and persistent pain and suffering, past and future loss of enjoyment of life, and mental suffering due to the negligence of the Defendants in Default, and that the Plaintiff has offered testimony and presented evidence in support of same.

CONCLUSIONS OF LAW

1. "[B]y suffering a default, the defaulting party is deemed to have admitted the truth of the plaintiff's allegations and have conceded liability." Austin v. Specialty Transp. Servs., Inc., 358 S.C. 298, 319 (Cl. App. 2004) (quoting Roche v. Young Bros., 332 S.C. 75, 81 (1998)). Therefore, since the Defendants in Default have been entered into Default by this Court, all of the Plaintiff's factual allegations of the Complaint (and all exhibits thereto) relating to their liability as well as all causes of action directed at the Defendants in Default must be taken as

true. Additionally, it appears to this Court that by a preponderance of the evidence, the Defendants in Default proximately caused the injuries and damages to the Plaintiff set forth above.

2. Finding that the essential elements of Plaintiff's claim for negligent conduct has been established as to the Defendants in Default, the Court now addresses the amount of damages to fairly compensate the Plaintiff for the injuries suffered. As set forth above, the evidence shows that the Plaintiff was injured as a result of Defendants' conduct. As such, this Court concludes that the Plaintiff's injuries, the attendant pain and suffering, and the Plaintiff's incurring medical expenses for past and future treatment all result from the Defendants in Default's negligence.

3. "The purpose of actual or compensatory damages is to compensate a party for injuries suffered or losses sustained. The goal is to restore the injured party, as nearly as possible through the payment of money, to the same position her or she was in before the wrongful injury occurred." Clark v. Cantrell, 339 S.C. 369, 378 (2000).

4. The Plaintiff, a minor, has incurred medical expenses totaling \$85,153.00. K.B.'s guardian, Anna Angelacci, is responsible for these charges and the future expenses until he is eighteen (18) years old.

5. The South Carolina Supreme Court has held as follows regarding future damages: "an injured party may also recover for such future damages as it is reasonably certain will of necessity result from the injury received. The principal underlying compensation for future damages is that only one action can be brought, and, therefore, only one recovery had. It is proper to include in the estimate of future damages compensation for pain and suffering which will with reasonable certainty result." Boan v. Blackwell, 343 S.C. 498, 500 (2001).

6. Plaintiff is also entitled to damages for "loss of enjoyment of life" and "pain and suffering." See Boan v. Blackwell, 343 S.C. 498, 499 (2001). These are two separately compensable elements of damages. See, id. "Pain and suffering compensates the plaintiff for the physical discomfort and the emotional response to the sensation of pain caused by the injury itself." Id. at 501-502. Damages for loss of enjoyment of life, "compensate for the limitations, resulting from the defendant's negligence, on the injured person's ability to participate in and derive pleasure from the normal activity of daily life, or for the individual's ability to pursue his talents, recreational interests, hobbies, or avocations." Id. at 502. Recovery for mental suffering is also recoverable. Holtzscheiter v. Thompson Newspapers, Inc., 332 S.C. 502, 506 S.E.2d 497 (1998). There is no definite standard by which to compensate a Plaintiff for loss of enjoyment of life, pain and suffering, and mental suffering. The Court must award damages that are just and reasonable in light of the testimony and evidence presented.

7. Given the foregoing, a preponderance of the evidence convinces this Court that the injuries and damages sustained by the Plaintiff were a direct and proximate result of the negligence of the Defendants in Default and that the amounts reasonably required to fairly and justly compensate the Plaintiffs for actual and noneconomic damages are as follows:

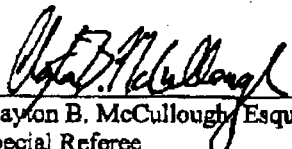
BASED UPON THE FOREGOING,

IT IS ORDERED, ADJUDGED and DECREED that the Plaintiff Anna Angelacci should be, and is hereby awarded judgment against Defendants Travis Felkel and Ginger Ulery, jointly and severally, in the total amount of \$150,000.

IT IS ORDERED, ADJUDGED and DECREED that the Plaintiff K.B. should be, and is hereby awarded judgment against Defendants Travis Felkel and Ginger Ulery, jointly and severally, in the total amount of \$5,000,000.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that the Clerk of this Court shall enter judgment in the foregoing amount against Travis Felkel and Ginger Ulery in the Judgment Rolls of Berkeley County, South Carolina.

AND IT IS SO ORDERED.



Clayton B. McCullough Esquire
Special Referee
Ninth Judicial Circuit

DATE: 4-23-15
Charleston, South Carolina

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP-08-2494

ANNA ANGELACCI, as guardian of K.B., a minor,

E.U., a minor, Travis O. Felkel, and Ginger
G. Ulery

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: David B. Yarborough, Jr.

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:

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)
Anna Angelacci	Travis Felkel and Ginger Ulery	\$150,000.00
K.B., a minor	Travis Felkel and Ginger Ulery	\$5,000,000.00
		\$

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. Notes: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

Date

This judgment was entered on the 30 day of 4, 2015 and a copy mailed first class or placed in the appropriate attorney's box on this 30 day of 4, 2015 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE DEFENDANT(S)
Manly D. Brown DW
 CLERK OF COURT

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE
(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.
2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).
4. The "Information for the Judgment Index" section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the "Judgment in Favor of" column, enter the name of the party to whom the judgment is awarded. In the "Judgment Against" column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the "Judgment Amount" column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate "N/A" in one of the boxes in this section of the form.
5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.
6. The section "For the Clerk of Court Office Use Only" should be completed by the clerk as it has been with the previous version of Form 4.
7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.
8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block.

9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.
10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.
11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.
12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.
13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.
14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP-08-2494

ANNA ANGELACCI, as guardian of K.B., a minor,

E.U., a minor, Travis O. Felkel, and Ginger
G. Ulery

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: David B. Yarborough, Jr.

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: A Guardian ad Litem now having been appointed and appeared at the Default Judgment hearing for Evan Ulery, a minor over the age of fourteen, I adopt the findings of fact and conclusions of law set forth in my Order of Default Judgment Against Travis Felkel and Ginger Ulery signed on April 23, 2015, and for the same reasons, enter judgment against Evan Ulery in the amount \$5,150,000. The Defendants Travis Felkel, Ginger Ulery and Evan Ulery are now jointly and severally responsible for the entire judgment.

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 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)
Anna Angelacci	Evan Ulery	\$150,000.00
K.B., a minor	Evan Ulery	\$5,000,000.00
		\$

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.

