

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Appellate Case No. 2015-000359
Case No. 2011-CP-42-3951

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S.C. SUPREME COURT

Dickie Shults, ...Petitioner,

v.

Angela G. Miller, ...Respondent.

APPENDIX

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Appellate Case No. 2015-000359
Case No. 2011-CP-42-3951

Dickie Shults, ...Appellant,

v.

Angela G. Miller, ...Respondent.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
(Jury Trial Demanded)

Dickie Shults,

Plaintiff,

vs.

Angela G. Miller,

Defendant.

Order Setting Aside Entry of Default

C/A#: 2011-CP-42-3951

On January 3, 2012, personally appeared before me Samuel Harms for Plaintiff and Robert E. Davis for Defendant on Defendant's Motion to Set Aside the Entry of Default pursuant to Rule 55(c), SCRCF. Based on the evidence presented, arguments of counsel, and the applicable law, hereby grant Defendant's Motion to Set Aside the Entry of Default.

Factual Background

This case involves an automobile accident occurring on July 22, 2009. Defendant and her husband have submitted affidavits that the accident was not Defendant's fault. Specifically, Defendant and her husband state that Defendant had the right-of-way when another vehicle driven by Philip Seay disregarded a stop sign and pulled directly in front of Defendant's vehicle. Defendant and her husband state that Seay's insurance company accepted liability and paid their claims. Trooper Chris Mace, who investigated the accident, also signed an affidavit confirming Defendant's version of the accident.

Procedural Background

Plaintiff filed suit against Seay in a separate action (CA # 2011-CP-42-03081). Plaintiff also

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3. filed suit against Defendant. An entry of default was entered against Defendant. Defendant answered within days of when her Answer was due and filed this motion.

Applicable Law

Rule 55(c), SCRCP, states that an entry of default can be set aside for "good cause."

This standard requires a party seeking relief from an entry of default under Rule 55(c) to provide an explanation for the default and give reasons why vacation of the default entry 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 Operating Co. v. Intedege Indus. Inc., 383 S.C. 601, 607-08, 681 S.E.2d 885, 888 (2009).

The "good cause" standard for relief under Rule 55(c) "is liberally construed to promote justice and dispose of cases on the merits." Dixon v. Besco Eng'g Inc., 320 S.C. 174, 178, 463 S.E.2d 636, 638

(Ct. App. 1995). "Relief granted at this point is within the equitable power of the court and excuses the previous failure to act promptly." James F. Flannagan, South Carolina Civil Procedure 440 (ed. 1996).

Good Cause In this Case

Defendant argues that good cause exists to set aside the entry of default. I agree.

I believe that Defendant has adequately satisfied the standard for relief set forth in Sundown. Defendant explained there was some confusion with Seay's insurance accepting liability for the accident and a change of her own insurance companies. Nevertheless, Defendant appeared and answered and moved for relief very shortly after her Answer was due. Defendant has also shown a meritorious defense to the accident. Despite Plaintiff's argument that he would be prejudiced by a jury trial, I do not find this constitutes the type of prejudice expressed in Sundown. Accordingly,



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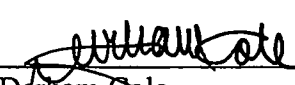
I find that this case should be disposed of on the merits.

IT IS THEREFORE ORDERED that Defendant's Motion for Relief from the Entry of Default is hereby GRANTED;

IT IS FURTHER ORDERED that the Clerk of Court shall accept Defendant's Answer;

IT IS FURTHER ORDERED that this case shall proceed with a jury trial on the merits;

IT IS SO ORDERED.



J. Derham Cole
Presiding Judge, Seventh Judicial Circuit

_____, 2012.

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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

(Jury Trial Demanded)

Dickie Shults,

Plaintiff,

vs.

Angela G. Miller,

Defendant.

Order

C/A#: 2011-CP-42-3951

On February 7, 2013, personally appeared before me Samuel Harms for Plaintiff and Robert E. Davis for Defendant on Plaintiff's Motion to Reconsider my previous order granting relief from the entry of default and Defendant's Motion for Summary Judgment. Based on the evidence presented, arguments of counsel, and the applicable law, I hereby deny Plaintiff's Motion to Reconsider and grant Defendant's Motion for Summary Judgment.

Factual Background

This case involves an automobile accident occurring on July 22, 2009. As part of the previous motion heard by me, Defendant and her husband submitted affidavits that the accident was no Defendant's fault. Specifically, Defendant and her husband state that Defendant had the right-of-way when another vehicle driven by Philip Seay disregarded a stop sign and pulled directly in front of Defendant's vehicle. Defendant denied any liability for the accident. Defendant and her husband state that Seay's insurance company accepted liability and paid their claims.

Trooper Chris Mace, who investigated the accident, also signed an affidavit confirming Defendant's version of the accident based on his conversations with the persons involved and his investigation.

Depositions have now been taken of the parties. In her deposition, Defendant continues to state

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[Signature]

that she is not at fault for the accident. She states that she was lawfully in her lane of travel when Seay disregarded a stop sign, failed to yield the right-of-way, and pulled directly in front of her, which caused her to be pushed into Plaintiff. In his deposition, Plaintiff admits that Defendant had the right-of-way on Highway 292. Plaintiff also confirmed that Seay pulled out in front of Defendant when she had the right-of-way.

Procedural History

Plaintiff filed suit against Seay in a separate action (CA # 2011-CP-42-03081). Plaintiff settled all claims with Seay including underinsured claims.

Plaintiff filed this action against Defendant. Defendant answered the complaint days after it was due. This Court granted Defendant's Motion for Relief from the Entry of Default. Plaintiff asks this Court to reconsider the prior order granting relief from the entry of default. Defendant moves for summary judgment.

Findings on Motion to Reconsider

Plaintiff argues that the prior order finding good cause for relief was erroneous. I disagree.

Plaintiff's Motion to Reconsider contains no specific grounds for reversing the previous order. At the hearing, Plaintiff presented an affidavit of Defendant's husband stating that he provided the summons and complaint to his insurer shortly after Defendant was served. Neither this affidavit nor the previous grounds raised by Plaintiff require this Court to reverse its prior decision.

As previously stated in the order granting relief, Rule 55(c), SCRCP, permits an entry of default to be set aside for "good cause." The good cause standard for relief under Rule 55(c) "is liberally construed to promote justice and dispose of cases on the merits." Dixon v. Besco Eng'g Inc., 320 S.C. 174, 178, 463 S.E.2d 636, 638 (Ct. App. 1995). "Relief granted at this point is within the equitable power of the court and excuses the previous failure to act promptly." James F. Flannagan, South Carolina Civil Procedure 456 (3d ed. 2010).

2
- 7 -

Defendant continues to satisfy the factors that establish good cause as set forth in Sundown Operating Co. v. Intedge Industries Inc., 383 S.C. 601, 607-08, 681 S.E.2d 885, 888 (2009). As stated in the previous order, Defendant explained that following the service of the complaint there was some confusion early on because Seay's insurance company had accepted liability for her claims and because she had changed insurance companies. Nevertheless, Defendant was able to answer very shortly after it was due, establish a meritorious defense, and show no prejudice to Plaintiff.

Accordingly, I find that the decision to grant relief satisfies the legal requirements for good cause and promotes justice. I further believe that this case should be decided on the merits. Therefore, Plaintiff's Motion to Reconsider is denied.

Findings on Motion for Summary Judgment

Defendant argues she is entitled to summary judgment because Plaintiff cannot prove she breached any duty that would render her liable for the accident. I agree.

"Summary judgment is appropriate where there is no genuine issue of material fact, and it is clear that the moving party is entitled to judgment as a matter of law." Bank of N.Y. v. Sumter County, 387 S.C. 147, 154-55, 691 S.E.2d 473, 477 (2010); see also Kase v. Ebert, 392 S.C. 57, 707 S.E.2d 456 (Ct. App. 2011).

In a negligence cause of action, such as this, Plaintiff must establish (1) Defendant owed duty of care; (2) Defendant breached the duty by a negligent act or omission; (3) Defendant's breach was the actual and proximate cause of Plaintiff's injury; and (4) Plaintiff suffered an injury or damages. Moore v. Weinberg, 373 S.C. 209, 220-21, 644 S.E.2d 740, 746 (Ct. App. 2007).

Even viewing the evidence in the light most favorable to Plaintiff, which this Court must do, there is no evidence that Defendant negligently breached any duty. The evidence before this Court is that Defendant was lawfully in her lane of travel when Seay disregarded a stop sign, failed to yield the right-of-way to Defendant, and pulled directly in front of her. Defendant presented evidence that she

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- 8 -

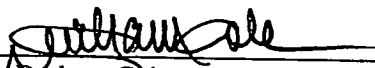
could not avoid Seay and was pushed by Seay across the center line into Plaintiff. In his deposition, Plaintiff does not dispute this version of the accident or offer any testimony establishing negligence on behalf of Defendant. Plaintiff has offered no other form of testimony against Defendant.

The only inference to be drawn from this set of facts is that Seay was the sole contributing cause of the accident. Defendant, therefore, is entitled to judgment as a matter of law. Id.

IT IS THEREFORE ORDERED that Plaintiff's Motion to Reconsider is DENIED;

IT IS FURTHER ORDERED that Defendant's Motion for Summary Judgment is GRANTED;

IT IS SO ORDERED.


J. Derham Cole
Presiding Judge, Seventh Judicial Circuit

3/15, 2013.

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2011 CP-42-3951

Dickie Shults

Angela G Miller

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (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 : Motion to Reconsider is denied.

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)
		\$
		\$
		\$

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

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

Circuit Court Judge

2053

Judge Code

Date

1/26/15

For Clerk of Court Office Use Only

This judgment was entered on the 27th day of Dec., 20 15 and a copy mailed first class or placed in the appropriate attorney's box on this 28th day of Dec., 20 15 to attorneys of record or to parties (when appearing pro se) as follows:

Sammuel Darryl Harms III
33 Market Point Drive Greenville, SC 29607

ATTORNEY(S) FOR THE PLAINTIFF(S)

Robert Eric Davis
PO Box 5663 Spartanburg, SC 29304

ATTORNEY(S) FOR THE DEFENDANT(S)

M. Hope Blackley
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.

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M. HOPE BLACKLEY

COUNTY OF SPARTANBURG

Dickie Shults,

Plaintiff(s)

vs.

Angela G. Miller,

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2011-CP - 42- 3951

(Please Print)

Submitted By: Samuel D. Harms, Esq.

Address: Harms Law Firm, P.A.
33 Market Point Drive
Greenville, SC 29607

SC Bar #: 13537

Telephone #: (864) 277-0102

Fax #: (864) 527-0427

Other:

E-mail: Samuel@HarmsLawFirm.com

NOTE: The cover sheet 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 cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

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

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☐ Breach of Contract (140) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) ☐ Notice/ File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☒ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanics Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)								
Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Other (799)	Administrative Law/Relief ☐ Reinstate Driver's License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Administrative Law Judge (980) ☐ Public Service Commission (990) ☐ Employment Security Comm (991) ☐ Other (999)								
Special/Complex /Other <table border="0"> <tr> <td>☐ Environmental (600)</td> <td>☐ Pharmaceuticals (630)</td> </tr> <tr> <td>☐ Automobile Arb. (610)</td> <td>☐ Unfair Trade Practices (640)</td> </tr> <tr> <td>☐ Medical (620)</td> <td>☐ Out-of State Depositions (650)</td> </tr> <tr> <td>☐ Other (699)</td> <td>☐ Sexual Predator (510)</td> </tr> </table>				☐ Environmental (600)	☐ Pharmaceuticals (630)	☐ Automobile Arb. (610)	☐ Unfair Trade Practices (640)	☐ Medical (620)	☐ Out-of State Depositions (650)	☐ Other (699)	☐ Sexual Predator (510)
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☐ Medical (620)	☐ Out-of State Depositions (650)										
☐ Other (699)	☐ Sexual Predator (510)										

Submitting Party Signature: _____

Date: September 13, 2011

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCF, 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
Allendale, Anderson, Beaufort, Colleton, Florence, Greenville,
Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), and Richland

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.

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

Dickie Shults,

Plaintiff,

vs.

Angela G. Miller,

Defendant.

C.A. No.: 2011-CP-42-

3951

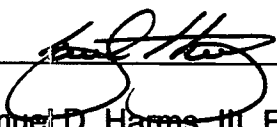
SUMMONS AND NOTICE

TO: Angela G. Miller

You are hereby summoned and required to answer the Complaint in this action -- a copy of which is attached hereto and herewith served upon you; and to serve a copy of your Answer to this Complaint upon the subscriber at 33 Market Point Drive, Greenville, SC 29607, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within this thirty (30) day period, the Plaintiff(s) will apply to the Court for the relief demanded in the Complaint and judgment will be taken against you by default.

HARMS LAW FIRM, P.A.

September 13, 2011

By: 

Samuel D. Harms, III, Esq.
SC Bar Number: 13537
33 Market Point Drive
Greenville, SC 29607
(864) 277-0102

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

Dickie Shults,

Plaintiff,

vs.

Angela G. Miller,

Defendant.

C.A. No.: 2011-CP-42- 3957

COMPLAINT

The Plaintiff, complaining of the above named Defendant(s), will respectfully establish to the Court the following:

THE PARTIES

1. Plaintiff Dickie Shults (hereinafter "Shults") is a resident of Spartanburg County, South Carolina.
2. Defendant Angela G. Miller (hereinafter "Miller") is a resident of Spartanburg County, South Carolina.

JURISDICTION

3. This Court has jurisdiction over these matters based upon Article V, Section 11 (Jurisdiction of Circuit Court), of the South Carolina Constitution; S.C. Code § 36-2-802 (Personal Jurisdiction Based Upon Enduring Relationship); and, S.C. Code § 36-2-803 (Personal Jurisdiction Based Upon Conduct).

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4. The amount in controversy exceeds the threshold amount required for additional interrogatories under SCRPC, Rule 33(b)(9).

VENUE

5. Venue is proper in this Court because at least one Defendant is a resident of Spartanburg County, South Carolina.

COMMON FACTUAL ALLEGATIONS

6. On or about July 22, 2009, Plaintiff was entering SC 292 in Spartanburg County, South Carolina to travel east on SC 292. At the same time, Defendant Miller was driving west on SC 292.
7. Defendant Miller crossed over the center line in the roadway and drove her vehicle into the Plaintiff's vehicle.

FOR A FIRST CAUSE OF ACTION

(Negligence, Gross Negligence)

8. The Plaintiff(s) reaffirm and reiterate all of the allegations contained in the Common Factual Allegations above, as if repeated herein.
9. The Defendant acted in a negligent, grossly negligent, careless and reckless manner. In particular, the Defendant:
- a. Drove too fast for the conditions;
 - b. Failed to maintain control over the vehicle;
 - c. Failed to yield the right-of-way;
 - d. Failed to keep a proper lookout;
 - e. Crossed over the center line in the roadway;

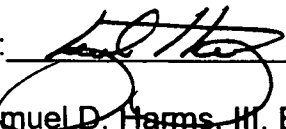
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- f. Failed to comply with all of the motor vehicle laws of the State of South Carolina.
10. The Defendant failed to take advantage of any last clear chance to avoid the wreck.
11. Plaintiff Shults suffered past and future damages as a direct and proximate cause of the wreck, including:
- a. Bodily injury;
 - b. Pain and suffering;
 - c. Lost time or income or earning capacity;
 - d. Medical expenses;
 - e. The loss of the enjoyment of life.

WHEREFORE, judgment should be entered for actual and punitive damages; the costs and expenses of this action, and; any further relief that the Court deems just and appropriate.

HARMS LAW FIRM, P.A.

September 13, 2011

By: 

Samuel D. Harms, III, Esq.
SC Bar Number: 13537
33 Market Point Drive
Greenville, SC 29607
(864) 277-0102

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

Dickie Shults,

Plaintiff,

vs.

Angela G. Miller,

Defendant.

C.A. No.: 2011-CP-42-3951

**MOTION FOR ENTRY OF DEFAULT BY THE CLERK OF COURT
AND FOR A DAMAGES HEARING**

Pursuant to Rule 55(a), SCRCP and Rule 55(b)(2), SCRCP, and all other applicable rules and state statutes, the Plaintiff(s) hereby request that the Clerk of Court enter a default upon the calendar (file book) against Defendant Angela G. Miller. In addition, the Plaintiff(s) hereby request that the Court schedule a hearing to determine the amount of damages suffered by the Plaintiff(s) so that the Court may enter a default judgment against the Defendant(s).

This motion is supported by Plaintiff(s)' Affidavit of Counsel Supporting Motion for Entry of Default.

HARMS LAW FIRM, P.A.

October 19, 2011

By: _____

Samuel D. Harms, III, Esq.
SC Bar Number: 13537
33 Market Point Drive
Greenville, SC 29607
(864) 277-0102

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SPARTANBURG COUNTY
2011 OCT 20 PM 3:28
M. HOPE BLAINELEY

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

Dickie Shults,

Plaintiff,

vs.

Angela G. Miller,

Defendant.

C.A. No.: 2011-CP-42-3951

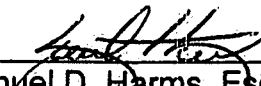
**AFFIDAVIT OF COUNSEL
SUPPORTING MOTION FOR ENTRY OF DEFAULT**

Samuel D. Harms, Esq., on oath deposes and states:

1. I am an attorney practicing law in the State of South Carolina, with an office located in Greenville, South Carolina. I represent the Plaintiff(s) in this action;
2. I filed a Summons and Complaint in the above-captioned case on or about September 13, 2011 against Defendant Angela G. Miller;
3. I have served the above-referenced Defendant(s) pursuant to the South Carolina Rules of Civil Procedure;
4. Defendant Angela G. Miller was served by certified mail, return receipt requested, restricted delivery, on September 15, 2011 as indicated by the attached copy of the U.S. Postal Service Domestic Return Receipt, signed by the Defendant;
5. I have not received any Answer, Counterclaim or other responsive pleading or Motion from the Defendant(s) since the service of the Summons and Complaint;
6. I have not received a Notice of Appearance from the Defendant(s) or Defendant(s)' attorney, nor have I been contacted directly by the Defendant(s) by mail since the service of the Summons and Complaint;
7. I have no information or knowledge that would indicate that the Defendant(s) are in the military;

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HARMS, SAMUEL D.

8. Defendant Angela G. Miller is now in default and I request that the Clerk of Court enter a default and I further request that a damages hearing be scheduled in the case.



Samuel D. Harms, Esq.

SWORN before me on October 19, 2011.



NOTARY PUBLIC FOR SOUTH CAROLINA
My commission expires: 8-25-18



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SPARTANBURG COUNTY
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M. HOPE BLACKLEY

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Angela G. Miller



COMPLETE THIS SECTION ON DELIVERY

A. Signature

X Angela Miller

☐ Agent

☒ Addressee

B. Received by (Printed Name)

Angela Miller

C. Date of Delivery

9-15-11

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail

☐ Express Mail

☐ Registered

☐ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☒ Yes

2. Airmail

(M)

7011 0470 0000 8709 6163

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1560

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cc: Shirts vs Miller

Miller Service Card

SEP 16 2011

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

Dickie Shults,

Plaintiff,

vs.

Angela G. Miller,

Defendant.

C.A. No.: 2011-CP-42-3951

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I have either hand delivered or electronically delivered or mailed, postage prepaid, a copy of the pleading(s), motion, proposed order, or other papers listed below to the party shown below on October 19, 2011.

PAPER(S):

Motion for Entry of Default by Clerk of Court and For a Damages Hearing

Proposed Entry of Default and Setting Case For a Damages Hearing

Affidavit of Counsel Supporting Motion for Entry of Default

PARTY(IES) / ATTORNEY(S) SERVED:

Angela G. Miller



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SPARTANBURG COUNTY
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M. HOPE CLAUDE

HARMS LAW FIRM, P.A.

October 19, 2011

By: 

33 Market Point Drive
Greenville, SC 29607
(864) 277-0102

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

Dickie Shults,

Plaintiff,

vs.

Angela G. Miller,

Defendant.

C.A. No.: 2011-CP-42-3951

ENTRY OF DEFAULT
AND SETTING CASE FOR A DAMAGES HEARING

IT APPEARING TO THIS CLERK that Defendant Angela G. Miller has failed to make an appearance, or file an Answer or other responsive pleading, and that the Defendant(s) have taken no action in response to the Summons and Complaint served on the Defendant(s), and it does not appear that the Defendant(s) are in the military, and;

IT FURTHER APPEARING TO THIS CLERK that an Affidavit of Counsel Supporting Motion for Entry of Default has been filed by the Plaintiff(s)' attorney Samuel D. Harms, Esq., indicating that he has not received any Notice of Appearance or other response from the Defendant(s) or Defendant(s)' representative since the service of the Summons and Complaint.

THEREFORE, AN ENTRY OF DEFAULT is hereby entered upon the calendar (file book) against Defendant Angela G. Miller in the above-captioned matter pursuant to Rule 55(a), SCRCP. A hearing to determine the amount of damages suffered by the Plaintiff(s) shall be conducted by a judge pursuant to Rule 55(b)(2), SCRCP.

DATE

10/20/11

CLERK of COURT

M. Hope Blackley
Pat Hester ex

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
Dickie Shults,)
Plaintiff,)
vs.)
Angela G. Miller,)
Defendant.)

IN THE COURT OF COMMON PLEAS
(Jury Trial Demanded)

**MOTION TO SET ASIDE
THE ENTRY OF DEFAULT**

C/A#: 2011-CP-42-3951

Defendant moves to set aside the entry of default pursuant to Rule 55(c), SCRPC, and permit Defendant to file the attached Answer. Defendant denies that she is at fault for the accident which is supported by the attached FR-10. Defendant will provide this Court with a brief and further support upon notice of a hearing.

THE WARD LAW FIRM, P.A.
Attorneys for Defendant



Robert E. Davis
233 South Pine Street
P. O. Box 5663
Spartanburg, South Carolina 29304
(864) 591-2369
(864) 585-3090 (facsimile)

October 26, 2011.

9	10/26/2011 11:11:47 AM [Central Daylight Time]	OHLEWAPP0719 774990756 03-09 CARRM8

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

(Jury Trial Demanded)

Dickie Shults,)
)
Plaintiff,)
)
vs.)
)
Angela G. Miller,)
)
Defendant.)
_____)

ANSWER TO COMPLAINT

C/A#: 2011-CP-42-3951

Defendant answering Plaintiff's Complaint admits that an accident occurred with Plaintiff but denies that Defendant is in any way liable to Plaintiff. Defendant denies all other allegations.

THE WARD LAW FIRM, P.A.
Attorneys for Defendant



Robert E. Davis
233 South Pine Street
P. O. Box 5663
Spartanburg, South Carolina 29304
(864) 591-2369
(864) 585-3090 (facsimile)

October 26, 2011.

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG)

(Jury Trial Demanded)

Dickie Shults,)

Plaintiff,)

CERTIFICATE OF SERVICE

vs.)

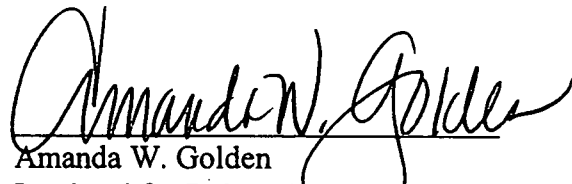
C/A#: 2011-CP-42-3951

Angela G. Miller,)

Defendant.)

The undersigned hereby certifies that Defendant's Motion to Set Aside the Entry of Default and Answer to Complaint was served upon the Plaintiff's attorneys of record on October 26, 2011, by depositing copies of the same via United States mail, postage affixed, to the following address:

Samuel D. Harms, III, Esquire
Harms Law Firm, PA
33 Market Point Drive
Greenville, SC 29607
Attorney for Plaintiff


Amanda W. Golden
Paralegal for Robert E. Davis

COPY

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

(Jury Trial Demanded)

Dickie Shults,)

Plaintiff,)

vs.)

Angela G. Miller,)

Defendant.)

AFFIDAVIT OF FRANK MILLER

C/A#: 2011-CP-42-3951

I, Frank Miller, state the following from my own personal knowledge:

1. On July 22, 2009, I, along with my three children, were riding in a vehicle operated by my wife, Angela Miller.

2. We were proceeding west on Hwy. 292 when a vehicle operated by Philip Seay suddenly pulled out in front of us.

3. My wife did not have an opportunity to take any evasive maneuvers to avoid the Seay vehicle.

4. The Seay vehicle disregarded a stop sign and entered into our lane of travel, where we had the right-of-way.

5. The Seay vehicle struck us on the passenger's side and knocked us across the centerline of 292 into a vehicle operated by Dickie Shults.

6. The sole cause of the accident was the actions of Philip Seay.

7. Philip Seay's insurance company paid our property damage.

8. Philip Seay's insurance company paid for the bodily injury claims for the occupants

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M. HOE BLACKLEY

of my vehicle.

11. Angela Miller did not cause or contribute to the subject accident or cause or contribute to any injuries or damages of Dickie Shults.

11/21, 2011.

Frank Miller
Frank Miller

SWORN to before me

this 21st day of November, 2011.

Madonna B. Comer
Notary Public for the State of South Carolina
My Commission Expires: 4/13/2020

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SPARTANBURG COUNTY
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STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
(Jury Trial Demanded)

Dickie Shults,)
Plaintiff,)
vs.)
Angela G. Miller,)
Defendant.)

AFFIDAVIT OF ANGELA MILLER

C/A#: 2011-CP-42-3951

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CLERK OF COURT
SPARTANBURG COUNTY
2011 NOV 29 AM 11:29
M. HOPE BLACKBERRY

I, Angela Miller, state the following from my own personal knowledge:

1. On July 22, 2009, I was driving a vehicle occupied by my husband and three children on Hwy. 292.
2. As I was traveling on Hwy. 292, a vehicle driven by Philip Seay disregarded a stop sign and pulled directly in front of my vehicle.
3. I did not have an opportunity to avoid Seay, and our vehicles collided.
4. The Seay vehicle hit the front passenger's side of my vehicle and pushed it across the centerline into a vehicle driven by Dickie Shults.
5. At the time of the accident, I was driving below the speed limit, and I did not contribute to the accident in any way.
6. At all times, I had the right-of-way in my lane on Hwy. 292.
7. The sole contributing cause to the accident was the actions of Philip Seay.
8. The accident was investigated by Trooper Mace, who only charged Philip Seay with contributing to the accident.

9. Philip Seay's insurance company paid for the property damage to my vehicle.
10. Philip Seay's insurance company paid for the bodily injury claims for the occupants of my vehicle.
11. I do not believe that I am in any way liable to Dickie Shults for any injuries or damages that he may claim out of the accident.
12. I fully intend on defending myself in this lawsuit.

11-21, 2011.

Angela Miller
Angela Miller

SWORN to before me

this 21st day of November, 2011.

Madonna B. Cromas
Notary Public for the State of South Carolina
My Commission Expires: 4/13/2020

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SPARTANBURG COUNTY
2011 NOV 29 AM 11:29
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
(Jury Trial Demanded)

Dickie Shults,)
))
Plaintiff,)
))
vs.)
))
Angela G. Miller,)
))
Defendant.)

AFFIDAVIT OF CHRIS MACE

C/A#: 2011-CP-42-3951

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SPARTANBURG COUNTY
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M. HOPE BLACKLEY

I, Chris Mace, state the following from my own personal knowledge:

1. I am a trooper with the South Carolina Highway Patrol.
2. On July 22, 2009, I investigated an automobile accident occurring between vehicles operated by Angela Miller, Dickie Shults, and Philip Seay.
3. As part of my investigation, I spoke with the drivers of all the vehicles.
4. All the drivers agreed that Angela Miller was proceeding west on Hwy. 292 and was traveling within the speed limit of 35 miles an hour.
5. Philip Seay disregarded a traffic controlled device and pulled into Angela Miller's lane of travel.
6. At all times, Angela Miller had the right-of-way in her lane of travel, and Philip Seay should have yielded the right-of-way to Angela Miller.
7. As a result of Philip Seay striking Angela Miller's vehicle, the Miller vehicle was pushed across the centerline into a vehicle operated by Dickie Shults.
8. The sole cause that contributed to the accident was Philip Seay.

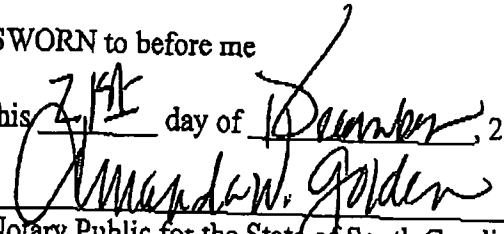
9. Angela Miller did not cause or contribute to the subject accident.
10. I completed the attached accident report based on my investigation and the information provided to me by the drivers of the vehicles.

12/21/2011, 2011.


Chris Mace

SWORN to before me

this 21st day of December, 2011.


Notary Public for the State of South Carolina

My Commission Expires: 12/29/2015

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SPARTANBURG COUNTY
2011 DEC 21 PM 3:51
M. HOPE BLACKLEY

South Carolina Farm Bureau

No. 639

COPY

Case No.		Date		Time		Location		Officer		Status	
09085200		2009		1800		24th		Miller		24th	
Z-006922		Miller		24th		24th		24th		24th	
Z-006923		Miller		24th		24th		24th		24th	
Z-006924		Miller		24th		24th		24th		24th	
Z-006925		Miller		24th		24th		24th		24th	
Z-006926		Miller		24th		24th		24th		24th	
Z-006927		Miller		24th		24th		24th		24th	
Z-006928		Miller		24th		24th		24th		24th	
Z-006929		Miller		24th		24th		24th		24th	
Z-006930		Miller		24th		24th		24th		24th	
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Z-006969		Miller		24th							

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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
(Jury Trial Demanded)

Dickie Shults,

Plaintiff,

vs.

Angela G. Miller,

Defendant.

**Defendant's Brief In Support of her
Motion to Set Aside Entry of Default**

C/A#: 2011-CP-42-3951

Defendant moves to set aside the entry of default pursuant to Rule 55(c), SCRCP, and permit Defendant to file the Answer that was served within days of when it was due. Defendant simply is not at fault for this accident and should be permitted to defend herself. Plaintiff currently has a another suit pending against the at-fault driver and would not suffer any prejudice. Accordingly, this Court should grant Defendant relief from the entry of default in favor of a trial on the merits.

Facts

On July 22, 2009, Miller, her husband, and their three children were traveling on Highway 292 when a vehicle driven by Philip Seay disregarded a stop sign and pulled directly in front of Miller's vehicle. Seay struck the front passenger's side of the Millers' vehicle and pushed it across the centerline into a vehicle driven by Plaintiff. Miller and her husband have signed the attached affidavits indicating that Miller was not at fault for the accident and expressing their desire to defend themselves in this case.

The accident was investigated by Trooper Chris Mace. Mace signed the attached affidavit indicating that Miller had the right-of-way when Seay disregarded the stop sign. Seay's actions were

the sole cause that contributed to the accident. Miller did not cause or contribute to the subject accident.

Seay's insurance company paid for the property damage to Miller's vehicle. Seay's insurance company paid for the bodily injury claims for the occupants of the Miller vehicle.

Plaintiff filed suit against Seay for this accident (CA # 2011CP4203081). Plaintiff also filed suit against Miller in a separate action. Miller answered within three days of when her Answer was due and filed this motion. Plaintiff has served Miller with interrogatories and requests to produce. Although Miller served Plaintiff with interrogatories and requests to produce, Plaintiff has not responded.

Argument

Miller can establish "good cause" for relief from the entry of default under Rule 55(c), SCRCP.

This standard requires a party seeking relief from an entry of default under Rule 55(c) to provide an explanation for the default and give reasons why vacation of the default entry 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 Operating Co. v. Intedege Indus. Inc., 383 S.C. 601, 607-08, 681 S.E.2d 885, 888 (2009).

The "good cause" standard for relief under Rule 55(c) "is liberally construed to promote justice and dispose of cases on the merits." Dixon v. Besco Eng'g Inc., 320 S.C. 174, 178, 463 S.E.2d 636, 638 (Ct. App. 1995). "Relief granted at this point is within the equitable power of the court and excuses the previous failure to act promptly. In most instances, the opposing party suffers little or no prejudice because there is no detrimental reliance on the entry of default." James F.

Flannagan, South Carolina Civil Procedure 440 (2d ed. 1996). Although relief is based on the discretion of the lower court, "this element of discretion given to the trial judge makes it clear the party requesting a judgment by default is not entitled to one as of right, even when the defendant is technically in default." Ricks v. Weinrauch, 293 S.C. 372, 375, 360 S.E.2d 535, 536 (Ct. App. 1987); "Under modern procedure, defaults are not favored by the law and any doubts usually will be resolved in favor of the defaulting party. The reason for this attitude is that contemporary procedural philosophy encourages trials on the merits." 10A Wright, Miller & Kane, Federal Practice & Procedure: Civil 3d § 2681 p. 10 (1998).

Applying the liberal "good cause" standard, the timing of Miller's response justifies relief. Miller attempted to defend herself but there was some confusion due to recent change in her insurance and because Seay's insurer paid all of Miller's claims. Miller, however, was able to serve an Answer within just three days of when it was due.¹ Miller, therefore, acted promptly in responding this case.

Without question, Miller has a meritorious defense to this case. The only evidence before this Court is that Seay is the sole cause of the accident by disregarding the stop sign and pulling in front of Miller. Trooper Mace, who investigated the accident, confirmed that Miller had the right-of-way and that only Seay was at fault. Plaintiff undeniably knows that Seay is at fault because he has sued him. Miller should be permitted to present this defense to a jury in a full trial.

Plaintiff would not suffer any prejudice by having to proceed to a trial on the merits. As indicated above, Plaintiff has sued the at-fault party, Seay. Allowing Miller to defend herself in no

¹ Miller's Answer was due on October 17, 2011, and she served an Answer and this Motion for Relief on October 20, 2011.

way interferes with Plaintiff's right to recover against Seay. In fact, permitting Miller to answer promotes justice and ensures there cannot be an inconsistent or absurd verdict. Accordingly, Professor Flannagan was right in this case when he said, "the opposing party suffers little or no prejudice because there is no detrimental reliance on the entry of default." James F. Flannagan, South Carolina Civil Procedure 440 (2d.ed. 1996).

Conclusion

For the reasons set forth above, this Court should set aside the entry of default and permit this case to be tried on the merits.

THE WARD LAW FIRM, P.A.
Attorneys for Defendant Miller



Robert E. Davis
233 South Pine Street
P.O. Box 5663
Spartanburg, South Carolina 29304
(864) 591-2369
(864) 585-3090 (facsimile)

December 30, 2011.

COPY

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG)

(Jury Trial Demanded)

Dickie Shults,)

Plaintiff,)

AFFIDAVIT OF ANGELA MILLER

vs.)

C/A#: 2011-CP-42-3951

Angela G. Miller,)

Defendant.)

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SPARTANBURG COUNTY
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M. HOPE BLACKBERRY

I, Angela Miller, state the following from my own personal knowledge:

1. On July 22, 2009, I was driving a vehicle occupied by my husband and three children on Hwy. 292.
2. As I was traveling on Hwy. 292, a vehicle driven by Philip Seay disregarded a stop sign and pulled directly in front of my vehicle.
3. I did not have an opportunity to avoid Seay, and our vehicles collided.
4. The Seay vehicle hit the front passenger's side of my vehicle and pushed it across the centerline into a vehicle driven by Dickie Shults.
5. At the time of the accident, I was driving below the speed limit, and I did not contribute to the accident in any way.
6. At all times, I had the right-of-way in my lane on Hwy. 292.
7. The sole contributing cause to the accident was the actions of Philip Seay.
8. The accident was investigated by Trooper Mace, who only charged Philip Seay with contributing to the accident.

9. Philip Seay's insurance company paid for the property damage to my vehicle.
10. Philip Seay's insurance company paid for the bodily injury claims for the occupants of my vehicle.
11. I do not believe that I am in any way liable to Dickie Shults for any injuries or damages that he may claim out of the accident.
12. I fully intend on defending myself in this lawsuit.

11-21, 2011.

Angela Miller
Angela Miller

SWORN to before me

this 21st day of November, 2011.

Madonna B. Cromer
Notary Public for the State of South Carolina
My Commission Expires: 4/13/2020

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SPARTANBURG COUNTY
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M. HOPE BLACKLEY

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STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG)

(Jury Trial Demanded)

Dickie Shults,)

Plaintiff,)

AFFIDAVIT OF FRANK MILLER

vs.)

C/A#: 2011-CP-42-3951

Angela G. Miller,)

Defendant.)

I, Frank Miller, state the following from my own personal knowledge:

1. On July 22, 2009, I, along with my three children, were riding in a vehicle operated by my wife, Angela Miller.

2. We were proceeding west on Hwy. 292 when a vehicle operated by Philip Seay suddenly pulled out in front of us.

3. My wife did not have an opportunity to take any evasive maneuvers to avoid the Seay vehicle.

4. The Seay vehicle disregarded a stop sign and entered into our lane of travel, where we had the right-of-way.

5. The Seay vehicle struck us on the passenger's side and knocked us across the centerline of 292 into a vehicle operated by Dickie Shults.

6. The sole cause of the accident was the actions of Philip Seay.

7. Philip Seay's insurance company paid our property damage.

8. Philip Seay's insurance company paid for the bodily injury claims for the occupants

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SPARTANBURG COUNTY
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M. HOE BLACKBERRY

of my vehicle.

11. Angela Miller did not cause or contribute to the subject accident or cause or contribute to any injuries or damages of Dickie Shults.

11/21, 2011.

Frank Miller
Frank Miller

SWORN to before me

this 21ST day of November, 2011.

Madonna B. Comer
Notary Public for the State of South Carolina
My Commission Expires: 4/13/2020

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CLERK OF COURT
HARTSFORD COUNTY
2011 NOV 29 AM 11:29
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
(Jury Trial Demanded)

Dickie Shults,)

Plaintiff,)

vs.)

Angela G. Miller,)

Defendant.)

AFFIDAVIT OF CHRIS MACE

C/A#: 2011-CP-42-3951

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CLERK OF COURT
SPARTANBURG COUNTY
2011 DEC 21 PM 3:57
M. HOPE BLACKLEY

I, Chris Mace, state the following from my own personal knowledge:

1. I am a trooper with the South Carolina Highway Patrol.
2. On July 22, 2009, I investigated an automobile accident occurring between vehicles operated by Angela Miller, Dickie Shults, and Philip Seay.
3. As part of my investigation, I spoke with the drivers of all the vehicles.
4. All the drivers agreed that Angela Miller was proceeding west on Hwy. 292 and was traveling within the speed limit of 35 miles an hour.
5. Philip Seay disregarded a traffic controlled device and pulled into Angela Miller's lane of travel.
6. At all times, Angela Miller had the right-of-way in her lane of travel, and Philip Seay should have yielded the right-of-way to Angela Miller.
7. As a result of Philip Seay striking Angela Miller's vehicle, the Miller vehicle was pushed across the centerline into a vehicle operated by Dickie Shults.
8. The sole cause that contributed to the accident was Philip Seay.

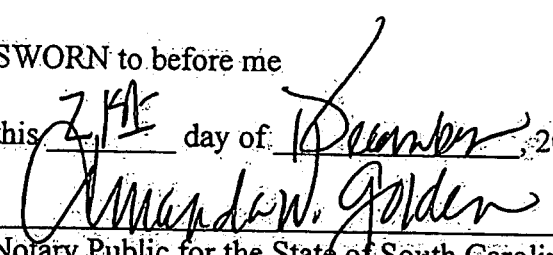
9. Angela Miller did not cause or contribute to the subject accident.
10. I completed the attached accident report based on my investigation and the information provided to me by the drivers of the vehicles.

12/21/2011, 2011.


Chris Mace

SWORN to before me

this 21st day of December, 2011.


Notary Public for the State of South Carolina

My Commission Expires: 12/29/2015

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 DEC 21 PM 3:51
M. HOPE BLACKLEY

South Carolina Farm Bureau

No. 639

COPY

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FILED
CLERK OF COURT
CLATSOP COUNTY

RECEIVED AUG 27 2009

APPENDIX 46

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

Dickie Shults,

Plaintiff,

vs.