Det. B. McElroy
Circuit Court Judge
Special Referee

Judge Code

6-25-15
Date

For Clerk of Court Office Use Only

This judgment was entered on the *25* day of *June*, 20 *15* and a copy mailed first class or placed in the appropriate attorney's box on this *25* day of *June*, 20 *15* to attorneys of record or to parties (when appearing pro se) as follows:

David B. Yarborough, Jr.
291 East Bay Street, Floor 2
Charleston, S.C. 29401
ATTORNEY(S) FOR THE PLAINTIFF(S)

Shannon P. Jones, as GAL for Evan Ulery
3 State Street
Charleston, SC 29401
ATTORNEY(S) FOR THE DEFENDANT(S)
Shannon P. Jones
CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE

(Instructions for Information Only-Not to be filed with Form 4C)

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2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).
4. The "Information for the Judgment Index" section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the "Judgment in Favor of" column, enter the name of the party to whom the judgment is awarded. In the "Judgment Against" column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the "Judgment Amount" column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate "N/A" in one of the boxes in this section of the form.
5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.
6. The section "For the Clerk of Court Office Use Only" should be completed by the clerk as it has been with the previous version of Form 4.
7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.
8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block.

9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.
10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.
11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.
12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.
13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.
14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2014-CP-08-2494

ASSIGNMENT OF CLAIMS

V.

Defendants.

Recitals

ALL-STATE LEGAL®

EXHIBIT

F

WHEREAS, on April 21, 2015, a damages hearing was held with the Defendants having been given proper notice.

WHEREAS, on April 23, 2015 special referee Clayton B. McCullough ordered a default judgment in the amount of \$5,150,000 in favor of the Plaintiff against Defendants Travis O. Felkel and Ginger G. Ulery.

WHEREAS, now, for good and valuable consideration in the form of Plaintiff's agreement not to immediately execute judgment against the Defendants and to seek satisfaction of the judgment from any party who may be responsible for indemnifying Defendants, the receipt and sufficiency of which is hereby acknowledged, the Plaintiff and Defendants agree as follows:

1. That Plaintiff will stay execution of this judgment until all claims that may be brought by or on behalf of Plaintiff or Defendants related to this incident are resolved by a settlement or verdict or otherwise resolved or abandoned.

2. That if and when, and only if and when, Defendants' insurance carrier, agent, or any other responsible party pays and satisfies to the agreement of Plaintiff the judgment against the Defendants, Plaintiff will mark any judgment as satisfied and agree never to enforce, execute, or levy upon Defendants' personal assets for any judgment.

3. Whereas, the Defendants believe they have causes of action against Nationwide, the John Herndon Nationwide Agency, and/or their employees or affiliated companies for the financial harm and judgment caused by the following acts and/or omissions:

- a. failure to provide coverage for the acts alleged in the underlying tort complaint;

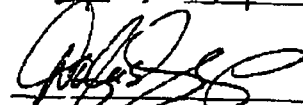
- b. failure to provide a defense for the acts alleged in the underlying tort complaint and protect its insured from financial harm;
- c. failure to notify its insureds that it was not defending the lawsuit;
- d. failure to comply with their contractual duties with and duty of good faith and fair dealing to the insured;
- e. failure of the insurance agent to properly handle receipt of the Summons and Complaint and properly advise the Defendants.

4. Therefore, the Defendants hereby assign and transfer all claims or causes of action, which are now possessed by the Defendants arising from the above-described events against any party, to the Plaintiff who shall have the right to prosecute the same to satisfy the judgment that is held against the Defendants and to collect all other actual and punitive damages and attorneys' fees that the Defendants may have a right to claim (1) against any and all parties as a result of the judgment entered against them in the above-captioned case (2) as to any other matters related to the claim which resulted in the judgment being entered against the Defendants and (3) for any claims that may arise out of any liability insurance coverage for the Defendants, and their relationship to the insurance agency or sales agent and carriers. Execution of this assignment shall bestow upon Plaintiff each and every right presently, or in the future, held by the Defendants arising from these claims, including the right to prosecute any action against any party in the name of the Defendants. The Defendants have an ongoing obligation to cooperate with counsel for the Plaintiff by providing truthful information concerning any and all communications they have had with Nationwide, its agents or affiliates related to these claims and to make themselves available to give sworn testimony by Affidavit, in deposition and at trial.


Travis O. Felkel

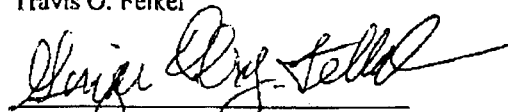
Ginger G. Ulery

SWORN TO AND SUBSCRIBED before me
this 20th day of April, 2015.

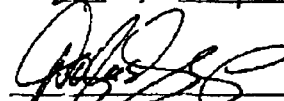


NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 10/24/21

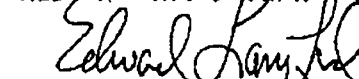

Travis O. Felkel


Ginger G. Ulery

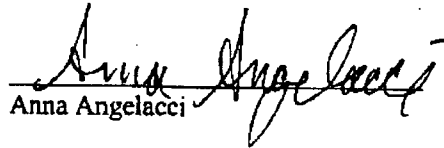
SWORN TO AND SUBSCRIBED before me
this 24th day of April, 2015.


NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 10/24/21

SWORN TO AND SUBSCRIBED BEFORE ME
this 4th DAY OF MAY, 2015


NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires 9/7/2017


Anna Angelacci

SWORN TO AND SUBSCRIBED before me
this 25 day of June, 2015.


NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 10/16/16

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

ANNA ANGELACCI, as guardian of
K. B., a minor,

Plaintiff,

v.

E. U., a minor, Travis O. Felkel, and
Ginger G. Ulery,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2014-CP-08-2494

ASSIGNMENT OF CLAIMS
AND SPRINGING COVENANT NOT TO
EXECUTE JUDGMENT

This is an assignment of all causes of action, now vested in E.U. a minor ("Defendant") or his guardian ad litem against any insurance company, insurance agency or agent or insurance broker or other person or entity, arising out of any failure to properly investigate, defend and indemnify a lawsuit filed against E.U. on November 10, 2014 by Anna Angelacci, as guardian of K.B., a minor ("Plaintiffs") which resulted in a judgment being entered against E.U. in the amount of \$5,150,000.

Recitals

WHEREAS, on December 2, 2014, Defendant E.U., a minor over the age of fourteen, was served with a Summons and Complaint filed by the Plaintiffs alleging negligence against him. At the time E.U. was living with his mother Ginger Ulery and step-father Travis O. Felkel at 339 Holly Ave., Goose Creek, SC 29445 and was, upon information and belief, an insured under a homeowners policy of insurance issued by Nationwide and sold by John T. Herndon's Nationwide agency. Upon receipt of the lawsuit, Travis Felkel, E.U.'s step-father, took the Summons and Complaint to his local Nationwide agent John Herndon who had sold him his homeowners insurance coverage. According to Felkel, Mr. Herndon at the Nationwide agency

made a copy of the lawsuit and said he would forward it to Nationwide for claims handling. No defense counsel appeared on behalf of the Defendant E.U., the Complaint was not timely answered, and an Entry of Default was ordered on February 4, 2015.

WHEREAS, on April 21, 2015, a damages hearing was held with the Defendants having been given proper notice.

WHEREAS, on June 8, 2015 Special Referee Clayton B. McCullough ordered appointment of Shannon P. Jones, Esquire, to serve as guardian ad litem for E.U.