Angela G. Miller,

Defendant.

C.A. No.: 2011-CP-42-3951

**MOTION TO RECONSIDER,
ALTER OR AMEND THE ORDER
SETTING ASIDE ENTRY OF DEFAULT**

YOU WILL PLEASE TAKE NOTICE that the plaintiff(s) hereby make a motion and will be heard before the presiding judge of the Court of Common Pleas at the above referenced County Courthouse on the 10th day after service hereof or as soon thereafter as counsel may be heard for an Order reconsidering, altering or amending the Court's Order Setting Aside Entry of Default filed July 11, 2012. Counsel for the Plaintiff received notice of the entry of the Order on July 16, 2012.

This Motion is made pursuant to Rule 59, SCRCP and other applicable rules, the S.C. Code, and the case law of the State of South Carolina.

Counsel affirms that he has consulted with opposing counsel prior to the filing of this motion and has attempted in good faith to resolve the matter contained in the motion, or that consultation is not required under the SCRCP, that consultation would serve no useful purpose, or could not be timely held.

HARMS LAW FIRM, PA

July 18, 2012

By: 

Samuel D. Harms, III, Esq.
SC Bar Number: 13537
33 Market Point Drive
Greenville, SC 29607
(864) 277-0102

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2012 JUL 20 PM 2:10
M. J. BLACKLEY

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

Dickie Shults,

Plaintiff,

vs.

Angela G. Miller,

Defendant.

C.A. No.: 2011-CP-42-3951

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I have either hand delivered or electronically delivered or mailed, postage prepaid, a copy of the pleading(s), motion, proposed order, or other papers listed below to the party shown below on July 18, 2012.

PAPER(S):

Motion to Reconsider, Alter or Amend the Order Setting Aside Entry of Default

PARTY(IES) / ATTORNEY(S) SERVED:

Robert E. Davis
The Ward Law Firm, P.A.
P.O. Box 5663
Spartanburg, SC 29304

HARMS LAW FIRM, P.A.

July 18, 2012

By


33 Market Point Drive
Greenville, SC 29607
(864) 277-0102

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2012 JUL 20 PM 2:11
M. HOPE ALACHLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

(Jury Trial Demanded)

Dickie Shults,)
Plaintiff,)

**DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT**

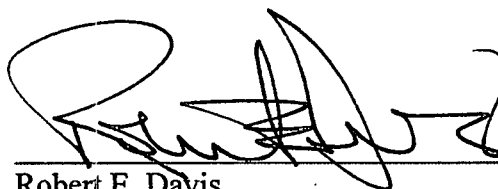
vs.)

C/A#: 2011-CP-42-3951

Angela G. Miller,)
Defendant.)

Defendant moves for summary judgment pursuant to Rule 56, SCRPC, on the grounds that Plaintiff cannot establish that Defendant breached any duty that caused or contributed to Plaintiff's alleged injuries. Defendant references previous Affidavits filed with this Court along with transcripts of the parties' depositions.

THE WARD LAW FIRM, P.A.
Attorneys for Defendant



Robert E. Davis
233 South Pine Street
P. O. Box 5663
Spartanburg, South Carolina 29304
(864) 591-2369
(864) 585-3090 (facsimile)

10/31, 2012.

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG)

(Jury Trial Demanded)

Dickie Shults,)

Plaintiff,)

vs.)

Angela G. Miller,)

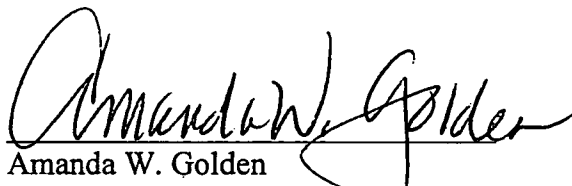
Defendant.)

CERTIFICATE OF SERVICE

C/A#: 2011-CP-42-3951

The undersigned hereby certifies that Defendant's Motion for Summary Judgment was served upon the attorneys of record on October 31, 2012, by depositing copies of the same via United States mail, postage affixed, to the following address:

Samuel D. Harms, III, Esquire
Harms Law Firm, PA
33 Market Point Drive
Greenville, SC 29607
Attorney for Plaintiff


Amanda W. Golden
Paralegal for Robert E. Davis

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	(Jury Trial Demanded)
	)	
Dickie Shults,	)	
	)	
Plaintiff,	)	DEFENDANT'S BRIEF IN SUPPORT OF
	)	MOTION FOR SUMMARY JUDGMENT
	)	
vs.	)	
	)	C/A#: 2011-CP-42-3951
Angela G. Miller,	)	
	)	
Defendant.	)	
	)	

Angela Miller moves for summary judgment pursuant to Rule 56, SCRCPP, on the grounds that Plaintiff cannot establish that Miller breached any duty that caused or contributed to Plaintiff's alleged injuries. Miller simply is not at fault for this accident, and Plaintiff cannot present any evidence otherwise. Accordingly, this Court should grant Miller judgment as a matter of law.

Factual History

On July 22, 2009, Miller, her husband, and their three children were traveling on Highway 292 when a vehicle driven by Philip Seay disregarded a stop sign from a side street and pulled directly in front of Miller's vehicle. Seay struck the front passenger's side of Miller's vehicle in Miller's lane of travel and pushed it across the centerline into a vehicle driven by Plaintiff.

The accident was investigated by Trooper Chris Mace. Mace signed the attached affidavit indicating that Miller had the right-of-way when Seay disregarded the stop sign. Based on his conversations with the parties involved, Mace determined that Seay's actions were the sole cause that contributed to the accident. Everyone admitted that Miller did not cause or contribute to the subject accident.

Plaintiff has given a deposition in this case. Plaintiff admits that Miller had the right-of-way on Highway 292 (Shults depo. p. 48.) He knows that Seay pulled out in front of Miller when she had the right-of-way. Id. He could not offer any testimony against Miller.

Procedural History

Plaintiff filed a separate suit against Seay. Plaintiff has settled all claims with Seay including underinsured claims.

Seay's insurance company paid for the property damage to Miller's vehicle. Seay's insurance company paid for the bodily injury claims for the occupants of the Miller vehicle.

Plaintiff filed this action against Miller. Miller moves for summary judgment.

Standard of Review

"[T]he plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). The "obligation of the nonmoving party 'is particularly strong when the nonmoving party bears the burden of proof.'" Hughes v. Bedsole, 48 F.3d 1376, 1381 (4th Cir.1995) (quoting Pachaly v. City of Lynchburg, 897 F.2d 723, 725 (4th Cir.1990)). Summary judgment is not "a disfavored procedural shortcut," but an important mechanism for weeding out "claims and defenses [that] have no factual basis." Celotex, 477 U.S. at 327, 106 S.Ct. 2548.

Argument

Miller is entitled to judgment as a matter of law because Plaintiff cannot present any evidence that she was negligent.

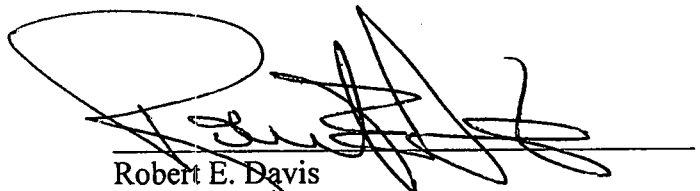
To succeed in a negligence cause of action, the plaintiff must establish (1) the defendant owed a duty of care to the plaintiff; (2) the defendant breached the duty by a negligent act or omission; (3) the defendant's breach was the actual and proximate cause of the plaintiff's injury; and (4) the plaintiff suffered an injury or damages. Moore v. Weinberg, 373 S.C. 209, 220-21, 644 S.E.2d 740, 746 (Ct. App. 2007).

In this case, Plaintiff cannot present any evidence that Miller breached any duty. In fact, all the evidence establishes that Miller did not breach any duty and was not the cause of the accident.¹ Without any evidence that Miller caused this accident, Miller is entitled to summary judgment. Kase v. Ebert, 392 S.C. 57, 707 S.E.2d 456 (Ct. App. 2011).

Conclusion

For the reasons set forth above, this Court should grant Miller's motion for summary judgment.

THE WARD LAW FIRM, P.A.
Attorneys for Defendant



Robert E. Davis
233 South Pine Street
P. O. Box 5663
Spartanburg, South Carolina 29304
(864) 591-2369
(864) 585-3090 (facsimile)

1/30, 2013.

¹ Plaintiff has already recovered from the at-fault party, Seay.

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

(Jury Trial Demanded)

Dickie Shults,)

Plaintiff,)

vs.)

Angela G. Miller,)

Defendant.)

AFFIDAVIT OF CHRIS MACE

C/A#: 2011-CP-42-3951

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 DEC 21 PM 3:57
M. HOPE BLACKLEY

I, Chris Mace, state the following from my own personal knowledge:

1. I am a trooper with the South Carolina Highway Patrol.
2. On July 22, 2009, I investigated an automobile accident occurring between vehicles operated by Angela Miller, Dickie Shults, and Philip Seay.
3. As part of my investigation, I spoke with the drivers of all the vehicles.
4. All the drivers agreed that Angela Miller was proceeding west on Hwy. 292 and was traveling within the speed limit of 35 miles an hour.
5. Philip Seay disregarded a traffic controlled device and pulled into Angela Miller's lane of travel.
6. At all times, Angela Miller had the right-of-way in her lane of travel, and Philip Seay should have yielded the right-of-way to Angela Miller.
7. As a result of Philip Seay striking Angela Miller's vehicle, the Miller vehicle was pushed across the centerline into a vehicle operated by Dickie Shults.
8. The sole cause that contributed to the accident was Philip Seay.

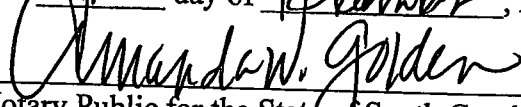
9. Angela Miller did not cause or contribute to the subject accident.
10. I completed the attached accident report based on my investigation and the information provided to me by the drivers of the vehicles.

12/21/2011, 2011.


Chris Mace

SWORN to before me

this 21st day of December, 2011.


Notary Public for the State of South Carolina
My Commission Expires: 12/29/2015

FILED
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SPARTANBURG COUNTY
2011 DEC 21 PM 3:51
M. HOPE BLACKLEY

No. 6391

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FILED
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CLATSOP COUNTY

RECEIVED AUG 27 2009

~~CONFIDENTIAL~~ APPENDIX 56

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

C.A. NO. 2012-CP-42-3951

Dickie Shults,

Plaintiff,

vs.

Angela G. Miller,

Defendant.



Deposition of **DICKIE SHULTS**

Pursuant to notice of deposition and/or agreement in the above-entitled case, a deposition was taken on the 29th day of October, 2012 commencing at approximately 9:50 a.m. attended by counsel as follows:

- 1 Q. It's got her going down Highway 292; correct?
- 2 A. Yes, sir.
- 3 Q. And she would have the right-of-way on 292 wouldn't
- 4 she?
- 5 A. Yes, sir.
- 6 Q. Mr. Seay would have -- if he was going to pull onto
- 7 to 292 he would have to yield the right-of-way to
- 8 Ms. Miller; correct?
- 9 A. Yes, sir.
- 10 Q. All right, thank you, sir. Did you go to any court
- 11 proceedings or anything for any tickets that were
- 12 given?
- 13 A. No.
- 14 Q. Do you know what fire department came out there?
- 15 A. I would think it would've been Boiling Springs or
- 16 either New Prospect, I'm not sure.
- 17 Q. Did anybody take any photographs of the vehicles or
- 18 anything while they were out there?
- 19 A. I don't know.
- 20 Q. Did you ever take any photographs?
- 21 A. No.
- 22 Q. Did you make any complaint of injury to the police
- 23 officer?
- 24 A. No, sir.
- 25 Q. You said an ambulance came. Did anybody leave in an

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

Dickie Shults,

Plaintiff,

vs.

Angela G. Miller,

Defendant.

C.A. No.: 2011-CP-42-3951

**MOTION TO RECONSIDER,
ALTER OR AMEND THE ORDER
GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

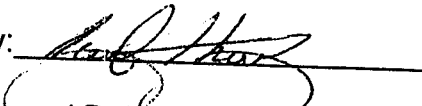
YOU WILL PLEASE TAKE NOTICE that the plaintiff(s) hereby make a motion and will be heard before the presiding judge of the Court of Common Pleas at the above referenced County Courthouse on the 10th day after service hereof or as soon thereafter as counsel may be heard for an Order reconsidering, altering or amending the Court's Order Granting the Defendant's Motion for Summary Judgment filed March 18, 2013. Counsel for the Plaintiff received notice of the entry of the Order on March 21, 2013.

This Motion is made pursuant to Rule 59, SCRCP and other applicable rules, the S.C. Code, and the case law of the State of South Carolina.

Counsel affirms that he has consulted with opposing counsel prior to the filing of this motion and has attempted in good faith to resolve the matter contained in the motion, or that consultation is not required under the SCRCP, or that consultation would serve no useful purpose, or could not be timely held.

HARMS LAW FIRM, P.A.

March 22, 2013

By: 

Samuel D. Harms, III, Esq.
SC Bar Number: 13537
33 Market Point Drive
Greenville, SC 29607
(864) 277-0102

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 MAR 25 AM 10:07
AS PROPOSED
ACKLEY

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

Dickie Shults,

Plaintiff,

vs.

Angela G. Miller,

Defendant.

C.A. No.: 2011-CP-42-3951

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I have either hand delivered or electronically delivered or mailed, postage prepaid, a copy of the pleading(s), motion, proposed order, or other papers listed below to the party shown below on March 22, 2013.

PAPER(S):

Motion to Reconsider, Alter or Amend the Order Granting Defendant's Motion for Summary Judgment

PARTY(IES) / ATTORNEY(S) SERVED:

Judge J. Derham Cole
Spartanburg County Courthouse
180 Magnolia Street
Spartanburg, SC 29306

Robert E. Davis
The Ward Law Firm, P.A.
P.O. Box 5663
Spartanburg, SC 29304

HARMS LAW FIRM, P.A.

March 22, 2013

By: 

33 Market Point Drive
Greenville, SC 29607
(864) 277-0102

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 MAR 25 AM 10:07
M. HOPE BLACKLEY

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Case No. 2011-CP-42-3951

RECEIVED

FEB 23 2015

SC Court of Appeals

Dickie Shults, ...Appellant,

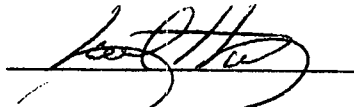
v.

Angela G. Miller, ...Respondent.

NOTICE OF APPEAL

Dickie Shults appeals the final judgment of the Honorable J. Derham Cole dated January 26, 2015 and filed January 27, 2015. Appellant received written notice of entry of this judgment on February 2, 2015. Appellant also appeals the Order Setting Aside Entry of Default filed July 11, 2012 and the Order denying the Plaintiff's motion to reconsider, and granting the Defendant's motion for summary judgment, filed on March 18, 2013.

February 20, 2015


Samuel D. Harms
Harms Law Firm, P.A.
33 Market Point Drive
Greenville, SC 29607
(864) 277-0102
Attorney for Appellant

Other Counsel of Record:

Robert E. Davis, Esq.
The Ward Law Firm, P.A.
P.O. Box 5663
Spartanburg, SC 29304
(864) 591-2369
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Case No. 2011-CP-42-3951

RECEIVED
FEB 23 2015
SC Court of Appeals

Dickie Shults, ...Appellant,

v.

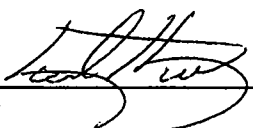
Angela G. Miller, ...Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Angela G. Miller by depositing a copy of it in the United States Mail, postage prepaid, on February 20, 2015, addressed to her attorney of record:

Robert E. Davis, Esq.
The Ward Law Firm, P.A.
P.O. Box 5663
Spartanburg, SC 29304

February 20, 2015



Samuel D. Harms
Harms Law Firm, P.A.
33 Market Point Drive
Greenville, SC 29607
(864) 277-0102
Attorney for Appellant

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COMMON PLEAS COURT
3
4 Dickie Shults,)
5 Plaintiff,) TRANSCRIPT OF RECORD
6 -vs-) 2011-CP-42-3951
7 Angela G. Miller,)
8 Defendant.) January 3, 2012
9 Spartanburg, South Carolina
10
11

12 B E F O R E:

13 HONORABLE J. DERHAM COLE, JUDGE
14
15

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

17 SAMUEL DARRYL HARMS, ESQUIRE
18 Attorney for the Plaintiff

19 ROBERT ERIC DAVIS, ESQUIRE
20 Attorney for the Defendant
21
22
23

24 Linda D. Moffitt
25 Circuit Court Reporter

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INDEX

Motions -- page 3.

No sworn testimony; no exhibits entered into evidence.

1 THE COURT: This is Shults vs. Miller.

2 MR. DAVIS: Yes, sir, Your Honor.

3 THE COURT: And, Mr. Davis, you represent the
4 defendants?

5 MR. DAVIS: Yes, sir.

6 THE COURT: Mr. Harms, you represent the plaintiff?

7 MR. HARMS: Yes, Your Honor.

8 THE COURT: This is the defendant's motion to set
9 aside the entry of default?

10 MR. DAVIS: That's correct, Your Honor.

11 THE COURT: All right. Mr. Davis.

12 MR. DAVIS: May it please the Court, Your Honor.

13 Robbie Davis. I'm here on behalf of Angela Miller on our
14 motion to set aside the entry of default.

15 Originally there was also a default damages hearing
16 that had been scheduled by the plaintiff. My understanding
17 is that they have withdrawn that with leave to potentially
18 refile that at a later date. So therefore we've asked the
19 Court to go ahead and hear this motion for -- to set aside
20 the entry of default.

21 I previously sent Your Honor and opposing counsel last
22 week a brief in support of this motion. If I may approach,
23 Your Honor, I'll hand up the original copy.

24 Your Honor, this case involves an automobile accident
25 that occurred on July the 22nd of 2009. The basis of this

1 motion to set aside the entry of default is the defendant
2 in this case is simply not at fault for this accident.

3 In support of the motion I've attached three
4 affidavits in the back of the motion -- the affidavit of my
5 client, Angela Miller; the affidavit of her passenger,
6 Frank Miller; and the affidavit of the highway patrolman
7 that investigated the accident, Chris Minx.

8 All three affidavits state that my client was not at
9 fault for the accident, that at all times she had the
10 right-of-way and was -- the accident was caused by the sole
11 negligence of a Phillip Michael Seay.

12 The evidence and the affidavits as attached indicate
13 that my client had the right-of-way and was proceeding on
14 Highway 292 when Mr. Seay disregarded a stop sign and
15 pulled into the path and hit my client's vehicle. When he
16 hit my client's vehicle it was pushed into another vehicle
17 that was operated by the plaintiff in this case, Mr. Dickie
18 Schults.

19 Mr. Schults has filed suit against Mr. Seay in a
20 separate cause of action that's currently pending in this
21 court, and has also filed suit against my client, Ms.
22 Miller.

23 They served my client with interrogatories and
24 requests to produce. We've responded to discovery. We
25 have served discovery upon the plaintiff but have not

1 received any responses back from them.

2 The issue in this case is simply can we establish good
3 cause to set aside the entry of default. And the standard
4 that is set forth in my brief is that good cause according
5 to our Supreme Court and the Court of Appeals is to be
6 liberally construed to promote justice and to dispose of
7 cases on the merits.

8 It states that in most cases the opposing parties
9 suffers no prejudice and that a plaintiff is not entitled
10 to default as a matter of right.

11 In fact, cases in this state, as across this country,
12 are encouraged to be decided by trials on the merits, and
13 that's what we're asking for in this case.

14 There was some confusion when the suit was initially
15 served on my client because prior to the suit being served
16 the at-fault party who the plaintiff has sued already, Mr.
17 Seay -- his insurance had paid the property damage and
18 injury claims of my client.

19 She had in the interim between the time of the
20 accident and the time suit was filed -- had had a different
21 insurance company name. And although she handed the stuff
22 in, there was some confusion because in her mind as well as
23 others about the -- who was going to be responsible for
24 this given that the at-fault party who the plaintiff has
25 sued has already satisfied all of her damages.

1 In never -- in any event, we were able to file an
2 answer within two or three days of when it was due. The
3 suit was filed in September -- I believe September 15th.
4 Our answer was due on October 17th, and our answer was
5 filed on October 20.

6 So looking at the Sundown standards for relief of
7 entry of default the timing of the motion for relief is the
8 first issue. And we have answer filed within just a few
9 days of when it was due.

10 The next issue is do we have a meritorious defense,
11 and we certainly do, Your Honor, as set forth in the
12 affidavits and as set forth in the evidence before this
13 Court.

14 My client was involved, and she is here. She's ready,
15 willing, able, wants to defend herself, the allegations
16 that are pending against her. Although we haven't received
17 any discovery responses, the plaintiff's indicated that
18 there's substantial claims against her, that she wants to
19 defend this. And so we are able to show not only that the
20 timing was done very quickly, that we have a meritorious
21 defense as not only her affidavit says but also the trooper
22 who investigated the accident.

23 And the only issue that we need to address is
24 prejudice, does the plaintiff suffer any prejudice as a
25 result of my client defending himself. And the answer to

1 that is absolutely not.

2 Professor Flanagan in his treatise on South Carolina
3 Rules of Civil Procedure states that in most cases an
4 opposing party suffers little or no prejudice because
5 there's no detrimental reliance on an entry of default.

6 There is no prejudice in this case, Your Honor,
7 because the plaintiff has sued the at-fault party and has a
8 separate suit pending against the at-fault party and can
9 receive full judgment against the at-fault party.

10 Failure to let us out could potentially lead to
11 inconsistent verdicts. And what we need to do in this case
12 is just have a, a complete trial on the merits, Your Honor.

13 We're not asking for anything other than to be allowed
14 to file the answer to defend the case, to participate in
15 discovery as the plaintiff has already participated with us
16 by serving us discovery that we responded to and to, to, to
17 get relief from the entry of default. Thank you, Your
18 Honor.

19 THE COURT: Mr. Harms.

20 MR. HARMS: Your Honor, the primary and first issue in
21 this case is whether or not there is good cause to allow
22 the defendant to be relieved from the entry of default.

23 I'd like to hand up to you the case decided on
24 November 9th of 2011, just two months ago, in the case of
25 Wilder vs. Blue Ribbon Taxicab Corporation. The appeal

1 number is 4910, which I think fairly lays out what the
2 current law is at this time since the case is only two
3 months old.

4 Your Honor, if you move to the highlighted portion on
5 the second page, it's highlighted on all of the copies. It
6 said regarding the Rule 55(c), a good cause definition,
7 says, quote, "This standard requires a party seeking relief
8 from an entry of default to provide an explanation for the
9 default and give reasons why vacation of the default entry
10 would serve the interests of justice." And then it quotes
11 the Sundown Operating case.

12 It goes on to say, quote, "Once a party has put forth
13 a satisfactory explanation the court must consider the
14 following Wham factors."

15 Your Honor, it's clear that the party seeking relief
16 from the entry of default must provide an explanation for
17 the default and why it would serve the interest of justice
18 for the vacation to occur.

19 It also makes it clear that there must be a
20 satisfactory explanation as to why the party did not
21 answer.

22 In this case there has been explanation at all. No
23 attorney was hired prior to the entry of default. Mr. Rob
24 Davis and the Ward Law Firm were hired after the entry of
25 the default.

1 This Court has been provided literally no guidance, no
2 explanation as to why Angela Miller did not answer the
3 complaint filed and served against her. And for that
4 reason we would ask that their motion be denied.

5 As far as the getting to the substance of the three
6 elements that you get to once an explanation has been
7 provided, as far as the timing of the motion for relief
8 according to my records we have slightly different dates
9 than he does by just a couple of days.

10 I have down that the motion to set aside the entry of
11 default occurred on October 26, 2011. I think he had
12 mentioned October the 20th. It's only a difference of six
13 days. Whether or not that's important to you -- I could be
14 wrong, but I'll stand corrected. You have all the
15 documents filed with the clerk, and they will be able to
16 give the clear date. I just wanted to point that out.

17 Whether the defendant has a meritorious defense, they
18 did file three affidavits regarding that issue, and that's
19 for you to decide.

20 And then the degree of prejudice to the plaintiff is
21 relief is granted, I would just simply point out that the
22 prejudice to the plaintiff would be prejudicial in this
23 case.

24 We did not ask for a jury trial. We asked for a trial
25 by -- a bench trial. If the answer is allowed to be filed,

1 the defendants filed for a request for a jury trial, that
2 would actually change the mode of operation or the mode of
3 -- the mode of operation as to how the damages would be
4 determined. And that would certainly be a significant
5 change to go from a bench trial to a jury trial. So we
6 think that that's what the prejudice is.

7 Ultimately, Your Honor, we don't think you ever get to
8 the three Wham factors because there is no explanation for
9 why she is in default. So you never even have to reach
10 those issues. Thank you, Your Honor.

11 THE COURT: All right. Mr. Davis.

12 MR. DAVIS: Your Honor, addressing the points raised
13 by Mr. Harms, is this: As I've pointed out to the Court,
14 the reason for the delay in this case was simply due to --
15 Ms. Miller was not at fault in this accident. She was not
16 charged with the accident. She had the right-of-way. And
17 all her damages have been paid for by someone else, by the
18 at-fault party that the plaintiff has already sued.

19 She misunderstood, but she did hand over her paper
20 that was -- to an insurance company. There was a change in
21 the actual companies that took place. But the confusion
22 led to this answer being filed a few days late.

23 This is the exact type situation where relief should
24 be granted looking at the three factors in the
25 Wham-Sundown, however you want to describe it, we can

1 satisfy all three.

2 The -- their prejudice of having to try a case before
3 a jury as opposed to before Your Honor or another judge is
4 not a prejudice that they're talking about in this type of
5 decision.

6 The prejudice they're talking about in these elements
7 are inability to assert a claim that could otherwise --
8 would have been asserted but for the entry of default. In
9 this case he can assert whatever he wants and has asserted
10 not only against my client but the at-fault party.

11 We believe that in the interest of justice that there
12 should be a full trial on the merits. We believe that this
13 is the exact type of case in which relief from entry should
14 be -- good cause for relief entry of default should be
15 granted. And we believe that applying these standards that
16 we should be allowed to defend ourselves. Thank you, Your
17 Honor.

18 THE COURT: All right. I'll review the affidavits
19 which have been submitted and issue an order.

20 MR. DAVIS: Thank you, Your Honor.

21 MR. HARMS: Thank you, Your Honor.

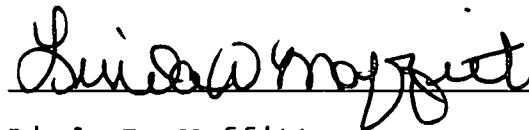
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Common Pleas Court for Spartanburg County, South Carolina, on the 3rd day of January 2012.

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

April 16, 2012



Linda D. Moffitt
Circuit Court Reporter

1 STATE OF SOUTH CAROLINA }
2 COUNTY OF SPARTANBURG } IN THE COMMON PLEAS COURT
3
4 Dickie Shults, }
5 Plaintiff, } TRANSCRIPT OF RECORD
6 -vs- } 2011-CP-42-3951
7 Angela G. Miller, }
8 Defendant. } February 7, 2013
9 } Spartanburg, South Carolina
10
11

12 B E F O R E :

13 HONORABLE J. DERHAM COLE, JUDGE
14
15

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

17 SAMUEL DARRYL HARMS, ESQUIRE
18 Attorney for the Plaintiff

19 ROBERT ERIC DAVIS, ESQUIRE
20 Attorney for the Defendant
21
22
23

24 Linda D. Moffitt
25 Circuit Court Reporter

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INDEX

Motions -- page 3.

No sworn testimony; no exhibits entered into evidence.

1 THE COURT: This is your motion for reconsideration.

2 MR. HARMS: This is my motion to reconsider your order
3 setting aside the entry of default that was issued in July
4 of 2012.

5 THE COURT: Okay.

6 MR. HARMS: Your Honor, if I could hand up to the
7 Court, I have the order setting aside the entry of default
8 for reference.

9 THE COURT: I've got a copy.

10 MR. HARMS: You've got it.

11 THE COURT: I've got the original.

12 MR. HARMS: All right. And then since the original
13 motion hearing we have taken the deposition of the
14 defendant, Angela Miller. I'm submitting that --
15 submitting that.

16 Your Honor, on our motion for -- to reconsider we have
17 two primary arguments.

18 First the argument is that as we have previously
19 argued to the Court under a motion to set aside the entry
20 of default under rule 55(c) the defendant must show good
21 cause as to why entry of default should be vacated.

22 And in this case we had argued that the defendant did
23 not have any good cause in that -- in actually oral
24 argument roughly a year ago I had pointed out that the
25 defendant had never advanced any reason at all as to why

1 she had good cause as to -- for failure to file an answer.

2 However, in your order that you had issued you had put
3 down under the good-cause-in-this-case section on page two,
4 you had said, quote, "Defendant argues that good cause
5 exists to set aside the entry of default. I agree. I
6 believe the defendant has adequately satisfied the standard
7 for relief set forth in Sundown. Defendant explained there
8 was some confusion with Seay's insurance accepting
9 liability for the accident and a change of her own
10 insurance companies."

11 Your Honor, that's all that you do to speak about good
12 cause.

13 There was no evidence presented at the hearing that
14 the defendant was confused about, say, his insurance
15 company accepting liability for the accident, and there was
16 no evidence that she had a change in any of her insurance
17 companies. Even if there was that would not be good cause.

18 Since the hearing I have taken her deposition, and
19 I've submitted that to the Court.

20 What the defendant said in her deposition was that she
21 was served with a summons and complaint on Thursday,
22 September 15th of 2011. That's at page 62.

23 She said that she gave the summons and the complaint
24 to her husband and told her husband to deliver it to the
25 insurance agent. That's at page 63 and 64.

1 She said that she had believed that her husband had
2 delivered it approximately three days to a week after she
3 gave it to him. However, she never actually went to the
4 insurance agency to find out if her husband, in fact, did
5 deliver the papers.

6 I think that's an important issue. And most
7 importantly, at no point in time did she ever call her
8 insurance agency, which was the Watson Insurance Agency, to
9 find out if they had ever received the paperworks.

10 She had absolutely no communications with the
11 insurance agency following up after her service. That's at
12 pages 72, 73 and 75.

13 We think that the failure of her to actually deliver
14 the paperwork herself and the failure for her to make any
15 telephone calls would negate any good cause she has.

16 She testified the next thing that happened is she
17 received the paperwork for notice of the entry of default
18 and a call from Nationwide Insurance company, slash, Allied
19 Insurance Company. I think it's a subsidiary parent
20 company. We'll call it Nationwide Insurance Company.

21 The next thing she got was a call from Nationwide
22 Insurance Company saying that a default had been entered
23 against her.

24 So, Your Honor, we think that there is absolutely no
25 evidence that she can show that there is good cause to

1 reopen or to relieve her of judgment and that it would
2 serve any interest of judgment. That's my first main
3 argument.

4 My second main argument is that I would just ask you
5 to reconsider my argument that -- that one of the factors
6 we need to identify or discuss is whether or not we had
7 suffered any prejudice.

8 I had advanced the argument that the prejudice in this
9 case is that the mode of -- the mode of trial would change
10 from a trial by a judge or a bench trial into, since the
11 defendant was allowed to file an answer requesting a jury
12 trial, changing it from a jury trial, would be prejudice,
13 would show prejudice per se.

14 Thank you, Your Honor.

15 THE COURT: All right. You better give me a copy of
16 that order, because the original I have doesn't have a page
17 three. Do y'all have a page three?

18 MR. HARMS: Yeah, I have a page three. I'll hand
19 up -- I'll hand up what I have, is the signed copy and the
20 stamped copy. It's consisting of at least three pages on
21 mine.

22 THE COURT: Thank you.

23 MR. DAVIS: May it please the Court, Your Honor.

24 THE COURT: Mr. Davis.

25 MR. DAVIS: Robbie Davis here on behalf of defendant

1 Angela Miller.

2 Your Honor, basically this is a case that should have
3 never been filed in the first place.

4 To refresh the Court's recollection, it involved an
5 automobile accident that occurred back in February of --
6 I'm sorry -- July 22nd of 2009.

7 As attached to my initial brief in support of the
8 motion to set aside the entry of default, I explained to
9 the Court and attached affidavits that this accident was in
10 no way my client's fault, Ms. Miller's fault.

11 She was traveling along the road in her lane of
12 travel, had the right of way, when another person,
13 Mr. Seay, Phillip Seay, disregarded a stop sign and pulled
14 directly into her lane of travel colliding with her
15 vehicle, which then pushed her across the center line into
16 the vehicle that was driven by the plaintiff, Mr. Dickie
17 Shults.

18 Mr. Shults filed a suit against Mr. Seay in a separate
19 action and then later on filed this action against
20 Ms. Miller. And the reason why as I understand was that
21 there was a worker's comp claim and that the worker's comp
22 was forcing this issue on the matter.

23 In any event, Ms. Miller, her husband and children
24 were all in the vehicle. They have signed affidavits --
25 the adults have -- indicating that the accident was not her

1 fault, that she was in her lane and had the right of way
2 when Mr. Seay pulled in front of her.

3 I've also attached an affidavit in my initial brief of
4 the investigating state trooper, Mr. Chris Mace, who said
5 that he investigated the accident, he spoke with all three
6 drivers, all three drivers were in agreement that
7 Ms. Miller was not at fault for this accident, that
8 Mr. Seay pulled in front of her vehicle, caused the
9 accident and that the sole cause of the accident was
10 Phillip Seay.

11 Now, when suit was filed against Ms. Miller and-but
12 when this Court initially heard the motion it was to set
13 aside an entry of default. And basically to set aside an
14 entry of default, as the Court is well aware, is a
15 good-cause standard.

16 The Supreme Court has told us what constitutes good
17 cause, and it's in the Sundown Operating Company case, and
18 it's three factors which this Court cited in its order
19 setting aside the entry of default.

20 The three factors that establish good cause are the
21 timing of the defendant's motion for relief, whether the
22 defendant has a meritorious defense and the degree of
23 prejudice to which the plaintiff -- if relief is granted.

24 Now, the Court heard and ruled that the Sundown
25 factors in this case established were established and that

1 Ms. Miller would be entitled to relief from the entry of
2 default and that the case should proceed for a trial on the
3 merits, which of course is favored in South Carolina.

4 The standard for good cause as the Supreme Court and
5 the Court of Appeals have all said is to be liberally
6 construed to promote justice and dispose of cases on the
7 merits.

8 So in this case we needed to look at the timing of the
9 motion for relief, whether there's a meritorious defense
10 and the degree of prejudice, which this Court did.

11 The answer in this case was three days late. And
12 there was confusion about the insurance that was involved
13 in the case and how it was to be applied.

14 The Millers changed agencies. They changed agencies,
15 and somehow there was a confusion and the answer was a
16 couple of days late. But the answer here is -- it was only
17 a couple of days late.

18 And the first prong for good cause, the timing of the
19 motion for relief, this Court correctly found was met.
20 That whether Ms. Miller had a meritorious defense is amply
21 established in this case by the affidavits, by the accident
22 report and by the investigation of the trooper that
23 investigated this accident.

24 And the last thing is the prejudice, and there is no
25 prejudice by having to go to a jury trial. In fact, there

1 is no prejudice whatsoever because since this Court has
2 heard this motion and ruled on it we've had a mediation in
3 this case. And this case was mediated with the --
4 Mr. Seay's case with the worker's comp claim.

5 And Mr. Shults has received [REDACTED] settlement, [REDACTED]
6 [REDACTED] from the Seay case. So there's no prejudice to
7 that. They reached that settlement on their own. It was
8 not something that was forced on them.

9 They have received what we would consider to be [REDACTED]
10 [REDACTED] So there's certainly no prejudice to
11 Mr. Shults. He's [REDACTED] He's [REDACTED] what we would
12 say [REDACTED]

13 And anything that he's trying to get here would be as
14 a result of a mere technicality, and that would not promote
15 justice and would not be what we would think that the
16 courts of this state would allow or would find would be
17 responsive to the Sundown factors.

18 So, Your Honor, I believe that the Court did
19 adequately and legally apply the Sundown factors. We've
20 met all three prongs of it. We've provided the Court with
21 evidence for all three prongs for it.

22 In addition, since we have last been before Your Honor
23 we have taken the deposition of the plaintiff, Mr. Dickie
24 Shults. And I asked him under oath about the case and the
25 facts of it.

1 And based on that I have filed a motion for summary
2 judgment, and I believe it's pending here today. And
3 basically the motion for summary judgment -- and if I may
4 approach, Your Honor, this is the brief for it. It's very
5 short, but it's basically the same thing that the Court has
6 already heard.

7 There is no evidence whatsoever to indicate that
8 Ms. Angela Miller was at fault in this accident. I've
9 already given up to the Court her affidavit and her
10 testimony. She testified absolutely consistent with it.
11 Asked point blank were you at any way at fault for this
12 accident in her deposition, she said no.

13 And when you asked Mr. Seay, the plaintiff, about it,
14 he says, yes, Ms. Miller was in her lane of travel and,
15 yes, Mr. Seay pulled into it and as a result of Mr. Seay
16 pulling into it she was knocked into me. And the only
17 thing he can say she did was basically get knocked across
18 the center lane as a result of being contacted by Mr. Seay.

19 As I said to begin with, Your Honor, this case really
20 should never have been filed in the first place. There's
21 not ever been any evidence whatsoever to support a cause of
22 action against Ms. Miller. There's not been one shred of
23 testimony by anyone that Ms. Miller did anything wrong or
24 is in any way liable to Mr. Shults or liable for this
25 accident.

1 We have asked to come in and defend the case. We
2 have. We have proceeded to mediation, depositions, written
3 discovery.

4 And basically it is our position that the time for
5 ending this case is now. There's no further delay. The
6 plaintiff has [REDACTED] in this case from
7 Mr. Seay, from the underinsured motorist carrier, from the
8 worker's comp carrier. And there's no -- no reason for the
9 case to continue any further against Ms. Miller.

10 THE COURT: Mr. Harms.

11 MR. HARMS: Your Honor, I'll address both the -- well,
12 first on the motion to reconsider setting aside the order
13 of default a couple of things.

14 First, before you get into the 3-prong analysis that's
15 in this Sundown Operating Company's case, which they're
16 cited in our order, you first must make a determination
17 whether or not there was good cause in order to relieve the
18 defendant from default.

19 The three prongs in the Sundown's Operating Company
20 case do not establish good cause. They're simply three
21 factors to consider after good cause is shown.

22 Our argument in this case is that the defendant cannot
23 show good cause, so you never get to the three factors that
24 you get to in your brief and that you can in your order
25 from the Sundown Operating Company case. Again, we are in

1 the same posture as we were approximately a year ago.

2 Defense counsel cannot articulate any actual good
3 cause for -- that would justify his client being relieved
4 from the order.

5 He mentions -- he mentions the insurance agency, and
6 some change in insurance. But I've taken the defendant's
7 deposition, and she at no point in time in her deposition
8 indicated that she was confused as to who her insurance
9 agent was.

10 And, in fact, she testified that she gave it to the
11 correct insurance agent through her husband. She actually
12 never did it herself. And we don't know if it actually
13 ever got there because she never called up.

14 But, Your Honor, that point -- this issue was actually
15 addressed directly in Sundown Operating Company. It says,
16 quote, "Initially, we reject petitioner's argument that it
17 should be granted relief from the entry of a default
18 because it should not be held responsible for the
19 negligence of its insurance agent in failing to answer the
20 complaint. This argument is without merit."

21 So we see that the Supreme Court -- or, yes, it was
22 the Supreme Court -- we see that the Supreme Court has
23 completely rejected as without merit the exact argument
24 that defense counsel is arguing in this case, that somehow
25 the insurance agency's negligence could justify good cause.

1 The Court went on to say in the Sundown case as the
2 law is clear that an attorney or insurance company's
3 misconduct is imputed to the client.

4 And it cites Williams vs. Vanvolkenburg, 312 SC 373.
5 It says observing that an attorneys's negligence in failing
6 to answer is imputed to the defendant. It also cites
7 Roberts vs. Peterson -- P-E-T-E-R-S-O-N, 292 SC 149.

8 It says recognizing the negligence of an attorney or
9 insurance company is imputed to the defaulting litigant.

10 So whether it was something that went wrong with the
11 insurance agency, which we actually don't know because she
12 never had any telephone calls with, or whether or not she
13 was confused about which insurance call -- which insurance
14 agent she had, which she actually didn't testify to in her
15 deposition, she cannot show good cause.

16 Now, switching gears -- and I have that Sundown
17 Operating Company case. If you'd like me to hand it up
18 including the language -- I highlighted the language where
19 it talks about the mistakes of insurance agents are imputed
20 to the clients. I have one for defense counsel too.

21 Again, Your Honor, that's the case you cite in your
22 order already.

23 Your Honor, regarding the motion for summary judgment,
24 Your Honor, this is a case that is not right for
25 adjudication through summary judgment because there are all

1 sorts of genuine issues of material fact as to the
2 defendant's negligence.

3 For example, in the -- a deposition of Angela Miller
4 that's already been handed up to the Court Ms. Miller
5 testified that her husband, Frank, yelled look out prior to
6 being struck by Mr. Seay's vehicle. That's at page 21.

7 Yet when I asked Ms. Miller how far away the vehicle
8 was, Mr. Seay's vehicle was, before the moment of impact,
9 she testified on numerous occasions that she never saw
10 Mr. Seay's vehicle until after the impact had actually
11 occurred. That's at pages 32, 33 and 34.

12 Your Honor, that raises a genuine issue of material
13 fact as to whether or not the defendant was properly
14 observing the road in front of her and whether or not since
15 her husband had time to yell look out, why she did not see
16 the vehicle that was coming out directly in front of her.

17 If she had been properly observing the roadway in
18 front of her the jury could find that she could have slowed
19 down and avoided hitting my client or stopped and avoided
20 hitting my client.

21 In addition, the defendant admits that she crossed
22 over the yellow line, the yellow center line. She
23 testified it was a 2-lane road, that there was a yellow
24 center line.

25 And the defendant admitted during her deposition that

1 she crossed over the yellow center line and struck my
2 client's vehicle in his lane of travel. That's at pages 30
3 and 31.

4 Crossing over the center line is a violation of South
5 Carolina Code 56-5-1810, drive on the right side of road,
6 exceptions.

7 So Ms. Miller violated a statutory obligation imposed
8 on her which would negate any motion for summary judgment
9 and would allow the jury to determine the facts of this
10 case and whether or not her negligence -- what negligence
11 caused this accident.

12 The -- she testified that the weather was clear, page
13 25, which raises an issue as to why she didn't see the
14 other vehicle prior to the accident.

15 And at page 26 I notice that she is wearing glasses
16 during her deposition. But she testified that at the time
17 of the accident she was not wearing any glasses.

18 She testified she needs to wear glasses now in order
19 to see distances. So an issue would be raised -- again,
20 this is going back to fact that she never saw any -- she
21 never saw Mr. Seay's vehicle until after she was impacted,
22 although, even though, she could have because it was in
23 front of him.

24 It raises an issue as to whether or not she should
25 have been wearing glasses at the time of the accident since

1 her vision -- well, she raises an issue as to whether or
2 not she should have been wearing glasses.

3 And, Your Honor, I asked her at page 37 why she just
4 didn't stop before being hit by Mr. Seay's vehicle, and she
5 simply could not even see -- at page 37, she just is not
6 able to give a satisfactory answer as to why she couldn't
7 stop other than she just didn't see the vehicles.

8 Your Honor, we point out in our interrogatories to
9 them that the defendant violated various statutory
10 requirements put on her. Section 56-5-580, right of way,
11 my client had the right of way in this case. So she
12 crossed over the center line and hit him.

13 I'd already mentioned the code section dealing with
14 crossing over the center line. She violated code section
15 56-5-30 -- 3230, drivers to exercise due caution simply
16 because she wasn't -- she obviously wasn't paying enough
17 attention because she didn't see the vehicle coming out
18 from in front of her and to her right.

19 56-5-1520, general rules as to maximum speeds,
20 otherwise known as too fast for conditions. She simply
21 could not testify as to why she couldn't stop or slow down
22 before this accident.

23 And technically 56-5-2320, a vehicle turning left, she
24 technically turned left into my client's lane of travel.
25 She testified she did not have her turn signal on at the

1 time that she crossed over the center line and hit my
2 client. And so she would have violated the rule requiring
3 her to turn her turn signal on before she crossed over the
4 center line.

5 Your Honor, for those reasons it's pretty clear that
6 we need to have a jury trial assuming you don't grant my
7 relief from entry of default. In that case it would be --
8 we'd have a damages hearing in front of a judge.

9 But absent you -- you -- if you do decide to relieve
10 the defendant of default we believe then that there are all
11 sorts of factual issues that would need to be decided by
12 the trier of fact. Thank you.

13 MR. DAVIS: Very briefly in response, Your Honor.

14 As to the motion to reconsider and the Sundown
15 factors, I think it's important that the case that
16 Mr. Harms handed up to Your Honor, that below it, the
17 highlighted portion, is actually what goes to the heart of
18 this matter.

19 It says that a defendant may not to be relieved from
20 the entry of default solely because it relied to its
21 detriment on an insurance agent.

22 In that case the defendant handed the case over to his
23 insurance agent, if you look in the very next paragraph,
24 after the time for answering had expired.

25 The -- based on that the Court found that the trial

1 court's -- the Supreme Court found the trial court's
2 decision not to grant relief was affirmed.

3 And every case since then has defined the three
4 elements set forth in Sundown as I went over with the Court
5 and as is cited in this Court's order as the standard for
6 good cause every case that said that that decision rests in
7 the sound discretion of the trial judge. And in this case
8 the sound discretion of Your Honor initially in finding
9 that Ms. Miller was entitled to relief stands, and nothing
10 has changed to the contrary.

11 As for the arguments of counsel against my client in
12 this accident, basically they're ridiculous.

13 My client -- the evidence solely before this Court is
14 that she was in her lane of travel, had the right of way,
15 when a car pulled out directly in front of her and hit her,
16 caused the accident and pushed her across the center line.

17 She wasn't making a left turn. No -- there's not one
18 shred of evidence that she was ever making a left turn.

19 Even the plaintiff, Mr. Dickie Shults, was --
20 testified to that, that she was in her lane in the right of
21 way when another car hit her and pushed her in the end.

22 There is no evidence she did one thing wrong, and the
23 case should end here. It should never have been filed, but
24 we're here today asking for the Court to deny the motion to
25 reconsider and grant the motion for summary judgment.

1 Thank you, Your Honor.

2 THE COURT: All right. I'll review it and issue an
3 order.

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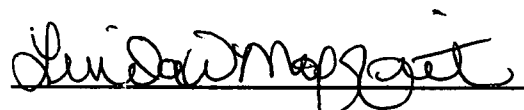
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Common Pleas Court for Spartanburg County, South Carolina, on the 7th day of February 2013.

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

March 29, 2013



Linda D. Moffitt
Circuit Court Reporter

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COMMON PLEAS COURT
3
4 Dickie Shults,)
5 Plaintiff,) TRANSCRIPT OF RECORD
6 -vs-) 2011-CP-42-3951
7 Angela G. Miller,)
8 Defendant.) October 31, 2013
9) Spartanburg, South Carolina
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12 B E F O R E:

13 HONORABLE J. DERHAM COLE, JUDGE
14

15 A P P E A R A N C E S:
16

17 SAMUEL DARRYL HARMS, III, ESQUIRE
Attorney for the Plaintiff

18 ROBERT ERIC DAVIS, ESQUIRE
Attorney for the Defendant
19
20
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22 Linda D. Moffitt
23 Circuit Court Reporter
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INDEX

Motion -- page 3.

No sworn testimony; no exhibits entered into evidence.

1 THE COURT: Mr. Harms, is this your motion for
2 reconsideration?

3 MR. HARMS: It is, Your Honor.

4 THE COURT: Okay.

5 MR. HARMS: Your Honor, we're here on a motion to
6 reconsider your March 15th of 2013 order granting summary
7 judgment in favor of Angela Miller in the case of Dickie
8 Shults vs. Angela Miller. I represent Dickie Shults.

9 Your Honor, with your permission I'd like to hand up
10 again the deposition of Angela Miller that was previously
11 handed up to the Court -- the original summary judgment
12 motion.

13 THE COURT: I may already have it.

14 MR. HARMS: You already have it? All right. Thank
15 you. You have it.

16 Your Honor, we ask you to reconsider your motion for
17 summary judgment on the grounds that there are genuine
18 issues of material fact and that the evidence should be
19 viewed in the light most favorable to the plaintiff, when
20 we believed that you viewed some of the evidence in the
21 light most favorable to the defendant.

22 And, in addition, we believe it was improper for you
23 to consider certain types of evidence.

24 For example, in your order on page one that says you
25 relied on the affidavit of Trooper Chris Mace. In that --

1 in that affidavit it contains hearsay evidence because it
2 says that he had spoken with the driver of the vehicle that
3 was driven by Mr. Seay.

4 Mr. Seay has passed away, and so any evidence,
5 anything that he had said, would be hearsay. And we
6 believe it was improper for the Court to consider the
7 hearsay evidence of Mr. Seay that's contained in Trooper
8 Chris Mace's affidavit.

9 In addition, the affidavit of Chris Mace contains
10 opinion testimony as to who caused the accident and who did
11 not cause the accident. And there is no evidence that
12 Mr. Mace is an expert in anything, and he hasn't been
13 qualified as an expert by the Court, and his affidavit
14 doesn't indicate that he's an expert in anything.

15 So we believe it was error for him -- his affidavit to
16 be considered since it contains opinion testimony as to the
17 cause of the accident.

18 In addition, in your order on page two it says that
19 the plaintiff admits that the defendant had the
20 right-of-way in his deposition.

21 There is no citation to the record, and we adamantly
22 disagree that the plaintiff admits that the defendant had
23 the right-of-way, and we believe that that was an error and
24 that if you were to look fully at all of the depositions
25 that you would reach a different conclusion.

1 In addition, on page two of your order it says that
2 the plaintiff confirms that Seay pulled in front of the
3 defendant. Again, there's no citation to the record for
4 that statement, and we do not agree with that. And, again,
5 we would ask that you reconsider your decision based on the
6 correct testimony.

7 In addition, there are genuine issues of material fact
8 that would preclude summary judgment being entered in favor
9 of Angela Miller in this case.

10 This is a situation where Angela Miller crossed over
11 the center line and hit my client nearly head on, or it's a
12 front-corner panel to front-corner panel accident. But
13 my -- my client is in his lane of travel properly when
14 Angela Miller crosses over the center line and hits him.

15 In Angela Miller's deposition that we handed up to you
16 she admits that on page 13 that she crossed over the center
17 line. She admits at page 21 and page 17 -- well, page 17
18 she admits that Frank Miller is her husband who was in the
19 vehicle with her.

20 At page 21 she admits that Frank Miller yelled look
21 out. So her husband who is in the car with her had enough
22 time to see a vehicle. And I should back up, Your Honor.

23 In this case Angela Miller claims that she was struck
24 by a vehicle being driven by Mr. Seay and that caused her
25 to go over the center line and hit my client in his lane of

1 travel.

2 All right. And so what an important issue in this
3 case from our perspective is is there anything that
4 Mrs. Miller could have done differently, could have -- is
5 there anything she could negligently -- that she either
6 could have stopped in time before either getting hit by
7 Mr. Seay or stopped in time before she crosses the center
8 line and hits my client.

9 So going back on that issue, her husband at page 21,
10 she says, yelled look out, which means that a passenger in
11 the vehicle had enough time to see Mr. Seay's vehicle
12 coming and yell look out.

13 Okay. It was a 2-lane road. That's at page 25. At
14 page 25 Mrs. Miller also testified it was clear weather and
15 her vision was not obstructed by anything.

16 At pages 30 and 31 she again admits that there was a
17 yellow line in the center of the road and that she crossed
18 over it and hit my client in his lane of travel.

19 And, most importantly, at pages 32 through 34 she
20 states over and over again that at no point in time did she
21 see Mr. Seay's vehicle until after the collision occurred.

22 And the reason why that is important is I asked her
23 questions such as:

24 "Q Was there anything obstructing your
25 view of his vehicle coming?

1 "A No.

2 "Q why were you looking ahead?

3 She said she was looking ahead down the road. She says
4 she was. But she could not give any explanation at all as
5 to why she never saw Mr. Seay's vehicle until after the
6 moment of impact.

7 And our argument -- and we believe this is a jury
8 issue -- is that had she been properly looking forward she
9 would have seen Mr. Seay's vehicle coming and she could have
10 either slowed down or stopped to either avoid being
11 initially hit or at least decelerate her car enough so that
12 her car did not travel into my client's lane.

13 Again, her husband had saw the vehicle coming and her
14 husband yelled watch out. why did she not see the vehicle;
15 why did she after hearing her husband yell watch out, why
16 did she not immediately stop and brake her vehicles? Those
17 are all negligent issues involving negligence.

18 She testified at page 36 she was only going 20 miles
19 per hour, which she was certainly traveling slow enough to
20 have avoided the accident or being hit by Mr. Seay or
21 hitting my client.

22 When I asked her at page 37 why she did not stop in
23 time, she just simply said, well, she had no time to react.
24 But that goes back to the issue as why did she not see the
25 vehicle coming, why did she not listen to her husband when

1 he yelled look out.

2 Your Honor, we allege -- in your order you do not
3 address any of those facts that we believe are most
4 favorable to us. And since you are to view the evidence in
5 the light most favorable to us, we ask you to consider the
6 facts that are most favorable to us about Mrs. Miller's
7 failure to see the -- Mr. Seay's vehicle before the
8 collision and all the things I discussed.

9 In addition, she is generally negligent. But in
10 addition we believe she's negligent per se in that she
11 violated 56-5-580, right-of-way, and she failed to yield
12 the right-of-way to my client who was in his proper lane of
13 travel.

14 She was negligent per se because she violated
15 56-5-180, drive on the right side of the road, because,
16 again, she crossed over the center lane and hit my client
17 after crossing over the center line.

18 56-5-3230, drivers to exercise due care. We believe
19 she was not exercising due care because she did not see the
20 vehicle coming until after the collision.

21 56-5-1520, general rules as to maximum speed limit,
22 driving too fast for conditions. We believe that she was
23 driving too fast for conditions because she was not able to
24 see another vehicle entering the roadway, but her husband
25 was.

1 And, Your Honor, for those reasons we believe that we
2 have proven both general negligence or at least created a
3 genuine issue of material fact to be determined by a jury
4 as to whether or not Mrs. Miller was negligent, whether or
5 not she was negligent per se.

6 Those arguments that I made, I'm essentially making
7 the same arguments I made to you about six months ago or
8 so. And none of those arguments that I made to you six
9 months ago appear in your order.

10 We ask for you to consider those arguments that I made
11 then and now and then to deny Mrs. Miller's motion for
12 summary judgment. Thank you, Your Honor.

13 MR. DAVIS: May it please the Court, Your Honor.
14 Robbie Davis on behalf of the defendant, Mrs. Angela
15 Miller.

16 And as Mr. Harms has indicated, there's really nothing
17 new here. This is a very simple and straightforward
18 accident.

19 This Court has heard multiple arguments on it. In my
20 opinion it's an action that should have never been filed.
21 There was a companion action Mr. Shults filed against the
22 real at-fault driver, Mr. Seay. And that matter went to
23 mediation and has [REDACTED] settled, and that case has been
24 dismissed.

25 The accident itself is very simple. My client,

1 Mrs. Angela Miller, was proceeding on Highway 292 where she
2 had the right-of-way when Mr. Seay pulled from a stop sign
3 directly in her path, hit her vehicle, knocked her vehicle
4 into the plaintiff's vehicle.

5 The arguments that Mr. Harms has made regarding the
6 affidavit of Trooper Mace I do not believe are correct.
7 And there are two briefs that contained information, Your
8 Honor, I believe that would be in your file.

9 First is the defendant's brief in support of motion
10 for summary judgment. I have a copy if you need it. And
11 also the defendant's brief and motion to set aside entry of
12 default.

13 But the affidavit of Trooper Mace who investigated the
14 accident indicates that he spoke with all of the drivers
15 that were involved including Mr. Seay who is now passed
16 away.

17 Mr. Harms has made a hearsay argument, but Mr. Seay
18 made a statement against interest, which is an exception to
19 the hearsay testimony, and Mr. Seay admitted that he was at
20 fault.

21 According to the conversation, no one at the scene
22 including the plaintiff said anything different, according
23 to the trooper that investigated the accident.

24 And based on that, based on what everyone said that
25 were there, including the plaintiff, there was no finding

1 of fault against my client.

2 Mr. Harms said that he disputes that my client had the
3 right-of-way.

4 Well, that is based completely upon the plaintiff's
5 own deposition testimony. That is attached in support of
6 my brief for summary judgment. It is on page 48. And my
7 questioning was to the plaintiff. On line one it's got her
8 going down Highway 292.

9 "Q Correct?

10 "A Yes, sir.

11 "Q And she would have had the
12 right-of-way, wouldn't she?

13 "A Yes, sir.

14 "Q Mr. Seay if he was going to pull onto
15 292, he would have to yield the right-of-way to
16 Mrs. Miller, correct?

17 And his response is "Yes, sir."

18 So there's really no dispute that my client had the
19 right-of-way at the time the accident occurred.

20 There is absolutely no evidence of speed on behalf of
21 my client. There's no evidence of -- that she was not
22 maintaining a proper lookout.

23 A vehicle simply from her left pulled in front of her,
24 hit her vehicle and knocked it into the plaintiff.

25 If there was any indication of speed, that would have

1 been indicated somewhere if there was any indication that
2 she was not acting in due care or anything.

3 All of these are just potential arguments without
4 evidence to really support them on behalf of the plaintiff,
5 on behalf of Mrs. Miller, and on behalf of the officer that
6 investigated the accident.

7 I have also attached affidavits of my client and her
8 husband, Frank Miller -- and Angela Miller. They are on
9 the other brief. And they both say that she did not have
10 an opportunity to take any evasive action to avoid the
11 accident, that she was not at fault for the accident, that
12 there was no opportunity to avoid it, and that simply the
13 only cause, legal cause, of this accident was Mr. Seay who
14 pulled in my client's path and knocked her into the
15 plaintiff.

16 There was no indication that she just swerved and hit
17 him. There was physical contact by Mr. Seay that
18 physically knocked my client into Mrs. -- Mr. Shults. And
19 as a result that's the only cause of the accident.

20 Your order fully addresses all of the arguments, all
21 of the arguments that have been raised before, and
22 certainly considers what took place legally.

23 There is no evidence to support any other conclusion
24 than Mrs. Miller was not at fault as a matter of law, and
25 we would ask the Court to deny the motion to reconsider.

1 MR. HARMS: Your Honor, two issues. First on the
2 issue of who had the right-of-way, your order is written to
3 indicate that -- it seems to indicate that you are saying
4 that Mrs. Miller had the right-of-way over my client, and
5 that is what we are objecting to.

6 It says, quote, in his deposition, "Plaintiff admits
7 that defendant had the right-of-way on Highway 292." I
8 want to make sure it's clear that we do not agree that --
9 we do not agree, and there is no evidence in the record,
10 that my client admits that she had the right-of-way over my
11 client [sic].

12 Again, as I stated before, it's our position that my
13 client had the right-of-way. She crossed over the center
14 line and hit him.

15 As to the issue of, again, of her fault or negligence,
16 the genuine issue in this case is why did she not see the
17 other -- Mr. Seay's vehicle when her husband was able to
18 see the vehicle and had time to yell watch out when she
19 says she never saw him until after the moment of impact.

20 Had she been driving more carefully, had she been
21 driving a little slower, had she been driving with a little
22 bit more caution and care and observance she could have
23 potentially seen, stopped -- seen the vehicle, stopped her
24 vehicle, and she never would have been hit by Mr. Seay. Or
25 in the alternative, when she did get hit by Mr. Seay she

1 would have been driving a lot slower and would not have hit
2 my client.

3 Thank you, Your Honor. That's a factual issue.

4 THE COURT: Okay. I'll review it and issue an order.

5 MR. DAVIS: Thank you, Your Honor.

6 END OF REQUESTED TRANSCRIPT OF RECORD
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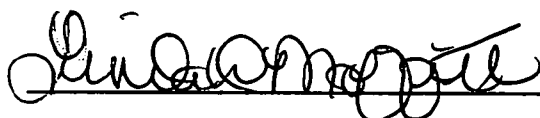
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Common Pleas Court for Spartanburg County, South Carolina, on the 31st day of October 2013.

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

February 25, 2015

A handwritten signature in cursive script, appearing to read 'Linda D. Moffitt', written over a horizontal line.

Linda D. Moffitt
Circuit Court Reporter

ORIGINAL

D.P.A. USE ONLY 09085200		Page # 1	SOUTH CAROLINA STATE POLICE REPORT		# Of Units 3	Arrested - Attach Copy of Original Report Corrected	Notified 1800	Arrived 1845
Date 0722 2009	Time 1800	Case # 42	Collision Location (Rt. # / Name) 5 292		0-Mile 6	6-Connection IN	Mile 6 Near City or Town Springburg	
1- Interstate 2- US Primary 3- SC Primary	4- Secondary 5- County 6- Other	Base Intersection (Rt. # / Name) Millerfarm Rd		0-Mile 2-Alternate 3-Spur	6-Connection 7-Business 8-Other	ASRU code UPRGrd		
1- Interstate 2- US Primary 3- SC Primary	4- Secondary 5- County 6- Other	Second Intersection (Rt. # / Name) 26		0-Mile 2-Alternate 3-Spur	6-Connection 7-Business 8-Other	Latitude 34° 54' 39.40"		
R.R. Id. NIA	From N E	Ramp Only 1 - Entrance	To S W	Longitude 82° 05' 04.10"				
Z-006922 Driver/Pedestrian's Full Name Miller Angela Griffin				Z-006923 Driver/Pedestrian's Full Name Shulls-Dickie				
Unit # 1	Sex F	Race W	Birth Date [REDACTED]		Unit # 2	Sex M	Race W	Birth Date [REDACTED]
State SC		Driver's License # [REDACTED]	Insurance Company Allied		State SC		Driver's License # [REDACTED]	Insurance Company Liberty Mutual
Year 1997	Body 4dr	Vehicle Make Chry	VIN # 1C3EJS6K2YN506769		Year 2006	Body Pic	Vehicle Make Chev	VIN # 1GCHCZ2006E274618
State SC	Year 2010	License Plate # DTI-701	Owner's D.L. # [REDACTED]		State SC	Year 2006	License Plate # P-36806	Owner's D.L. # NIA
Home Telephone 843-592-2054		Owner's Full Name Miller Angela Griffin		Home Telephone 843-303-0895		Owner's Full Name Reynolds Utilities LLC		
Bus. Telephone NIA		Street [REDACTED]		Bus. Telephone NIA		Street 343 Old Spky Hwy		
Contributed To Collision Yes		City, State & Zip Wellford S.C. 29385		Contributed To Collision No		City, State & Zip Wellford S.C. 29385		
Estimated Speed 20	Speed Limit 35	C.D.L. Req. Yes (No) NIA	T.B.S. Req. Yes (No) NIA	Alc/Drg info (see back) Yes (No) NIA	Estimated Speed 10	Speed Limit 35	C.D.L. Req. Yes (No) NIA	T.B.S. Req. Yes (No) NIA
Z-006924 Driver/Pedestrian's Full Name SEAY-Philip Michael		State SC		Year 2007	License Plate # 131-CX	Owner's D.L. # NIA		
Unit # 3	Sex M	Race W	Birth Date [REDACTED]		Home Telephone 843-788-425		Owner's Full Name Seay-Lisa A.	
State SC		Driver's License # [REDACTED]	Insurance Company Farm Bureau		Contributed To Collision Yes		City, State & Zip [REDACTED]	
Year 1997	Body 4dr	Vehicle Make Ford	VIN # FA1P6S32VK112010		Estimated Speed 5	Speed Limit 35	C.D.L. Req. Yes (No) F-006/BS	T.B.S. Req. Yes (No) U2
Dir. of Travel: Unit 1: N S E W		Unit 2: N S E W		Unit 3: N S E W		Unit 4: N S E W		
Unit 1 Dam. \$1500		Unit 2 Dam. \$2000		Unit 3 Dam. \$1200		Unit 4 Dam. NIA		
Property Owned/Witness NIA		Property Owned/Witness NIA		Property Owned/Witness NIA		Property Owned/Witness NIA		
Address NIA		Address NIA		Address NIA		Address NIA		
State SC		Zip 292		State SC		Zip 292		
Phone NIA		Phone NIA		Phone NIA		Phone NIA		
Describe What Happened (Refer to Units by Number) Vehicle #1 was travelling west on SC 292. Vehicle #2 was turning right from a private dr., traveling east. Vehicle #3 was attempting to enter S.C. 292 from Millerfarm Rd traveling south. Driver of Vehicle #3, disregarding a Traffic Control device, struck Vehicle #1 on passenger's side. Vehicle #2 was then pushed into Vehicle #3.								
Investigating Officer's Name MAJCH Rank 236 Station SPR000 Signature [Signature] Date 07/25/09								

Unit	Date of Birth	Sex	Race	BU	Seat	RSD	ABA	Eject	LAI	Tran	Name	Street Address	Zip Code
1		F	W	01	13	13	1	1	2				
2		M	W	01	13	13	1	1	2				
3		M	W	01	13	13	1	1	2				

Race	A - Asian/Pacific Islander	W - Caucasian	3 - Non-incapacitating	Seating Loc.	20 - Pedestrian	60 - Steeper of Cab	Restraints/Safety Device
B - African American	H - Hispanic	O - Other	4 - Not Injured	01 02 03	30 - Trailing Unit	70 - Riding on Unit Exterior	00 - None Used
C - Alaskan Native or American Indian	U - Unk.	1 - Possible	5 - Fatal	04 05 06	40 - Bus or Van (4th row or Higher)	80 - Lap	11 - Shoulder Belt Only
			6 - Motorcycle Only	07 08 09	50 - Other Enclosed Area (nontrailing)	90 - Unit AIA	12 - Lap Belt Only
					51 - Other Unenclosed Area (nontrailing)		13 - Shoulder & Lap Belt
							14 - Pedestrian, Motor/Pedestrian Only
							15 - Helmet
							16 - Reflective Clothing
							17 - Protective Pads
							18 - Lighting

Air Bag Deployment / Switch	Ejection	Head Injury	Location After Impact	3 - Freed (non-mech)	a) Transported to Medical Facility
1 - Deployed Front 4 - Not Deployed	1 - Not Ejected	1 - Yes	1 - Not Trapped	4 - Not Applicable	1 - Yes
2 - Deployed Side 7 - Not Applicable	2 - Part Ejected	2 - No	2 - Ejected (Mechanical Means)	5 - Unknown	2 - No
3 - Deployed Both 9 - Deployment Unit	3 - Tot. Ejected				3 - Unknown
4 - Switch in On Position 5 - No Switch	7 - Not App.				b) By: 1 - EMS 2 - Police 3 - Other 4 - Unk.
5 - Switch in Off Position 6 - Unknown	9 - Unk.				

Sequence of Events	Collision	27 - Pedestrian	Collision - Fixed Object	47 - Embankment	55 - Mail Box	68 - Other
1 - Collision	20 - Animal (Deer Only)	28 - Railway Veh	40 - Bridge Overhead Structure	48 - Equipment	56 - Median Barrier	69 - Unk.
2 - Collision	21 - Animal (All Other)	29 - With Zone	41 - Bridge Ramp End	49 - Fence	57 - Overhead Sign Support	
3 - Collision	22 - Motor Veh (Stopped)	30 - Other Mobile Object	42 - Bridge Pier or Abutment	50 - Guardrail End	58 - Other (Post, Pole Support, Etc.)	
4 - Collision	23 - Motor Veh (Clearing)	31 - Unk. Mobile Object	43 - Bridge Rail	51 - Guardrail Face	59 - Other (Wall, Building, Tunnel, Etc.)	
5 - Collision	24 - Motor Veh (Park)	32 - Unk. Mobile Object	44 - Culvert	52 - Highway Traffic Sign Post	60 - Tree	
6 - Collision	25 - Pedestrian	33 - Unk. Mobile Object	45 - Curb	53 - Impact Absorber/Crash Cushion	61 - Utility Pole	
7 - Collision			46 - Ditch	54 - Light/Luminance Support	62 - Work Zone Mast Equipment	

Vehicle Type	10 - Full Size Van	27 - Pedestrian	61 - School Bus	1 - Under - Compartment Intrusion	Under/Over/Under
01 - Automobile	15 - Mini Van	30 - Animal (Deer Only)	62 - Passenger Bus	2 - Under - No Intrusion	4 - Over - MV in Transport
12 - Pickup Truck	17 - Sport Utility	31 - Animal (All Other)	63 - Other	3 - Under - Unknown	5 - Over - Other Vehicle
13 - Truck Tractor	25 - Motorcycle	32 - Motor Veh (Stopped)	64 - Unk. (Hit and Run Only)	6 - None/Minor	6 - None
14 - Other Truck	26 - Other Motorcycle	33 - Motor Veh (Clearing)		7 - Functional Damage	4 - Severe/Totaled
		34 - Motor Veh (Park)		8 - Disabling Damage	5 - Not Applicable

Vehicle Use Code	04 - Ambulance	08 - Farm Use	12 - Fire Fighting	1 - Under - Compartment Intrusion	Under/Over/Under
01 - Personal	05 - Military	09 - Worker or Tow	13 - Logging	2 - Under - No Intrusion	4 - Over - MV in Transport
02 - Driver Training	06 - Transport Passengers	10 - Police	14 - Other	3 - Under - Unknown	5 - Over - Other Vehicle
03 - Construction/Maint.	07 - Transport Property	11 - Government <td>41 - Pedestrian</td> <td>6 - None/Minor</td> <td>6 - None</td>	41 - Pedestrian	6 - None/Minor	6 - None

Vehicle Attachment	4 - Utility Trailer	8 - Towed Motor Vehicle	C - Other Trailer	1 - Under - Compartment Intrusion	Under/Over/Under
1 - None	5 - Farm Trailer	9 - Petroleum Tanker	D - Flat Bed	2 - Under - No Intrusion	4 - Over - MV in Transport
2 - Mobile Home	6 - Trailer w/Boat	A - Lowboy Trailer	E - Twin Trailers	3 - Under - Unknown	5 - Over - Other Vehicle
3 - Semi-Trailer	7 - Camper Trailer	B - Autocarrier Trailer	F - Other	6 - None/Minor	6 - None

Action Prior to Impact	(Vehicle)	(Non-motorist)	1 - Under - Compartment Intrusion	Under/Over/Under
01 - Backing	08 - Parked	21 - Approaching/Leaving Vehicle	2 - Under - No Intrusion	4 - Over - MV in Transport
02 - Changing Lanes	09 - Stopping or	22 - Entering/Crossing Location	3 - Under - Unknown	5 - Over - Other Vehicle
03 - Entering Traffic Lane	10 - Stopped in Traffic	23 - Playing/Working on Vehicle	6 - None/Minor	6 - None
04 - Leaving Traffic Lane	11 - Turning Left	24 - Pushing Vehicle	7 - Functional Damage	4 - Severe/Totaled
05 - Making U-turn	12 - Turning Right	25 - Standing	8 - Disabling Damage	5 - Not Applicable
06 - Movements Essentially Straight Ahead	13 - Turning Right	26 - Walking, Playing, Cycling		
07 - Overtaking/Passing	14 - Other	27 - Working		

Weather Condition	3 - Cloudy	6 - Fog, Smog, Smoke	1 - Under - Compartment Intrusion	Under/Over/Under
1 - Clear (no adverse conditions)	4 - Mist, Hail	7 - Blowing Sand, 8 - Severe Crosswinds	2 - Under - No Intrusion	4 - Over - MV in Transport
2 - Rain	5 - Snow	9 - Oil, Dirt or Snow on Road	3 - Under - Unknown	5 - Over - Other Vehicle

Light Condition	3 - Dark	6 - Dark (Street Lamp Not Lit)	1 - Under - Compartment Intrusion	Under/Over/Under
1 - Daylight	4 - Dark (Lighting Unspecified)	7 - Dark (No lights)	2 - Under - No Intrusion	4 - Over - MV in Transport
2 - Dawn	5 - Dark (Street Lamp Lit)		3 - Under - Unknown	5 - Over - Other Vehicle

Junction Type	03 - Five/More Points	07 - Shared Use Paths or Trail	12 - Y-Intersection	1 - Under - Compartment Intrusion	Under/Over/Under
01 - Crossover	04 - Four-way Intersection	08 - T-Intersection	13 - Non-junction	2 - Under - No Intrusion	4 - Over - MV in Transport
02 - Downway	05 - Railway Grade Crossing	09 - Traffic Circle	99 - Unk.	3 - Under - Unknown	5 - Over - Other Vehicle

Contributing Factors	09 - Made an Improper Turn	30 - Debris	48 - Other	50 - Inattentive	60 - Animal in Road	63 - Weather Cond.
01 - Damaged Signs, Signals, Etc.	10 - Medical Related	31 - Non-highway Work	49 - Unk.	51 - Lying Alr Illegally in Roadway	61 - Glass	64 - Other
02 - Distracted/Inattention	11 - Aggressive Operation of Vehicle	32 - Obstruction in Roadway		52 - Failure to Yield R of W	65 - Other	65 - Unk.
03 - Driving Too Fast for Conditions	12 - Over-correcting/Over-steering	33 - Road Surface Condition (i.e., Wet)		53 - Not Visible (Dark Clothing)		
04 - Exceeded Authorized Speed Limit	13 - Swerving to Avoiding Object	34 - Rut, Holes, Bumps		54 - Damaged Signs, Signals, Etc.		
05 - Failed to Yield Right of Way	14 - Wrong Side or Wrong Way	35 - Roadside (More, Low, Soft, High)		55 - Improper Crossing		
06 - Ran off Road	15 - Under the Influence	36 - Traffic Control Device (i.e., Missing)		56 - Daring		
07 - Fatigued/Asleep	16 - Vision Obscured (Within Unit)	37 - Work Zone (Const./Attn./Utility)		57 - Wrong Side of Road		
08 - Followed Too Closely	17 - Improper Lane Usage/Change	38 - Worn, Tilted, or Damaged Surface		58 - Under the Influence		
	18 - Other Improper Action	39 - Unk.		59 - Other Person Under Influence		

Vehicle Defect	70 - Brakes	76 - Windows/Shield	77 - Restraint System	78 - Truck Coupling	79 - Cargo	80 - Fuel System
70 - Brakes	71 - Steering	72 - Power Plant	73 - Trans/Wheel	74 - Lights	75 - Other	80 - Unk.

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STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

C.A. NO. 2012-CP-42-3951

Dickie Shults,

Plaintiff,

vs.

Angela G. Miller,

Defendant.

A large, bold, black stamp with the word "COPY" in a sans-serif font. To the left of the word is a small icon of a document with a folded corner.

Deposition of **ANGELA MILLER**

Pursuant to notice of deposition and/or agreement
in the above-entitled case, a deposition was taken on
the 29th day of October, 2012 commencing at
approximately 11:25 a.m. attended by counsel as follows:

1 Appearances:

3 **SAMUEL D. HARMS, III**, Esquire

4 Harms Law Firm, P.A.

5 33 Market Point Drive

6 Greenville, South Carolina 29607

7 Attorney for Plaintiff,

9 **ROBERT E. DAVIS**, Esquire

10 The Ward Law Firm

11 233 South Pine Street

12 Spartanburg, South Carolina 29302

13 Attorney for Defendant.

16 Also Present: **Dickie Shults**, Plaintiff17 **Frank Miller**, Defendant's husband

20 Deposition Reported By:

21 Bebe O. Norris, CR

22 Depositions And, Inc.

23 (864) 235-3518

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Pursuant to notice and/or agreement to take depositions, the within deposition was taken by the above reporter, a notary public, as required under the code of laws of South Carolina, 1976, section 19-17-10, and circuit court rule 30, et al., by consent of all parties at The Ward Law Firm, 233 South Pine Street, Spartanburg, South Carolina.

WAIVER:

Counsel and the deponent agreed that both the reading over of and signing of the deposition are hereby dispensed with and **WAIVED**.

**

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The deponent was duly sworn to tell the truth, the whole truth, and nothing but the truth concerning the matter herein.

ANGELA MILLER, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HARMS:

Q. Ms. Miller, my name is Samuel Harms and I am the attorney that represents Dickie Shults in an automobile collision case that's been brought against you. I'm going to be taking your deposition here today. Have you ever had your deposition taken before?

A. Yes.

Q. How many times have you had your deposition taken

1 before?

2 A. With Davis here and I'm not sure through the
3 insurance company or not. I don't remember who
4 else.

5 Q. Was it a deposition taken for the automobile
6 collision that occurred in July, 2009?

7 A. Yes.

8 Q. Were you bringing a lawsuit or were you a Plaintiff
9 or the Defendant or a witness in that?

10 A. No, I was -- I mean, I wasn't at fault, no way, I
11 was just, you know, a part of the accident. How are
12 you trying to ask me? What ---

13 Q. Well let me start off with some basic information;
14 okay?

15 A. Okay.

16 Q. Have you ever sued anyone before?

17 A. Oh, no.

18 Q. Have you ever filed a lawsuit before?

19 A. No.

20 Q. Did you file any kind of a lawsuit because of the
21 collision that occurred in July of 2009?

22 A. No. Only part I got was for the damage and the --
23 our going to the doctor, of the accident; that's it.

24 Q. Okay. And I'm going to get into that in just a
25 second ---

1 A. Okay.

2 Q. --- because that's one of the questions I had about
3 how bad you were hurt and what you had already been
4 paid. But how this started is you said you've had
5 your deposition taken before and I need to know why
6 you've had your deposition taken before. So can you
7 tell me why you ---

8 A. Because I was a part of the accident, of the Seay
9 hitting me into Shults.

10 **BY MR. DAVIS:**

11 Have you sat in front of a court reporter?

12 **BY THE WITNESS:**

13 Oh, no.

14 **BY MR. DAVIS:**

15 That's what he's talking about by a deposition.

16 **BY THE WITNESS:**

17 Oh, okay.

18 **BY MR. DAVIS:**

19 Okay. Sorry.

20 **DIRECT EXAMINATION RESUMED BY MR. HARMS:**

21 Q. Have you ever been in front of a court reporter
22 before with an attorney on the other side ---

23 A. Oh, no.

24 Q. --- like we're doing here today?

25 A. No, this is my first time.

1 Q. All right. I'm going to be taking your deposition
2 here today. Now you were here for the deposition of
3 Dickie Shults that just concluded a few minutes ago;
4 correct?

5 A. Yes.

6 Q. So you have a general idea of how a deposition
7 works?

8 A. Yes.

9 Q. I'm going to go over a couple of ground rules with
10 you and if I ask you a question I'm going to ask
11 that you allow me to complete my question before you
12 answer so that we're not talking over each other;
13 okay?

14 A. Okay.

15 Q. And if I ask you a question and you would like me to
16 repeat the question feel free to do so; okay?

17 A. Okay.

18 Q. If you need me to clarify a question feel free to
19 ask me to clarify it; okay?

20 A. Okay.

21 Q. And you have an attorney representing you here
22 today; you understand that?

23 A. Yes.

24 Q. But if you have questions about a question I need
25 you to direct those questions to me; do you

1 understand that?

2 A. Yes.

3 Q. And you understand he helped you out on this basic
4 question about a deposition but except for that you
5 understand that you're not allow to look to him how
6 to answer a question; do you understand that?

7 A. Yes.

8 Q. And he's not allowed to explain answers to you; do
9 you understand that?

10 A. Yes.

11 Q. And do you understand that you've sworn to tell the
12 truth?

13 A. Yes.

14 Q. And you understand that if you lie you can be
15 convicted or charged with the crime of perjury for
16 this deposition; do you understand that?