WHEREAS on June 26, 2015 Special Referee Clayton B. McCullough ordered that the default judgment in the amount of \$5,150,000 be entered in favor of the Plaintiffs against Defendants Travis O. Felkel and Ginger G. Ulery on April 23, 2015 was jointly and severally to also be entered against E.U. a minor.

WHEREAS, now, for good and valuable consideration in the form of Plaintiffs' agreement not to immediately execute judgment against the Defendant E.U. and to later, upon satisfaction of the judgment, to mark it as satisfied, the receipt and sufficiency of which is hereby acknowledged, the Plaintiffs and Defendant E.U., through and by his guardian ad litem, agree and contract as follows:

1. That Plaintiffs will stay execution of this judgment until all claims that may be brought by or on behalf of Plaintiff or Defendants related to this incident are resolved by a settlement or verdict or otherwise resolved or abandoned in a manner that is satisfactory to Plaintiff.

2. That if and when, and only if and when, Defendant's insurance carrier, agent, or any other responsible party pays and satisfies the judgment plus any applicable accumulated

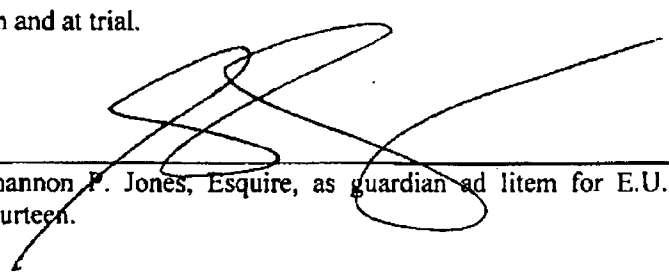
interest, costs and fees against the Defendant, Plaintiffs will mark any judgment as satisfied and agree never to enforce, execute, or levy upon Defendant's personal assets for any judgment.

3. Whereas, the GAL for the Defendant believes there exist causes of action against Nationwide, the John Herndon Nationwide Agency, and/or their employees or affiliated companies for the financial harm and judgment caused by the following acts and/or omissions:

- a. failure to accept that it should provide coverage for the acts alleged in the underlying tort complaint;
- b. failure to provide a defense for the acts alleged in the underlying tort complaint and protect its insured from financial harm;
- c. failure to notify its insureds that it was not defending the lawsuit;
- d. failure to comply with their contractual duties with and duty of good faith and fair dealing to the insured;
- e. failure of the insurance agent to properly handle receipt of the Summons and Complaint and properly advise the Defendant.

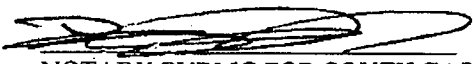
4. Therefore, the GAL for minor Defendant hereby assigns and transfer all claims or causes of action, of which are now possessed by the Defendant E.U. arising from the above-described events against any party, to the Plaintiffs who shall have the right to prosecute the same to satisfy the judgment that is held against the Defendant and to collect all other actual and punitive damages and attorneys' fees that the Defendant may have a right to claim (1) against any and all parties as a result of the judgment entered against them in the above-captioned case (2) as to any other matters related to the claim which resulted in the judgment being entered against the Defendant and (3) for any claims that may arise out of any liability insurance coverage for the Defendant, and their relationship to the insurance agency or insurance agent and

carriers. Execution of this assignment shall bestow upon Plaintiffs each and every right presently, or in the future, held by the Defendant E.U. arising from these claims, including the right to prosecute any action against any party in the name of E.U., either independently, through his GAL or the assignee, to retain the proceeds of any and all verdicts or settlements and to fully release and all claims against any party. The Defendant E.U. and his GAL have an ongoing obligation to cooperate with counsel for the Plaintiffs by providing truthful information related to these claims and to make themselves available to give sworn testimony by Affidavit, in deposition and at trial.



Shannon P. Jones, Esquire, as guardian ad litem for E.U. a minor over the age of fourteen.

SWORN TO AND SUBSCRIBED before me
this 25 day of June, 2015.



NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 2023

Anna Angelacci
Anna Angelacci, as Guardian for K.B., a minor over the age of fourteen.

SWORN TO AND SUBSCRIBED before me
this 24 day of June, 2015.

Michelle Holder
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 10/16/16

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Anna Angelacci, individually and as guardian
of K. B., a minor over the age of fourteen, as
assignee of Travis Felkel, Ginger Ulery and
E.U., a minor over the age of fourteen, by his
Guardian ad Litem Shannon P. Jones,

Plaintiff,

vs.

John T. Herndon, III, Herndon Insurance
Agency, Inc., Nationwide Mutual Insurance
Company, and Nationwide Mutual Fire
Insurance Company,

Defendants.

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO.: 2015-CP-_____

AFFIDAVIT OF LINDSEY RASH

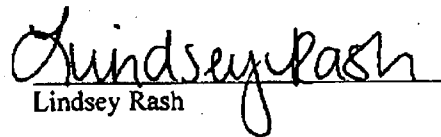
I, Lindsey Rash, am over the age of eighteen, am of sound mind, and swear to the following:

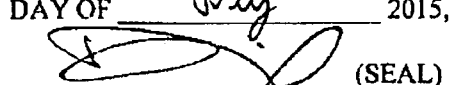
1. I am a paralegal employed with the law firm Yarborough Applegate LLC in Charleston, South Carolina.
2. On July 27, 2015, I called Herndon Insurance Agency at (843) 556-6088 to find out what happened to the lawsuit captioned Anna Angelacci, as guardian of K.B., a minor v. E.U., a minor, Travis O. Felkel, and Ginger G. Ulery, Case No. 2014-CP-08-2494 that was allegedly delivered by Nationwide's insured Travis Felkel to John T. Herndon, III in December 2014.
3. Jamie Richardson of Nationwide Sales Solutions Agency answered the call. Mr. Richardson informed me that he was with Nationwide corporate and that Mr. Herndon had



retired in March 2015. He further informed me that they had taken over the majority of Mr. Herndon's policies and files, including Travis Felkel's Policy No. 61HO708143.

4. I provided Jamie Richardson the date of loss, and he performed a search on his computer which revealed that the Summons and Complaint for the above-referenced lawsuit had in fact been uploaded into Nationwide's computer system. After pausing, he stated that it appeared that the lawsuit never was transferred to the claims department. He also said that since they have taken over Mr. Herndon's files, "Johnny's documents have a tendency to not show up where they should sometimes." He then stated that he was going to turn this over to Nationwide's legal department to handle.


Lindsey Rash

SWORN TO ME BEFORE THIS 27th
DAY OF July 2015,
 (SEAL)
NOTARY PUBLIC FOR S.C.
COMMISSION EXPIRES: 10-18-2021

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS

Anna Angelacci, individually and as guardian of
K. B., a minor over the age of fourteen, as assignee
of Travis Felkel, Ginger Ulery and E.U., a minor
over the age of fourteen, by his Guardian ad Litem
Shannon P. Jones,

CIVIL ACTION COVERSHEET

Plaintiff(s)

vs.