17 A. Yes.

18 Q. Okay. Let me start with some basic information
19 about you.

20 A. Okay.

21 Q. Tell me your full legal name, please.

22 A. My -- what I go by now?

23 Q. Sure. What you go by right now.

24 A. Angela Griffin Miller.

25 Q. How do you spell each part of that?

1 A. A-n-g-e-l-a, Griffin, G-r-i-f-f-i-n, Miller,
2 M-i-l-l-e-r.

3 Q. How long have you gone by that name?

4 A. For 18 years we've been married.

5 Q. What was your name before then?

6 A. Angela Pauline Griffin.

7 Q. What's your date of birth?

8 A. [REDACTED]

9 Q. So how old are you today?

10 A. 33.

11 Q. What's your current home address?

12 A. [REDACTED]

13 Q. How long have you lived there?

14 A. 17 years.

15 Q. Do you work anywhere?

16 A. Yes.

17 Q. Where do you work?

18 A. Concept Packaging.

19 Q. Where is that located?

20 A. It's Palmetto Drive, Inman 29349.

21 Q. What do you do there?

22 A. I work as a laminator.

23 Q. What does a laminator do?

24 A. It's -- they do cardboard and we -- the laminator
25 puts glue on the bottom of it, so we stick them

1 together, build them up like for different
2 companies. Like right now we are working on Briggs
3 and Stratton.

4 Q. How long have you been doing that type of work?

5 A. I've been there a little over a month.

6 Q. Where did you work before that?

7 A. I worked at Adidas.

8 Q. And what did you do there?

9 A. We packaged -- packed up clothing in boxes and sent
10 them out.

11 Q. How long did you do that type of work?

12 A. Two years.

13 Q. And what was your job title there?

14 A. I know it was production work, but it's like I stood
15 in front of a computer and scanned pieces and it
16 would tell me which box to put it in.

17 Q. Why did that job come to an end?

18 A. Well I wanted something different where I could be
19 home with my children more.

20 Q. Where did you work before Adidas?

21 A. Two By Two Daycare.

22 Q. How long did you work there?

23 A. About two years.

24 Q. What was your job title there?

25 A. I was a cook for the children.

1 Q. How long did that job last?

2 A. Let's see, about 2008 till 2010.

3 Q. Do you have a home phone number?

4 A. Yes.

5 Q. What's that?

6 A. 864-592-2054.

7 Q. Is that an actual landline in your home?

8 A. Yes.

9 Q. Do you have a cell phone number?

10 A. No.

11 Q. Does your husband Frank have a cell phone number?

12 A. No.

13 Q. Are there any other phone numbers where you can be
14 reached easily?

15 A. No.

16 Q. No?

17 A. Huh-uh (negative).

18 Q. Do you have a phone number at work where you can be
19 reached?

20 A. I don't know it right off.

21 Q. Tell me a little bit about your education. How far
22 did you go in school?

23 A. I have my GED and I have a two-year Associates
24 Degree in Early Childhood.

25 Q. What was the last year that you actually ---

1 A. 9th.

2 Q. You completed the 9th?

3 A. Uh-huh (affirmative).

4 Q. Is that a yes?

5 A. Yes.

6 Q. And by the way you've done something that's
7 extremely common, you nod your head and you grunt.
8 I can tell what you're doing because I'm here and
9 that's the way human beings talk a lot, but the
10 court reporter when writing up the transcript has no
11 way to know what that is; okay? So if I say things
12 like "Is that a yes? Is that a no?" that's the
13 reason why I'm doing that; okay?

14 A. Okay.

15 Q. So you completed the 9th grade; is that correct?

16 A. Yes.

17 Q. And then you got your GED?

18 A. Yes.

19 Q. And then you completed a two-year Associates Degree?

20 A. Yes.

21 Q. Where did you get that from?

22 A. Spartanburg Community College.

23 Q. What year did you graduate?

24 A. I got it in, I'll say 2004.

25 Q. All right. Let me talk to you a little bit about

1 the vehicles that were involved in this collision;
2 okay?

3 A. Okay.

4 Q. And when I mean the collision I'm always referring
5 to the collision that happened on July 22nd of 2009;
6 okay?

7 A. Okay.

8 Q. Or if I say the word "accident" or collision or car
9 wreck or anything like that we're always referring
10 to that July 22nd, 2009 collision; okay?

11 A. Okay.

12 Q. And do you agree that July 22nd, 2009 was the date
13 of the collision?

14 A. Yes.

15 Q. Tell me a little bit about the vehicle you were
16 driving on that day.

17 A. It's a green Chrysler Cirrus. Me and my family were
18 going to church, going west on 292, and Seay, just
19 as I was approaching near the Hot Spot and the
20 little side road, I mean, I didn't have time to
21 react to nothing, it was so instant, and he pushed
22 me across the line, which I hit Shults.

23 Q. I'm going to break that down in a little bit here.

24 A. Okay.

25 Q. But let me get through a couple of things; okay?

1 The vehicle you were driving, was there any damage
2 to it before the collision?

3 A. No.

4 Q. Did you take any pictures of your vehicle after the
5 collision?

6 A. No.

7 Q. Do you know if anybody did take any pictures of your
8 ---

9 A. I don't know.

10 Q. I've got to finish my question. Do you know if
11 anybody took any pictures of your vehicle after the
12 collision?

13 A. I don't know.

14 Q. Did any insurance adjuster for your insurance
15 company go and take any photos that you know of?

16 A. I don't remember.

17 Q. How big is a Chrysler Cirrus?

18 A. It's a small four-door car.

19 Q. Was it in good working order before ---

20 A. Yes.

21 Q. --- or were there any defects with it?

22 A. Yes, it was -- it got us where we needed to go.
23 There was nothing wrong with it.

24 Q. Was there anything wrong with the tires?

25 A. No.

1 Q. Anything wrong with the brakes?

2 A. No.

3 Q. Anything wrong with the steering wheel?

4 A. No.

5 Q. Anything wrong with anything on the windshield, any
6 cracks; anything like that?

7 A. No.

8 Q. When was the last time it had been to a mechanic
9 before the collision?

10 A. I hadn't even had it long so I don't recall. I
11 don't know. I mean, they told us when we got it it
12 was checked out.

13 Q. How long had you owned it before the collision?

14 A. Not long. I don't remember right off how long we
15 had it but it wasn't long.

16 Q. Was it more or less than 30 days?

17 A. It was more than 30 days.

18 Q. The police report listed you down as the owner of
19 the vehicle; is that correct?

20 A. Me or my husband.

21 Q. Do you know had you had it checked out by a mechanic
22 or one of the oil change places from the time that
23 you had purchased it to the time of the collision?

24 A. My husband always did our mechanic work and he
25 checks cars out before we even take them from a car

1 lot. I mean, you know, once we get it at home he
2 really goes over it more to make sure ---

3 Q. Was there any mechanical defect or car defect that
4 caused this collision; are you alleging that?

5 A. No.

6 Q. At the time of the collision did you own a cell
7 phone?

8 A. No.

9 Q. Do you own a cell phone today?

10 A. No.

11 Q. Have you ever owned a cell phone?

12 A. Yes.

13 Q. When's the last time you owned a cell phone?

14 A. Back July of this year.

15 Q. But you didn't have one back in July of 2009?

16 A. Not that I recall.

17 Q. Were you using a cell phone at the time of the
18 collision?

19 A. No.

20 Q. In the two minutes before the collision occurred had
21 you used a cell phone in any way?

22 A. No.

23 Q. Were there any cell phones in the car at the time of
24 the collision?

25 A. No.

1 Q. Do you know was the radio on at the time of the
2 collision?

3 A. I don't think it was.

4 Q. In the 30 seconds before the collision occurred had
5 you touched any of the dials?

6 A. No.

7 Q. In the two minutes before the collision occurred had
8 you touched any of the dials for anything in the
9 vehicle?

10 A. No, both my hands was on the steering wheel.

11 Q. Was anything else in your hands at the time of the
12 collision?

13 A. No.

14 Q. What I mean by that, were you eating anything, had
15 you stopped ---

16 A. No.

17 Q. Do you smoke?

18 A. No.

19 Q. Did you smoke back in July, 2009?

20 A. No.

21 Q. Was there anyone else in the vehicle at the time of
22 the collision?

23 A. My husband and our three children.

24 Q. Your husband is who?

25 A. Franklin Miller.

1 Q. How do you spell that?

2 A. F-r-a-n-k-l-i-n. Most people call him Frank, that's
3 why it says "Frank."

4 Q. And who are your children in the order that they
5 were born?

6 A. [REDACTED] ---

7 Q. How old is [REDACTED]

8 A. She's 18.

9 Q. 18 now?

10 A. Uh-huh (affirmative). No, 17, I'm trying to make
11 her older already.

12 Q. I understand. And who is your next child that was
13 in the vehicle?

14 A. [REDACTED]

15 Q. Is that [REDACTED]

16 A. Well we call him [REDACTED] his middle name. He's not
17 really ---

18 Q. All right, so it's [REDACTED]

19 A. He's not really a [REDACTED]

20 Q. What's his full ---

21 A. It's [REDACTED]

22 Q. Let's start with this: What's [REDACTED] legal name?

23 A. [REDACTED]

24 Q. All right, and what's [REDACTED] legal name?

25 A. [REDACTED]

1 Q. And how old is [REDACTED] today?

2 A. He's 14.

3 Q. And who was the next oldest child in the vehicle?

4 A. [REDACTED]

5 Q. And how old is [REDACTED] now?

6 A. 10.

7 Q. And all three of them were in the vehicle at the
8 time?

9 A. Yes.

10 Q. Was anybody else other than Frank and your three
11 kids in the vehicle at the time of the collision?

12 A. No.

13 Q. What were Frank and the three kids doing in the two
14 minutes before the collision occurred?

15 A. They were playing their little handheld games.

16 Q. Like Nintendo devices?

17 A. Yes.

18 Q. Was that distracting in any way?

19 A. No. They didn't even know nothing had happened
20 cause they told me they said, "Mama, I didn't know
21 nothing had happened" cause they wasn't even
22 looking, you know, away from their game.

23 Q. So [REDACTED] and [REDACTED] did not see the collision
24 occur?

25 A. No.

1 Q. "No" meaning you disagree with me or "no" they
2 didn't see the collision occur?

3 A. No, they didn't see it occur.

4 Q. Did Frank see the collision occur?

5 A. Yes, he was in the passenger's seat.

6 Q. Was Frank doing anything to distract you?

7 A. No.

8 Q. Were you talking to Frank at the time of the
9 collision?

10 A. No.

11 Q. Tell me what Frank has told you -- well have you had
12 any conversations with Frank Miller, your husband,
13 about how the collision occurred?

14 A. Other than we don't see where we're at fault, that's
15 all, cause they was nothing I could do to avoid the
16 situation.

17 Q. But on the day of the collision did you have any
18 discussions with your husband Frank about how the
19 collision occurred?

20 A. I probably did. I mean, you know, just normal
21 conversation a husband and wife would have.

22 Q. Do you remember what Frank told you in those
23 conversations that day?

24 A. No.

25 Q. Have you had any other conversations with your

1 husband Frank after the collision in which he told
2 you what he saw or observed on the day or time of
3 the collision?

4 A. No, not that -- nothing other than what I said about
5 we don't see how we were -- we were at fault of
6 anything.

7 Q. Other than that has Frank told you anything else
8 about how the collision occurred or what he saw
9 during the collision?

10 A. It was just so instant he was in the passenger's
11 seat and he went to holler, wasn't nothing I could
12 to because it just -- that second, you know.

13 Q. You said he hollered before the collision occurred?

14 A. Right as it was happening.

15 Q. What did he say?

16 A. "Look out." I mean, bam, wasn't no -- nothing, you
17 know, I just seen it once it hit me.

18 Q. Did Frank, your husband, saying anything other than
19 "Look out"?

20 A. No.

21 Q. How much time passed from the time that your husband
22 yelled "Look out" from the moment your vehicle and
23 Mr. Seay's vehicle made contact?

24 A. It was instant also. I mean, I was just -- I don't
25 know ---

1 Q. Do you think it was more ---

2 A. --- everything was just so instant.

3 Q. Do you think it was more or less than two seconds?

4 A. Less than two seconds.

5 Q. Did you take any photographs of Mr. Seay's vehicle
6 after the collision?

7 A. No.

8 Q. Do you know if anybody took any photographs of Mr.
9 Seay's vehicle after the collision?

10 A. I don't know.

11 Q. Let's talk a little bit about the collision then.
12 Where is the last place you were before the
13 collision? Where were you coming from before the
14 collision occurred?

15 A. At my home.

16 Q. Your home where?

17 A. 108 Miller Circle.

18 Q. How far had you traveled before the collision
19 occurred?

20 A. However far from Miller Circle to 292.

21 Q. Do you think it was more or less than five minutes
22 that you had been traveling before the collision
23 occurred?

24 A. It at least takes about 10 minutes to get to 292.

25 Q. Where were you heading to if this collision had not

1 occurred?

2 A. We were going to Restoration Church.

3 Q. Where is that at?

4 A. It is Pottery Road off of New Cut Road.

5 Q. What were you going to do at Restoration Church?

6 A. Go to our Wednesday night service.

7 Q. What time did that Wednesday night service start?

8 A. 6:30.

9 Q. How far away were you from Restoration Church at the
10 time of the collision?

11 A. At least probably close to 20 more minutes from 26.

12 Q. Were you in a hurry to get there?

13 A. No.

14 Q. Were you running late?

15 A. No.

16 Q. What were you planning on doing after Restoration
17 Church?

18 A. Going home.

19 Q. From the time you left your home before the
20 collision until the time of the collision had you
21 stopped anywhere?

22 A. No.

23 Q. No convenient stores, gas stations; anything like
24 that?

25 A. No.

1 Q. From the place where the collision occurred to the
2 location of Restoration Church were you planning on
3 stopping anywhere?

4 A. No.

5 Q. I assume it was a Wednesday on the day of the
6 collision?

7 A. Yes.

8 Q. Do you know what time of day the collision occurred?

9 A. Around 6:00 o'clock.

10 Q. And what road were you traveling on?

11 A. Highway 292.

12 Q. How many lanes of travel were there on Highway 292
13 in the direction that you were going?

14 A. Can you ---

15 Q. Sure.

16 A. --- explain that more?

17 Q. The police report looks like it shows it's a two-
18 lane road, one lane in each direction?

19 A. Yes.

20 Q. Does that sound right?

21 A. Yes.

22 Q. Okay. I just wanted to make sure because trust me,
23 police officers can get these things wrong.

24 A. Yes.

25 Q. So do you agree in the location that you were at

1 when the collision occurred, it was a two-lane road,
2 one lane in each direction?

3 A. Yes

4 Q. Was it light out at the time of the collision?

5 A. Yes.

6 Q. What was the weather like?

7 A. Clear.

8 Q. The place where the collision occurred would you
9 describe it as straight or curvy?

10 A. Straight.

11 Q. The place where the collision occurred would you
12 describe it as flat, hilly or a valley?

13 A. Flat.

14 Q. Were there any road defects that caused or
15 contributed to this collision?

16 A. No.

17 Q. What I mean by that is any kind of pot holes,
18 anything wrong with gravel on the road, anything
19 like that that may have caused or contributed to
20 this collision occurring?

21 A. No.

22 Q. Was your vision obstructed by anything including the
23 light or sun?

24 A. No.

25 Q. Were there any trees, shrubs, bushes or anything

1 obstructing your view of either Mr. Seay's vehicle
2 or Mr. Shults' vehicle?

3 A. No.

4 Q. You're wearing glasses here today?

5 A. Yes.

6 Q. How long have you been wearing glasses, since
7 roughly what age?

8 A. Maybe two years.

9 Q. Were you required to wear glasses at the time of
10 this collision?

11 A. No.

12 Q. At the time of this collision, on the day of the
13 collision, were you wearing any prescription
14 glasses?

15 A. No.

16 Q. Were you wearing sunglasses of any type?

17 A. No.

18 Q. Were you wearing anything over your eyes?

19 A. No.

20 Q. The glasses you're wearing now is it because it
21 helps you read close or does it help you see things
22 far away?

23 A. See far away.

24 Q. When did you first start getting glasses after the
25 collision?

1 A. Well I started having headaches and then I didn't
2 know that was causing my headaches.

3 Q. Do you remember what month of what year you went and
4 saw an eye doctor and you got prescription glasses?

5 A. I think it was towards the end of 2010.

6 Q. Before the collision when's the last time you had
7 seen an eye doctor of any type, optometrist,
8 ophthalmologist or any other eye doctor?

9 A. I hadn't because I could see fine.

10 Q. Well what kind of vision problems were you having
11 back on July 22nd, 2009?

12 A. None that I recall.

13 Q. Do you remember the last time you had to get your
14 vision checked in order to get your driver's license
15 before the collision?

16 A. Not right off. I hadn't -- they hadn't never sent
17 me to have them checked.

18 Q. When you got your driver's license renewed before
19 the collision occurred did you do it in person, did
20 you do it by mail; do you remember?

21 A. I went in person.

22 Q. You went in person? Did they check your eyes at
23 that point in time?

24 A. Yes, I had to read the ---

25 Q. Read the -- you made this motion ---

1 A. --- the, you know, the thing ---

2 Q. --- the little goggles they put on ---

3 A. Yes.

4 Q. --- or that big goggle device they have?

5 A. Look in it and read the line off to them, yeah.

6 Q. Do you remember when that occurred?

7 A. Well I've got to have them renewed in 2015, so I
8 don't know right off.

9 Q. Was your vision blurry at all back in the month of
10 July of 2009 because of a lack of glasses?

11 A. No.

12 Q. You sure?

13 A. I'm sure.

14 Q. But roughly a year later you were getting glasses;
15 is that correct?

16 A. Yes.

17 Q. Do you remember what your prescription level is now?

18 A. I don't know right off but I can see like -- I can
19 see not wearing them but it's just like far, far
20 away.

21 Q. I understand.

22 A. So far I don't know how far up but ---

23 Q. Did the optometrist or -- well what doctor did you
24 go to for your eyes?

25 A. The one in Boiling Springs Wal-Mart, Steve -- Steve

1 McPhail.

2 Q. So it's the Wal-Mart in Boiling Springs?

3 A. Yes.

4 Q. On what road is that?

5 A. Rainbow Lake Road.

6 Q. It's the optometrist that's inside the Wal-Mart?

7 A. Yes.

8 Q. Did he ever tell you, you know, do you have 20/40
9 vision, 20/200 vision; do you remember what that
10 number was?

11 A. I don't remember.

12 Q. How many visits have you had to that optometrist?

13 A. I try to go at least -- at least once a year.

14 Q. Before this collision occurred had you ever been
15 prescribed contact lenses or prescription lenses?

16 A. No.

17 Q. In the 24 hours before the collision occurred had
18 you drunk any alcoholic beverages of any type?

19 A. No.

20 Q. In the 24 hours before the collision occurred had
21 you taken any prescription medications?

22 A. No. The only prescription medication I am
23 prescribed is Synthroid, and I take that once a day,
24 which it don't have no, you know, side effects like
25 that.

1 Q. Is that for a thyroid issue?

2 A. Yes, uh-huh (affirmative).

3 Q. In the three years before the collision occurred had
4 you been prescribed any other prescription
5 medications other than the Synthroid?

6 A. No.

7 Q. On Highway 292, where you were at when the collision
8 occurred, is there a yellow line in the center of
9 the road?

10 A. Yes.

11 Q. Now did you cross over that yellow line in the
12 center of the road and hit Dickie Shults' vehicle?

13 A. I was pushed into Dickie Shults by Seay.

14 Q. What I need to know is did you ultimately go over
15 that yellow center line ---

16 A. I didn't intentionally, if that's what you're trying
17 to say.

18 Q. I'm not asking you if you intentionally or
19 negligently did it; all I need to know is the
20 movement of the vehicles for right now; okay?

21 A. Okay.

22 Q. Did the vehicle you were driving cross over that
23 yellow center line into Dickie Shults' lane of
24 travel?

25 A. When I was struck by Seay but before then no.

1 Q. After you were hit by Mr. Seay did your vehicle
2 cross over the yellow center line and into Dickie
3 Shults' lane of travel?

4 A. Yes.

5 Q. Did you ultimately hit or make contact with Dickie
6 Shults' vehicle?

7 A. What do you mean?

8 Q. Did your vehicle touch his vehicle?

9 A. Yes.

10 Q. Why did you not stop before you got struck by Mr.
11 Seay's vehicle?

12 A. I was pushed, I couldn't. I mean, wasn't no
13 stopping. I mean, it was so fast that I didn't have
14 time to, you know, do anything.

15 Q. How far away was Mr. Seay's vehicle the first time
16 you noticed or observed his vehicle?

17 A. Not even two seconds as far as ---

18 Q. As far as time ---

19 A. Yes.

20 Q. --- it was less than two seconds?

21 A. Yes.

22 Q. How far away distance-wise was Mr. Seay's vehicle
23 the first time you noticed that Mr. Seay's vehicle
24 was on the road or on his road?

25 A. Just that -- within the two seconds. I mean, it was

1 no -- no time for me to have a chance to avoid the
2 collision.

3 Q. What I'm looking for is a distance. I mean, was it
4 two car lengths away, three car lengths away, a
5 hundred feet, a hundred yards? The very first time
6 that you remember his vehicle being present how far
7 away was his vehicle?

8 A. When I was struck. I mean, it wasn't no -- I didn't
9 have no kind of distance at all.

10 Q. Okay. So do I understand it correctly that before
11 your vehicle and Mr. Seay's vehicle made contact you
12 did not see his vehicle at all?

13 A. No.

14 Q. "No" you disagree with me or "no" you didn't see his
15 vehicle at all?

16 A. No, I didn't see him until I was struck by him.

17 Q. So the first time you saw Mr. Seay's vehicle was at
18 the time that your vehicle and his vehicle made
19 contact?

20 A. Yes.

21 Q. Tell me why you did not see Mr. Seay's vehicle prior
22 to contact being made by the vehicles.

23 A. I guess cause he yielded to stop and hit me. I
24 mean, I don't know.

25 Q. Were you looking at some place other than the road

1 in front of you?

2 A. No, looking straight ahead.

3 Q. Well he came out from your -- in front of you and to
4 your right; is that correct?

5 A. Yes, my right fender, right side fender.

6 Q. Did he -- let's just make sure we're on the same
7 page because I assume that's because it's on the
8 collision report. Did Mr. Seay come from your right
9 or passenger's side of the vehicle?

10 A. Yes.

11 Q. What road was Mr. Seay on before the collision?

12 A. I think it's called Miller -- Miller Farm. It's
13 right there near the Hot Spot.

14 Q. The police report says Miller Farm Road; does that
15 sound correct?

16 A. Yes.

17 Q. And it looks like it's nearly across the street
18 approximately then a service station?

19 A. Yes.

20 Q. The name of the service station is the "Hot Spot"?

21 A. Yes, at that time. I don't know if they changed
22 their name, you know, since then.

23 Q. I got you. Miller Farm Road, how many -- is that a
24 one-lane road or a two-lane road?

25 A. I think it's two-lane.

1 Q. And was Mr. Seay in the proper lane prior to the
2 collision, meaning he was in his right lane, the
3 right lane for him?

4 A. I don't know.

5 Q. And that's because -- you don't know because you
6 literally did not see him ---

7 A. That's right.

8 Q. --- until after the collision occurred; is that
9 correct?

10 A. No, right. When the collision happened is when, you
11 know, I seen who, you know, had hit me.

12 Q. What I need to know was there anything obstructing
13 your view of Mr. Seay's vehicle?

14 A. No.

15 Q. So then tell me in your own words why did you not
16 see Mr. Seay's vehicle until after the collision
17 occurred?

18 A. Everything happened so fast. I mean, I didn't have
19 a chance. I didn't see him at all. I don't know
20 why but I didn't see him.

21 Q. Do you know how fast Mr. Seay was going at the
22 moment his vehicle struck your vehicle?

23 A. It was enough to cause me to be bumped into Shults
24 and total my car.

25 Q. Your vehicle was totaled in this collision?

1 A. Yes. It was not drivable.

2 Q. Did you ever see any estimate as to how much it
3 would cost to get your vehicle fixed?

4 A. I don't remember the actual figures. I don't
5 remember.

6 Q. How much were you paid in compensation for this
7 vehicle, the total loss?

8 A. I don't remember what the value was.

9 Q. Was it more or less than \$4,000?

10 A. Around \$4,000 sounds around -- around the ballpark.

11 Q. Tell me what kind of damage was done to your
12 vehicle?

13 A. Well I know water ran out from under it, the
14 steering wheel was locked up. I don't remember
15 about the gears.

16 Q. Was there damage to the front of the vehicle, the
17 fender or the bumper?

18 A. The whole front was basically where all of the
19 impact and total was.

20 Q. Was the front bumper and grill area impacted like an
21 accordion?

22 A. Yes, I think it was.

23 Q. And I think you said your vehicle wasn't drivable
24 anymore?

25 A. Right.

1 Q. Did the bumpers where the body of the vehicle
2 touched down on to the tires so the tires wouldn't
3 rotate anymore?

4 A. Yes.

5 Q. Was the hood of the vehicle damaged and pushed in?

6 A. I think it was -- it was like the passenger's side
7 was pushed in and then when I was struck in the
8 Shults' truck it pushed the driver's side in. So it
9 was ---

10 Q. How fast were you going at the moment Mr. Seay's
11 vehicle struck your vehicle?

12 A. Around 20, 20 something, wasn't too fast.

13 Q. Why were you going that slow?

14 A. That's a busy intersection, cars coming out of the
15 store, the road there, you're near 26. That's a
16 real busy intersection.

17 Q. Is the speed limit 55 miles an hour right before
18 that gas station?

19 A. I think up to right before you get around that area
20 it drops down to 35.

21 Q. But it's 55 before it drops down to 35?

22 A. Yes.

23 Q. How far is it from the point in time from where the
24 speed limit drops to 35 miles an hour to the time
25 where the collision occurred, what's the distance or

1 time?

2 A. I know it was a good little distance but I right off

3 ---

4 Q. More or less than a block?

5 A. More than a block, I would think.

6 Q. Were you driving more than 35 miles an hour at the
7 time of the collision?

8 A. Before I got near the area to where you supposed to
9 slow down. Before I got to the area, you know,
10 slowed down before entering the area.

11 Q. In the five seconds before the collision occurred
12 were you going more than 35 miles an hour?

13 A. No.

14 Q. All right, so going back to this question: Why did
15 you not stop before getting struck by Mr. Seay's
16 vehicle?

17 A. I didn't have time to react to stop.

18 Q. At the moment of impact did you still have your foot
19 on the accelerator?

20 A. No.

21 Q. Where did you have your foot then?

22 A. Brakes.

23 Q. At the moment of impact why did you have your foot
24 on the brakes if you didn't see Mr. Seay before the
25 collision?

1 A. Not to go too fast in that little area, being
2 cautious, cautious as I could be.

3 Q. How was your vehicle moving forward if your foot was
4 on the brakes?

5 A. I wasn't, you know, like complete stop, if that's
6 what you're asking.

7 Q. Well when's the last time that your foot was on the
8 accelerator prior to the collision with Mr. Seay?

9 A. I don't -- I don't remember right off when.

10 Q. Did you leave any skid marks prior to colliding with
11 Mr. Seay?

12 A. No.

13 Q. Did you brake hard at all prior to this collision?

14 A. No, I didn't have -- I didn't have a chance to.

15 Q. And I'm sorry, how fast do you think Mr. Seay's
16 vehicle was going at the moment of impact?

17 A. I don't know.

18 Q. You have literally no idea?

19 A. I mean, it was -- it was enough to push me across
20 the yellow line.

21 Q. Into Dickie Shults' lane of travel?

22 A. Yes.

23 Q. Why did you not stop between the time that you got
24 struck by Mr. Seay but before you hit Dickie Shults'
25 vehicle?

1 A. There was no time between all the -- being bumped
2 into Dickie Shults. He had already pulled out from
3 the store.

4 Q. Did you see Dickie Shults' vehicle prior to getting
5 hit by Mr. Seay?

6 A. Not in time to do anything.

7 Q. Well did you see ---

8 A. I mean ---

9 Q. --- Dickie Shults' vehicle at all prior to getting
10 hit by Mr. Seay?

11 A. As soon as I was bumped into it, I mean, cause that
12 was like how close I was to the store of where you
13 come out.

14 Q. How far away was Dickie Shults' vehicle the very
15 first time you noticed his vehicle?

16 A. When we was bumper-to-bumper, my front bumper to his
17 bumper.

18 Q. So the moment of impact?

19 A. Yes.

20 Q. So it would be fair to say you did not see Dickie
21 Shults' vehicle prior to actually making contact
22 with his vehicle; is that correct?

23 A. No, I did not see it before the prior bump.

24 Q. The contact with his vehicle?

25 A. Right, the contact, yes.

1 Q. You keep saying a "bump" though. This was ---

2 A. Well I mean ---

3 Q. Was this collision more than just a bump?

4 A. I was just referring to that as far as the contact.

5 I didn't know ---

6 Q. That's fine. Your vehicle got totaled in this

7 collision; right?

8 A. Yes.

9 Q. Do you think your vehicle got damaged because of the
10 collision with Mr. Shults? You had already ---

11 A. Most of the damage came from Shults.

12 Q. Most of the damage ---

13 A. Yes.

14 Q. --- actually came from hitting Mr. Shults' ---

15 A. Not Shults, I mean the Seay.

16 Q. Mr. Seay, okay.

17 A. The Seay bumping me, yes.

18 Q. Could you see was there damage to your vehicle

19 because of the collision with Mr. Shults?

20 A. No, he was not -- he was not the contributor to the
21 accident, if that's what ---

22 Q. I'm asking a bad question. And you've already
23 answered this once but I want to clarify this; okay?

24 A. Okay.

25 Q. Is it fair to say your vehicle got damaged twice,

1 once from the impact with Mr. Seay and once from the
2 impact with Mr. Shults?

3 A. I would say it was more of the Seay because the
4 Shults, the side that I impacted with him, was not
5 as damaged.

6 Q. But was there some damage?

7 A. Yes.

8 Q. Okay, that's what I wanted to know. What was the
9 "some" damage that you saw on your vehicle because
10 of the impact with Mr. Shults?

11 A. I could not open my driver door to get out my
12 driver's side.

13 Q. What part of your vehicle touched what part of Mr.
14 Shults' vehicle?

15 A. The left front fender but it was like where the door
16 ---

17 Q. Hold on, the left front fender of your vehicle?

18 A. Yes.

19 Q. Hit what part of his vehicle?

20 A. The front driver bumper.

21 Q. How far did your vehicle travel across the yellow
22 line into Mr. Shults' lane of travel?

23 A. Basically, you know you have the length between cars
24 as far as the yellow line going down the road like
25 passing and them -- you know, how much room that you

1 have passing, of not crossing the yellow line.

2 You're not understanding what I'm trying to say.

3 Q. Was there a center median or a -- I sometimes call
4 it the "suicide lane" a turning lane there ---

5 A. No.

6 Q. --- between the two lanes? Okay. So it was two
7 lanes ---

8 A. Just the yellow or the ---

9 Q. --- and the yellow lines that are about, I don't
10 know, eight inches apart or so, give or take?

11 A. Yeah.

12 Q. What I need to know is how far did your vehicle's
13 bumper go into the oncoming lane of travel, how many
14 feet?

15 A. I'm not good at measurements. I don't know right
16 off, I mean, as far as how many feet you're wanting
17 to know.

18 Q. Well do you think it was more or less than a yard
19 stick?

20 A. It was less than a yard stick. It was like I bumped
21 his front bumper and then went in behind the truck,
22 of his truck, up in the grass of the store.

23 Q. So your vehicle actually turned around?

24 A. No.

25 Q. It didn't?

1 A. I was still facing ---

2 Q. Describe that for me what happened then.

3 A. I was still facing forward, I mean, going west on
4 292.

5 Q. Did your vehicle rotate at all ---

6 A. No.

7 Q. --- clockwise or counterclockwise?

8 A. No, it was like I bumped his fender and then it was
9 like I didn't hit no other part of his truck but it
10 was like went up behind, just right behind him into
11 the grass.

12 Q. So your vehicle came to a rest in the grass; is that
13 correct?

14 A. Yes.

15 Q. And that would be in the grass on Mr. -- to your
16 left?

17 A. Of the store.

18 Q. Yes, to the Hot Spot store?

19 A. Yes.

20 Q. Okay. So that would have been -- it came to a rest
21 in the grass ditch area on ---

22 A. It wasn't really a ditch, it was kindly flat.

23 Q. But it's the grass on Dickie Shults' side of the
24 road?

25 A. Yes.

1 Q. So your vehicle had enough momentum to actually
2 completely go across to the -- completely go across
3 the oncoming lane of travel?

4 A. I mean, he was right -- I mean, he had just came out
5 from the store area, I mean, that's how close he was
6 still to the store, of going into the grass.

7 Q. You would agree your vehicle had at least enough
8 momentum or speed to travel all the way across
9 Dickie Shults' lane of travel and come to a rest on
10 his side of the road; correct?

11 A. Yes.

12 Q. Where did Mr. Seay's vehicle come to a rest, where
13 did it stop?

14 A. (No verbal response).

15 Q. In your lane of travel or did he go somewhere else?

16 A. I don't remember if they had to move his car, if his
17 was totaled or if he could move it. I don't
18 remember.

19 Q. Where did Dickie ---

20 A. I was more worried about me and my family, you know,
21 being okay at the time.

22 Q. Perfectly understandable. Do you remember where
23 Dickie Shults' vehicle came to a rest?

24 A. I think it was the entrance. They had more than one
25 entrance of the store, I think it was like the next

1 little entrance mainly where the big trucks mainly
2 go up to.

3 Q. What kind of damage did you see on Dickie Shults'
4 vehicle after the collision?

5 A. The front -- front driver's side fender.

6 Q. It was ---

7 A. It was just ---

8 Q. --- mashed in?

9 A. Yes, a little bit mashed in.

10 Q. Were there any other vehicles involved in this
11 collision other than the three we've already
12 mentioned?

13 A. No.

14 Q. Do you know of any other witnesses to this collision
15 other than the people in your vehicle?

16 A. The people that worked at the store at the time saw
17 what happened.

18 Q. Did you get their names?

19 A. No, I don't know who they were.

20 Q. As we sit here today would you be able to identify
21 who they are?

22 A. Maybe by face but not name-wise.

23 Q. Have you spoken with any of them?

24 A. Not since the accident.

25 Q. On the date of the accident ---

1 A. They offered us a drink because it was hot and made
2 sure everyone was okay. That was basically all they
3 asked.

4 Q. Let's clarify here, do you know the names of any of
5 those people?

6 A. No.

7 Q. Do you know if any of them work at the Hot Spot
8 still?

9 A. I don't know.

10 Q. Have you been back in that Hot Spot since the
11 collision?

12 A. Yes, but not, you know, to pay them attention like,
13 "Hey, I know you from then."

14 Q. Did they actually tell you that they saw the
15 collision occur?

16 A. Yes.

17 Q. What did they tell you what ---

18 A. Well they told us they saw what happened, that, you
19 know, they was just -- make sure that we were okay.

20 Q. What did they tell you happened?

21 A. They didn't -- I mean, they didn't go in details,
22 they just said they saw what happened.

23 Q. Did they say anything more than that?

24 A. No.

25 Q. Other than those people do you know of any witnesses

1 to this collision?

2 A. I don't know.

3 Q. Has anybody told you after the collision that they
4 saw the collision occur other than the employees of
5 the Hot Spot?

6 A. No.

7 Q. Do you remember if there were any other vehicles on
8 the road at the time of the collision other than the
9 three vehicles we've been talking about?

10 A. Not right off, no.

11 Q. I assume you did not turn on any of your blinker
12 lights, including your left blinker lights before
13 the collision occurred?

14 A. No, cause I wasn't turning nowhere at the time.

15 Q. It was never your intention to make a left turn ---

16 A. No.

17 Q. --- into Dickie Shults' lane of travel?

18 A. Oh, no.

19 Q. Is that correct?

20 A. No. No.

21 Q. You would've never turned on a left turn signal
22 light; correct ---

23 A. No.

24 Q. --- before the collision?

25 A. No.

1 Q. "No" I'm incorrect or "no" you never turned on your

2 ---

3 A. No, I never turned a signal on.

4 Q. Did anybody blow their horn prior to the collision?

5 A. No.

6 Q. Why do you think this collision occurred?

7 A. Because of Seay pushing me across the yellow line.

8 Q. How did he -- we haven't talked about this: Tell me
9 the manner in which he hit you, meaning we know he
10 was coming from your right?

11 A. Uh-huh (affirmative), yes.

12 Q. Do you know what he did or did not do in order to
13 hit you? Do you actually know, did you actually see
14 it?

15 A. I didn't see -- what was the question again?

16 Q. Well let ---

17 A. What are you trying to ---

18 Q. Yeah, let me just back up.

19 A. Okay.

20 Q. I believe your testimony is you honestly did not see
21 Mr. Seay's vehicle until the moment of impact; is
22 that correct?

23 A. Yes.

24 Q. So therefore I assume you can't tell me if he blew
25 through the -- if he came to a stop for a -- for the

1 road and then proceeded out versus him doing a
2 rolling stop where he kind of just goes right out or
3 did he just completely blow right through the stop
4 sign and hit you? I assume you don't know one way
5 or the other; is that correct?

6 A. I don't know.

7 Q. You said you don't know?

8 A. I don't know what he tried ---

9 Q. You don't know what he tried to do before ---

10 A. No.

11 Q. --- the moment of impact; is that correct?

12 A. No.

13 Q. Do you think that Dickie Shults did anything
14 negligent or wrong in this collision?

15 A. No.

16 Q. Do you know how fast -- well I assume you don't know
17 how fast Dickie Shults' vehicle was going at the
18 time of the collision; right?

19 A. No.

20 Q. "No" meaning you don't know the speed?

21 A. No, I don't know.

22 Q. Did you feel the impact?

23 A. Yes.

24 Q. Did you feel the impact with Dickie Shults' vehicle?

25 A. Well I'm not sure if it was just from Seay or from

1 Shults.

2 Q. Were you wearing your seatbelt at the time of the
3 collision?

4 A. Yes.

5 Q. Did it lock down or catch?

6 A. It caught.

7 Q. Did your airbags deploy?

8 A. No.

9 Q. That vehicle does have airbags; right?

10 A. Yes.

11 Q. Did any airbags deploy?

12 A. No.

13 Q. Were you concerned that somebody got hurt in the
14 collision?

15 A. Yes, I mean ---

16 Q. Why?

17 A. Because the way everything happened. I mean, any
18 kind of accident someone's can be -- someone can be
19 hurt and you not know it right then.

20 Q. What I want to make sure, you're not claiming this
21 was just some minor bump in which you would say,
22 "Gosh, how did anybody get hurt in this collision"?

23 A. No.

24 Q. "No" you don't think that or "no" you disagree with
25 me?

1 A. No, I don't think that. I mean, I think you can get
2 hurt in any kind of accident.

3 Q. Did you have any conversations with Dickie Shults
4 after the collision?

5 A. He asked was we okay, he asked was the children
6 fine. Other than that, that was it.

7 Q. Did you ever ask him if he was fine?

8 A. Yes.

9 Q. Okay, what did he say?

10 A. He was fine.

11 Q. Other than what you've told me did you have any
12 other conversations with Dickie Shults?

13 A. No.

14 Q. Did you have any conversations with Dickie Shults as
15 to how the collision occurred or who was at fault?

16 A. No.

17 Q. Have you ever had any conversations with him even
18 after the collision as to how the accident occurred
19 or who was at fault?

20 A. No.

21 Q. Did you have any conversations with Mr. Seay?

22 A. No.

23 Q. On the date of the accident did you have any
24 conversations with him at all?

25 A. No.

1 Q. So I assume then you're not able to testify at all
2 as far as conversations with him as to how the
3 accident occurred or who was at fault?

4 A. No.

5 Q. "No" you had no conversations?

6 A. No conversations.

7 Q. Did you talk to a police officer or a sheriff's
8 deputy or who came out there to investigate, was it
9 a police officer, a sheriff's deputy, a highway
10 patrol officer?

11 A. Highway patrol.

12 Q. Okay, yeah, it looks like it was a highway patrol
13 officer according to the collision report. Did you
14 get any tickets or citations because of this
15 collision?

16 A. No.

17 Q. Do you know if anybody got any tickets or citations
18 because of this collision?

19 A. I think the Seay did.

20 Q. Who told you that, the officer or did you see it,
21 the ticket?

22 A. Well the report, I think, even says that he was
23 something, I don't know what.

24 Q. Did the officer tell you that Mr. Seay was getting a
25 ticket or citation?

1 A. I don't remember if he officially told me that he
2 did.

3 Q. Do you know did Dickie Shults get any kind of ticket
4 or citation because of this collision?

5 A. I don't think so.

6 Q. What did you tell the highway patrol officer as to
7 what happened, as far as what happened in the
8 collision?

9 A. I was approaching the intersection and I was struck
10 by the car from the Miller Farm Road of my front,
11 right front fender, was pushed into Shults, which
12 struck my left front fender and I ended behind in
13 the grass of 292 right there at the Hot Spot.

14 Q. How fast do you think your vehicle was traveling at
15 the moment it hit Dickie Shults' vehicle?

16 A. Not fast at all, 20 something miles an hour, 20, 20
17 something.

18 Q. Did you get hurt in this collision?

19 A. I had a -- I'm diagnosed -- was diagnosed with
20 carpal tunnel in my left wrist ---

21 Q. Because of this ---

22 A. --- they said possibly from gripping the steering
23 wheel.

24 Q. So because of this automobile collision you
25 developed carpal tunnel?

1 A. Yes.

2 Q. In what wrist or wrists?

3 A. Left.

4 Q. Your left wrist?

5 A. Uh-huh (affirmative).

6 Q. All right.

7 A. Yes.

8 Q. And when is the first time you went and saw a doctor
9 after this collision for the injuries from the
10 collision?

11 A. I probably gave it two or three days and then my
12 wrist kept hurting so I went to my family doctor and
13 he sent me to have it -- I went to Dr. Falcon.

14 Q. Is that your family doctor?

15 A. No, my family doctor is Graham Dickerson.

16 Q. At what clinic?

17 A. Mary -- he's affiliated with Mary Black Family
18 Foothills.

19 Q. In what location? What's the general address?

20 A. Old Furnace, Boiling Springs.

21 Q. All right. And then you got referred to a hand
22 specialist?

23 A. Yes.

24 Q. And that's Dr. Falcon?

25 A. Yes.

1 Q. What's Dr. Falcon's full name?

2 A. He's -- I don't remember his first name. He's ---

3 Q. In what ---

4 A. He's in Regional, the Regional. I don't remember
5 what part but he's in Regional.

6 Q. In what city?

7 A. Spartanburg.

8 Q. And he's the one who did the surgery?

9 A. I didn't have -- it wasn't -- it wasn't bad enough
10 for surgery. He sent me to Piedmont Imaging to
11 where they did the MRI on it and he said looks like
12 I could be treated with a hydrocortisone shot. So
13 he gave me the shot and it's not bothered me since.

14 Q. Have you seen any other doctors for the injuries you
15 suffered in the collision?

16 A. Just went to the ER to make sure I was fine, my
17 children and my husband.

18 Q. Did you go to the ER the day of the collision?

19 A. I think it was the next day.

20 Q. You, your husband and your three children all went
21 to the ER the day after the collision?

22 A. Yes.

23 Q. Did any of you get any medical treatment on the day
24 of the collision?

25 A. Not -- I don't think so.

1 Q. What do you think -- ballpark figure what do you
2 think is the total amount of your medical bills from
3 the ER to the last visit you had with Dr. Falcon?

4 A. I don't -- I don't know, I mean, I don't know how
5 much the ER visit and things are. I don't recall.
6 I don't remember the amount.

7 Q. We have learned from the previous litigation that
8 you had received a settlement from Mr. Seay; is that
9 correct?

10 A. Yes.

11 Q. How much was your settlement with Mr. Seay for you?

12 A. I don't remember without going back looking at that
13 information. I've not looked at the information
14 since 2009.

15 Q. Do you think it was more or less than \$10,000?

16 A. It sounds around that maybe.

17 Q. Did your husband get any medical treatment other
18 than the emergency room visit after this collision
19 ---

20 A. No.

21 Q. --- because of the collision?

22 A. No.

23 Q. Just one visit to the ER, for your husband?

24 A. I think so. I think that was all, one.

25 Q. What kind of complaints or problems was he having

1 because of the collision?

2 A. Just the soreness of your back and your neck and
3 stuff that I remember, I think.

4 Q. You told me about your left wrist, did you have any
5 other body parts injured in this collision?

6 A. No.

7 Q. And your three children now, [REDACTED] she went to the
8 emergency room the day after the collision; is that
9 correct?

10 A. Yes.

11 Q. What additional medical treatment did she get
12 because of this collision?

13 A. Nothing, there was just soreness. There was no --
14 nothing wrong with them that needed ongoing
15 treatment.

16 Q. Now your son [REDACTED] he went to the emergency room
17 the day after the collision; correct?

18 A. Yes.

19 Q. Did he get any additional medical treatment?

20 A. No.

21 Q. I'm sorry, what was wrong with [REDACTED] that she got
22 medical treatment?

23 A. Nothing that I -- I mean, it was, you know,
24 basically make sure her back and stuff was okay
25 because of just being jarred.

1 Q. Was she having back pain?

2 A. Her back was sore.

3 Q. And [REDACTED] too, what were the problems he was
4 complaining of?

5 A. Basically the same thing, their back was sore.

6 Q. What about [REDACTED] did he get any medical treatment
7 other than the emergency room visit?

8 A. No.

9 Q. What were his main complaints?

10 A. Just their back being sore from just jarred.

11 Q. And they didn't follow up with any other doctors,
12 chiropractors, any other medical other than the ER
13 visit?

14 A. They may have went to the family doctor but I don't
15 -- I don't think they did, I think it was just the
16 ER.

17 Q. Do you remember the total amount of the settlement
18 for all five of you from Mr. Seay's insurance
19 company?

20 A. Not right off. I was trying to think if I did but I
21 don't -- can't remember right off.

22 Q. Did you miss any time from work because of this
23 collision?

24 A. Yes.

25 Q. How long?

1 A. Probably a total of three or four days maybe.

2 Q. Did your husband miss any time from work because of
3 the collision?

4 A. No.

5 Q. Were you working for anyone at the time of the
6 collision? What I mean by that is were you on the
7 job getting paid by any employer at the moment of
8 the collision?

9 A. At the time?

10 Q. Yeah, were you on the clock, were you on the job at
11 the time of the collision?

12 A. Oh, no.

13 Q. Okay. Did you go into any court proceedings or
14 hearings after the collision because of the
15 collision? Did you go, you know, to any trial by
16 Mr. Seay?

17 A. No.

18 Q. What do you think you could have done in order to
19 avoid this collision from occurring?

20 A. Probably just not have been there.

21 Q. Anything else?

22 A. Or not have been on that road, you know, at the time
23 is all I can think of.

24 Q. Anything else that you could have done differently
25 or anything you could have done to avoid this

1 accident or collision?

2 A. No.

3 Q. Is there anything you think Dickie Shults could have
4 done to avoid this collision?

5 A. No.

6 Q. Do you have any medical training or experience?

7 A. Well just have CPR and First Aid.

8 Q. Other than that have you had any other medical
9 training?

10 A. No.

11 Q. Did you know Phillip Seay before this collision?

12 A. No.

13 Q. Did you know Dickie Shults before this collision?

14 A. No.

15 Q. Prior to the collision on July 22nd, 2009 had you
16 been involved in any other automobile collisions?

17 A. Yes.

18 Q. How many?

19 A. One that I remember of.

20 Q. Was it more or less than five years before the July,
21 2009 collision?

22 A. More than five years.

23 Q. What happened, very briefly?

24 A. We were on Reidville Road, I was -- my husband was
25 carrying me to the doctor, I had the flu, and we

1 were struck in the back by a car running a red
2 light.

3 Q. You were a passenger?

4 A. Yes.

5 Q. Did you get hurt?

6 A. Nothing other than soreness and my back bothering
7 me. Other than that no.

8 Q. Have you been involved in any other motor vehicle
9 collisions since the July, 2009 collision?

10 A. Yes. I was -- the car that I got after the
11 Chrysler, it was -- it started sleeting and I was
12 going home from work and I slid off into this lady's
13 brick columns and it damaged just my back fender.
14 Other than that no.

15 Q. Mr. Seay, the collision report says he had a 1997
16 four-door Ford; does that sound correct?

17 A. Yes.

18 Q. Do you remember what kind of Ford it was?

19 A. I don't know. It was a small car.

20 Q. Do you remember what kind of vehicle Dickie Shults
21 was driving at the time of the collision?

22 A. A white work truck.

23 Q. White pick-up truck?

24 A. Well one of them more heavy-duty work vehicles.

25 Q. After this lawsuit by Dickie Shults against you was

1 filed, looks like you were served on Thursday,
2 September 15th, 2011; okay? Who was the first
3 person that you notified that you had been served
4 with the lawsuit by Dickie Shults against you?

5 A. Me and my husband talked about it.

6 Q. Okay.

7 A. And at the time I was working so he took the paper,
8 tried to take the paper, the information, to the
9 insurance company.

10 Q. All right, and I'm going to slow you down here;
11 okay? So on the day that you got served, September
12 15th, 2011?

13 A. Yes.

14 Q. Okay. Did you talk to anybody other than your
15 husband about you having been served with the
16 lawsuit?

17 A. No.

18 Q. Start me from that going forward what happened? Did
19 you drop off the lawsuit or the copy of the lawsuit
20 with your insurance company or did your husband do
21 it?

22 A. My husband took care of that because at the time I
23 didn't have time, I was working.

24 Q. And when did he do that in relationship to the day
25 you were served, was it the day you got served, the

1 day after you got served?

2 A. It was during that week. I don't remember what date
3 but it was during that week.

4 Q. I looked it up and the day you got served was a
5 Thursday.

6 A. Okay.

7 Q. Do you remember did he do it ---

8 A. It would be that following week.

9 Q. Well do you think he did it that following day, the
10 next day on Friday or Saturday or Sunday?

11 A. Well the insurance company's not open Saturday and
12 Sunday.

13 Q. Do you think that he did drop the paperwork off on
14 that Friday, the next day?

15 A. I think it was that Monday or Tuesday of that
16 following week.

17 Q. The Monday or Tuesday after you got served?

18 A. Yes.

19 Q. Okay. Now, and I'm going to slow you down here,
20 were you there when your husband dropped the
21 paperwork off with the insurance company?

22 A. No, I was at work.

23 Q. I assume your husband has told you who he dropped it
24 off with?

25 A. I don't remember who.

1 Q. Which insurance agency or company?

2 A. We were with Watson.

3 Q. And according to your policy it looks like it's
4 Watson Insurance Agency, Inc.; does that sound
5 right?

6 A. Yes.

7 Q. In Boiling Springs, South Carolina 29316; does that
8 sound correct?

9 A. Yes.

10 Q. Did your husband tell you that he dropped off a copy
11 of the Summons and the Complaint with Watson
12 Insurance Agency, Inc.?

13 A. Yes, and then we got the phone call from Davis.

14 Q. Let me slow you down there; okay?

15 A. Okay.

16 Q. Watson Insurance Agency, Inc., is that the insurance
17 agency that you had purchased insurance from that
18 covered you for the collision that occurred in July
19 of 2009?

20 A. Yes, they were like the middle person of the Allied,
21 like -- it was like ---

22 Q. Allied is the name of your insurance company;
23 correct?

24 A. Yes.

25 Q. And it's a Nationwide Insurance company it looks

1 like?

2 A. Yes.

3 Q. So let's be on the same page here, Allied
4 Insurance/Nationwide Insurance Company was the name
5 of the insurance company that you had purchased
6 insurance from; correct?

7 A. Yes.

8 Q. Before the July 22nd, 2009 collision; correct?

9 A. Yes.

10 Q. You had purchased that insurance policy through
11 Watson Insurance Agency; correct?

12 A. Yes.

13 Q. And they are the one in Boiling Springs, South
14 Carolina?

15 A. Yes.

16 Q. Do you know what road they're on?

17 A. It's Highway 9.

18 Q. Before July of 2009 how long had you been purchasing
19 automobile liability insurance through Watson
20 Insurance Agency?

21 A. Maybe a year or two.

22 Q. Are you still with the Watson Insurance Agency as
23 far as who you're buying your automobile liability
24 insurance through?

25 A. No.

1 Q. When did you stop using Watson Insurance Agency as
2 your insurance agent that you purchase insurance
3 policies through?

4 A. It wasn't long after this.

5 Q. "This" meaning after you got served with the lawsuit
6 or "this" meaning the collision?

7 A. Well when the lawsuit was pursued against us we were
8 no longer with Watson.

9 Q. Okay.

10 A. We were with we are with Nationwide.

11 Q. You were with Nationwide Insurance Company or a
12 Nationwide insurance agency or both?

13 A. I think it's an agency.

14 Q. On the day that you were served with the Summons and
15 Complaint on September 15th, 2011, who were you
16 purchasing your insurance from, meaning which
17 agency?

18 A. Nationwide. I'm not sure what the actual place is
19 called but I know where it's at.

20 Q. Tell me just so we're on the same page, I mean ---

21 A. Right.

22 Q. --- I drive up and down the road and I see Allstate
23 agents everywhere, I see State Farm agents
24 everywhere, I see Nationwide agencies everywhere,
25 that's why I want to make sure we're clear. You

1 were buying this Nationwide policy through a
2 Nationwide agency locally in your area; correct?

3 A. Yes.

4 Q. Okay, as opposed to let's say you were not buying
5 this over the internet; were you?

6 A. No.

7 Q. But each one of these insurance agencies usually
8 have some kind of a name affiliated with them; do
9 you know what I mean by that?

10 A. Yes, I know ---

11 Q. It's like, you know, the Samuel Harms Nationwide
12 Insurance Company, that's what I'm wondering.

13 A. Okay.

14 Q. What is the name of your agent that's near your
15 house that you were buying the insurance at when you
16 got served?

17 A. I think they're called "Cornerstone."

18 Q. Cornerstone?

19 A. I'm not sure right off.

20 Q. Okay, are you ---

21 A. But when the bill comes out to us it says
22 Nationwide.

23 Q. Sure, but I need to know the local agent, and you
24 think it's Cornerstone Agency?

25 A. It's Ricar -- I know the man's name.

1 Q. Okay, what's the man's name?

2 A. Ricardo Haygood.

3 Q. How do you spell Ricardo?

4 A. A ---

5 Q. Is it R-i-c-a-r-d-o?

6 A. Yes.

7 Q. Haygood, H-a-y-g-o-o-d; does that sound right?

8 A. Yes, that sounds right.

9 Q. What's the address, best your can, what's the
10 address, street address?

11 A. I don't know the name of the road but I know the
12 location.

13 Q. Tell me the location. What's it nearby?

14 A. It's Highway 9 near Pet World.

15 Q. Is it on Highway 9?

16 A. No, it's the little -- a little side road and it's
17 like right here in the corner of Highway 9 and the
18 little side road.

19 Q. Okay, but ---

20 A. And it's like at the red light of Pet World. If you
21 were traveling from Boiling Springs to Spartanburg
22 at the red light you would go left onto that little
23 road and it's just right there.

24 Q. Is it on the same side of the road as Pet World?

25 A. No.

1 Q. It's on the other side of the road as Pet World?

2 A. Yes.

3 Q. Okay.

4 A. There's that used to be Hot Dog Express and then --
5 well it used to be a restaurant right here
6 (indicating).

7 Q. This Ricardo Haygood Nationwide, maybe Cornerstone
8 Agency, is it in a strip mall?

9 A. No, it's just a little white building.

10 Q. It's a stand-alone building?

11 A. Yes.

12 Q. Is it still there?

13 A. Yes.

14 Q. You still getting insurance from them?

15 A. Yes.

16 Q. What else are they nearby?

17 A. I think there's a -- there's a new little strip mall
18 like thing behind the restaurant that used to be a
19 restaurant that does mattresses, I think, it's like
20 Serta.

21 Q. Is that on the same side of the road as them?

22 A. No.

23 Q. Or across the street?

24 A. Across the street.

25 Q. Okay. You got served on September 15th, 2011. In

1 the 30 days after you got served did you ever notify
2 Ricardo Haygood/Nation -- that Nationwide agency
3 that you had been served with a lawsuit?

4 A. No.

5 Q. So you never dropped -- well, did you or -- I should
6 ask your husband since your husband did that. Did
7 you, your husband or anyone on your behalf ever
8 notify Ricardo Haygood or Cornerstone Agency or that
9 Nationwide agency in the 30 days after you were
10 served with the lawsuit?

11 A. No, not those because they -- I didn't have them at
12 the time of the accident. So ---

13 Q. Exactly.

14 A. --- I didn't see why I should tell them.

15 Q. And I'm not disagreeing with you, I just need to
16 know if they ever got notice of this lawsuit ---

17 A. Okay.

18 Q. --- before the default was entered. So do you think
19 Ricardo -- and you understand that a default was
20 entered against you in the lawsuit originally?

21 A. Yes, Davis explained that to me.

22 Q. Do you think Ricardo Haygood, that Cornerstone
23 Agency which has appeared to be a Nationwide agency
24 near Highway 9, did anything wrong or negligent that
25 resulted in you going into default for this lawsuit?

1 A. Not that I'm aware of.

2 Q. And that would be because from what I understand
3 from you they literally had no idea that you had
4 been served with a lawsuit?

5 A. Right.

6 Q. All right, now, going back to the agency that your
7 husband apparently dropped the paperwork off; okay?
8 And we agree that's the Watson Insurance Agency?

9 A. Yes.

10 Q. And that's also near Highway 9?

11 A. It's on Highway 9.

12 Q. It's on Highway 9 in Boiling Springs?

13 A. Across from Hardees that's on Highway 9.

14 Q. It's across from the Hardees?

15 A. Uh-huh (affirmative).

16 Q. What's another main road where it's near where it
17 criss-crosses on Highway 9?

18 A. There's not no main road, they's little, you know,
19 little side roads right near there but that's all.

20 Q. Is there only one Watson Insurance Agency in Boiling
21 Springs?

22 A. That I'm aware of.

23 Q. Before I interrupted and we went down this rabbit
24 trail on Ricardo Haygood; okay?

25 A. Okay.

1 Q. You were about to tell me that somebody called you
2 about the lawsuit. You said so-in-so called me; who
3 was that?

4 A. I don't remember. I think the Nationwide of the
5 Allied Insurance called and made contact with me and
6 explained the situation.

7 Q. What day did they call you in relationship to your
8 husband apparently dropping the paperwork off at the
9 Watson Insurance Agency, the lawsuit, the Watson
10 Insurance Agency?

11 A. It wasn't ---

12 Q. Was it the next day, the day after; that's what I'm
13 looking for?

14 A. It wasn't long afterwards. I don't recall what
15 exact day but it wasn't long afterwards.

16 Q. Do you think it was more or less than three days
17 after your husband physically delivered the lawsuit
18 to Watson Insurance Agency?

19 A. It was probably about three days, I guess.

20 Q. Tell me about that -- first off, did you have any
21 conversations with anyone at Watson Insurance Agency
22 prior to receiving this phone call from Allied
23 Insurance or Nationwide?

24 A. No, just you know, turning in my green form that you
25 had had a accident, you know; other than that

1 nothing.

2 Q But the green form I assume the FR10 form is what we
3 call it, that occurred within days of the accident
4 back in July of '09 ---

5 A. Yes.

6 Q. --- correct?

7 A. Yes.

8 Q. What I need to know is from September 15th, 2011
9 when you received the lawsuit did anybody from
10 Watson Insurance Agency ever call you, let's say in
11 the next 35 days?

12 A. I don't remember if I talked to someone from the
13 Nationwide or the Davis first, of Davis' office
14 calling saying they was rep ---

15 **BY MR. DAVIS:**

16 Don't say anything that I discussed with you; that
17 would be privileged.

18 **DIRECT EXAMINATION RESUMED BY MR. HARMS:**

19 Q. Yeah, yeah, you don't need to get into that. But
20 anybody from Watson Insurance Agency, did they ever
21 call you in the 30 days after you got served with
22 the Summons and Complaint?

23 A. No.

24 Q. Somebody from Nationwide Insurance Company, though,
25 called you roughly you said about three days after

1 your husband dropped off the paperwork the following
2 week; is that correct?

3 A. Yes. I don't remember if I talked to them first or
4 Davis first. I don't know -- I don't remember which
5 I talked to beforehand, but I know I had been
6 talking to Nationwide also.

7 Q. What did the agent from Nationwide Insurance Company
8 tell you?

9 A. That this had went into default and that the --
10 about the lawsuit from Shults against us, or against
11 me.

12 Q. So by the time Nationwide called you on the phone
13 for the first time they were already notifying you
14 that you had already gone into default on the
15 lawsuit; is that correct?

16 A. Yes, I think so.

17 Q. Are you confident that your husband dropped the
18 paperwork off at the Watson Insurance Agency before
19 you went into default?

20 A. Yes.

21 Q. Has your husband ever told you that maybe he lied to
22 you, he forgot to do it, he forgot to drop it off at
23 the insurance agency; anything like that?

24 A. No.

25 Q. Do you have any reason to believe that the Watson

1 Insurance Agency did not get a copy of the lawsuit
2 that had been served against you within, let's say,
3 a week of you actually being served?

4 A. No.

5 Q. "No" meaning?

6 A. No, I don't -- I don't think, you know.

7 Q. You have no reason to believe they didn't get it?

8 A. Right.

9 Q. Is that correct?

10 A. Yes.

11 Q. As we sit here today do you believe with full
12 confidence that Watson Insurance Agency received a
13 copy of the lawsuit that had been served against you
14 within seven days of you being served?

15 A. Yes.

16 Q. Did you have any follow-up telephone conversations
17 with the Watson Insurance Agency, first off to find
18 out if they were going to file an Answer to the
19 Complaint or hire you an attorney?

20 A. No.

21 Q. As we sit here today have you had any conversations
22 with anybody at the Watson Insurance Agency to find
23 out why you went into default in this case that had
24 been filed and served against you?

25 A. Not with them but I did with Nationwide.

1 Q. What did Nationwide tell you?

2 A. That it wouldn't -- as far as I know it was not
3 filed from Watson in time to Nationwide.

4 Q. So Nationwide says that the Watson Insurance Agency
5 failed to forward the paperwork on to Nationwide or
6 Allied; is that correct?

7 A. Yes.

8 Q. As we sit here today do you believe that Watson
9 Insurance Agency did something wrong or negligent
10 that ultimately resulted in you going into default
11 in this case?

12 A. I don't know.

13 Q. You don't know just because you haven't talked to
14 anybody at Watson Insurance Agency?

15 A. No, I've not asked no one personally at Watson to
16 ask.

17 Q. Other than what the person at Nationwide told you;
18 is that correct?

19 A. Yes.

20 Q. You don't know if that person at Nationwide is
21 telling you the truth or not telling you the truth;
22 is that what I'm getting at?

23 A. Right.

24 Q. Okay, that's what I'm sensing. Why haven't you
25 talked to anybody at Watson Insurance Agency to find

1 out why this mistake or negligence ended up
2 resulting in you going into default?

3 A. I just hadn't.

4 Q. You're not with the Watson Insurance Agency anymore
5 though; right?

6 A. No.

7 Q. Is their mistake or apparent mistake one of the
8 reasons why you left them as an insurance agency?

9 A. I found better coverage is why I left and cheaper
10 price than what I was getting with them.

11 Q. In the 30 days after you were served with the
12 lawsuit did you ever directly call anyone at either
13 Nationwide or Allied Insurance Company?

14 A. Not that I recall.

15 Q. What I need to know is in the 30 days after you were
16 served did you ever tell anybody other than the
17 Watson Insurance Agency that you had been served
18 with the lawsuit, meaning did you fax the paperwork
19 to any other lawyer, insurance company, insurance
20 agency?

21 A. No.

22 Q. So it was just the Watson Insurance Agency, your
23 insurance agent, at the time that covered you for
24 the accident that you notified; right?

25 A. Yes.

1 Q. Do you know the name of the person that your husband
2 dropped the lawsuit off at at the Watson Insurance
3 Agency?

4 A. No.

5 Q. Do you think your husband knows?

6 A. Probably not being that long.

7 Q. Did you or your husband get any kind of receipt from
8 the Watson Insurance Agency showing that he had
9 delivered it to the Watson Insurance Agency before
10 you went into default?

11 A. No.

12 Q. Back in 2009 roughly how much money were you making
13 a year? Ballpark it for me.

14 A. Probably at minimum wage, 40 hours a week, maybe not
15 even \$24,000 a year.

16 Q. Did you file taxes for the year 2009?

17 A. Yes.

18 Q. Did you file taxes for the year 2008?

19 A. Yes.

20 Q. Do you have any other insurance -- well back in July
21 of 2009, the day of the collision, I've got your
22 insurance policy, it looks like it's Allied
23 Insurance through Nationwide Insurance Company;
24 okay? Did you have any other insurance covering you
25 for the July, 2009 collision?

1 A. No.

2 Q. Do you have an umbrella policy that covered you?

3 A. No.

4 Q. Any secondary automobile accident insurance coverage
5 that you happened to purchase?

6 A. No.

7 Q. Do you own a home or rent a home?

8 A. We own.

9 Q. How much do you think the equity in your home is?

10 A. Not even \$5,000.

11 Q. So what do you think the value of the house is if
12 you had to resale it?

13 A. That's what I thought you was asking.

14 Q. No, no, you answered it correctly. What do you
15 think the value of your house is?

16 A. It wouldn't even be \$5,000. I mean it's old.

17 Q. If you had to sell your home how much do you think
18 you could get for it?

19 A. Maybe \$1,000, if that much.

20 Q. Well what I'm saying is if you had to list it what
21 would be the listing price?

22 A. I don't know. It's a '72 Buddy mobile home. I
23 don't -- I don't know.

24 Q. So it's a 1972 mobile home?

25 A. Yes.

1 Q. What's the bank loan on it?

2 A. We don't have a bank loan.

3 Q. So it's free and clear?

4 A. Yes.

5 Q. How long have you been married to Frank? I think
6 you already mentioned this.

7 A. 18 years.

8 Q. Have you ever been arrested, charged or convicted of
9 any crime?

10 A. No.

11 Q. What's your Social Security number?

12 A. XXX-X [REDACTED]

13 Q. Do you know what your driver's license number is?

14 A. I've got my driver's license with me.

15 Q. Would you just show it to me real quick here?

16 A. Yes.

17 Q. I think we're pretty much done.

18 A. (Witness complies).

19 Q. All right, I have the license of Angela Griffin
20 Miller at [REDACTED] with a driver's license
21 number [REDACTED], expires [REDACTED], no
22 restrictions. All right, let me just take a very
23 quick break and let me talk with my client here real
24 quick.

25 A. Okay.

1 (Off the record at approximately 12:54 p.m.; back on the
2 record at approximately 12:55 p.m.)

3 **DIRECT EXAMINATION RESUMED BY MR. HARMS:**

4 Q. We're back on the record after a short recess. I
5 have no further questions.

6 **CROSS-EXAMINATION BY MR. DAVIS:**

7 Q. Just a few quick ones, Ms. Miller. I want to make
8 sure I understand about this July 22nd, 2009
9 accident. You said I believe you were traveling
10 west on 292; correct?

11 A. Yes.

12 Q. And you approached the intersection of Miller Farm
13 Road that intersects with 292; is that right?

14 A. Yes.

15 Q. Your intention was not to turn onto Miller Farm
16 Road; was it?

17 A. No.

18 Q. You were going to go straight on 292?

19 A. Yes.

20 Q. As you approached that intersection with Miller Farm
21 Road did you have a stop sign or a stop light or
22 anything?

23 A. No.

24 Q. Do vehicles on Miller Farm Road that want to get on
25 to 292 do they have a traffic control signal like a

1 stop sign or something?

2 A. A stop sign.

3 Q. As you approached the Miller Farm Road were you
4 paying attention?

5 A. Yes.

6 Q. Were you looking ahead?

7 A. Yes.

8 Q. And were you keeping a proper lookout?

9 A. Yes.

10 Q. Now you described to Attorney Harms that you were
11 hit by a vehicle that was on Miller Farm Road that
12 you didn't see until the accident occurred; is that
13 right?

14 A. Yes.

15 Q. That vehicle that was on Miller Farm Road was driven
16 by Mr. Phillip Seay; correct?

17 A. Yes.

18 Q. And as a result of being hit by Mr. Seay's vehicle
19 were you pushed across the center line?

20 A. Yes, into Shults.

21 Q. Would you have crossed the center line and made any
22 contact with Mr. Shults' vehicle if it wasn't for
23 the actions of Mr. Seay?

24 A. No.

25 Q. Thank you, ma'am, that's all I have.

1 A. Okay.

2 **RE-DIRECT EXAMINATION BY MR. HARMS:**

3 Q. After your husband dropped off the Summons and
4 Complaint with the Watson Insurance Agency were you
5 relying on the Watson Insurance Agency to either
6 hire you an attorney/Nationwide/Allied, hire you an
7 attorney or to at least handle the Answer to the
8 Complaint?

9 A. Yes, that's what we pay them for.

10 Q. And that's why you didn't end up filing an Answer to
11 the Complaint until after the default, because you
12 were relying on the Watson Insurance Agency?

13 A. Yes, yes.

14 Q. That's all the questions I have.

15 **(There being no further questions, this deposition was**
16 **concluded at approximately 12:58 p.m.)**

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3 **CERTIFICATE**

4 This is to certify that the foregoing deposition of
5 **ANGELA MILLER** was taken by the within court reporter, a
6 notary public for the state of South Carolina, duly
7 commissioned and qualified as such, on October 29, 2012
8 at The Ward Law Firm, 233 South Pine Street,
9 Spartanburg, South Carolina.

10 That said court reporter is not a relative or
11 employee of any of the parties or the attorneys, and
12 further, is not of counsel or attorney for any of the
13 parties to said action, and, is not in any manner
14 interested in the cause, financial or otherwise.

15 That the deponent was duly placed under oath and
16 admonished to speak the whole truth; that the oral
17 deposition was duly taken and transcribed as to the
18 questions propounded and the answers given; that the
19 foregoing 83 pages is a true, accurate, and correct
20 record of the testimony given by the deponent; together
21 with such changes as said deponent may have made, if
22 any, during the reading over and signing procedure.

23 That the court reporter has retained the original
24 deposition in its possession for the purpose of sealing
25 and filing same with the proper official.

That all offered exhibits, stipulations and
objections, if any, involved in this cause are duly

1 attached or included herein.

2 In witness whereof, I have set my hand and official
3 seal.

4
5 Date: 11/02/2012

6
7
8 

9 Bebe O. Norris, Court Reporter

10 Notary Public for South Carolina

11 My Commission Expires 04/22/2018
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A				
able 43:5 49:4	69:25 73:12	approached 76:24	35:15 43:18	bothering 57:18
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STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

C.A. NO. 2012-CP-42-3951

Dickie Shults,

Plaintiff,

vs.

Angela G. Miller,

Defendant.



Deposition of **DICKIE SHULTS**

Pursuant to notice of deposition and/or agreement in the above-entitled case, a deposition was taken on the 29th day of October, 2012 commencing at approximately 9:50 a.m. attended by counsel as follows:

Appearances:

SAMUEL D. HARMS, III, Esquire

Harms Law Firm, P.A.

33 Market Point Drive

Greenville, South Carolina 29607

Attorney for Plaintiff,

ROBERT E. DAVIS, Esquire

The Ward Law Firm

233 South Pine Street

Spartanburg, South Carolina 29302

Attorney for Defendant.

Also Present: **Angela G. Miller**, Defendant and

Frank Miller, Defendant's husband

Deposition Reported By:

Bebe O. Norris, CR

Depositions And ..., Inc.

(864) 235-3518

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1 Pursuant to notice and/or agreement to take
2 depositions, the within deposition was taken by the
3 above reporter, a notary public, as required under the
4 code of laws of South Carolina, 1976, section 19-17-10,
5 and circuit court rule 30, et al., by consent of all
6 parties at The Ward Law Firm, 233 South Pine Street,
7 Spartanburg, South Carolina.

8 **WAIVER:**

9 Counsel and the deponent agreed that both the reading
10 over of and signing of the deposition are hereby
11 dispensed with and **WAIVED**.

12 ** ** **

13 The deponent was duly sworn to tell the truth, the
14 whole truth, and nothing but the truth concerning the
15 matter herein.

16 **DICKIE SHULTS**, being duly sworn, testified as follows:

17 **DIRECT EXAMINATION BY MR. DAVIS:**

18 Q. Mr. Shults, my name is Robbie Davis and I represent
19 Angela Miller in a lawsuit that you filed against
20 her. You've given a deposition before; is that
21 right?

22 A. Yes, sir.

23 Q. I still want to go over with you the ground rules so
24 that we're on the same page and there is no question
25 about what's going to take place here today; okay?

1 A. Yes, sir.

2 Q. The court reporter here is going to be taking down
3 everything that's going to be said in this room and
4 that means a couple of things, it means first, we
5 don't need to talk over each other. If at any point
6 you don't understand a question that I ask you
7 please ask me to rephrase or re-communicate it to
8 you until you do understand; okay?

9 A. Yes, sir.

10 Q. When you do answer a question I need for it to be
11 out loud and verbal in a way that she can take it
12 down on her recording devices. She's going to be
13 repeating what we say in her mask and she's got some
14 microphones here to record what we say. While I may
15 see a shake or nod of your head it will be difficult
16 for her to take down on her machines and everything.
17 Likewise, uh-huh's and um-hum's can sound similar so
18 if you do that I'm going to ask you to rephrase it
19 until you do answer verbally yes or no; okay?

20 A. Yes, sir.

21 Q. You've been placed under oath; you understand that?

22 A. Yes, sir.

23 Q. Understand you've got a legal and moral
24 responsibility to tell the truth?

25 A. Yes, sir.

1 Q. Do you know of any reason today you could not
2 understand my questions and give me truthful and
3 complete answers?

4 A. No, sir, I don't.

5 Q. Okay, great. If at any point you need to take a
6 break that's fine, just let me know and we can do
7 that. I need to tell you though if you take a break
8 you can't really discuss your testimony or what's
9 going on with your attorney or anyone. If you do I
10 get a chance to ask you about what was discussed.
11 That's one time when the attorney/client privilege,
12 during this deposition while it's ongoing, is sort
13 of on a hold; okay?

14 A. Yes, sir.

15 Q. Just wanted to let you be aware of that. Where do
16 you live, Mr. Shults?

17 A. I live in Campobello.

18 Q. What's your address?

19 A. [REDACTED]

20 Q. Is that in Spartanburg County or Greenville County?

21 A. It's Spartanburg County.

22 Q. Because Campobello the county lines sort of run
23 through there; don't they?

24 A. Yes, sir, they do.

25 Q. How long have you lived there?

- 1 A. Seven years.
- 2 Q. Who do you live there with?
- 3 A. My wife.
- 4 Q. What's her name?
- 5 A. Becky.
- 6 Q. How long have you been married to Becky?
- 7 A. Three years.
- 8 Q. What's her maiden name?
- 9 A. Rebecca Homan, H-o-m-a-n.
- 10 Q. How many times have you been married?
- 11 A. Twice.
- 12 Q. Who was your first wife?
- 13 A. Sherry Wilson.
- 14 Q. When were you married to Ms. Wilson?
- 15 A. In '72.
- 16 Q. How long were you married to her?
- 17 A. 30 years.
- 18 Q. And that marriage ended in divorce?
- 19 A. Cancer, she passed away.
- 20 Q. I'm sorry to hear that. Any children from your
- 21 marriage with Sherry?
- 22 A. Three.
- 23 Q. What are their names and ages?
- 24 A. Wendy Barton is the oldest, she's 38; Misty Medlin,
- 25 she's 36; and Chris Shults is 34.

- 1 Q. Where does Wendy live? Does she live in Spartanburg
2 County?
- 3 A. She does, yes, sir.
- 4 Q. What's her husband's name?
- 5 A. Timmy Barton.
- 6 Q. What does Timmy do?
- 7 A. Timmy doesn't do anything.
- 8 Q. He doesn't work?
- 9 A. No, sir.
- 10 Q. Is he on disability?
- 11 A. No, sir.
- 12 Q. What about Wendy, does she work?
- 13 A. Yes, sir.
- 14 Q. What does she do?
- 15 A. She works at Dollar General.
- 16 Q. Misty, what's her husband's name?
- 17 A. Dale.
- 18 Q. What does Dale do?
- 19 A. Dale works at Mack Molding.
- 20 Q. What does Misty do?
- 21 A. Nothing, tends to the children.
- 22 Q. Is Chris married?
- 23 A. He is.
- 24 Q. What's his wife's name?
- 25 A. That's embarrassing.

- 1 Q. It'll come to you. Tell me what Chris does.
- 2 A. Chris works at Hendersonville. I don't know exactly
- 3 what he does. I don't know what the job is that
- 4 he's at.
- 5 Q. Does he live in Hendersonville?
- 6 A. No, he lives at Campobello.
- 7 Q. Does Misty live in Spartanburg County?
- 8 A. Yes.
- 9 Q. How many grandchildren do you have?
- 10 A. 11.
- 11 Q. Any of them over 18?
- 12 A. Yes, one.
- 13 Q. Who is the one over 18?
- 14 A. Brooke Owens.
- 15 Q. Who does Brooke belong to?
- 16 A. Scott Owens.
- 17 Q. That's her husband?
- 18 A. No.
- 19 Q. What I'm trying to get is which one of your
- 20 children?
- 21 A. Oh, I'm sorry.
- 22 Q. That was a bad question on my part.
- 23 A. It's Wendy.
- 24 Q. Wendy's daughter?
- 25 A. Yes.

1 Q. And Brooke is married to a Scott Owens?

2 A. No, Brooke's not married. Her dad is Scott Owens,
3 that's what I said.

4 Q. Okay, I got you. What does Brooke do; is she in
5 school?

6 A. No, sir, she was in college but she's working
7 somewhere now for a little while.

8 Q. Do you know where she's working?

9 A. I don't, somewhere in Greenville. You know how
10 children are they swap every day jobs somewhere.

11 Q. I got you.

12 A. Amanda is Chris' wife.

13 Q. Amanda, all right, I got you. Do you know what
14 Amanda does?

15 A. She's a nurse.

16 Q. Where, do you know?

17 A. She works at Greenville. I don't know if it's
18 Greenville Memorial or what.

19 Q. Now you've been married to Becky you said about
20 three years; right?

21 A. Yes, sir.

22 Q. Does Becky work?

23 A. She does.

24 Q. Where does she work?

25 A. Swofford Trucking.

- 1 Q. What does she do for them?
- 2 A. She's a dispatcher.
- 3 Q. Where is Swofford Trucking?
- 4 A. It's right off Old Highway 14 in Greer.
- 5 Q. Does she have children?
- 6 A. She doesn't. Becky can't have any children.
- 7 Q. Are you from Spartanburg originally?
- 8 A. Yes, sir.
- 9 Q. How far did you go in school?
- 10 A. I went to the 10th grade and quit and then I went
- 11 back to night school and got my diploma, my papers,
- 12 but it didn't make me any smarter.
- 13 Q. Are you parents still with us?
- 14 A. No, sir.
- 15 Q. What were their names?
- 16 A. W.C. and Carolyn.
- 17 Q. What did your father do?
- 18 A. My dad was a peach farmer.
- 19 Q. Did your mother work outside of the home?
- 20 A. She did, she worked at a nursing home.
- 21 Q. Which one?
- 22 A. Magnolia Manor. She worked at two or three of them,
- 23 I don't -- I mean, you know, over the years but
- 24 that's all I ever remember mom doing.
- 25 Q. Do you have any brothers or sisters that live in

1 Spartanburg County?

2 A. I do.

3 Q. How many?

4 A. I've got -- actually, I've got three, I've got two
5 brothers and one sister.

6 Q. Tell me their names.

7 A. Roy Shults.

8 Q. Roy?

9 A. Roy.

10 Q. Tell me ---

11 A. He works at the Sheriff's Department.

12 Q. He's a Deputy?

13 A. Yes, sir.

14 Q. What's his wife's name?

15 A. It'll come to me.

16 Q. That's all right. Do you know what she does?

17 A. She doesn't work. She's disabled.

18 Q. Other brother?

19 A. George.

20 Q. What does George do?

21 A. He doesn't do anything, he's had a stroke. He's
22 disabled also.

23 Q. Is he married?

24 A. He is, Linda.

25 Q. Do you know what Linda does?

1 A. Linda doesn't work either; she has to take care of
2 him.

3 Q. And your sister?

4 A. Evelyn.

5 Q. Her last name?

6 A. Wright.

7 Q. What's her husband's name?

8 A. Bobby.

9 Q. What does Bobby do?

10 A. Bobby's disabled.

11 Q. What does Evelyn do?

12 A. She works at a nursing home.

13 Q. Tell me about relatives that live or work in
14 Spartanburg County with a different name other than
15 Shults, Wright, Barton or Medlin or Owens.