John T. Herndon, III, Herndon Insurance Agency,
Inc., Nationwide Mutual Insurance Company, and
Nationwide Mutual Fire Insurance Company,

Defendant(s)

Submitted By: David B. Yarborough, Jr., Esquire
Yarborough Applegate LLC
291 East Bay Street, Floor 2
Charleston, SC 29401

SC Bar #: 15515

Telephone #: (843) 972-0150

Fax #: (843) 277-6699

Other:

E-mail: david@yarboroughapplegate.com

Address:

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

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

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

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|---|--|---|
| ☐ Contracts
☐ Construction (100)
☐ Debt Collection (110)
☐ General (130)
☐ Breach of Contract (140)
☒ Fraud/Bad Faith (150)
☐ Failure to Deliver/
Warranty (160)
☐ Employment Discrim (170)
☐ Employment (180)
☐ Other (199) | ☐ Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20 ____-NI-____
☐ Notice/ File Med Mal (230)
☐ Other (299) | ☐ Torts - Personal Injury
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Assault/Battery (370)
☐ Slander/Libel (380)
☐ Other (399) | ☐ Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| ☐ Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | ☐ Administrative Law/Relief
☐ Reinstate Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | ☐ Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured
Settlement Payment Rights
Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers
Compensation Settlement
Approval (780)
☐ Other (799) | ☐ Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| ☐ Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699)
☐ Sexual Predator (510) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in
an Out-of-County Action (660)
☐ Pre-Suit Discovery (670) | | |

SCCA / 234 (06/2015)

Page 1 of 3



Submitting Party Signature: 

Date: July 27, 2015

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

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

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

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

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

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

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Anna Angelacci, individually and as guardian
of K. B., a minor over the age of fourteen, as
assignee of Travis Felkel, Ginger Ulery and
E.U., a minor over the age of fourteen, by his
Guardian ad Litem Shannon P. Jones,

Plaintiff,

vs.

John T. Herndon, III, Herndon Insurance
Agency, Inc., Nationwide Mutual Insurance
Company, and Nationwide Mutual Fire
Insurance Company,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2015-CP-08 1759

SUMMONS

2015 JUL 27 PM 3:14
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

FILED

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action,
a copy of which is herewith served upon you, and to serve a copy of your answer to the said
Complaint on the subscribers at their office at 291 East Bay Street, Floor 2, Charleston, South
Carolina 29401 within thirty (30) days after the service hereof, exclusive of the day of such
service; and, if you fail to appear and defend by filing an answer to the Complaint within the
time aforesaid, judgment by default will be rendered against you for the relief demanded in the
Complaint.

Signature on following page.

Yarborough Applegate LLC
291 East Bay Street, Floor 2
Charleston, SC 29401
843-972-0150 office
843-277-6691 fax



David B. Yarborough, Jr., Esquire
Douglas E. Jennings, Esquire

ATTORNEYS FOR THE PLAINTIFF

July 27, 2015
Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Anna Angelacci, individually and as guardian
of K. B., a minor over the age of fourteen, as
assignee of Travis Felkel, Ginger Ulery and
E.U., a minor over the age of fourteen, by his
Guardian ad Litem Shannon P. Jones,

Plaintiff,

vs.

John T. Herndon, III, Herndon Insurance
Agency, Inc., Nationwide Mutual Insurance
Company, and Nationwide Mutual Fire
Insurance Company,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2015-CP-08-1759

COMPLAINT

(Bad Faith)

(Breach of Contract)

(Negligence)

(Declaratory Judgment)

(Negligent Misrepresentation)

(Jury Trial Demanded)

ARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

2015 JUL 27 PM 3:14

FILED

SUMMARY OF THE CASE

This action includes claims of negligence, bad faith, breach of contract, negligent misrepresentation and a declaratory judgment against John T. Herndon, III (hereinafter "Herndon" or "John Herndon"), Herndon Insurance Agency, Inc., Nationwide Mutual Insurance Company, and Nationwide Mutual Fire Insurance Company for wrongful conduct in their mishandling of an insurance claim and failure to defend a personal injury lawsuit entitled Anna Angelacci, as guardian of K.B., a minor v. E.U., a minor, Travis O. Felkel, and Ginger G. Ulery. Case No. 2014-CP-08-2494, which was filed in the Berkeley County Court of Common Pleas. (Lawsuit as Exhibit A.)

E.U., a minor over the age of fourteen, Travis Felkel (E.U.'s stepfather) and Ginger Ulery (E.U.'s mother) (hereinafter "Ulery-Felkel family") were named defendants in the underlying negligence lawsuit and were properly served on December 2, 2014. The Ulery-Felkel

family was insured by Nationwide through a homeowners insurance policy sold to them by John Herndon at the Nationwide Herndon Insurance Agency. Herndon is an authorized Nationwide agent and the homeowners policy instructs its insured to report claims and lawsuits to him. Shortly after being served with the lawsuit, Travis Felkel, on behalf of himself and his family, personally delivered the Summons and Complaint to his Nationwide agent John Herndon at the Nationwide Herndon Insurance Agency. (Affidavit of Felkel as Exhibit B.) Herndon made a copy of the lawsuit papers and indicated he would see that the matter was taken care of and gave Felkel a copy of his business card. (Business card as Exhibit C.)

Herndon had a duty to file the claim with the claims department at Nationwide and forward the lawsuit to them. Nationwide had a duty to investigate and defend the lawsuit and protect its insureds, which would include E.U., a minor over the age of fourteen, Travis Felkel and Ginger Ulery. Nationwide did not defend the lawsuit, nor advise its insureds that it was not defending the lawsuit. (Affidavit of Lindsey Rash as Exhibit C-1.) The lawsuit was not timely answered, an entry of default and referral to a special referee was ordered, damages and default hearings were held and default judgments were entered against the Ulery-Felkel family, jointly and severally, in the amount of \$5,150,000 in favor of Anna Angelacci and K.B., a minor over the age of fourteen. (Felkel, Ulery Judgment as Exhibit D and E.U. Judgment as Exhibit E.)

After judgments were entered against the Ulery-Felkel family, they each assigned to Anna Angelacci and K.B. all rights, claims and causes of actions then possessed by them against any insurance company or agent for mishandling of the lawsuit in the underlying action in exchange for not having the judgments immediately executed against them and the possibility of having the judgments vacated if satisfied by the above-named defendants. (Felkel, Ulery Assignments as Exhibit F and E.U. Assignment as Exhibit G). This action is being brought by

assignee and judgment creditor Anna Angelacci, individually, as guardian of K.B., a minor over the age of fourteen, and as assignee of Travis Felkel, Ginger Ulery and E.U., a minor over the age of fourteen, by his Guardian ad Litem Shannon P. Jones.