16 A. I've got a uncle that lives in Spartanburg County,
17 Charles Shults.

18 Q. Okay.

19 A. Carl Shults lives in Spartanburg County, is my
20 uncle. That's all I can think of that lives in
21 Spartanburg County.

22 Q. Any different last names other than Shults?

23 A. Oh, I'm sorry. I can't think of any, not in
24 Spartanburg County.

25 Q. What's your date of birth?

- 1 A. [REDACTED]
- 2 Q. Social Security number?
- 3 A. XXX-XX [REDACTED]
- 4 Q. Do you have a South Carolina driver's license?
- 5 A. Yes, sir, I do.
- 6 Q. Do you have it with you?
- 7 A. Yes, sir.
- 8 Q. May I see it, please?
- 9 A. (Witness complies).
- 10 Q. Thank you, sir. I've been handed the South Carolina
- 11 driver's license of Dickie Shults, it is driver's
- 12 license number [REDACTED] expiration is [REDACTED]
- 13 Thank you, sir. Has your license ever been
- 14 suspended or revoked for any reason?
- 15 A. No, sir.
- 16 Q. Do you have a handicap tag on your vehicle?
- 17 A. No, sir.
- 18 Q. Do you still drive?
- 19 A. Yes, sir.
- 20 Q. Have you ever been arrested?
- 21 A. No, sir.
- 22 Q. Ever been in a lawsuit before?
- 23 A. Nothing other than with this wreck.
- 24 Q. Ever testified in court before?
- 25 A. No, sir.

1 Q. The deposition that you've given, I believe, was in
2 a worker's compensation claim involving this
3 accident; is that right?

4 A. Yes, sir.

5 Q. Have you ever given any other depositions?

6 A. No, sir.

7 Q. Are you currently disabled?

8 A. Yes, sir.

9 Q. When did you apply for disability? I know you don't
10 know the exact date but give me an idea, was it one
11 year ago, five years ago?

12 A. Three or four months ago.

13 Q. Three or four months ago?

14 A. Yes, sir. I wanted to go back to work.

15 Q. You applied for disability three or four months ago?

16 A. Yes, sir.

17 Q. Did you have an attorney assist you with that?

18 A. Yes, sir.

19 Q. Who was it?

20 A. Samuel Harms.

21 Q. Have you been found to be disabled or is it pending?
22 What's the status?

23 A. The Social Security is pending but the doctors they
24 sent me to says I can't go back to work.

25 Q. So your application is pending?

1 A. Yes, sir.

2 Q. You haven't been found -- you're not receiving any
3 benefits at this point; is that right?

4 A. Not yet, no, sir. Not heard the results yet.

5 Q. What doctors did they send you to?

6 A. I've been to Shallcross. I've been to -- you
7 talking about with everything or with the Social
8 Security?

9 Q. No. You said that -- let me make sure we're on the
10 same page. I was asking you about your Social
11 Security disability and you said that you've applied
12 for it and the doctors that they sent you to had
13 said you were disabled. And what I'm trying to get
14 at is who are you talking about? What doctors did
15 they send you to?

16 A. I don't remember the names of the doctors that they
17 sent me to. It was in Greer.

18 Q. Okay, it was a doctor in Greer?

19 A. Yes, sir. He was a -- it had lawyer and doctor or
20 something on it that they sent me to. I don't have
21 his name with me.

22 Q. The Social Security Department sent you to him?

23 A. Yes, sir.

24 Q. Your Attorney Harms would have that more than likely
25 to your knowledge, who it was?

1 A. I don't think so. I didn't tell him.

2 Q. You didn't tell him that you ---

3 A. No, I didn't tell him that I'd went to their doctor.
4 I hadn't told him yet. I just -- well, this morning
5 I did, in here.

6 Q. When did you go to that doctor?

7 A. About two or three weeks ago.

8 Q. Do you have any documents at home that show who it
9 was you saw?

10 A. Yes, sir.

11 Q. All right. I'll send your attorney a letter
12 requesting that if you just make sure you keep it
13 and make it available to him; okay?

14 A. Okay.

15 Q. Any other doctors that they sent you to besides the
16 one in Greer?

17 A. Not Social Security.

18 Q. What did you say in your application that rendered
19 you unable to work?

20 A. What did I say in my application?

21 Q. Yeah. When you filed an application with the Social
22 Security Department you had to tell them that you
23 were unable to work because of certain reasons, and
24 what I want to know is what those reasons are.

25 A. I can't do anything with my left arm.

1 Q. Anything else besides your left arm?

2 A. Right arm, my neck and my elbow.

3 Q. Which elbow?

4 A. Left.

5 Q. Any other reasons you said you were unable to work
6 other than your left arm, your right arm, your neck
7 and your left elbow?

8 A. No, sir, not that I know of.

9 Q. Is that the first time you ever applied for
10 disability was just three or four months ago?

11 A. Yes, sir.

12 Q. Where's the last place you worked?

13 A. Reynolds Utilities.

14 Q. When was the last time you worked?

15 A. It was about three years ago. I don't know the
16 exact day.

17 Q. All right.

18 A. I believe it was January, I think, of '10.

19 Q. January of 2010?

20 A. I think that's right.

21 Q. What did you do for Reynolds Utilities?

22 A. I was a Foreman Supervisor, ran equipment, heavy
23 equipment, did a lot of lifting, chains, cables. We
24 laid pipe, shovel work.

25 Q. What does Reynolds Utilities do?

1 A. They put in utilities, water lines, sewer lines,
2 storm drains.

3 Q. Who's the head man over at Reynolds?

4 A. It was Jay Reynolds. They're out of business now.

5 Q. What happened to them?

6 A. They went bankrupt, went under.

7 Q. Have you ever filed for bankruptcy?

8 A. No, sir.

9 Q. You last worked around January of 2010; does that
10 sound about right?

11 A. Yes, sir, I feel pretty sure it is.

12 Q. Why did you leave work in January of 2010?

13 A. The doctor told me I couldn't work.

14 Q. What doctor said that?

15 A. Dr. Posta.

16 Q. And you haven't worked any since then?

17 A. No, sir.

18 Q. How long did you work for Reynolds Utilities?

19 A. About six years.

20 Q. So you would have started around '04 and worked
21 through '10?

22 A. Yes, sir, somewhere in there.

23 Q. Who did you work with before Reynolds Utilities?

24 A. Inman Paving.

25 Q. What did you do for them?

1 A. Put asphalt down, ran equipment.

2 Q. How long did you work for them?

3 A. Five years.

4 Q. What years would those have been?

5 A. Well from '04 to about '99, somewhere around in
6 there.

7 Q. What I'm getting at, was there a time between Inman
8 Paving and Reynolds Utilities when you were not
9 working?

10 A. No, sir.

11 Q. You went from Inman Paving and very soon thereafter
12 started with Reynolds Utilities?

13 A. Yes, sir.

14 Q. Why did you leave Inman Paving?

15 A. Not enough money.

16 Q. Who was the head man over at Inman Paving?

17 A. Steve Green.

18 Q. Green?

19 A. Steve Green.

20 Q. Where did you work before Inman Paving?

21 A. I was out of work for about -- almost six years I
22 didn't work anywhere.

23 Q. Why not?

24 A. I stayed with my wife when I found out she had
25 cancer. I stayed with her until she died, every

1 day.

2 Q. How did you support yourself during those six years?

3 A. I had my own company and I started selling
4 equipment.

5 Q. What kind of equipment?

6 A. Back hoes, graders, dump trucks, tractors.

7 Q. What was the name of your company?

8 A. Shults Grading.

9 Q. You weren't actually doing any grading work at that
10 time?

11 A. No, sir.

12 Q. You were just selling equipment?

13 A. That's all.

14 Q. Where was your business located?

15 A. In Campobello.

16 Q. Do you know the street?

17 A. No, no, it wasn't, it was Landrum.

18 Q. Okay.

19 A. 8 -- I believe it was 835 Oak Grove Road.

20 Q. What happened with that business?

21 A. What do you mean what happened with it?

22 Q. Are you still doing business with that equipment?

23 A. No, sir.

24 Q. What happened?

25 A. I sold everything I had and I had to sell my house

1 to pay bills.

2 Q. Who is your family doctor?

3 A. Dr. Viar.

4 Q. B-y ---

5 A. V-i-a-r.

6 Q. How long has Dr. Viar been your family doctor?

7 A. Well I'm -- that was my family doctor then, actually
8 I don't have a family doctor now. He was our family
9 doctor probably for about 15 years.

10 Q. When did he stop being your family doctor?

11 A. I'm going to say eight or ten years ago. That's
12 just a guess.

13 Q. I understand.

14 A. I don't have any idea.

15 Q. Okay. Why did you stop going to him?

16 A. Wasn't nothing wrong with me.

17 Q. You don't have a family doctor now?

18 A. No, sir.

19 Q. Was Dr. Viar your last family doctor?

20 A. Yes, sir.

21 Q. What would happen if you got a cold or sinus
22 infection or something, where would you go?

23 A. I don't know. That's a good question. I guess I'd
24 go to the hospital, the emergency room or something.

25 Q. When you had one -- I mean, I assume you've had one

1 in the last five to ten years?

2 A. Actually, I've not. I hadn't been to the doctor
3 till I got hurt.

4 Q. When was it you got hurt?

5 A. In 2009.

6 Q. How long had it been since you'd been to a doctor
7 since you got hurt in 2009? Are you talking about
8 the accident of July 22nd, 2009 is when you got
9 hurt?

10 A. Yes, sir.

11 Q. How long had it been since you had been to a doctor
12 before that accident of July 22nd, 2009?

13 A. I got hurt in '04 with my shoulder and I went to the
14 doctors then.

15 Q. How did you hurt your shoulder in '04?

16 A. The windshield fell out of a back hoe and I throwed
17 my arms up to catch it to protect my face.

18 Q. Were you working at the time?

19 A. Yes, sir.

20 Q. Who were you working for?

21 A. Reynolds.

22 Q. I didn't quite understand your description. You
23 were working on a job site; is that right?

24 A. Yes, sir.

25 Q. What were you doing on the job site when you were

1 injured in '04?

2 A. I was running a back hoe.

3 Q. You were operating a back hoe?

4 A. Yes, sir.

5 Q. What happened as you were operating the back hoe?

6 A. The windshield fell. You fold the windshield up so
7 you can see out better because the sun glares on the
8 windshield and you can't see good running it
9 sometimes. You fold the windshield up and lock it
10 in a lock and one of the rollers was messed up on it
11 and I ran it for a while and the windshield fell
12 down on top of me and I throwed my arms up to
13 protect my face. It's in a metal frame and it's
14 glass.

15 Q. And that windshield fell and what injuries did you
16 suffer in that?

17 A. A rotator cuff.

18 Q. Which shoulder?

19 A. Left.

20 Q. Did you go to the emergency room?

21 A. Yes, sir.

22 Q. Which one?

23 A. I believe it was Spartanburg Regional. It was there
24 or either at Pelham, I can't remember because they
25 both affiliated with each other.

1 Q. When you went to the emergency room did they run an
2 MRI on your shoulder to see?

3 A. I think they did x-rays to start with and then later
4 they did MRI.

5 Q. What doctors did you see back in '04 when you hurt
6 your left shoulder?

7 A. I have no idea. I don't remember.

8 Q. Did you have any surgery?

9 A. Yes, sir, they did arthroscopic.

10 Q. Who did the surgery?

11 A. Don't remember.

12 Q. Was it a doctor in Spartanburg ---

13 A. Yes, sir.

14 Q. --- or Greenville?

15 A. Spartanburg.

16 Q. Where was the surgery done?

17 A. At Village at Pelham.

18 Q. And you were diagnosed with a rotator cuff tear in
19 your left shoulder?

20 A. Yes, sir.

21 Q. Back in '04?

22 A. Yes, sir. I believe it was affiliated with Steadman
23 and Hawkins.

24 Q. Okay.

25 A. I want to say that.

1 Q. Was the surgery successful?

2 A. Yes, sir. I went back to work.

3 Q. Did you have any limitations when you went back to
4 work?

5 A. Yes, sir, some to begin with. I don't remember what
6 they were but weight-wise was -- and I don't -- I
7 don't know.

8 Q. So when you went back to work in the beginning you
9 had some limitations; is that what you're telling
10 me?

11 A. Yes, sir.

12 Q. When you say "weight" you mean weight, what you
13 could lift up?

14 A. Right, right. But the more I did it the better it
15 got.

16 Q. Did you eventually begin working with no
17 limitations?

18 A. Yes, sir, I did.

19 Q. Did you have any -- well you said the surgery was
20 successful, did it help your pain?

21 A. Yes, sir.

22 Q. And were there any problems after the surgery with
23 pain?

24 A. No, sir. Let me change, they was some. They sent
25 me to physical therapy then after a month or two of

1 physical therapy the pain went away also.

2 Q. Okay. Do you remember where you did physical
3 therapy?

4 A. I believe I did it over here at North Grove. They
5 sent me to two or three different ones, whichever
6 one they decide to send you to.

7 Q. When you say "they sent you" it makes me believe you
8 had a ---

9 A. Workmen's ---

10 Q. --- worker's comp claim; is that right?

11 A. Yes, sir, I did.

12 Q. Were you represented by an attorney?

13 A. No, sir.

14 Q. You did file a worker's comp claim though?

15 A. Yes, sir.

16 Q. What happened with your worker's comp claim?

17 A. They paid all my bills and we reached a settlement
18 and I went right back to work.

19 Q. What was the settlement you reached with them?

20 A. I don't know with the doctor bills and all. I don't
21 have any idea.

22 Q. All right I understand they paid for your doctor
23 bills, they paid for your surgery.

24 A. Yes, sir.

25 Q. You said you had physical therapy. I assume they

1 paid for your physical therapy?

2 A. Yes, sir.

3 Q. Did they pay you some more on top of that for ---

4 A. Yes, sir, they give me a cash settlement, it was
5 \$75,000.

6 Q. Did any doctors find you had any impairment to your
7 shoulder following that initial surgery you had?

8 A. No, sir.

9 Q. Do you remember seeing any doctors other than
10 possibly the one at Steadman Hawkins that did your
11 surgery? Any other doctors you saw other than that
12 one and the ones at the emergency room? Here's what
13 I'm getting at: Steadman Hawkins, the orthopedic
14 doctors, they deal with bones and joints and things
15 like that; okay?

16 A. Yes, sir.

17 Q. Did you see a neurologist, somebody that dealt with
18 nerves?

19 A. Yes, sir, I'm sure I did.

20 Q. Do you know ---

21 A. But I don't know ---

22 Q. You don't know who that would've been?

23 A. --- who it was, no, sir.

24 Q. Do you remember where they would have been located?

25 A. I don't.

1 Q. Any other doctors that you would've seen?

2 A. Not that I know of.

3 Q. Did you give a deposition in that worker's comp
4 claim?

5 A. No.

6 Q. There are multiple ways that you can settle a
7 worker's comp claim. I'm not a worker's comp
8 attorney so your attorney probably can advise you
9 better than that. But here's one of the ways I
10 understand you can settle a claim is you can settle
11 on what's called a "clincher" which means you take a
12 cash payment and that forever ends everything
13 involved with your worker's comp claim, or you can
14 leave it potentially open-ended where they will
15 continue to pay medical bills associated with your
16 shoulder; do you understand what I'm saying?

17 A. I do.

18 Q. How did you settle that '04; do you know? Did you
19 settle on a clincher where they stopped paying ---

20 A. I did.

21 Q. It was a clincher?

22 A. Yes, sir.

23 Q. All right. Have you ever had any other worker's
24 comp claims?

25 A. No, sir.

1 Q. Did you ever see your family doctor for that left
2 shoulder?

3 A. No, sir.

4 Q. Before the accident of 2009, in July of 2009, how
5 long had it been since you'd seen any doctors
6 involving your left shoulder?

7 A. I hadn't seen any after they sent me to the physical
8 therapy. I hadn't seen anybody with my left
9 shoulder.

10 Q. So it had been years?

11 A. Yes, sir, probably from '05 to roughly ---

12 Q. And you were back working full time?

13 A. Yes, sir.

14 Q. Have you ever had any other on-the-job injuries?

15 A. No, sir, nothing that I went to the doctor for. I
16 mean, I busted a thumb or skinned, you know ---

17 Q. Yeah, you had bumps and bruises ---

18 A. Right.

19 Q. --- but you didn't have to go to any doctors?

20 A. No, sir.

21 Q. Were you ever in the military?

22 A. No, sir.

23 Q. You've lived in Spartanburg County your whole life?

24 A. Yes, sir.

25 Q. What hospitals have you been to? You said possibly

1 Spartanburg Regional?

2 A. Spartanburg Regional and St. Luke's and Village at
3 Pelham and St. Francis in Greenville.

4 Q. St. Luke's is the free ---

5 A. No, sir, that's St. Luke's at Columbus, North
6 Carolina.

7 Q. All right. What have you been up there for?

8 A. Stumped toe, or whatever, I don't remember what I
9 went for. My wife worked up there so I'd run up
10 there if I needed to for something.

11 Q. And you've been to St. Francis in ---

12 A. Greenville.

13 Q. --- Greenville? What have you been there for?

14 A. That's where Dr. Posta did my surgery.

15 Q. Been to Mary Black?

16 A. No, sir.

17 Q. Been to Greenville Memorial?

18 A. No, sir.

19 Q. You understand how I got confused about the St. --
20 there's a St. Luke's Free Clinic here in Spartanburg
21 and I thought that might have been what you ---

22 A. No.

23 Q. But you went to the hospital up in Columbus?

24 A. Up in Columbus, North Carolina.

25 Q. All right, thank you, sir. Have you ever been to a

1 chiropractor?

2 A. No, sir.

3 Q. Dr. Viar that you said was your family doctor, where
4 is he located?

5 A. Columbus.

6 Q. Have you had any other family doctors besides Viar?

7 A. I had a Dr. Waldon up in Landrum and he died when I
8 was a kid. My mom and dad would take me up there.

9 Q. But no other ones that you can recall?

10 A. No, sir, never been sick a lot, thank God.

11 Q. Do you have any ongoing health problems like high
12 blood pressure, high cholesterol, diabetes?

13 A. Diabetes.

14 Q. You're a diabetic?

15 A. Well I didn't know I was till they went to do the
16 surgery and it was so high they had to keep me two
17 days to get my sugar down before they could do the
18 surgery. They put me on shots, insulin shots, and I
19 took them for awhile but if I watch what I eat and
20 try I could control it like that so I don't have to
21 take the shots.

22 Q. So you just found out that you were diabetic in 2010
23 when you had that shoulder ---

24 A. Uh-huh (affirmative).

25 Q. --- or the 2004 shoulder?

1 A. 2010.

2 Q. Do you take any oral medication for it?

3 A. No, sir.

4 Q. Have you had any shots of insulin since that
5 surgery?

6 A. I have. I hadn't had a shot in about two years.

7 Q. Who gave you the shot?

8 A. My wife.

9 Q. Who prescribed the shot for you though?

10 A. They did at the hospital. I don't know who, I guess
11 Dr. Posta.

12 Q. Have you seen any other doctors for diabetes?

13 A. No, sir.

14 Q. Have you had your blood sugar checked any since
15 then?

16 A. No, sir.

17 Q. Better go do it.

18 A. Well my wife checks it with that machine and if I
19 need a shot I take it.

20 Q. So you've got a machine where your wife ---

21 A. Yes.

22 Q. All right.

23 A. We just check it ever so --- I can pretty much feel
24 if I'm dragging and don't feel like I've got any
25 energy I know that there's something wrong and we

1 check it. We don't check it every day, no, sir.

2 Q. But you still have some insulin shots that you can
3 take?

4 A. Yes, sir.

5 Q. Now do you think Dr. Posta -- are those still left
6 over from 2010?

7 A. Yeah.

8 Q. So you hadn't been to any other doctors or anything
9 for it?

10 A. No.

11 Q. Have you ever had any other surgeries?

12 A. No, sir.

13 Q. Other than on your left shoulder?

14 A. No, sir.

15 Q. What about high blood pressure, high cholesterol;
16 anything like that?

17 A. Not that I'm aware of.

18 Q. Do you take any other medication on a regular basis?

19 A. I take pain pills.

20 Q. Is that from Shallcross?

21 A. Yes, sir.

22 Q. What about your eyesight, do you wear glasses or
23 contact lenses?

24 A. Glasses.

25 Q. Who is your eye doctor?

1 A. I just went to the Vision Center.

2 Q. Which one?

3 A. In Greer. No, it was Greenville, right there on a
4 -- let me see, what's the name of that place, it's
5 across from the mall? I can't think of the name of
6 it but it's in Greenville.

7 Q. And it's called the Vision Center?

8 A. Yes, sir.

9 Q. And they gave you some glasses?

10 A. Yes, sir, they put -- give me glasses to wear.

11 Q. I get it mixed up, nearsighted and farsighted, I can
12 never keep it straight but when you put your glasses
13 on does it help you see things at a distance or up
14 close?

15 A. It helps me to read up close.

16 Q. Do you have to wear those to drive?

17 A. No, sir.

18 Q. I need to take a quick break. I'll be right back.

19 **(Off the record at approximately 10:26 a.m.; back on the**
20 **record at 10:34 a.m.)**

21 **DIRECT EXAMINATION RESUMED BY MR. DAVIS:**

22 Q. Going back on the record. You were telling me --
23 looks like my last question about your glasses you
24 said you went to, is it Vision Works or Vision
25 Center?

1 A. I believe it's Vision Center.

2 Q. Is it Dr. Nigh?

3 A. (No verbal response).

4 Q. That doesn't ring a bell?

5 A. Is that a female? I went to a female doctor.

6 Q. All right. I know about the automobile accident of
7 July 22nd, 2009. What I need to know is other than
8 that one have you ever been involved in any other
9 automobile accidents, either as a driver, a
10 passenger or a pedestrian?

11 A. I wrecked a pick-up truck one day coming home.

12 Q. When was that?

13 A. Years ago, total lossed it.

14 Q. When you say "years ago" more than 10?

15 A. Yes, sir.

16 Q. More than 20?

17 A. Yes, sir. I was -- I just had left home, probably
18 17 or 18 years old.

19 Q. Were you ---

20 A. I was in my dad's truck.

21 Q. Were you injured in that accident?

22 A. No, sir. Well I cut a ear but they sewed it up.

23 Q. Where did you have to go get it sewed up?

24 A. St. Luke's.

25 Q. Did you see any other doctors following that

1 accident other than St. Luke's emergency room?

2 A. No, sir, and I don't remember the doctor's name.

3 Q. Sure you don't. Any other automobile accidents?

4 A. No, sir.

5 Q. So two in your life then?

6 A. Yes, sir.

7 Q. Have you ever had any other traumatic injuries, and
8 let me explain to you what I mean by that. Like
9 when you had your worker's comp injury where the
10 windshield fell on you, something hit your body or
11 caused your body to be injured. You also can see it
12 in like sports injuries or slip and falls or
13 assaults or traumas; things like that. So what I'm
14 trying to get at have you ever had any other
15 traumatic-type injuries?

16 A. No, sir, can't think of any.

17 Q. Ever had any type of mental health or drug or
18 alcohol treatment?

19 A. No, sir.

20 Q. Didn't think you had but got to ask the question;
21 all right?

22 A. That's fine.

23 Q. Do you belong to any church or organizations?

24 A. No, sir.

25 Q. I think I asked you this but sometimes my mouth gets

1 ahead of my mind: You've had I know two surgeries
2 on your shoulder, have you had any other type of
3 surgeries?

4 A. No, sir.

5 Q. Ever broken any bones?

6 A. No, sir.

7 Q. All right, let's talk about July 22nd, 2009. Do you
8 remember where you had been and where you were going
9 to before the accident?

10 A. I had been at work and was going home.

11 Q. Do you remember where you were working at that time?

12 A. Brevard.

13 Q. Where were you living at the time?

14 A. Wilkins Road.

15 Q. What were you driving?

16 A. Company truck.

17 Q. Anybody in the truck with you?

18 A. No, sir.

19 Q. What time of day are we talking about?

20 A. Probably 5:00, 6:00 o'clock in the evening. I'd say
21 around 6:00, thereabouts.

22 Q. You were at a work site in Brevard; correct?

23 A. Yes, sir.

24 Q. And did you leave that work site and go straight
25 home?

- 1 A. Yes, sir. I'm married.
- 2 Q. Okay. You didn't stop anywhere to get anything to
- 3 eat or anything like that?
- 4 A. Yes, sir, stopped at a service station.
- 5 Q. What did you do at the service station?
- 6 A. Got fuel and Skoal.
- 7 Q. Anybody in the truck with you?
- 8 A. No, sir.
- 9 Q. What was the weather like that day?
- 10 A. It was clear. The weather was fine.
- 11 Q. Still daylight out in July around 5:00?
- 12 A. Yes, sir.
- 13 Q. No need to have lights on or anything like that?
- 14 A. No, sir.
- 15 Q. Do you know what roadway you were on, what road you
- 16 were on?
- 17 A. What do you mean, when I had the accident?
- 18 Q. Yeah.
- 19 A. On 292.
- 20 Q. You were on 292?
- 21 A. Yes, sir. I had left the service station, pulled
- 22 out of the service station, took a right, pulled up
- 23 to the stop -- to the thing and looked and nobody
- 24 was coming so I pulled out in the road on 292.
- 25 Q. When you pulled out onto 292 did you make a right

1 turn or a left turn?

2 A. I made a right.

3 Q. Tell me what happened.

4 A. Pulled out in the road and got hit.

5 Q. Did you see the car that hit you beforehand?

6 A. I didn't have time to look. It happened about the
7 time I got in the road good.

8 Q. So is that a "no" you didn't see the car before you
9 got hit?

10 A. I don't think I did.

11 Q. Was there an accident before yours?

12 A. Yes, sir.

13 Q. Did you see that accident?

14 A. No, sir.

15 Q. What part of your truck got hit?

16 A. The front left-hand corner.

17 Q. When you say "left" ---

18 A. Driver's side.

19 Q. --- driver's side? How much damage was done to the
20 truck?

21 A. I think the insurance was right at \$3,000.

22 Q. Was it repairable?

23 A. Yes, sir.

24 Q. Do you know where it was repaired?

25 A. I don't. The company sent it somewhere and got it

1 repaired.

2 Q. The vehicle that you were involved in with, what
3 kind of vehicle was it? You were in a truck?

4 A. Yes, sir.

5 Q. The other vehicle that was involved with your truck
6 what was it?

7 A. I believe it was a white or a cream-colored
8 Chevrolet, I think.

9 Q. Was it a truck, car, mini-van?

10 A. It was a car.

11 Q. What part of it was involved with your truck?

12 A. I don't know if she hit me on the side or in the
13 front. I don't -- I don't know.

14 Q. And the driver of that vehicle was Angela Miller?

15 A. Yes, sir.

16 Q. Before the accident do you know what roadway she was
17 on?

18 A. 292.

19 Q. Was she going in the opposite direction of you?

20 A. She was -- yes, sir. She was going one way and I
21 was going the other. She was probably going I guess
22 toward town is west, toward Inman, and I was
23 probably going east, I think.

24 Q. After the accident occurred did you get out of your
25 vehicle?

1 A. Yes, sir.

2 Q. Did you speak with anybody?

3 A. Yes, sir.

4 Q. Who did you speak with?

5 A. I went to the car to see if any of those kids was
6 hurt.

7 Q. Did you speak to Ms. Miller?

8 A. I don't remember. I want to say I asked her if they
9 was all right and they said yeah, I think.

10 Q. Did you have any other conversations with Ms.
11 Miller?

12 A. No.

13 Q. What about her husband who is here, Frank Miller,
14 sitting beside her, do you remember having any
15 conversations with him?

16 A. I don't -- I might have asked him again later if the
17 kids was okay. We was worried about the kids more
18 than anything. But I'm not sure if I did or not.

19 Q. The other vehicle that was involved was driven by a
20 fellow I understand, Phillip Seay, S-e-a-y?

21 A. Seay (pronounced "See") or Seay (pronounced "Say"),
22 I don't know how he says it.

23 Q. Let's just say Seay (pronounced "See").

24 A. Right.

25 Q. Or I don't care.

1 A. That works for me.

2 Q. Did you see his vehicle before the accident
3 occurred?

4 A. I saw it come up and I don't know if -- I didn't
5 have time to see a whole lot of anything. By the
6 time I looked to my left and pulled out in the road
7 and I probably went a car length before I got hit.
8 I didn't have a lot of time to see anything.

9 Q. Did you speak to Mr. Seay?

10 A. Yes, sir, I asked him if he was all right.

11 Q. What did he tell you?

12 A. He said yes, sir.

13 Q. Do you remember anything else you discussed with
14 him?

15 A. No, I didn't discuss with him. I went back over to
16 my truck.

17 Q. All right. Did you call anybody to come to the
18 scene?

19 A. Yes, sir, I called my boss man and we called 911.

20 Q. Who is he?

21 A. Jay Reynolds.

22 Q. And did you call 911?

23 A. Yes, sir, I did.

24 Q. What kind of emergency personnel came out there?

25 A. They brought an ambulance out and I want to say

1 might have been a fire truck too, I'm not sure.

2 Q. What about a police officer?

3 A. Yes, sir.

4 Q. Did you speak with the police officer?

5 A. Yes, sir.

6 Q. Did you tell him what happened in the accident?

7 A. Best I could from what I knew.

8 Q. And is that what you told me here today?

9 A. Yes, sir.

10 Q. That you made a right-hand turn and your vehicle was
11 hit?

12 A. Yes, sir.

13 Q. Do you know about any tickets that were issued?

14 A. I don't have any idea.

15 Q. Have you seen the accident report?

16 A. No, sir, I don't think so.

17 Q. Let me show you.

18 A. I think Mr. Seay might have got a ticket, I'm not
19 sure.

20 Q. Okay.

21 A. I don't know if anybody else did or not.

22 Q. Let me show you, this is a two-page document, it's
23 the accident report for the automobile accident of
24 July 22nd, 2009; okay?

25 A. Okay.

1 Q. Have you seen this document before?

2 A. Yes, sir, I've saw -- I saw that.

3 Q. I figured you had. Like I say it's two pages.

4 A. Uh-huh (affirmative).

5 Q. We'll mark it as 1.

6 **(COURT REPORTER MARKS DOCUMENT AS DEFENDANT'S EXHIBIT**

7 **NUMBER 1; RETAINED BY COUNSEL)**

8 **DIRECT EXAMINATION RESUMED BY MR. DAVIS:**

9 Q. See here he's got information, I guess the police
10 officer did, from the drivers of each of the three
11 vehicles. Vehicle 1 is Angela Miller, Vehicle 2 is
12 Dickie Shults, that's you, Vehicle 3 is Phillip
13 Seay; do you see those? And I guess the police
14 officer would have to get this information which
15 includes address and driver's license number from
16 each of the three people that were driving the
17 vehicles out there. Did you see him do that, get
18 information from them?

19 A. Yeah, he talked to all of us.

20 Q. Did you see the police officer speak to my client,
21 Ms. Miller?

22 A. Yeah.

23 Q. Did you see him speak to Mr. Seay?

24 A. Yes, sir.

25 Q. In addition to the information that they've got down

1 here it's got "Contributed to the accident and
2 Tickets." Do you see where I'm talking about for
3 each one of the three people?

4 A. I can't see. I don't have my glasses.

5 Q. That's okay. Well it's got "Contributed to
6 accident, yes and no" for each of the three people
7 and then down below it it's got "Summons Number"
8 indicating whether a ticket was issued or not; okay?

9 A. Yeah.

10 Q. For you, for example, under Unit 2, it's got
11 "Contributed to accident" it's got "No" circled; do
12 you agree with that?

13 A. Yes, sir.

14 Q. And it shows here you did not get a ticket.

15 A. Okay.

16 Q. For Phillip Seay it's got "Contributed to the
17 accident" it's got "Yes" circled.

18 A. Yes, sir.

19 Q. Do you know any reason to disagree with that?

20 A. No, sir.

21 Q. For Ms. Angela Miller, Unit 1, it's got "Contributed
22 to the accident" it's got "No" circled; do you know
23 any reason to disagree with that?

24 A. Yes, sir.

25 Q. You do?

- 1 A. Yes, sir.
- 2 Q. Why would you disagree with that?
- 3 A. She hit me.
- 4 Q. Other than her vehicle hitting yours do you have any
5 other reason to disagree with that?
- 6 A. Not no other than her hitting me, no.
- 7 Q. Do you know if she was hit before she hit you?
- 8 A. Yes, sir, I think she was.
- 9 Q. And do you know if that reason she hit you is
10 because she was hit by Mr. Seay?
- 11 A. I guess it could be.
- 12 Q. The diagram he's got drawn here below it shows you
13 as Number 3 ---
- 14 A. Okay.
- 15 Q. --- again in your vehicle, you sort of follow it?
- 16 A. Yes, sir.
- 17 Q. All right, and it shows Mr. -- No, I'm sorry, I'm
18 sorry, you're Number 2.
- 19 A. Yes, sir.
- 20 Q. I'm looking at it upside down. So you're 2.
- 21 A. Yes.
- 22 Q. Mr. Seay is 3.
- 23 A. Yes, sir.
- 24 Q. And Ms. Miller is 1; you see that?
- 25 A. Yes, sir.

1 Q. It's got her going down Highway 292; correct?

2 A. Yes, sir.

3 Q. And she would have the right-of-way on 292 wouldn't
4 she?

5 A. Yes, sir.

6 Q. Mr. Seay would have -- if he was going to pull onto
7 to 292 he would have to yield the right-of-way to
8 Ms. Miller; correct?

9 A. Yes, sir.

10 Q. All right, thank you, sir. Did you go to any court
11 proceedings or anything for any tickets that were
12 given?

13 A. No.

14 Q. Do you know what fire department came out there?

15 A. I would think it would've been Boiling Springs or
16 either New Prospect, I'm not sure.

17 Q. Did anybody take any photographs of the vehicles or
18 anything while they were out there?

19 A. I don't know.

20 Q. Did you ever take any photographs?

21 A. No.

22 Q. Did you make any complaint of injury to the police
23 officer?

24 A. No, sir.

25 Q. You said an ambulance came. Did anybody leave in an

1 ambulance?

2 A. No, sir.

3 Q. Have you had any other conversations with Ms. Miller
4 since leaving the accident scene?

5 A. No, sir, I haven't.

6 Q. What about Mr. Miller?

7 A. No, sir.

8 Q. Mr. Seay has passed away; is that right?

9 A. Yes, sir.

10 Q. Do you remember anything else he may have said
11 either at the accident scene or at any other later
12 point?

13 A. No, sir.

14 Q. What did you do after the police officer finished up
15 everything?

16 A. We bent the bumper out on my truck so I could get it
17 out of the road and waited on them.

18 Q. How did you do that?

19 A. With a crow bar out of the truck. The boss man did,
20 him and his son.

21 Q. Did you help them?

22 A. No, sir.

23 Q. Were you able to drive the vehicle away from the
24 scene?

25 A. Yes, sir.

1 Q. Where did you drive to?

2 A. Home.

3 Q. Did you go to work the next day?

4 A. Yes, sir, and went to the office. They made me go
5 to the doctor.

6 Q. The next day you went to the doctor?

7 A. Yes, sir.

8 Q. What doctor did you go to the next day?

9 A. They sent me to Pelham, Village at Pelham. I don't
10 remember the name of the doctor. I'm not good with
11 names, I'm sorry.

12 Q. You're doing fine. You went to that Village at
13 Pelham emergency room?

14 A. Yes, sir.

15 Q. Why did they send you to the doctor?

16 A. Cause I was hurting, didn't sleep the night before
17 and my wife called my boss man and he made me go.

18 Q. When did you start hurting after this accident?

19 A. Soon as it happened but I thought it would go away.

20 Q. Where were you hurting?

21 A. On my shoulder, elbow.

22 Q. Which shoulder?

23 A. Left.

24 Q. Left elbow?

25 A. Yes, sir.

1 Q. Did you have your seatbelt on at the time of the
2 accident?

3 A. Yes, sir.

4 Q. Did any part of your body hit anything?

5 A. It -- probably the window, I'm not sure, it happened
6 so quick I didn't have time to -- I don't know.

7 Q. Do you ---

8 A. The seatbelt I think probably pulled it too, I'm not
9 sure.

10 Q. Did your seatbelt work?

11 A. Yes, sir.

12 Q. So the way you think you injured your left shoulder
13 was where the seatbelt was?

14 A. Yes, sir, I feel like it was.

15 Q. Any other way you would've hurt your left shoulder?

16 A. No, sir, not to my knowledge.

17 Q. What about your left elbow?

18 A. I don't know without it hit the door panel or
19 something.

20 Q. So it started hurting you and then your wife called
21 in to work and they told you to go to the Village at
22 Pelham; is that right?

23 A. Yes, sir.

24 Q. And you went the next morning?

25 A. Well his son took me after I got to work.

- 1 Q. What time do you get to work in the mornings?
- 2 A. 7:30.
- 3 Q. Did you go that morning to the Village at Pelham?
- 4 A. Yes, sir.
- 5 Q. What did they do for you?
- 6 A. Sent me home.
- 7 Q. Did they do any x-rays or anything?
- 8 A. Yeah, they did.
- 9 Q. Do you know what the results of those x-rays were?
- 10 A. No, sir, I don't.
- 11 Q. Did they give you a prescription?
- 12 A. Yes, sir.
- 13 Q. Did you fill it?
- 14 A. Yes, sir.
- 15 Q. Did they write you out of work any?
- 16 A. Three days I think to begin with and then they wrote
- 17 me off some more and sent me to physical therapy.
- 18 This went on for four or five months.
- 19 Q. So they wrote you out of work three or four days.
- 20 Did you go back?
- 21 A. I went back to work on light duty, yes, sir.
- 22 Q. Okay, but did you go back to Village at Pelham?
- 23 A. Yeah, two or three different times.
- 24 Q. To the emergency room area there?
- 25 A. No, sir, to one of their doctors they've got on the

1 side down through there.

2 Q. Who told you to go to those places?

3 A. I'm sorry?

4 Q. Who told you to go to those doctors?

5 A. The one in the emergency room sent me down there for
6 one to follow up on.

7 Q. And did you follow up like they told you to?

8 A. Yes, sir.

9 Q. And were you still having problems with your left
10 shoulder and elbow?

11 A. Yes, sir.

12 Q. All right. And those doctors they sent you to I'm
13 assuming you don't remember their names?

14 A. I don't, I'm sorry.

15 Q. I know, it's all right. I just don't have any
16 records from them.

17 A. But they sent me to so many doctors there ain't no
18 way I could remember all of them names.

19 Q. Well I've got some records from your attorney and
20 the first one I have is when you saw Dr. Sanchez in
21 August, August 21 of '09. But you're telling me you
22 went to Village at Pelham and saw some doctors
23 before then?

24 A. Before then, yeah. Dr. Sanchez is a surgeon.

25 Q. He's an orthopedic surgeon?

1 A. Yes, sir.

2 Q. What I need to know is I don't have any records in
3 between as best you can who you would've seen. You
4 told me Village at Pelham, the ER, and you said they
5 sent you to some doctors at Pelham to follow up
6 with. Any other doctors you would've seen before
7 Sanchez?