THE COMPLAINT

NOW COMES THE PLAINTIFF complaining of the above-named Defendants, hereby alleging unto this Honorable Court as follows:

JURISDICTION AND VENUE

1. Plaintiff is a resident of the State of South Carolina.
2. Defendant John Herndon is a resident of the State of South Carolina and was at all times relevant hereto acting within the course and scope of his employment as an employee of Defendant Herndon Insurance Agency, Inc. and as an agent for Defendant Nationwide Mutual Insurance Company.
3. Defendant Herndon Insurance Agency, Inc. (hereinafter "Herndon Insurance Agency") is an insurance company organized and existing under the laws of the State of South Carolina and is located in Charleston, South Carolina.
4. Defendants Nationwide Mutual Insurance Company and Nationwide Mutual Fire Insurance Company (hereafter referred to jointly as "Nationwide") are affiliated domestic corporations which operate as one company under the Nationwide Mutual Insurance umbrella. Both companies are incorporated under the laws of the State of Ohio with their principal places of business in Columbus, Ohio. Nationwide Mutual Insurance Company, through its subsidiaries, operates insurance companies throughout the United States, including in South Carolina. Nationwide Mutual Fire Insurance Company is the entity which actually writes homeowners insurance. The underlying lawsuit which Nationwide failed to defend was pending

in Berkeley County. The default judgments were entered in Berkeley County. The policy of insurance issued and breached by Nationwide in this case insured the Ulery-Felkel home which is located in Berkeley County.

5. This Court has personal jurisdiction over the parties hereto and subject matter jurisdiction over the causes of action set forth herein. Venue is proper in Berkeley County.

FOR A FIRST CAUSE OF ACTION
AS TO NATIONWIDE DEFENDANTS
(Bad Faith)

6. The allegations stated in Paragraphs 1 through 5 above are repeated and realleged as if fully set forth verbatim herein.

7. In December 2014, husband Travis Felkel and wife Ginger Ulery, along with Ginger's sixteen year old son, E.U., lived in a home owned by Travis and Ginger located at 339 Holly Avenue, Goose Creek, South Carolina. The home was insured by Nationwide, and the policy had been sold to Felkel by John Herndon of Herndon Insurance Agency, Inc. which, upon information and belief, is an exclusive Nationwide insurance agency.

8. On December 2, 2014, the Ulery-Felkel family was served with a lawsuit filed by Anna Angelacci, as guardian of K.B., a minor, alleging negligence by Travis Felkel, Ginger Ulery, and E.U. that caused serious injuries to K.B.

9. Travis Felkel, on behalf of himself and his family, promptly took the Summons and Complaint to his local Nationwide Insurance Agent John Herndon who sold him his homeowners insurance coverage.

10. Defendant John Herndon, acting as an employee of Herndon Insurance Agency, Inc. and agent of Defendant Nationwide and within the course and scope of his employment and agency, made a photocopy of the Summons and Complaint and advised Felkel that he would

forward it to the claims department and that they would handle it and gave him a copy of his business card.

11. Upon receipt of the Summons and Complaint, Defendant Nationwide, by and through its agent John Herndon, owed a duty of good faith and fair dealing to its insureds under the policy, as well as a duty to investigate and defend the action filed against its insureds.

12. Defendant Nationwide breached its duty owed to its insureds by failing to investigate or defend the underlying action, Case No. 2014-CP-08-2494, filed by Anna Angelacci as guardian of K.B., a minor, in this Court.

13. As a direct and proximate result of Defendant Nationwide's failure to investigate and defend the action, and as a direct and proximate result of its breach of its duty of good faith and fair dealing, Default Judgments were entered against Travis Felkel and Ginger Ulery on April 23, 2015 and against E.U. on June 25, 2015.

14. Defendant Nationwide acted by and through its exclusive Nationwide agency, Herndon Insurance Agency, Inc. and its employees and agent, Defendant John Herndon, who acted within the course and scope of his employment and/or agency with all implied, inherent, apparent, and express authority so as to bind both Herndon Insurance Agency, Inc. and Nationwide and by his acts and/or omissions thereby making Defendant Nationwide vicariously liable for the same under the principles and doctrines of non-delegable duty, corporate liability, apparent authority, agency, ostensible agency and/or respondeat superior.

FOR A SECOND CAUSE OF ACTION
AS TO NATIONWIDE DEFENDANTS
(Breach of Contract)

15. The allegations stated in Paragraphs 1 through 14 above are repeated and realleged as if fully set forth verbatim herein.

16. The Ulery-Felkel family and Defendants had a contract of insurance whereby Defendants were not only obligated to insure the Ulery-Felkel family against loss under their homeowners insurance policy, but were also obligated to defend and investigate any claims filed against the Ulery-Felkel family as their insureds.

17. The Ulery-Felkel family fully performed and delivered consideration under the contract by promptly and continuously paying Defendants' insurance premiums for their homeowners insurance coverage.

18. Defendants' failure to investigate and defend the aforesaid action against the Ulery-Felkel family in this Court constitutes a failure to perform their obligation, and thus, a breach of contract by Defendants.

19. As a direct and proximate result of this breach, the Ulery-Felkel family has suffered serious actual and consequential damages of \$5,150,000 in judgments entered against them, for which they are now personally liable.

20. Anna Angelacci holds a judgment and is a creditor in the amount of \$150,000 plus interest against the Ulery-Felkel family. Anna Angelacci, as guardian for K.B, a minor over the age of fourteen, holds a judgment and is a creditor in the amount of \$5,000,000 plus interest against the Ulery-Felkel family.

FOR A THIRD CAUSE OF ACTION
AGAINST ALL DEFENDANTS
(Negligence/Professional Negligence)

The allegations stated in Paragraphs 1 through 20 above are repeated and realleged as if fully set forth verbatim herein.

21. Defendants owed the Ulery-Felkel family certain duties, to properly handle and defend claims brought against them, arising out of the special relationship and confidence of

trust placed in them, and the covenant and duty of good faith and fair dealing implied as a matter of law in contracts of insurance.

22. Defendants were negligent, reckless, grossly negligent, willful and wanton in their investigation and handling of the lawsuit brought against the Ulery-Felkel family in one or more of the following particulars:

- a. In the failure and professional negligence of John Herndon and his employees to notify the claims department of Nationwide that a lawsuit had been filed against its insureds;
- b. In the failure and professional negligence of John Herndon and his employees to deliver a copy of the lawsuit to the Nationwide claims department;
- c. In the failure and professional negligence of the Herndon Insurance Agency and its owner and employees to follow industry standards and its own policies of reporting claims brought to their attention by their insureds;
- d. In the failure and professional negligence of the Herndon Insurance Agency to have proper safeguards in place to protect its insureds from the damages they suffered in this case due to failure to report a claim/lawsuit;
- e. In the failure and professional negligence of John Herndon to advise the Ulery-Felkel family to hire counsel to answer the Complaint because Nationwide would not be defending the lawsuit;
- f. In the failure and professional negligence of John Herndon to advise the Ulery-Felkel family of the consequences of failing to answer the Complaint within 30 days;
- g. In failing to investigate the lawsuit;
- h. In failing to provide a defense to the lawsuit or to advise their insureds that the claim was being denied, that the insureds needed to secure their own counsel and that Nationwide was not going to hire counsel to file an Answer;
- i. In lulling Travis Felkel into a belief that the claim against him and his family was going to be investigated and defended by Nationwide;
- j. In failing to protect the Ulery-Felkel family from an excess judgment

against them in the amount of \$5,150,000 plus post judgment interest that is accruing daily;

- k. In failing to evaluate or properly evaluate the claim given the information then available;
- l. In failing to make any effort whatsoever to settle the claim;
- m. Upon information and belief, in violating their own policies, procedures, and/or guidelines regarding the investigation and handling of liability claims;
- n. In failing to exercise the degree of care, caution, and good faith that a reasonably prudent insurance carrier, manager or adjuster would exercise under the same or similar circumstances;
- o. In placing their own interests ahead of those of the insureds; and
- p. In failing to place the insureds' interests ahead of those of Defendants.