8 A. Yeah, the ones at Pelham but I don't remember their
9 names.

10 Q. Okay. And were they the ones that sent you to
11 Sanchez?

12 A. No, the workmen's comp finally sent me to Sanchez to
13 see about doing surgery.

14 Q. And what I've got is the first time you saw Sanchez
15 was on again August 21 of '09 and you told him you
16 had left shoulder pain; does that sound about right?

17 A. Yes, sir.

18 Q. All right.

19 A. And they's two or three more doctors in there with
20 him and I seen two of them too, I think.

21 Q. You saw Dr. Rodriguez ---

22 A. Yes.

23 Q. --- and a Dr. Leon?

24 A. That sounds right.

25 Q. And I've got those records. Did you ever get a

1 cortisone shot in your left shoulder?

2 A. Yes, sir.

3 Q. Who did that?

4 A. I don't know. It was down here at North Grove.

5 Q. Did Sanchez or Rodriquez send you for that or ---

6 A. No, they sent me for it, one of them did, I think,

7 I'm not sure, but it might have been a doctor --

8 this was another surgeon that did shoulder

9 replacements and he's the one that said I was too

10 young, down at North Grove. And I think worker's

11 comp made me go over there because Dr. Sanchez

12 wouldn't do the surgery.

13 Q. Is that Dr. Kana? Do you ever remember seeing a Dr.

14 Kana?

15 A. (No verbal response).

16 Q. I know you're not good with names. I'm just trying

17 to fill in the blanks.

18 A. I don't -- I don't know.

19 Q. Dr. Posta did your surgery?

20 A. Yes.

21 Q. Looks like before you had your surgery you had some

22 MRI's done on your left shoulder ---

23 A. Yes, sir.

24 Q. --- where they put you in that tube ---

25 A. Yes, sir.

1 Q. --- and it does all the clicking sounds and all?

2 A. Yeah, they did two or three of those at different
3 places.

4 Q. All right. Did one on your left shoulder and did
5 one on your neck; does that sound about right?

6 A. Yes, sir.

7 Q. And the one on your neck did they tell you you had
8 degenerative disc disease in your neck?

9 A. I don't remember.

10 Q. Do you remember any diagnosis you ever got on your
11 neck?

12 A. No, sir, I don't.

13 Q. You hadn't had any surgeries on your neck?

14 A. No, sir. And it still bothers me, though. I don't
15 know if it's from favoring this shoulder (indicates
16 left shoulder) or not but my neck still bothers me.

17 Q. Have you ever gotten any definitive diagnosis of
18 what's going on with your neck?

19 A. (No verbal response).

20 Q. Is that a no?

21 A. No, sorry.

22 Q. All right. Do you remember anybody telling you you
23 have degenerative issues or arthritic or osteophytes
24 in your neck, any of those sound familiar?

25 A. I don't know.

1 Q. Bone spurring?

2 A. Probably. I want to say yes to some of that but I
3 don't know which.

4 Q. I understand. You actually had a CT myelogram it
5 looks like of your neck where they had to inject the
6 dye in it and do the CT scan?

7 A. Yes, sir.

8 Q. And I believe Dr. Sanchez or Dr. Leon, they're in
9 the same office?

10 A. Yeah, they's two or three of them there that I seen
11 but I didn't -- wouldn't have remembered Sanchez if
12 you hadn't have mentioned his name. I don't
13 remember the others' names.

14 Q. Before you had your surgery did they try a nerve
15 block on your shoulder? Do you remember having a
16 nerve block?

17 A. I had a nerve block. I don't remember if it was
18 before or after.

19 Q. It looks to me like you had one before and it didn't
20 really help you all that much; does that sound ---

21 A. That sounds right. Yeah, that was before.

22 Q. From what I've got, the records, again it looks like
23 you saw Dr. Sanchez's group through about December
24 of '09 and he didn't -- is he the one that sent you
25 to Dr. Posta for your shoulder?

1 A. I think the worker's comp's the one that sent me to
2 Dr. Posta because Sanchez said he wouldn't touch it
3 and the other doctor at North Grove that give me the
4 cortisone shot, and I don't remember his name, and
5 he said he wouldn't touch it either, that I was too
6 young to have a shoulder replacement.

7 Q. Before you went to Posta the last visit that you had
8 with Dr. Sanchez' group it states that they were
9 releasing you at that time for your neck issues.
10 Have you seen any other doctors for your neck
11 issues?

12 A. For my neck, no, sir.

13 Q. Then the next doctor I've got in the records your
14 attorney has been kind enough to provide is from Dr.
15 Posta and that indicates he saw you for a second
16 opinion and did that surgery over at St. Francis
17 when you had to be admitted for a couple of days
18 because of your diabetes and everything; does that
19 sound right?

20 A. Yes, sir, that sounds right.

21 Q. Was the surgery successful?

22 A. No, sir.

23 Q. What problems do you have after the surgery?

24 A. I can't move my arm, I can't hardly use it, I can't
25 raise it but so high, I have trouble buttoning my

1 pants, getting dressed. I don't know if it was
2 during the surgery or what but my neck bothers me
3 and it might be from favoring my left shoulder, I
4 don't know, and my arm won't straighten completely
5 out, they messed the nerves up in it.

6 Q. The surgery you had you had a prosthetic device put
7 in your shoulder?

8 A. Yes, sir, had a shoulder reversal.

9 Q. Is your shoulder better or worse since you had the
10 surgery?

11 A. Worse.

12 Q. It's worse?

13 A. Yeah.

14 Q. What's wrong with it? Has anybody told you why it's
15 worse after having the surgery?

16 A. Well it's -- they said that everything's looking
17 right but the skin, he couldn't pull it back up
18 right and they messed a nerve up in my arm.

19 Q. Who told you they messed a nerve up in your arm?

20 A. Well I don't know who told me. I guess it was San
21 -- uh, Dr. Posta, him or either San -- uh,
22 Shallcross one. I have to take nerve medicine.

23 Q. And Shallcross gives you that?

24 A. Yes, sir.

25 Q. What medication are you currently taking?

1 A. It's Neurotin, it's for nerves. I take 300
2 milligrams four times a day. And I'm on morphine
3 and I take it four times a day.

4 Q. How long have you been taking morphine?

5 A. About six, five or six months now.

6 Q. Have you ever tried to get off of it?

7 A. I can't. I tried, yes, sir.

8 Q. When you say "you can't" are you addicted to it?

9 A. No, I'm not addicted to it but if I don't take it I
10 can't sleep any. And I don't sleep but a couple of
11 hours now like it is. I go from the bed to the
12 recliner.

13 Q. Morphine's addictive, you can become addicted to it;
14 were you aware of that?

15 A. Yes, sir.

16 Q. Do you think you could stop taking it if the pain
17 was okay?

18 A. Yes, sir, if the pain was fine I know I could.

19 Q. How often do you go back and see Shallcross?

20 A. Once a month.

21 Q. And that's to get your medication?

22 A. To get my medicine, yes, sir. And they've had me on
23 a lot of medicine because it doesn't do much to me
24 and they have to keep swapping around.

25 Q. Now you were telling me about the nerve damage. Dr.

1 Shallcross' records indicate you had a nerve test
2 and that came back normal didn't it?

3 A. I don't know. He did the shock thing on me.

4 Q. Where he put the needles on there ---

5 A. Yes, sir.

6 Q. --- and measured the nerve conductions and ---

7 A. Yes, sir. He's the same doctor that give me my
8 nerve pills too for my -- Shallcross.

9 Q. Did he tell you the results of that nerve
10 conduction, nerve testing?

11 A. I'm not sure. I'm sure he did.

12 Q. Has he done anymore injections?

13 A. What do you mean "injections"?

14 Q. Has he tried to give you anymore shots or anything
15 in your neck or your shoulder?

16 A. No, sir. It's metal, I don't think it'd do no good
17 in my shoulder, that titanium.

18 Q. And you're seeing Shallcross you said every month?

19 A. Yes, sir.

20 Q. So you would have seen him last month?

21 A. Yes, sir.

22 Q. Are you seeing any other doctors besides Shallcross?

23 A. Just Posta once a year, follow-up.

24 Q. Have any other doctors recommended any other
25 surgeries or anything more?

1 A. No, sir, he said there wasn't nothing else they
2 could to until they come out with something new.
3 Right now they can't do a shoulder replacement or
4 anything.

5 Q. So the game plan now is just to treat it with
6 medication indefinitely?

7 A. He said I'll have to be on medication long as I
8 lived.

9 Q. Who said that?

10 A. Dr. Shallcross.

11 Q. And you have a good relationship with Shallcross?

12 A. What do you mean?

13 Q. I mean, do you like him and trust him?

14 A. I don't like no doctors. I don't like doctors or
15 lawyers. Dr. Shallcross, I'm sure he's a good
16 doctor but he's got to -- he's kindly like House on
17 T.V., he's a little rough but he's -- he's the only
18 one that's helped me so far.

19 Q. All right. Other than Shallcross and seeing Dr.
20 Posta once a year do you have any other doctors that
21 you have plans to see or anything like that?

22 A. No, sir.

23 Q. Now you settled your worker's comp claim involving
24 the 2009 accident; correct?

25 A. Yes, sir.

1 Q. Was that done on a clincher or are they still paying
2 for your shoulder?

3 A. No, sir, it's done.

4 Q. The clincher is totally over with?

5 A. Yes, sir, I didn't want them to -- cause if I die in
6 two years and they got money sitting back to do more
7 surgery and they never come up with nothing else
8 then my wife's not going to get anything.

9 Q. Okay.

10 A. And I got a feeling they'll not do anymore surgery
11 on me, anybody.

12 Q. Any doctors in North Carolina that you've seen
13 besides St. Luke's and Dr. Viar, any other doctors
14 you've seen up there?

15 A. No, sir.

16 Q. Let me do this -- well before I take a break, we've
17 talked about your left shoulder surgery and your
18 neck. Are there any other injuries that you're
19 claiming as a result of the July, 2009 accident?

20 A. Nothing other than my right shoulder, I've wore it
21 out. When I went to the Social Security doctor he
22 told me it was shot too. I told him it'd just have
23 to be shot, they ain't doing no more surgery.

24 Q. All right, and this is the doctor you saw a couple
25 of weeks ago?

1 A. Yes, sir, about three weeks ago.

2 Q. You haven't received any treatment or anything
3 involving your right shoulder have you?

4 A. No, sir.

5 Q. And you're not planning on getting any treatment on
6 your right shoulder?

7 A. No, sir.

8 Q. When did you start having right shoulder issues?

9 A. About three years ago, right after I messed my
10 shoulder -- my left one up. I couldn't use it so I
11 had to use this one (indicating right shoulder).

12 Q. Give me an idea how long after the accident it was
13 when you started having problems with your right
14 shoulder? And when I say the "accident" you know
15 it's July, 2009.

16 A. I'm going to say maybe a year, roughly, and that's
17 just guessing, I don't ---

18 Q. I understand. So what you're telling me is your
19 right shoulder started hurting not because it was
20 actually injured in the accident but because you
21 were having to overcompensate or use it because your
22 left shoulder was injured?

23 A. Yes, sir. And that might be what's wrong with my
24 neck, it might be messed up because I'm favoring
25 this left side, I don't know.

1 Q. Any other injuries that you know of?

2 A. No, sir.

3 Q. Do you know of any other witnesses to this accident?

4 A. What do you mean "any other witnesses"?

5 Q. Do you know of any other than the people that were
6 involved in it? Do you know of any eye witnesses?

7 A. No, sir.

8 Q. These people here and you?

9 A. That's it.

10 Q. All right.

11 A. Just us now because Mr. Miller is dead -- Mr. ---

12 Q. Mr. Seay passed away.

13 A. --- Seay's dead.

14 Q. That's right.

15 A. And his wife wasn't there, he was by himself.

16 Q. Give me just about three or four minutes, I'm going
17 to talk to my client and we'll wrap your deposition
18 up; okay?

19 A. Okay, sir.

20 **(Off the record at approximately 11:08 a.m.; back on the**
21 **record at approximately 11:20 a.m.)**

22 **DIRECT EXAMINATION RESUMED BY MR. DAVIS:**

23 Q. Going back on the record. Mr. Shults, I told you
24 we're about done with this; okay?

25 A. That's fine.

1 Q. Let me just ask you a few more questions and make
2 sure I got everything; okay?

3 A. Yes, sir.

4 Q. Do you know a Dr. Charles Alford who's an economist,
5 have you ever spoken with him?

6 A. I spoke to somebody and I'm not sure about the name.
7 That sounds right, though.

8 Q. Do you remember what you spoke with him about?

9 A. I think it was about my -- like vocational, what I
10 could do and what I couldn't; is that ---

11 Q. Well I think he did a report analyzing what your ---

12 A. Lost wages is what it was.

13 Q. Right.

14 A. Yes, sir, I remember.

15 Q. You did talk with him?

16 A. Yes, sir.

17 Q. Do you know a Glenn Adams? Do you remember speaking
18 with a Glenn Adams?

19 A. Yes, sir, Glenn was the one who did the vocation.

20 Q. The vocation?

21 A. Yes, sir.

22 Q. Okay. Wendy Garland?

23 A. Yes, sir.

24 Q. And do you remember -- she is the Life Care Planner;
25 do you remember speaking with her?

1 A. Yes, sir, I do.

2 Q. You identified a McMillan Carter that you worked
3 for, who is McMillan Carter?

4 A. That's a sister company of Jay Reynolds, Reynolds
5 Utilities. Both of them were together but I worked
6 for Jay.

7 Q. Is McMillan Carter out of business too?

8 A. They're out of business also.

9 Q. You don't have middle name do you?

10 A. No, sir.

11 Q. It's just Dickie Shults. All right, Mr. Shults,
12 have you understood the questions that I've asked
13 here today and given me answers to the best of your
14 ability?

15 A. Yes, sir, I have.

16 Q. All right, thank you, sir. The only thing I have is
17 because there are two out-of-state healthcare
18 providers you've identified, a St. Luke's Hospital
19 and a Dr. Viar, I'm going to provide your attorney
20 with authorizations to obtain those. Let him look
21 over that and I would ask that you execute those for
22 me to get those records; okay? And that's it.

23 **(There being no further questions, this deposition was**
24 **concluded at approximately 11:23 a.m.)**

25

CERTIFICATE

This is to certify that the foregoing deposition of **DICKIE SHULTS** was taken by the within court reporter, a notary public for the state of South Carolina, duly commissioned and qualified as such, on October 29, 2012 at The Ward Law Firm, 233 South Pine Street, Spartanburg, South Carolina.

That said court reporter is not a relative or employee of any of the parties or the attorneys, and further, is not of counsel or attorney for any of the parties to said action, and, is not in any manner interested in the cause, financial or otherwise.

That the deponent was duly placed under oath and admonished to speak the whole truth; that the oral deposition was duly taken and transcribed as to the questions propounded and the answers given; that the foregoing 67 pages is a true, accurate, and correct record of the testimony given by the deponent; together with such changes as said deponent may have made, if any, during the reading over and signing procedure.

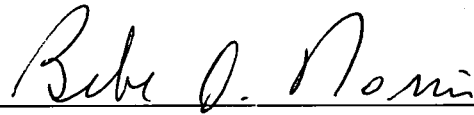
That the court reporter has retained the original deposition in its possession for the purpose of sealing and filing same with the proper official.

That all offered exhibits, stipulations and objections, if any, involved in this cause are duly

1 attached or included herein.

2 In witness whereof, I have set my hand and official
3 seal.

4
5 Date: 10/31/2012

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7 
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9 Bebe O. Norris, Court Reporter

10 Notary Public for South Carolina

11 My Commission Expires 04/22/2018
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THE STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG

Dickie Shults,

Plaintiff,

vs.

C.A. No.: 2011-CP-42-3081

Philip M. Seay, the Estate of Philip M.
Seay, and Lisa A. Seay, individually,
and as the Personal Representative of
the Estate of Philip M. Seay,

Defendants.

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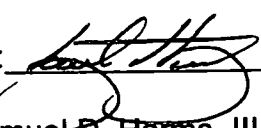
AMENDED SUMMONS AND NOTICE

TO: Philip M. Seay

You are hereby summoned and required to answer the Complaint in this action -- a copy of which is attached hereto and herewith served upon you; and to serve a copy of your Answer to this Complaint upon the subscriber at 33 Market Point Drive, Greenville, SC 29607, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within this thirty (30) day period, the Plaintiff(s) will apply to the Court for the relief demanded in the Complaint and judgment will be taken against you by default.

HARMS LAW FIRM, P.A.

July 27, 2011

By: 

Samuel D. Harms, III, Esq.
SC Bar Number: 13537
33 Market Point Drive
Greenville, SC 29607
(864) 277-0102

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

Dickie Shults,

Plaintiff,

vs.

Philip M. Seay, the Estate of Philip M.
Seay, and Lisa A. Seay, individually,
and as the Personal Representative of
the Estate of Philip M. Seay,

Defendants.

C.A. No.: 2011-CP-42-3081

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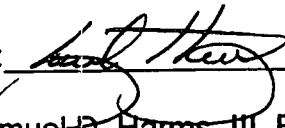
AMENDED SUMMONS AND NOTICE

TO: Estate of Philip M. Seay

You are hereby summoned and required to answer the Complaint in this action -- a copy of which is attached hereto and herewith served upon you; and to serve a copy of your Answer to this Complaint upon the subscriber at 33 Market Point Drive, Greenville, SC 29607, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within this thirty (30) day period, the Plaintiff(s) will apply to the Court for the relief demanded in the Complaint and judgment will be taken against you by default.

HARMS LAW FIRM, P.A.

July 27, 2011

By: 

Samuel D. Harms, III, Esq.
SC Bar Number: 13537
33 Market Point Drive
Greenville, SC 29607
(864) 277-0102

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

Dickie Shults,

Plaintiff,

vs.

Philip M. Seay, the Estate of Philip M.
Seay, and Lisa A. Seay, individually,
and as the Personal Representative of
the Estate of Philip M. Seay,

Defendants.

C.A. No.: 2011-CP-42-3081

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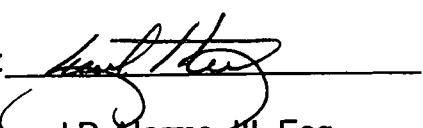
AMENDED SUMMONS AND NOTICE

TO: Lisa A. Seay

You are hereby summoned and required to answer the Complaint in this action -- a copy of which is attached hereto and herewith served upon you; and to serve a copy of your Answer to this Complaint upon the subscriber at 33 Market Point Drive, Greenville, SC 29607, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within this thirty (30) day period, the Plaintiff(s) will apply to the Court for the relief demanded in the Complaint and judgment will be taken against you by default.

HARMS LAW FIRM, P.A.

July 27, 2011

By: 

Samuel D. Harms, III, Esq.
SC Bar Number: 13537
33 Market Point Drive
Greenville, SC 29607
(864) 277-0102

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

Dickie Shults,

Plaintiff,

vs.

Philip M. Seay, the Estate of Philip M.
Seay, and Lisa A. Seay, individually,
and as the Personal Representative of
the Estate of Philip M. Seay,

Defendants.

C.A. No.: 2011-CP-42-3081

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AMENDED COMPLAINT

The Plaintiff, complaining of the above named Defendant(s), will
respectfully establish to the Court the following:

THE PARTIES

1. Plaintiff Dickie Shults (hereinafter "Shults") is a resident of Spartanburg County, South Carolina.
2. Defendant Philip M. Seay (hereinafter "Philip Seay") is a resident of Spartanburg County, South Carolina. Upon information and belief, Defendant Philip Seay died on or about September 9, 2009.
3. Defendant Estate of Philip M. Seay is the Estate of Defendant Philip M. Seay established by the Spartanburg County Probate Court with a case number of ES-2009-42-1664.
4. Defendant Lisa A. Seay (hereinafter "Lisa Seay") is a resident of Spartanburg County, South Carolina. Defendant Lisa A. Seay has been

appointed the Personal Representative of the Estate of Philip M. Seay. Defendant Lisa Seay is sued in both her individual capacity and in her capacity as the Personal Representative of the Estate of Philip M. Seay.

JURISDICTION

5. This Court has jurisdiction over these matters based upon Article V, Section 11 (Jurisdiction of Circuit Court), of the South Carolina Constitution; S.C. Code § 36-2-802 (Personal Jurisdiction Based Upon Enduring Relationship); and, S.C. Code § 36-2-803 (Personal Jurisdiction Based Upon Conduct).
6. The amount in controversy exceeds the threshold amount required for additional interrogatories under SCRCP, Rule 33(b)(9).

VENUE

7. Venue is proper in this Court because at least one Defendant is a resident of Spartanburg County, South Carolina.

COMMON FACTUAL ALLEGATIONS

8. On or about July 22, 2009, Plaintiff was entering SC 292 in Spartanburg County, South Carolina to travel east on SC 292. At the same time, Defendant Philip Seay was driving south on Miller Farm Road.
9. Defendant Philip Seay was driving a vehicle owned by Defendant Lisa Seay.
10. At the intersection of SC 292 and Miller Farm Road there is a traffic control device.

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11. When Defendant Philip Seay approached the intersection of SC 292 and Miller Farm Road, the Defendant disregarded the traffic control device and struck a vehicle traveling on SC 292 driven by Angela Miller. The vehicle driven by Angela Miller then struck the Plaintiff's vehicle.
12. After the collision on July 22, 2009, Defendant Philip Seay died on or about September 9, 2009. The Estate of Philip Seay has assumed all of the assets and liabilities of Defendant Philip Seay.

FOR A FIRST CAUSE OF ACTION

(Negligence, Gross Negligence)
(Philip Seay and the Estate of Philip Seay)

13. The Plaintiff(s) reaffirm and reiterate all of the allegations contained in Common Factual Allegations above, as if repeated herein.
14. Defendant Philip Seay acted in a negligent, grossly negligent, careless and reckless manner. In particular, the Defendant:
 - a. Drove too fast for the conditions;
 - b. Failed to maintain control over the vehicle;
 - c. Failed to obey a traffic control signal or sign;
 - d. Failed to yield the right-of-way;
 - e. Failed to keep a proper lookout;
 - f. Failed to comply with all of the motor vehicle laws of the State of South Carolina.
15. Defendant Philip Seay failed to take advantage of any last clear chance to avoid the wreck.

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16. Plaintiff Shults suffered past and future damages as a direct and proximate cause of the wreck, including:
- a. Bodily injury;
 - b. Pain and suffering;
 - c. Lost time or income or earning capacity;
 - d. Medical expenses;
 - e. The loss of the enjoyment of life.
17. The Estate of Philip Seay is liable for the damages caused to the Plaintiff by Defendant Philip Seay.

FOR A SECOND CAUSE OF ACTION
(Negligent Inspection & Maintenance)
(Lisa Seay)

18. The Plaintiff(s) reaffirm and reiterate all of the allegations contained in the Common Factual Allegations above, as if repeated herein.
19. Upon information and belief, Defendant Lisa Seay acted in a negligent, grossly negligent, careless and reckless manner when the Defendant inspected and maintained the vehicle involved in the wreck.
20. Plaintiff Shults suffered past and future damages as a direct and proximate cause of the Defendant's actions, including:
- a. Bodily injury;
 - b. Pain and suffering;
 - c. Lost time or income or earning capacity;
 - d. Medical expenses;
 - e. The loss of the enjoyment of life.

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FOR A THIRD CAUSE OF ACTION

(Negligent Entrustment)
(Lisa Seay)

21. The Plaintiff(s) reaffirm and reiterate all of the allegations contained in the Common Factual Allegations above, as if repeated herein.
22. Upon information and belief, Defendant Lisa Seay acted in a negligent, grossly negligent, careless and reckless manner when the Defendant entrusted the Defendant's vehicle to Defendant Philip Seay. In particular, Defendant Lisa Seay:
- a. Upon information and belief, allowed Defendant Philip Seay to operate her vehicle when she knew or should have known that Defendant Philip Seay did not have the physical or mental capacity to safely operate the vehicle.
23. Plaintiff Shults suffered past and future damages as a direct and proximate cause of the Defendant's actions, including:
- a. Bodily injury;
 - b. Pain and suffering;
 - c. Lost time or income or earning capacity;
 - d. Medical expenses;
 - e. The loss of the enjoyment of life.

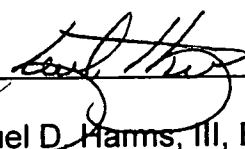
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M. HOPE BLACKLEY

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WHEREFORE, judgment should be entered for actual and punitive damages; the costs and expenses of this action, and; any further relief that the Court deems just and appropriate.

HARMS LAW FIRM, P.A.

July 27, 2011

By: 

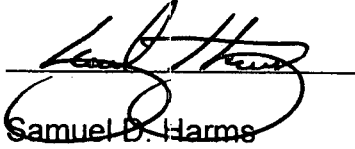
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CLERK OF COURT
SPARTANBURG COUNTY
2011 JUL 28 AM 9:26
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Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

June 27, 2015

A handwritten signature in black ink, appearing to read "Samuel D. Harms", is written over a horizontal line.

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Appellate Case No. 2015-000359
Case No. 2011-CP-42-3951

Dickie Shults, ...Appellant,

v.

Angela G. Miller, ...Respondent.

SUPPLEMENTAL RECORD ON APPEAL

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1 is no prejudice whatsoever because since this Court has
2 heard this motion and ruled on it we've had a mediation in
3 this case. And this case was mediated with the --
4 Mr. Seay's case with the worker's comp claim.

5 And Mr. Shults has received ample settlement, over
6 \$225,000, from the Seay case. So there's no prejudice to
7 that. They reached that settlement on their own. It was
8 not something that was forced on them.

9 They have received what we would consider to be full
10 satisfaction. So there's certainly no prejudice to
11 Mr. Shults. He's recovered. He's recovered what we would
12 say fully.

13 And anything that he's trying to get here would be as
14 a result of a mere technicality, and that would not promote
15 justice and would not be what we would think that the
16 courts of this state would allow or would find would be
17 responsive to the Sundown factors.

18 So, Your Honor, I believe that the Court did
19 adequately and legally apply the Sundown factors. We've
20 met all three prongs of it. We've provided the Court with
21 evidence for all three prongs for it.

22 In addition, since we have last been before Your Honor
23 we have taken the deposition of the plaintiff, Mr. Dickie
24 Shults. And I asked him under oath about the case and the
25 facts of it.

1 we have asked to come in and defend the case. We
2 have. We have proceeded to mediation, depositions, written
3 discovery.

4 And basically it is our position that the time for
5 ending this case is now. There's no further delay. The
6 plaintiff has received full recovery in this case from
7 Mr. Seay, from the underinsured motorist carrier, from the
8 worker's comp carrier. And there's no -- no reason for the
9 case to continue any further against Ms. Miller.

10 THE COURT: Mr. Harms.

11 MR. HARMS: Your Honor, I'll address both the -- well,
12 first on the motion to reconsider setting aside the order
13 of default a couple of things.

14 First, before you get into the 3-prong analysis that's
15 in this Sundown Operating Company's case, which they're
16 cited in our order, you first must make a determination
17 whether or not there was good cause in order to relieve the
18 defendant from default.

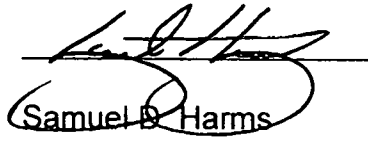
19 The three prongs in the Sundown's Operating Company
20 case do not establish good cause. They're simply three
21 factors to consider after good cause is shown.

22 Our argument in this case is that the defendant cannot
23 show good cause, so you never get to the three factors that
24 you get to in your brief and that you can in your order
25 from the Sundown Operating Company case. Again, we are in

Certificate of Counsel

The undersigned hereby certifies that the Supplemental Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

September 8, 2015

A handwritten signature in black ink, appearing to read "Samuel B. Harms", is written over a horizontal line.

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Appellate Case No. 2015-000359
Case No. 2011-CP-42-3951

Dickie Shults, ...Appellant,

v.

Angela G. Miller, ...Respondent.

BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. Should the trial court have set aside the entry of default?
- II. Should the Defendant have been granted summary judgment by the trial court?

STATEMENT OF THE CASE

On July 22, 2009, Dickie Shults (hereinafter "Shults") was injured in an automobile collision. (R. p. 16)(Summons & Complaint, p. 2). The Plaintiff filed a Summons and Complaint against Angela G. Miller (hereinafter "Miller") on September 13, 2011. (R. p. 15)(Summons & Complaint). The Defendant failed to file an Answer to the Complaint and the Spartanburg County Clerk of Court entered an Entry of Default on October 20, 2011. (R. p. 23)(Entry of Default). On October 26, 2011, the Defendant served a Motion to Set Aside the Entry of Default and an Answer. (R. p. 24, 26)(Motion to Set Aside the Entry of Default; Answer). A hearing was held before Judge J. Derham Cole on the Defendant's Motion to Set Aside the Entry of Default on January 3, 2012 in Spartanburg, South Carolina. (R. p. 62)(Hearing Transcript 01/03/12). On July 11, 2012, Judge J. Derham Cole filed an order setting aside the entry of default. (R. p. 3)(Order Setting Aside Entry of Default). The Plaintiff served a Motion to Reconsider, Alter or Amend the Order Setting Aside Entry of Default on July 18, 2012. (R. p. 46)(Motion to Reconsider 07/18/12). On October 31, 2012, the Defendant served a Motion for Summary Judgment. (R. p. 48)(Defendant's Motion for Summary Judgment). A hearing was held before Judge J. Derham Cole on the Plaintiff's Motion to Reconsider the Order Setting Aside the Entry of Default and on Defendant's Motion for Summary Judgment on February 7, 2013 in Spartanburg, South Carolina. (R. p. 74)(Hearing Transcript 02/07/13). On March 18, 2013, Judge J. Derham Cole filed an order denying Plaintiff's Motion to Reconsider and granting the Defendant's Motion for Summary Judgment. (R. p. 6)(Order 03/18/13). The Plaintiff served, on March 22, 2013, Plaintiff's Motion to Reconsider, Alter or Amend the Order Granting Defendant's Motion for Summary Judgment. (R. p. 58)(Motion to Reconsider 03/22/13). Judge J.

Derham Cole heard the Plaintiff's Motion to Reconsider, Alter or Amend the Order Granting Defendant's Motion for Summary Judgment on October 31, 2013 in Spartanburg, South Carolina. (R. p. 95)(Hearing Transcript 10/31/13). On January 27, 2015, Judge J. Derham Cole filed an order denying the Plaintiff's motion to reconsider. (R. p. 10)(Form 4 Order 01/27/15). On February 20, 2015, the Plaintiff served a Notice of Appeal on the Defendant. (R. pp. 60-61)(Notice of Appeal; Proof of Service 02/20/15).

FACTS

This case arises out of an automobile collision between Defendant Angela Miller and Plaintiff Dickie Shults. On July 22, 2009, the Defendant was traveling west on South Carolina 292 in Spartanburg County. (R. p. 124)(Miller Depo. p. 13). The road has two lanes - one in each direction. (R. pp. 135-136)(Miller Depo. pp. 24-25). The Plaintiff was travelling east on South Carolina 292. (R. p. 124)(Miller Depo. p. 13). Defendant Miller crossed over the center line of the road and struck the Plaintiff's vehicle. (R. pp. 141-142, 254)(Miller Depo. pp. 30-31; Shults Depo. p. 47). The Defendant's vehicle had enough momentum to completely cross the Plaintiff's lane of travel and come to a rest in the ditch on the Plaintiff's side of the road. (R. pp. 154-155)(Miller Depo. pp. 43-44). The Plaintiff was injured in the collision. (R. pp. 17, 257-262)(Complaint p. 3; Shults Depo. pp. 50-55).

The Defendant was served with the Summons and Complaint on September 15, 2011. (R. pp. 173, 18-22)(Miller Depo. p. 62; Motion for Entry of Default and Exhibits). The Defendant gave the Summons and Complaint to her husband with the understanding that the husband would take it to the Watson Insurance Agency, Inc.,

her automobile liability insurance company. (R. pp. 173-175)(Miller Depo. pp. 62-64). She thinks that her husband delivered the paperwork to the Watson Insurance Agency within 1 week of being served, but she is not sure of the date. (R. pp. 174, 186)(Miller Depo. pp. 63, 75). She was not present at the agency when her husband dropped off the lawsuit. (R. p. 174)(Miller Depo. p. 63). She does not know the name of the person that her husband gave the lawsuit to at the agency and he did not get a receipt. (R. p. 189)(Miller Depo. p. 78). The Defendant never called the Watson Insurance Agency in the 35 days following service of the Complaint to confirm that it had the Summons and Complaint or that it was going to respond to the Complaint. (R. pp. 184, 186)(Miller Depo. pp. 73, 75). She had no conversations, for any reason, with the Watson Insurance Agency after being served with the lawsuit. (R. p. 186)(Miller Depo. p. 75). The Defendant's liability insurance carrier, Nationwide (formally Allied Insurance Co.), called the Defendant about three days after her husband dropped the paperwork off at the Watson Insurance Agency to discuss the lawsuit. (R. pp. 175-176, 183 ("It was probably about three days, I guess."), 185)(Miller Depo. pp. 64-65, 72, 74). However, in that first telephone conversation with the Nationwide agent three days after her husband dropped off the lawsuit, the Nationwide agent told the Defendant that she had already gone into default. (R. p. 185)(Miller Depo. p. 74). The Nationwide agent did tell the Defendant that the Watson Insurance Agency did not timely file the lawsuit with Nationwide. (R. p. 187)(Miller Depo. p. 76). In the thirty days after being served with the lawsuit, the Defendant did not call anyone at either Nationwide or Allied Insurance Company. (R. p. 188)(Miller Depo. p. 77). In the thirty days after being served with the lawsuit, other than the Watson Insurance Agency, the Defendant did not send the lawsuit to any lawyer, insurance agency, or insurance company. (R. p. 188)(Miller

Depo. p. 77). The Defendant testified that she relied on the Watson Insurance Agency to hire her an attorney to file an answer and that is why she went into default. (R. p. 194)(Miller Depo. p. 83). The Defendant failed to timely file an Answer to the Complaint and the Spartanburg County Clerk of Court entered an Entry of Default on October 20, 2011. (R. p. 23)(Entry of Default).

STANDARD OF REVIEW

The decision whether to set aside an entry of default lies solely within the discretion of the trial court. *Sundown Operating Company, Inc. v. Intedge Industries, Inc.*, 383 S.C. 601, 606, 681 S.E.2d 885, 888 (2009). The trial court's decision will not be disturbed on appeal absent a clear showing of an abuse of discretion. *Id.* An abuse of discretion occurs when the judge issuing the order was controlled by some error of law or when the order, based upon factual, as distinguished from legal conclusions, is without evidentiary support. *Id.* at 383 S.C. 607, 681 S.E.2d 888.

"In reviewing the grant of summary judgment, [an appellate court] applies the same standard that governs the trial court under Rule 56, SCRPC: summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." *Pittman v. Grand Strand Entm't, Inc.*, 363 S.C. 531, 536, 611 S.E.2d 922, 925 (2005). In determining whether any triable issue of fact exists, the evidence and all inferences that can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party. *Medical Univ. of South Carolina v. Arnaud*, 360 S.C. 615, 602 S.E.2d 747 (2004). If triable issues exist, those issues must go to the jury. *Mulherin-Howell v. Cobb*, 362 S.C. 588, 608 S.E.2d 587 (Ct. App.2005).

Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRPC. On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party. *Willis v. Wu*, 362 S.C. 146, 607 S.E.2d 63 (2004). Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. *Baugus v. Wessinger*, 303 S.C. 412, 401 S.E.2d 169 (1991). The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. *McCall v. State Farm Mut. Auto. Ins. Co.*, 359 S.C. 372, 597 S.E.2d 181 (Ct.App.2004). Summary judgment is a drastic remedy and should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues. *Helena Chem. Co. v. Allianz Underwriters Ins. Co.*, 357 S.C. 631, 594 S.E.2d 455 (2004).

ARGUMENTS

PART I

I. The Trial Court should not have Set Aside the Entry of Default.

Rule 55(c) states that: “[f]or good cause shown the court may set aside an entry of default.” Rule 55, SCRPC. “This standard requires a party seeking relief from an entry of default under Rule 55(c) to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice.”

Sundown Operating Company, Inc. v. Intedger Industries, Inc., 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009). “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 Operating Company, Inc. v. Intedger Industries, Inc.*, 383 S.C. 601, 607-08, 681 S.E.2d 885, 888 (2009)(emphasis added) (citing *Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 465, 381 S.E.2d 499, 501-02 (Ct.App.1989). The first step in the analysis is to determine if the party put forth a satisfactory explanation for the default that constitutes good cause. The Court does not reach the three *Wham* factors if there is not a satisfactory explanation for the default. *Regions Bank v. Owens*, 402 S.C. 642, 649, 741 S.E.2d 51, 55 (Ct.App.2013) (“Because we find the master did not err in finding Owens failed to show good cause for failing to answer the complaint, we need not consider the *Wham* factors.”). In *Sundown*, the Supreme Court did not reach the *Wham* factors in its analysis of the facts.

In this case, the trial court did not address in its order whether the Defendant had a satisfactory explanation for the default. This was an error of law and an abuse of discretion. In fact, the Defendant does not have a satisfactory explanation for the default. This case is controlled by *Sundown Operating Company, Inc. v. Intedger Industries, Inc.*, 383 S.C. 601, 681 S.E.2d 885 (2009). In *Sundown*, the Supreme Court reiterated that a Defendant cannot establish good cause to be relieved of default by arguing that it relied upon an insurance agent to respond to the Complaint. The Supreme Court said:

Initially, we reject Petitioner’s argument that it should be

granted relief from the entry of default because it should not be held responsible for the negligence of its insurance agent in failing to answer the complaint. This argument is without merit, as the law is clear that an attorney or insurance company's misconduct is imputed to the client. See *Williams v. Vanvokenburg*, 312 S.C. 373, 375, 440 S.E.2d 408, 409 (Ct.App.1994) (observing that an attorney's negligence in failing to answer is imputable to the defendant); *Roberts v. Peterson*, 292 S.C. 149, 151, 355 S.E.2d 280, 281 (Ct.App.1987) (recognizing that negligence of an attorney or insurance company is imputable to a defaulting litigant)."

Sundown, 383 S.C. at 609, 681 S.E.2d at 889.

The Supreme Court, in *Sundown*, went on to hold that: "a defendant may not be relieved from the entry of default solely because it relied to its detriment on a negligent insurance agent." *Sundown*, 383 S.C. at 609, 681 S.E.2d at 889. See also *White Oak Manor, Inc. v. Lexington Ins. Co.*, 407 S.C. 1, 753 S.E.2d 537 (2014) (a defendant misplacing a complaint is not good cause to set aside an entry of default). In this case, the Defendant's sole argument that she has good cause to set aside the entry of default is the negligence of her insurance agency. Since the Supreme Court has held that the negligence of an insurance agency is not good cause, and that the Defendant's argument is without merit, it was an error of law and an abuse of discretion for the trial court to grant the Defendant relief from the default.

There is a second reason why the entry of default should not be set aside in this case. The Defendant shares responsibility for the entry of default with the insurance agency. A Defendant cannot establish good cause if she shares responsibility for the entry of default. *Sundown*, 383 S.C. at 609, 681 S.E.2d at 889. In *Sundown*, the Defendant waited two weeks to notify the insurance agency of the lawsuit, and the court found that this fact caused the defendant to share in the responsibility for the

default. The case of *Regions Bank* is controlling on this point. *Regions Bank v. Owens*, 402 S.C. 642, 741 S.E.2d 51 (Ct.App.2013). In *Regions Bank*, a 79-year-old defendant with a limited education went into default. *Id.* He argued that he relied on a person to whom he gave a power of attorney to file an answer to a complaint. However, the Court noted that the defendant “presented no evidence he took any steps to protect himself by contacting either Paddy [his power of attorney] or Paddy’s attorney to confirm an answer would be filed on his behalf.” *Regions Bank v. Owens*, 402 S.C. 642, 648-49, 741 S.E.2d 51, 54-55 (Ct.App.2013).