23. By reason of Defendants' negligence, recklessness, gross negligence, willfulness, and wantonness, the Ulery-Felkel family directly and proximately suffered actual damages.

24. Plaintiff is entitled to a judgment against Defendants for the full amount of the judgments entered against Ulery-Felkel family, interest accruing on the judgments, and punitive damages.

FOR A FOURTH CAUSE OF ACTION
AS TO NATIONWIDE DEFENDANTS
(Declaratory Judgment and Attorneys' Fees)

25. The allegations stated in Paragraphs 1 through 23 above are repeated and realleged as if fully set forth verbatim herein.

26. Pursuant to the South Carolina Uniform Declaratory Judgment Act, Plaintiff seeks a declaration that:

- (a) Travis Felkel properly notified Nationwide of the claim by delivering a copy of the lawsuit to Nationwide agent John Herndon as required by Section J-1

or other sections of the homeowners policy and that by doing so Nationwide's duty to protect its insureds by investigating and defending the claim was triggered.

(b) Nationwide failed to comply with its duties and obligations under the policy of insurance and that its insureds were harmed as a result of these breaches.

(c) Nationwide is liable for the entire amount of the judgments, plus post judgment interest as a result of Nationwide's conduct.

(d) Plaintiff as assignee is entitled to attorney's fees pursuant to S.C. Code Ann. § 38-59-40 (1976, as amended).

FOR A FIFTH CAUSE OF ACTION
AS TO ALL DEFENDANTS
(Negligent Misrepresentation)

27. The allegations stated in Paragraphs 1 through 25 above are repeated and realleged as if fully set forth verbatim herein.

28. Defendant John Herndon made a false representation to Travis Felkel that he would pass along the lawsuit to Nationwide and that it would be taken care of by Nationwide. Upon belief, Herndon did not pass along the lawsuit to Nationwide and/or it was not taken care of by Nationwide, and default judgments were entered against the Ulery-Felkel family.

29. Defendant Herndon had a pecuniary interest in the matter as he gave this information in the course of his employment, business and profession.

30. Defendant Herndon owed a duty to communicate truthful information to Felkel and breached that duty by failing to do so.

31. Felkel relied on Herndon's representation that the lawsuit would be passed along to Nationwide and taken care of by Nationwide, and he and his family suffered damages as a

result of his reliance on the representation.

32. Herndon Insurance Agency, Inc. and the Nationwide defendants are vicariously liable for the negligent misrepresentations of its owner, agent and employee John Herndon who was acting in the course and scope of his business when he made these negligent misrepresentations.

WHEREFORE, Plaintiff prays for a trial and for the following:

- i. Judgment against Defendants, jointly and severally, for a declaratory judgment, and actual and punitive damages in an amount to be determined by a jury;
- ii. For the costs of this action; and
- iii. For such other and further relief as this court deems just and proper.

Yarborough Applegate LLC
291 East Bay Street, Floor 2
Charleston, SC 29401
843-972-0150 office
843-277-6691 fax


David B. Yarborough, Jr., Esquire
Douglas E. Jennings, Esquire

ATTORNEYS FOR THE PLAINTIFF

July 27, 2015
Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

ANNA ANGELACCI, as guardian of K.B.
a minor

Plaintiff(s)

vs.

E.U., a minor, TRAVIS O. FELKEL AND
GINGER G. ULERY
Defendant

IN THE COURT OF COMMON PLEAS
THE NINTH JUDICAL CIRCUIT

CASE: 2014-CP-08-2494

AFFIDAVIT OF SERVICE

The below-signed individual, being duly sworn, states that Private Investigations Robert St. Onge served NOTICE OF HEARING in the above-referenced matter on the Defendant GINGER G. ULERY, by the method described below.

X

Personally Served on GINGER G. ULERY.

—

Hand delivered a copy to Ginger G. Ulery,
a person of suitable age and discretion, residing at the address of defendant

Service was completed at 339 HOLY AVENUE GOOSE CREEK, SC, 29445. APRIL 11TH, 2015 AT 3:02 PM

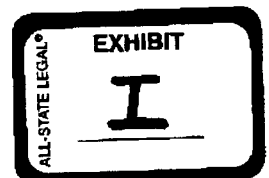
—

Unable to locate and serve after diligent efforts to
do so. The process is returned unexecuted.
The following service attempts were made.

Sworn to and subscribed before me on this
16th day of April 2015,
by the affiant who is personally known to me.

Robert St. Onge
Notary Public for the State of South Carolina
My Commission Expires: 02-2-2022

Robert St. Onge
Private Investigations
Robert St. Onge
PO Box 81209
North Charleston, SC
843-270-1273 phone
800-374-8176 fax
risinvestigations@gmail.com



STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)
)
ANNA ANGELACCI, as guardian of K.B.)
a minor)
Plaintiff(s))
)
vs.)
)
E.U., a minor, TRAVIS O. FELKEL AND)
GINGER G. ULERY)
Defendant)

IN THE COURT OF COMMON PLEAS
THE NINTH JUDICAL CIRCUIT

CASE: 2014-CP-08-2494

AFFIDAVIT OF SERVICE

The below-signed individual, being duly sworn, states that Private Investigations Robert St. Onge served NOTICE OF HEARING in the above-referenced matter on the Defendant GINGER G. ULERY, AS GUARDIAN OF E. U. A MINOR,

by the method described below.

— Personally Served on E. U. A MINOR.

X

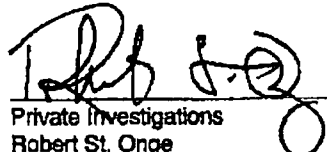
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do so. The process is returned unexecuted.
The following service attempts were made.

Sworn to and subscribed before me on this
16th day of April 2015,
by the affiant who is personally known to me.

Robert St. Onge
Notary Public for the State of South Carolina
My Commission Expires: 5-22-2022


Private Investigations
Robert St. Onge
PO Box 81209
North Charleston, SC
843-270-1273 phone
800-374-8176 fax
risinvestigations@gmail.com

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

ANNA ANGELACCI, as guardian of K.B.
a minor)

Plaintiff(s))

vs.)

E.U., a minor, TRAVIS O. FELKEL AND
GINGER G. ULERY)
Defendant)

IN THE COURT OF COMMON PLEAS
THE NINTH JUDICAL CIRCUIT

CASE: 2014-CP-08-2494

AFFIDAVIT OF SERVICE

The below-signed individual, being duly sworn, states that Private Investigations Robert St. Onge served NOTICE OF HEARING in the above-referenced matter on the Defendant TRAVIS O. FELKEL by the method described below.

— Personally Served on TRAVIS O. FELKEL

X

Hand delivered a copy to Ginger G. Ulery,
a person of suitable age and discretion, residing at the address of defendant

Service was completed at 339 HOLY AVENUE GOOSE CREEK, SC, 29445. APRIL 11TH, 2015 AT 3:02 PM

— Unable to locate and serve after diligent efforts to
do so. The process is returned unexecuted.
The following service attempts were made.

Sworn to and subscribed before me on this
11th day of April, 2015,
by the affiant who is personally known to me.

Jessie St. Onge
Notary Public for the State of South Carolina
My Commission Expires: 5-22-2022

Robert St. Onge
Private Investigations
Robert St. Onge
PO Box 61209
North Charleston, SC
843-270-1273 phone
800-374-8176 fax
risinvestigations@gmail.com



**YARBOROUGH
APPLEGATE**

ATTORNEYS AT LAW

david@yarboroughapplegate.com

April 10, 2015

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED
RESTRICTED DELIVERY

Ms. Ginger Ulery-Felkel as guardian of
Evan Ulery
339 Holly Ave.
Goose Creek, SC 29445

Re: *Anna Angelacci as guardian of K.B., a minor v. E.U. a minor, Travis O Felkel
and Ginger G. Ulery*
Case No.: 2014-CP-08-2494

**THIS IS A TIME SENSITIVE DOCUMENT THAT REQUIRES A RESPONSE. You will
face adverse legal consequences if you do not respond. Please forward this document to
your lawyer and insurance company immediately.**

Dear Ms. Ulery-Felkel:

Enclosed for service upon you as Guardian of Evan Ulery please find a Notice of Hearing
for April 21, 2015 in the above-referenced matter. Please forward these time sensitive documents
to your legal representative upon receipt.

Sincerely,

Michelle Helscher,
Paralegal to David B. Yarborough, Jr.

Enclosures as stated

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

Anna Angelacci, as guardian of K.B.,
a minor,)

Plaintiffs,)

vs.)

E.U. a minor, Travis O Felkel, and
Ginger G. Ulery,)

Defendants.)

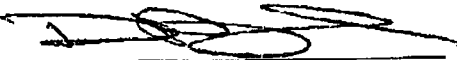
IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2014-CP-08-2494

NOTICE OF HEARING

TO: DEFENDANTS E.U., A MINOR, TRAVIS O. FELKEL, AND GINGER G. ULERY:

YOU WILL PLEASE TAKE NOTICE that a Damages Hearing in the above-captioned
matter will take place on April 21, 2015, at McCullough Khan, LLC, 359 King Street, Suite 200,
Charleston, SC 29401, at 10:00 a.m.

YARBOROUGH APPLGATE LLC



David B. Yarborough, Jr., Esquire
Douglas E. Jennings, Esquire
291 East Bay Street, Second Floor
Charleston, SC 29401
843-972-0150

ATTORNEY FOR PLAINTIFFS

4/10, 2015
Charleston, South Carolina



**YARBOROUGH
APPLEGATE**
ATTORNEYS AT LAW

david@yarboroughapplegate.com

April 10, 2015

VIA PROCESS SERVER

Travis O. Felkel
339 Holly Ave.
Goose Creek, SC 29445

Re: *Anna Angelacci as guardian of K.B., a minor v. E.U. a minor, Travis O Felkel
and Ginger G. Ulery*
Case No.: 2014-CP-08-2494

**THIS IS A TIME SENSITIVE DOCUMENT THAT REQUIRES A RESPONSE. You will
face adverse legal consequences if you do not respond. Please forward this document to
your lawyer and insurance company immediately.**

Dear Mr. Felkel:

Enclosed for service upon you please find a Notice of Hearing for April 21, 2015 in the
above-referenced matter. Please plan to attend the hearing and forward these time sensitive
documents to your legal representative upon receipt.

Sincerely,

Michelle Helscher,
Paralegal to David B. Yarborough, Jr.

Enclosures as stated

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)
)
Anna Angelacci, as guardian of K.B.,)
a minor,)
)
Plaintiffs,)
)
vs.)
)
E.U. a minor, Travis O Felkel, and)
Ginger G. Ulery,)
)
Defendants.)
)

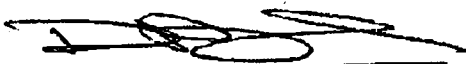
IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2014-CP-08-2494

NOTICE OF HEARING

TO: DEFENDANTS E.U., A MINOR, TRAVIS O. FELKEL, AND GINGER G. ULERY:

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YARBOROUGH APPLGATE LLC


David B. Yarborough, Jr., Esquire
Douglas E. Jennings, Esquire
291 East Bay Street, Second Floor
Charleston, SC 29401
843-972-0150

ATTORNEY FOR PLAINTIFFS

4/10, 2015
Charleston, South Carolina



**YARBOROUGH
APPLEGATE**
ATTORNEYS AT LAW

david@yarboroughapplegate.com

April 10, 2015

VIA PROCESS SERVER

Ms. Ginger Ulery-Felkel as guardian of
Evan Ulery
339 Holly Ave.
Goose Creek, SC 29445

Re: *Anna Angelacci as guardian of K.B., a minor v. E.U. a minor, Travis O Felkel
and Ginger G. Ulery*
Case No.: 2014-CP-08-2494

**THIS IS A TIME SENSITIVE DOCUMENT THAT REQUIRES A RESPONSE. You will
face adverse legal consequences if you do not respond. Please forward this document to
your lawyer and insurance company immediately.**

Dear Ms. Ulery-Felkel:

Enclosed for service upon you as Guardian of Evan Ulery please find a Notice of Hearing for April 21, 2015 in the above-referenced matter. Please plan to attend the hearing and forward these time sensitive documents to your legal representative upon receipt.

Sincerely,

Michelle Helscher,
Paralegal to David B. Yarborough, Jr.

Enclosures as stated

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

Anna Angelacci, as guardian of K.B.,
a minor,)

Plaintiffs,)

vs.)

E.U. a minor, Travis O Felkel, and
Ginger G. Ulery,)

Defendants.)

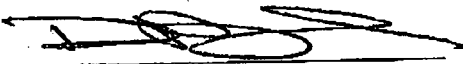
IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2014-CP-08-2494

NOTICE OF HEARING

TO: DEFENDANTS E.U., A MINOR, TRAVIS O. FELKEL, AND GINGER G. ULERY:

YOU WILL PLEASE TAKE NOTICE that a Damages Hearing in the above-captioned matter will take place on April 21, 2015, at McCullough Khan, LLC, 359 King Street, Suite 200, Charleston, SC 29401, at 10:00 a.m.

YARBOROUGH APPLGATE LLC


David B. Yarborough, Jr., Esquire
Douglas E. Jennings, Esquire
291 East Bay Street, Second Floor
Charleston, SC 29401
843-972-0150

ATTORNEY FOR PLAINTIFFS

4/10, 2015
Charleston, South Carolina



**YARBOROUGH
APPLEGATE**
ATTORNEYS AT LAW

david@yarboroughapplegate.com

April 10, 2015

VIA PROCESS SERVER

Ms. Ginger Ulery-Felkel
339 Holly Ave.
Goose Creek, SC 29445

Re: *Anna Angelacci as guardian of K.B., a minor v. E.U. a minor, Travis O Felkel
and Ginger G. Ulery*
Case No.: 2014-CP-08-2494

**THIS IS A TIME SENSITIVE DOCUMENT THAT REQUIRES A RESPONSE. You will
face adverse legal consequences if you do not respond. Please forward this document to
your lawyer and insurance company immediately.**

Dear Ms. Ulery-Felkel:

Enclosed for service upon you please find a Notice of Hearing for April 21, 2015 in the
above-referenced matter. Please plan to attend the hearing and forward these time sensitive
documents to your legal representative upon receipt.

Sincerely,

Michelle Helscher,
Paralegal to David B. Yarborough, Jr.

Enclosures as stated

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

Anna Angelacci, as guardian of K.B.,
a minor,

Plaintiffs,

vs.

E.U. a minor, Travis O Felkel, and
Ginger G. Ulery,

Defendants.

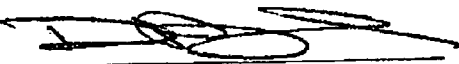
IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2014-CP-08-2494

NOTICE OF HEARING

TO: DEFENDANTS E.U., A MINOR, TRAVIS O. FELKEL, AND GINGER G. ULERY:

YOU WILL PLEASE TAKE NOTICE that a Damages Hearing in the above-captioned matter will take place on April 21, 2015, at McCullough Khan, LLC, 359 King Street, Suite 200, Charleston, SC 29401, at 10:00 a.m.

YARBOROUGH APPLGATE LLC


David B. Yarborough, Jr., Esquire
Douglas E. Jennings, Esquire
291 East Bay Street, Second Floor
Charleston, SC 29401
843-972-0150

ATTORNEY FOR PLAINTIFFS

4/10, 2015
Charleston, South Carolina



**YARBOROUGH
APPLEGATE**
ATTORNEYS AT LAW

david@yarboroughapplegate.com

June 15, 2015

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ms. Ginger Ulery-Felkel as the Natural Parent and
General Guardian of Evan Ulery
339 Holly Ave.
Goose Creek, SC 29445

Re: *Anna Angelacci as guardian of K.B., a minor v. E.U. a minor, Travis O Felkel
and Ginger G. Ulery*
Case No.: 2014-CP-08-2494

Dear Ms. Ulery-Felkel:

Enclosed please find a Motion for Default Judgment and Notice of Hearing in the above-referenced matter. Please note a hearing has been scheduled in this matter for June 25, 2015 at 10:00 a.m. at the office of Clayton McCullough, 359 King Street, Ste 200, Charleston, South Carolina. Should you have any questions or concerns please feel free to contact me.

With kind regards, I am

Sincerely,

Michelle Helscher,
Paralegal to David B. Yarborough, Jr.

Enclosures as stated

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

ANNA ANGELACCI, as guardian of
K. B., a minor,

Plaintiff,

vs.

E. U., a minor, Travis O. Felkel, and Ginger G.
Ulery,

Defendants.

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO.: 2014-CP-08-2494

**MOTION FOR DEFAULT
JUDGMENT AGAINST E.U., A MINOR
OVER THE AGE OF FOURTEEN AND
NOTICE OF HEARING**

TO: E.U. A MINOR AND HIS GUARDIAN AD LITEM SHANNON JONES; TRAVIS
FELKEL; AND GINGER ULERY

The Plaintiffs, by and through their undersigned attorneys, hereby move the Special Referee of the Berkeley County Court of Common Pleas for an Order of Default Judgment against E.U., a minor over the age of fourteen, who has now been appointed a Guardian ad Litem, pursuant to Rule 55 of the South Carolina Rules of Civil Procedure. The Entry of Default against E.U., which was entered by this court on February 4, 2015, and a damages hearing, was held on April 21, 2015 at which time judgment against E.U. was reserved until a Guardian ad Litem could be appointed for E.U. due to the fact that he is a minor over the age of fourteen. On June 8, 2015 a Guardian ad Litem was appointed by this court and Plaintiffs now request judgment be entered against E.U.

Plaintiffs also hereby give notice to Defendants that a hearing on this matter will occur at the office of Clayton B. McCullough, Special Referee for Berkeley County, located at 359 King Street, Ste. 200, Charleston, South Carolina on June 25, 2015 at 10:00 a.m.

A copy of this Notice and Motion has been served upon Shannon Jones, the Guardian ad Litem for E.U., as well as his co-defendants and parents Travis Felkel and Ginger Ulery.

Yarborough Applegate LLC
291 East Bay Street, Floor 2
Charleston, SC 29401
843-972-0150 office
843-277-6691 fax


David B. Yarborough, Jr., Esquire
Douglas E. Jennings, Esquire

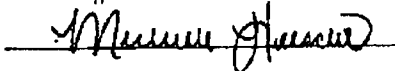
Attorneys for the Plaintiff

June 9, 2015
Charleston, South Carolina

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing 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 9th day of June, 2015



THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Clayton B. McCullough, Esquire, Special Referee

Case No.: 2016-000063

RECEIVED

AUG 19 2016

SC Court of Appeals

Ex parte: Nationwide Mutual Fire Insurance Company..... Appellant

In Re: Anna Angelacci, as guardian of K.B., a minor.....Respondent

v.

E.U., a minor, Travis O. Felkel, and Ginger G. Ulery.....Defendants

PROOF OF SERVICE OF RECORD ON APPEAL

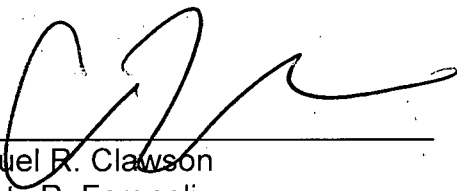
I certify that I have served the Record on Appeal on Respondent and Defendants above-named by depositing a copy of it in the United States Mail, postage prepaid, on August 18, 2016, addressed to their attorneys of record:

David Yarborough, Esq.
Yarborough Applegate, LLC
291 E Bay St #2
Charleston, SC 29401-1601

Mark Tinsley, Esq.
Gooding & Gooding, PA
PO Box 1000
Allendale, SC 29810-1000

Shannon Jones, Esq.
Shannon Jones Law, LLC
3 State St
Charleston, SC 29401-3308

G. Troy Thames, Esq.
Willson Jones Carter & Baxley, P.A.
421 Wando Park Blvd Ste 100
Mount Pleasant, SC 29464-7960



Samuel R. Clawson
Christy R. Fagnoli
CLAWSON & STAUBES, LLC
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492-8144
Phone: (843) 577-2026
Fax: (843) 722-2867
sclawson@clawsonandstaubes.com
cfagnoli@clawsonandstaubes.com

Attorneys for Nationwide Mutual Fire
Insurance Company,