In this case, it appears that the Defendant’s husband may not have delivered the lawsuit to the insurance agency until three days before the default. The Defendant testified that she got a call from Nationwide three days after her husband delivered the lawsuit to the Watson Insurance Agency, and she testified that the Nationwide agent told her that she was already in default during that telephone conversation. These two statements, taken together, indicate that the lawsuit was not delivered to the agency until the very last moment before the default. In addition, the Defendant failed to call the insurance agency to see if and when it received the Summons and Complaint. The Defendant did not inquire with the insurance agency if it was going to respond to the Complaint. The Defendant did not make a single phone call to the agency. *See Hill v. Dotts*, 345 S.C. 304, 310, 547 S.E.2d 84, 897 (Ct.App.2001) (holding “a party has a duty to monitor the progress of his case. Lack of familiarity with legal proceedings is unacceptable and the court will not hold a laymen to any lesser standard than is applied to an attorney.”). The Defendant shares responsibility for the entry of default, and therefore, there is not good cause to set aside the entry of default.

Because there is no good cause pursuant to the holding in *Sundown*, it was an

error of law for the trial court to consider the *Wham* factors. *Regions Bank v. Owens*, 402 S.C. 642, 649, 741 S.E.2d 51, 55 (Ct.App.2013) (*Wham* factors are not considered if there is no good cause). In *Sundown*, the three *Wham* factors were not considered or analyzed by the Court because there was no initial explanation that could be considered good cause. The trial court erred in this case when it made its decision solely on the three *Wham* factors. Instead, the analysis should have stopped with the determination that the Defendant has failed to establish an explanation that constitutes good cause or that the Defendant shares responsibility for the entry of default.

Finally, the *Sundown* “standard requires a party seeking relief from an entry of default under Rule 55(c) to ... give reasons why vacation of the default would serve the interests of justice.” *Sundown*, 383 S.C. at 607, 681 S.E.2d at 888. This is a necessary step in any request for relief from default. In this case, the Defendant did not give any reason to the trial court why vacation of the default would serve the interests of justice. The trial court’s order setting aside the default does not give any reason why setting aside the default would serve the interests of justice. The order setting aside the default, and the order reconsidering the issue, is silent on this required finding. Therefore, the trial court committed an error of law and abused its discretion in setting aside the entry of default without considering if the vacation of the default would serve the interests of justice. For these reasons, the order setting aside the entry of default should be reverse and the case should be remanded to the trial court for a damages hearing.

PART II

II. The Defendant should not have been Granted Summary Judgment by the Trial Court.

Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP. In this case, when viewing the evidence in the light most favorable to the Plaintiff, there are genuine issues of material fact that preclude the granting of summary judgment. The trial court committed an error of law and an abuse of discretion when it granted summary judgment to the Defendant. As an initial matter, since the Defendant was in default, and liability was therefore admitted by the Defendant, summary judgment should not have been granted by the Court. Since it was an error for the trial court to set aside the entry of default, it was an error for the trial court to then grant summary judgment to the Defendant. So, the issue of the granting of summary judgment is only reached on appeal if the Court of Appeals affirms the trial court's decision to set aside the entry of default.

In order to prevail in a negligence cause of action, the plaintiff must establish: (1) the defendant owed a duty of care to the plaintiff; (2) the defendant breached the duty by a negligent act or omission; (3) the defendant's breach was the actual and proximate cause of the plaintiff's injury; and (4) the plaintiff suffered an injury or damages. *Steinke v. S.C. Dep't. of Labor, Licensing and Regulation*, 336 S.C. 373, 387. 520 S.E.2d 142, 149 (1999). In this case, the Plaintiff's negligence claim should not have been dismissed by the trial court because the Defendant owed a duty of care

to the Plaintiff, the Defendant breached that duty, and the breach was the actual and proximate cause of the Plaintiff's injury.

On July 22, 2009, the Defendant was traveling west on South Carolina 292 in Spartanburg County. (R. p. 124)(Miller Depo. p. 13). The road has two lanes - one in each direction. (R. pp. 135-136)(Miller Depo. pp. 24-25). The Plaintiff was travelling east on South Carolina 292. (R. p. 124)(Miller Depo. p. 13). Defendant Miller crossed over the center line of the road and struck the Plaintiff's vehicle. (R. pp. 141-142, 254)(Miller Depo. pp. 30-31; Shults Depo. p. 47). The Defendant's vehicle had enough momentum to completely cross the Plaintiff's lane of travel and come to a rest in the ditch on the Plaintiff's side of the road. (R. pp. 154-155)(Miller Depo. pp. 43-44). The Plaintiff was injured in the collision. (R. pp. 17, 257-262)(Complaint p. 3; Shults Depo. pp. 50-55).

The Defendant testified that she was hit from the front-right side by Mr. Phillip Seay as he was entering S.C. 292 from a road that dead-ended into S.C. 292 at a right angle (a "T" intersection). (R. pp. 141-142, 110)(Miller Depo. pp. 30-31; Collision Report). The Defendant's husband, Frank Miller, was in the car at the time of the collision. (R. p. 128)(Miller Depo. p. 17). The Defendant's husband saw the collision. (R. p. 131)(Miller Depo. p. 20). The Defendant's husband yelled "look out" prior to the collision. (R. p. 132)(Miller Depo. p. 21).

The weather was clear and the Defendant's vision was not obstructed by anything. (R. pp. 136-137)(Miller Depo. pp. 25-26). She was not wearing prescription eyeglasses at the time of the collision, but in the year 2010 she had to get prescription eyeglasses to help her distance vision. (R. pp. 137-140)(Miller Depo. pp. 26-29). Even though the weather was clear, and Mr. Seay was approaching from in front of the

Defendant, the Defendant did not see Mr. Phillip Seay until after the collision. The Defendant testified as follows:

Q. The very first time that you remember his vehicle being present how far away was his vehicle?

A. When I was struck. I mean, it wasn't no – I didn't have no kind of distance at all.

Q. Okay. So do I understand it correctly that before your vehicle and Mr. Seay's vehicle made contact you did not see his vehicle at all?

A. No.

Q. "No" you disagree with me or "no" you didn't see his vehicle at all?

A. No, I didn't see him until I was struck by him.

Q. Tell me why you did not see Mr. Seay's vehicle prior to contact being made by the vehicles?

A. I guess cause he yielded to stop and hit me. I mean, I don't know.

Q. Where you looking at some place other than the road in front of you?

A. No, looking straight ahead.

(R. pp. 143-144)(Miller Depo. pp. 32-33). The Defendant's vehicle was hit in the front right corner by Mr. Seay. (R. pp. 144, 164)(Miller Depo. pp. 33, 53). The Defendant was not rear-ended or hit from behind by Mr. Seay. (R. pp. 144-145)(Miller Depo. pp. 33-34).

When pressed again on the issue of why she did not observe Mr. Seay, the Defendant testified as follows:

Q. What I need to know was there anything obstructing your view of Mr. Seay's vehicle?

A. No.

Q. So then tell me in your own words why did you not see Mr. Seay's vehicle until after the collision occurred?

A. Everything happened so fast. I mean, I didn't have a chance. I didn't see him at all. I don't know why but I didn't see him.

(R. p. 145)(Miller Depo. p. 34).

The Defendant did not know how fast Mr. Seay was traveling before the impact,

because she never saw him. (R. pp. 145, 149, 159-160)(Miller Depo. pp. 34, 38, 48-49). The Defendant testified that the speed limit was 35 mph for her, but she was only traveling 20 mph when she was struck by Mr. Seay. (R. pp. 147, 164)(Miller Depo. pp. 36, 53). She claimed she was traveling only 20 mph at the time of the initial collision, but when she was asked why she did not stop before getting struck by Mr. Seay's vehicle, she said she didn't have time to react to stop. (R. p. 148)(Miller Depo. p. 37). She said that she had her foot on the brake prior to the collision because she was being "cautious" with her driving. (R. p. 149)(Miller Depo. p. 38). She could not explain why she did not stop before crossing over the center lane into the Plaintiff's lane of travel. (R. pp. 149-150)(Miller Depo. pp. 38-39). The Defendant had no conversations with Mr. Seay after the collision. (R. p. 162)(Miller Depo. p. 51).

In addition, the Defendant did not see the Plaintiff's vehicle until after the impact. (R. p. 150)(Miller Depo. p. 39). She does not know how fast the Plaintiff was traveling because she never saw the Plaintiff until after the impact. (R. p. 160)(Miller Depo. p. 49). The Defendant testified that the Plaintiff did not cause the accident, that the Plaintiff was not negligent in his driving, that the Plaintiff did nothing wrong, and there was nothing the Plaintiff could have done to avoid the collision. (R. pp. 151, 160, 171)(Miller Depo. pp. 40, 49, 60). Mr. Philip Seay died a few months after the collision (from unrelated causes) and the parties were not able to depose him prior to his death.

A.

In this case, there is evidence that the Defendant was negligent under both a common law standard and negligent per se because she violated a motor vehicle statute. As to the common law standard, there is a genuine issue of material fact as to whether the Defendant was keeping a proper lookout at the time of the collision, or if

she was using reasonable care in the operation of her vehicle. A person who has the right-of-way is not excused from the common law duty to keep a reasonable lookout to avoid hazards. *Thomasko v. Poole*, 349, S.C. 7, 561 S.E.2d 597 (2002). The common law duty to keep a proper lookout is not merely one of looking but one of observation. Ralph King Anderson, Jr., South Carolina Requests to Charge – Civil, 2002, § 28-2. “A person operating a motor vehicle on a public highway owes an urgent duty to keep the vehicle under proper control so as to be able to slow down, stop or turn such vehicle in order to avoid colliding with other vehicles.” *Id.* Also, a person has a common law duty to use reasonable care in the operation of her vehicle so that the vehicle is controlled in a manner to avoid a collision. Ralph King Anderson, Jr., South Carolina Requests to Charge – Civil, 2002, § 28-1; *Wilson v. Marshall*, 260 S.C. 271, 195 S.E.2d 610 (1973). In this case, the Defendant’s husband yelled “look out” prior to the collision. The Defendant was hit from the front-right side by Mr. Seay as he was entering S.C. 292 from a road that dead-ended into S.C. 292 at a right angle (a “T” intersection). Yet, the Defendant testified several times that she never saw Mr. Seay until after the moment of impact. This fact is hard to explain if the Defendant was keeping a proper lookout. This raises a genuine issue as to whether she was keeping a proper lookout. She testified that her vision was not obstructed by anything and it was a clear day. She testified that she was only driving 20 mph in a 35 mph zone. At such a slow speed, it seems unreasonable that she never saw Mr. Seay’s vehicle approaching from in front of her, and at such a slow speed, a reasonable person could have stopped to avoid the collision if the person was keeping a proper lookout. Also, on this subject of her vision, the Defendant was not wearing prescription eyeglasses at the time of the collision, but she had to get prescription eyeglasses about 1 year after the collision to

help her see distant objects. This raises an issue as to whether she should have been wearing prescription eyeglasses at the time of the collision.

Also, since she was only driving 20 mph, according to her testimony, there is an issue as to whether she could have stopped her vehicle before it collided with the Plaintiff's vehicle. At such a slow speed, she could have stopped almost immediately after the initial impact. She testified that her foot was on her brake prior to the first impact because she is a cautious driver and she drives with her foot on the brake. However, she ended up traveling all the way across the Plaintiff's lane of travel and into the grass ditch on the Plaintiff's side of the road. This indicates that the Defendant negligently pushed the accelerator pedal after the initial impact and accelerated into the Plaintiff. There is a genuine issue as to whether a reasonable person could have stopped a vehicle before hitting the Plaintiff when the Defendant's vehicle's speed was only 20 mph and the Defendant already had her foot on the brake; or in the alternative, a reasonable person would not have pressed down on the accelerator pedal and accelerated into oncoming traffic.

B.

Next, there is evidence that the Defendant was negligent per se. The violation of a state statute may constitute negligence per se. *Norton v. Opening Break*, 319 S.C. 469, 462 S.E.2d 861 (1995). First, the Defendant admits that she crossed over the center yellow line and into the Plaintiff's lane of travel. The Defendant's conduct violates S.C. Code Ann. § 56-5-1810 (Supp. 2014)(drive on the right side of road, exceptions). So, the Defendant violated a statutory obligation imposed on her and that raises an issue of her negligence per se. Second, the Plaintiff had the right of way in his lane of travel when the Defendant struck him, so the Defendant violated S.C. Code

Ann. § 56-5-580 (Supp. 2014)(right of way) and S.C. Code Ann. § 56-5-2320 (Supp. 2014)(vehicle turning left) when she entered into his lane of travel. Third, she violated S.C. Code Ann. § 56-5-1520 (Supp. 2014)(general rules as to maximum speeds)("speed must be so controlled to avoid colliding with a ... vehicle") because she was driving too fast to avoid a collision with both Seay and the Plaintiff. In her deposition, she could not explain why she could not stop before hitting Mr. Seay since she was going so slow prior to the first impact and why she could not stop before hitting the Plaintiff.

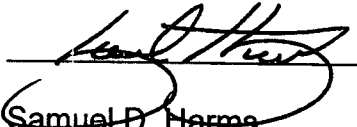
C.

For these reasons, the trial court should not have granted the Defendant's motion for summary judgement.

CONCLUSION

The Plaintiff respectfully requests the Court of Appeals to reverse the trial court's order setting aside the entry of default. In addition, the Plaintiff requests the Court to reverse the trial court's order granting summary judgment to the Defendant.

July 16, 2015



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Appellate Case No. 2015-000359
Case No. 2011-CP-42-3951

Dickie Shults, ...Appellant,

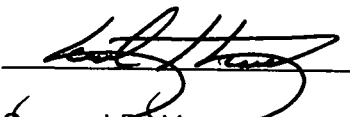
v.

Angela G. Miller, ...Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b),
SCACR.

July 16, 2015



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Dickie Shults	Appellant
Angela G. Miller	Respondent

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STATEMENT OF ISSUES ON APPEAL

1. Can Appellant show the trial court abused its discretion by finding good cause to set aside an entry of default where (1) the trial court applied the proper law and (2) evidence exists to support the trial court's decision?

2. Can Appellant maintain an action against Miller where the uncontested evidence demonstrates that Miller was struck by a motorist who failed to yield the right-of-way to Miller and pushed Miller into Appellant?

STATEMENT OF THE CASE

On July 22, 2009, Miller, her husband, and their three children were traveling on Highway 292 when a vehicle driven by Philip Seay disregarded a stop sign and pulled directly in front of Miller's vehicle. (R. pp. 28-34) Seay struck the front passenger's side of the Millers' vehicle and pushed it into a vehicle driven by Plaintiff. (R. pp. 28-34) Miller and her husband testified that Miller (1) was traveling below the speed limit, (2) had the right-of-way, (3) could not avoid Seay once he disregarded the stop sign and pulled into the path of Miller, and (4) did not cause or contribute to the accident. (R. pp. 28-31)

Appellant was traveling in the opposite direction as Miller on Highway 292. (R. p. 248 lines 16-23 & pp. 32-34) Appellant, who did not see the collision between Miller and Seay, confirmed that when Seay attempted to pull onto Highway 292, Seay would have to yield the right-of-way to Miller. (R. p. 247 lines 5-10 & p. 255 lines 3-9) Appellant also admitted that Miller was struck by Seay before Appellant was involved in the accident. (R. p. 256 lines 7-8) Appellant confirmed that Trooper Chris Mace spoke with all involved in accident. (R. p. 252 lines 9-24) Appellant made no complaint of injury to Trooper Mace. (R. p. 255 lines 22-23)

Trooper Mace investigated the accident and interviewed all the parties involved in the accident. All involved agreed that Miller was lawfully operating her vehicle on Highway 292 within the speed limit. (R. pp. 32-34) At all times, Miller would have had the right-of-way and Seay would have had to yield the right-of-way to her. (R. pp. 32-34) Trooper Mace did not find any evidence that Miller caused or contributed to the accident and found the sole cause of the accident was Seay. (R. p. 32-34)

Appellant filed a separate lawsuit against Seay for this accident (CA # 2011CP4203081).

(R. pp. 288-295) Seay resolved all of Appellant's claims against him. (R. p. 83 lines 5-12) Furthermore, Seay paid all property damage and bodily injury claims of Miller and her family. (R. p. 28-31)

Appellant filed this action against Miller and an entry of default was entered. Miller attempted to defend herself but there was some confusion due to a recent change in her insurance and because Seay's insurer paid all of Miller's claims. (R. pp. 35-45) Miller, however, was able to serve an Answer within days of when it was due. (R. pp. 35-45) The trial court found there was good cause to set aside the entry of default and permit Miller to defend this action. (R. pp. 3-5)

Following discovery, Miller filed a Motion for Summary Judgment. (R. pp. 48-55) The trial court found that Miller was entitled to judgment as a matter of law on the issue of liability for the accident. (R. pp. 6-9) Plaintiff's motions to reconsider were denied. (R. p. 10)

ARGUMENTS

I. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN FINDING GOOD CAUSE FOR RELIEF FROM THE ENTRY OF DEFAULT WHERE IT APPLIED THE PROPER LAW AND EVIDENCE SUPPORTS ITS DECISION.

“The decision whether to set aside an entry of default or a default judgment lies solely within the sound discretion of the trial judge. *The trial court's decision will not be disturbed on appeal absent a clear showing of an abuse of that discretion.* An abuse of discretion occurs when the judge issuing the order was controlled by some error of law or when the order, based upon factual, as distinguished from legal conclusions, is without evidentiary support.” Sundown Operating Co. v. Intedgen Indus., Inc., 383 S.C. 601, 606-07, 681 S.E.2d 885, 888 (2009) (emphasis added).

For Appellant to prevail on this abuse of discretion standard, Appellant, therefore must show either (1) the trial did not apply the proper law or (2) there is no evidentiary support of the trial court's ruling. Id. Appellant cannot prove either. Appellant merely seeks to have this Court substitute its judgment for the trial court, which is not a proper standard of review. Ricks v. Weinrauch, 293 S.C. 372, 374, 360 S.E.2d 535, 536 (Ct. App.1987).

A. The trial court applied the proper “good cause” standard for relief from the entry of default.

In the Order Granting Relief, the trial court properly noted that relief from an entry of default is governed by Rule 55(c), SCRC. (R. pp. 3-5) Furthermore, the trial court applied the exact same law that Appellant argues applies to this case when it said the following in the Order Granting Relief:

This standard requires a party seeking relief from an entry of default under Rule 55(c) to provide an explanation for the default and give reasons why vacation of the default entry 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 Operating Co. v.

Intedege Indus. Inc., 383 S.C. 601, 607-08, 681 S.E.2d 885, 888 (2009). (R. p. 4)

The trial court also properly noted and Appellant does not challenge the following:

The “good cause” standard for relief under Rule 55(c) “is liberally construed to promote justice and dispose of cases on the merits.” Dixon v. Besco Eng’g Inc., 320 S.C. 174, 178, 463 S.E.2d 636, 638 (Ct. App. 1995). “Relief granted at this point is within the equitable power of the court and excuses the previous failure to act promptly.” James F. Flannagan, South Carolina Civil Procedure 440 (2d ed. 1996). (R. p. 4)

Accordingly, there is no legal basis for attacking the trial court’s discretion in granting relief.

B. Evidence supports the trial court’s decision to grant relief.

In the Order Granting Relief, the trial court exercised its discretion to find “good cause” existed to grant relief based on Sundown when it held:

I believe that Defendant has adequately satisfied the standard for relief set forth in Sundown. Defendant explained there was some confusion with Seay’s insurance accepting liability for the accident and a change of her own insurance companies. Nevertheless, Defendant appeared and answered and moved for relief very shortly after her Answer was due. Defendant has also shown a meritorious defense to the accident. Despite Plaintiff’s argument that he would be prejudiced by a jury trial, I do not find this constitutes the type of prejudice expressed in Sundown. Accordingly, I find that this case should be disposed of on the merits. (R. p. 4)

The trial court’s discretionary decision must stand as long as there is some evidence to support it. Sundown at 606-07, 681 S.E.2d at 888. “The trial court need not make specific findings of fact for each factor if there is sufficient evidentiary support on the record” to support the decision. Id.

On appeal, Appellant does not challenge the trial court’s findings that (1) the timing for relief, (2) the existence of a meritorious defense, or (3) the lack of prejudice justify relief based on the “good cause” standard. Instead, Appellant erroneously argues the trial court did not address whether Defendant explained the default situation. Appellant is wrong.

As stated above, the trial court’s Order Granting Relief specifically states, “I believe that

Defendant has adequately satisfied the standard for relief set forth in Sundown. *Defendant explained there was some confusion with Seay's insurance accepting liability for the accident and a change of her own insurance companies.*" (R. p. 4 emphasis added) In the Order Denying Plaintiff's Motion to Reconsider the Grant of Relief, the trial court held,

Defendant continues to satisfy the factors to establish good cause as set forth in Sundown Operating Co. v. Intedege Indus. Inc., 383 S.C. 601, 607-08, 681 S.E.2d 885, 888 (2009). As stated in the previous order, *Defendant explained that following the service of the complaint there was some confusion early on because Seay's insurance company had accepted liability for her claims and because she had changed insurance companies.* Nevertheless, Defendant was able to answer very shortly after it was due, establish a meritorious defense, and show no prejudice to Plaintiff. (R. p. 8 emphasis added)

Keeping in mind the abuse of discretion standard applies to this case, all that is necessary to affirm the trial court's decision is some evidence that confusion explained the default situation. Supporting the trial court's discretionary decision on confusion are the affidavits of Miller and her husband asserting that Miller was not at fault for the accident and that Seay's insurance paid all their claims (R. pp. 28-31 & pp. 62-68), Trooper Mace's affidavit about his investigation and accident report indicating that Miller was not charged with the accident and the sole cause of the accident was Seay (R. pp. 32-34), the fact there was a prior lawsuit filed by Appellant against Seay, who is the real at-fault party (R. pp. 287-295), and the change in Miller's insurance (R. p. 66 lines 14-25 & pp. 176-177). Because some evidence exists on this issue, there exists no further basis for examining the trial court's discretionary decision.

Appellant's arguments based on White Oak Manor, Inc. v. Lexington Ins. Co., 407 S.C. 1, 753 S.E.2d 537 (2014), and Regions Bank v. Owens, 402 S.C. 642, 741 S.E.2d 51 (Ct. App. 2013), demonstrate Appellant's fundamental misunderstanding of the standard of review for abuse of discretion cases. Both cases involve appellate review under an abuse of discretion of the trial court's

decision not finding “good cause” for relief. Just like this Court should do in this case, the White Oak Manor and Regions Bank courts merely found there was evidence supporting the trial court’s decisions; thus, there was no basis for reversing the trial courts when applying the abuse of discretion standard. White Oak Manor, 407 S.C. at 12, 753 S.E.2d at 543 (holding “we find no error in the court’s holding that losing the complaint was not ‘good cause’”); Regions Bank, 402 S.C. at 648, 741 S.E.2d at 54 (“We find evidence in the record supports the master’s finding [defendant] did not show good cause for failing to answer the complaint”). Therefore, White Oak Manor and Regions Bank actually support this Court affirming the trial court’s decision in this case.

Appellant’s final argument about the interests of justice is disingenuous at best. The Sundown Court adopted the three factors based on Wham v. Shearson Lehman Bros., Inc., 298 S.C. 462, 381 S.E.2d 499 (Ct. App. 1989), for a trial court to use when determining whether vacation of the default entry would serve the interests of justice. Those three factors—(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—were not only cited but analyzed by the trial court in the Orders. (R. pp. 3-5 & pp. 6-9) Although not challenged by Appellant, ample evidence supports the trial court’s discretionary decision that interests of justice is served by granting relief based on the Wham factors. See also James F. Flannagan, South Carolina Civil Procedure 440 (2d ed. 1996) (“In most instances, the opposing party suffers little or no prejudice because there is no detrimental reliance on the entry of default.”). (R pp. 28-34 & pp. 35-45 & pp. 62-68 & pp. 83-85)

The bottom line is this Court should affirm the trial court’s decision to grant relief because the trial court did not abuse its discretion.

II. APPELLANT CANNOT MAINTAIN AN ACTION AGAINST MILLER WHERE THE UNCONTESTED EVIDENCE IS THAT MILLER WAS STRUCK BY A MOTORIST WHO FAILED TO YIELD THE RIGHT-OF-WAY TO MILLER AND PUSHED MILLER INTO PLAINTIFF.

The trial court properly found that evidence presented did not create any inference that Miller caused the subject accident. The following facts are not contested:

1. On July 22, 2009, Miller, her husband, and their three children were traveling on Highway 292. (R. pp. 28-31)
2. Miller was traveling below the speed limit. (R. pp. 28-34)
3. Seay, another motorist, approached Highway 292 from Miller's right. (R. pp. 28-34)
4. To enter Highway 292, Seay would have to stop at a stop sign and yield the right-of-way to Miller. (R. pp. 32-34 & pp. 255 lines 6-9)
5. Seay did not yield the right-of-way to Miller, pulled directly in front of her, and struck the front passenger's side of Miller's vehicle. (R. pp. 28-34 & p. 254 lines 7-8)
6. After failing to yield the right-of-way and colliding with Miller, Seay pushed Miller into Appellant's vehicle. (R. pp. 28-34)
7. Trooper Mace investigated the accident and spoke with all involved and found no evidence or testimony that Miller did anything to cause the accident. (R. pp. 32-34)

A. Appellant's proper lookout theory fails because it is speculative and does not address the uncontested evidence that Seay was the sole proximate cause of the accident by failing to yield the right-of-way.

Appellant does not and cannot challenge any of the facts listed above. Instead, Appellant attempts to create some speculative argument that Miller did not keep a proper lookout. This argument is improper because it is based on pure speculation and does not change the fact that Seay

was the sole cause of the accident.

When confronted with this overwhelming evidence that Miller did not cause the accident, Appellant cannot simply rest on the allegations of the pleadings but has to “come forward with specific facts showing there is a genuine issue for trial.” Singleton v. Sherer, 377 S.C. 185, 198, 659 S.E.2d 196, 203 (Ct. App. 2008). Appellant, however, cannot rely on speculative, theoretical, or hypothetical evidence. Jackson v. Bermuda Sands, Inc., 383 S.C. 11, 17, 677 S.E.2d 612, 616 (Ct. App. 2009). “Our courts have recognized that when only one reasonable inference can be deduced from the evidence, the question becomes one of law for the court. A corollary of this rule is that *verdicts may not be permitted to rest upon surmise, conjecture, or speculation. Finally, assertions as to liability must be more than mere bald allegations made by the non-moving party in order to create a genuine issue of material fact.*” Id. (emphasis added).

When discussing Seay failing to yield the right-of-way and pulling out directly in front of her, Miller said, “I did not have an opportunity to avoid Seay, and our vehicles collided.” (R. p. 30) Miller said just before the accident she was looking straight ahead with both hands on the steering wheel. (R. p. 128 lines 7-10) Seay pulled so quickly in front of her from a side road that she did not see him until he was colliding with her vehicle. (R. p. 142 lines 10-25) “The sole contributing cause to the accident was the actions of Philip Seay.” (R. p. 32)

Frank Miller, who was a passenger in Miller’s vehicle, supports Miller’s version of the accident. He testified that when Seay failed to yield the right-of-way and pulled directly into the path of the Miller vehicle, “My wife did not have an opportunity to take any evasive maneuvers to avoid the Seay vehicle.” (R. p. 28) Furthermore, Frank Miller said, “The sole cause of the accident was the actions of Philip Seay.” (R. p. 28)

Trooper Mace investigated the accident and spoke with all involved. No one claimed and no evidence supported any finding that Miller caused the accident. (R. pp. 32-34)

Contrary to the rule that evidence must rise above surmise, conjecture, and speculation, the only thing that Appellant argues to this Court is a proper lookout theory based solely on speculative, theoretical, and hypothetical guesswork. While ignoring the uncontradicted evidence that Miller was lawfully driving her vehicle and looking straight ahead when Seay failed to yield the right-of-way and darted out directly in front of Miller, Appellant argues he can support a verdict against Miller because she did not see Seay until he unlawfully barreled into her lane and hit her. This is the exact type of “bald allegations” that the speculative guesswork that the Jackson v. Bermuda Sands, Inc. decision found did not justify submission to a jury. Id.

Where Plaintiff’s theoretical proper lookout argument falls completely flat is on the issue of proximate cause, a required element for any claim against Miller. Moore v. Weinberg, 373 S.C. 209, 220–21, 644 S.E.2d 740, 746 (Ct. App. 2007). Even if Appellant is right and some credible evidence exists that Miller failed to maintain a proper lookout, there is no evidence indicating anything related to a proper lookout caused the accident.¹ The only evidence in the record is that when Seay failed to yield the right-of-way, he pulled out directly in front of Miller and there was nothing she could do to avoid him. Without any evidence beyond mere speculation on causation, Appellant cannot prevail. Clark v. Cantrell, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000) (judgment as a matter of law is proper when any alleged negligence “could not have contributed to the cause of the accident”).

¹ Miller would be entitled to assume that Seay would obey the law and yield the right-of-way. Beverly v. Sarvis, 246 S.C. 470, 476, 144 S.E.2d 220, 223 (1965).

B. There is no evidence Miller violated any statute.

Appellant's arguments that Miller violated any statute is without any evidentiary support and seems like a desperate attempt to confuse this Court. Appellant is well aware of all the uncontested evidence cited above that Seay failed to yield the right-of-way, struck Miller's vehicle and pushed it into Appellant. (R. pp. 28-34) As illustrated above, there is no evidence that Miller did anything to cause the accident or that she would have entered Appellant's lane "but for" the actions of Seay.

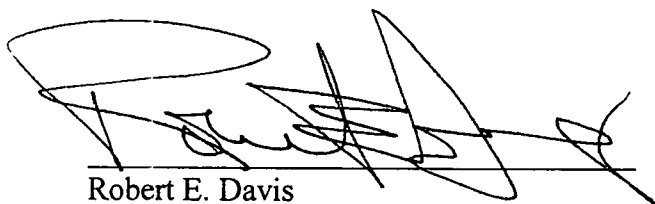
Given the facts presented, it stretches the boundaries of good faith for Appellant to argue that Miller violated statutes concerning driving on the right side of the road, right-of-way, left hand turn, or speed. For the statutes dealing with crossing the center line and right-of-way, the only evidence is that Miller was pushed by Seay across the center line into oncoming traffic. By definition, Miller was not a driver, defined as one "in actual physical control of a vehicle" by S.C. Code Ann. § 56-5-400, when she was pushed by Seay. Miller, therefore, could not violate those statutes. As for the statutes dealing with speed and left turn, there is not one shred of evidence that Miller was speeding or making a left turn when the accident occurred.

Like the argument on proper lookout, Appellant cannot point to actual evidence so he makes up wild theory based on speculation. This Court, therefore, should reject any argument based on a statutory violation as being wholly unsupported by actual evidence.

The record before this Court indicates that Seay was the sole cause of the subject accident. Appellant has already collected a lot of money in the suit filed against Seay. There is no basis for this lawsuit against Miller to continue.

CONCLUSION

The time has come for this case to finally end. In fact, it should have never been filed. Appellant cannot present any basis for overturning the discretionary decision to grant Miller relief. The record indicates the sole cause of the accident was Seay and not Miller. This Court, therefore, should affirm the decisions of the trial court.



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

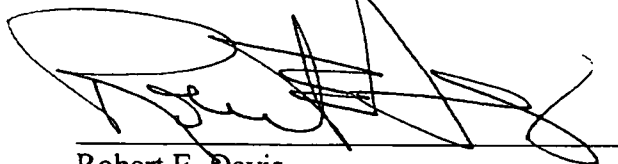
Appellate Case No. 2015-000359
Case No. 2011-CP-42-3951

Dickie Shults Appellant,

Angela G. Miller Respondent.

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Appellate Case No. 2015-000359
Case No. 2011-CP-42-3951

Dickie Shults, ...Appellant,

v.

Angela G. Miller, ...Respondent.

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ARGUMENTS

PART I

I. The Trial Court should not have Set Aside the Entry of Default.

The Defendant's Brief correctly points out that a trial court's decision to set aside an entry of default will not be disturbed on appeal absent an abuse of discretion. *Sundown Operating Company, Inc. v. Intedge Industries, Inc.*, 383 S.C. 601, 606, 681 S.E.2d 885, 888 (2009). An abuse of discretion occurs when the judge issuing the order was (1) controlled by some error of law or (2) when the order, factually, is without evidentiary support. *Id.* at 383 S.C. 607, 681 S.E.2d 888. In this case, the lower court's decision was both (1) controlled by an error of law and (2) is factually without evidentiary support. Therefore, there was an abuse of discretion by the trial court when it set aside the entry of default.

A. The trial court's order was controlled by an error of law.

The trial court's order was controlled by an error of law. Specifically, the trial court failed to require the Defendant "to put forth a satisfactory explanation for the default" before addressing the *Wham* factors. *Sundown Operating Company, Inc. v. Intedge Industries, Inc.*, 383 S.C. 601, 681 S.E.2d 885 (2009). This case is controlled by *Sundown Operating Company, Inc. v. Intedge Industries, Inc.*, 383 S.C. 601, 681 S.E.2d 885 (2009). In *Sundown*, the Supreme Court reiterated that a Defendant cannot establish good cause to be relieved of default by arguing that it relied upon an insurance agent to respond to the Complaint. The Supreme Court specifically said that:

This argument is without merit, as the law is clear that an attorney or insurance company's misconduct is imputed to

the client. *See Williams v. Vanvokenburg*, 312 S.C. 373, 375, 440 S.E.2d 408, 409 (Ct.App.1994) (observing that an attorney's negligence in failing to answer is imputable to the defendant); *Roberts v. Peterson*, 292 S.C. 149, 151, 355 S.E.2d 280, 281 (Ct.App.1987) (recognizing that negligence of an attorney or insurance company is imputable to a defaulting litigant)."

Sundown, 383 S.C. at 609, 681 S.E.2d at 889.

The Defendant testified that she relied on the Watson Insurance Agency to hire her an attorney to file an answer and that is why she went into default. (R. p. 194)(Miller Depo. p. 83). This is the only reason ever given by the Defendant as to why she went into default. Since the Defendant's proffered excuse has already been declared to be without merit by the Supreme Court, it was an error of law for the trial court to set aside the entry of default.

Instead of analyzing whether the Defendant's proffered excuse was legally sufficient, the trial court skipped over that legal issue and just analyzed the *Wham* factors. This too was an error of law. "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 Operating Company, Inc. v. Intedge Industries, Inc.*, 383 S.C. 601, 607-08, 681 S.E.2d 885, 888 (2009)(emphasis added). It is important to recognize that in *Sundown*, the Supreme Court did not reach the *Wham* factors in its analysis of the facts. The Court of Appeals has also held that it does not reach the three *Wham* factors if there is not a satisfactory explanation for the default. *Regions Bank v. Owens*, 402 S.C. 642, 649, 741 S.E.2d 51, 55 (Ct.App.2013) ("Because we find the master did not err in finding Owens failed to show good cause for failing to answer the complaint, we need not consider the

Wham factors.”). Therefore, it was an error of law for the trial court to reach the *Wham* factors in its analysis of whether to set aside the entry of default.

In addition, in analyzing whether the Defendant’s proffered excuse is legally sufficient, it is important to keep in mind that the Defendant in this case is also at fault for the entry of default in this case. A Defendant cannot establish good cause if she shares responsibility for the entry of default. *Sundown*, 383 S.C. at 609, 681 S.E.2d at 889. The Defendant’s liability insurance carrier, Nationwide (formally Allied Insurance Co.), called the Defendant about three days after her husband dropped the paperwork off at the Watson Insurance Agency to discuss the lawsuit. (R. pp. 175-176, 183 (“It was probably about three days, I guess.”), 185)(Miller Depo. pp. 64-65, 72, 74). However, in that first telephone conversation with the Nationwide agent three days after her husband dropped off the lawsuit, the Nationwide agent told the Defendant that she had already gone into default. (R. p. 185)(Miller Depo. p. 74). This demonstrates that the Defendant did not drop the paperwork off with her insurance agent until right before (or right after) the entry of default.

Also, in the thirty days after being served with the lawsuit, the Defendant did not call anyone at either Nationwide or Allied Insurance Company. (R. p. 188)(Miller Depo. p. 77). In the thirty days after being served with the lawsuit, other than the Watson Insurance Agency, the Defendant did not send the lawsuit to any lawyer, insurance agency, or insurance company. (R. p. 188)(Miller Depo. p. 77). *See Hill v. Dotts*, 345 S.C. 304, 310, 547 S.E.2d 84, 897 (Ct.App.2001) (holding “a party has a duty to monitor the progress of his case. Lack of familiarity with legal proceedings is unacceptable and the court will not hold a laymen to any lesser standard than is applied to an attorney.”). The Defendant shares responsibility for the entry of default,

and therefore, there is not good cause to set aside the entry of default. Again, because there is no good cause pursuant to the holding in *Sundown*, it was an error of law for the trial court to consider the *Wham* factors. The trial court erred in this case when it made its decision solely on the three *Wham* factors. Instead, the analysis should have stopped with the determination that the Defendant has failed to establish an explanation that constitutes good cause or that the Defendant shares responsibility for the entry of default.

Finally, the *Sundown* “standard requires a party seeking relief from an entry of default under Rule 55(c) to ... give reasons why vacation of the default would serve the interests of justice.” *Sundown*, 383 S.C. at 607, 681 S.E.2d at 888. This is a necessary step in any request for relief from default. The trial court’s order setting aside the default does not give any reason why setting aside the default would serve the interests of justice. The order setting aside the default, and the order reconsidering the issue, is silent on this required finding. The Defendant argues that this issue is “disingenuous at best.” (Def. Br. at 7). However, *Sundown* requires the trial court to consider the interests of justice. Therefore, the trial court committed an error of law and abused its discretion in setting aside the entry of default without considering if the vacation of the default would serve the interests of justice.

B. The trial court’s decision to set aside the entry of default is also without evidentiary support.

The trial court’s decision to set aside the entry of default is also without evidentiary support. The trial court’s decision states that the “Defendant explained there was some confusion with Seay’s insurance accepting liability for the accident and a change of her own insurance companies.” (R. p. 4)(Order 7/11/12, p. 2). A

similar one sentence line appears in the Order denying the motion to reconsider. (R. p. 8)(Order 3/15/13, p. 3). The Defendant argues that this one sentence demonstrates that the Court considered evidence about an excuse. For the reasons stated above, this excuse is not legally sufficient because she is relying on an insurance agent to file an answer to the Complaint. However, the undisputed testimony, by the Defendant herself, is that she was not confused about her responsibilities. Instead, she had a complete lack of communication with the insurance agent she had at the time of the accident and with the agent she had on the day she was served with the Complaint. She said she gave the Summons and Complaint to her husband with the understanding that the husband would take it to the Watson Insurance Agency, Inc., her automobile liability insurance company at the time of the accident. (R. pp. 173-175)(Miller Depo. pp. 62-64). She was not present at the agency when her husband dropped off the lawsuit. (R. p. 174)(Miller Depo. p. 63). She does not know the name of the person that her husband gave the lawsuit to at the agency and he did not get a receipt. (R. p. 189)(Miller Depo. p. 78). The Defendant never called the Watson Insurance Agency in the 35 days following service of the Complaint to confirm that it had the Summons and Complaint or that it was going to respond to the Complaint. (R. pp. 184, 186)(Miller Depo. pp. 73, 75).

The Defendant never testified that she was confused about Seay's insurance company paying for the claim (she had no contact with Seay's insurance company about this lawsuit). She never mentions any confusion caused by her changing insurance agencies. She changed from the Watson Insurance Agency to the Cornerstone (Haygood) Insurance Agency after the accident, but both agencies placed her with Nationwide. (R. pp. 177-178, 180-182)(Miller Depo. pp. 66-67, 69-71). She

had absolutely no contact with the Cornerstone (Haygood) Insurance Agency after being served, and never gave it the Complaint, because Cornerstone was not her agent at the time of the accident. (R. pp. 180-182)(Miller Depo. pp. 69-71). There was no confusion – just a lack of communication. She testified that she had no conversations, for any reason, with the Watson Insurance Agency after being served with the lawsuit. (R. p. 186)(Miller Depo. p. 75). In the thirty days after being served with the lawsuit, the Defendant did not call anyone at either Nationwide or Allied Insurance Company. (R. p. 188)(Miller Depo. p. 77). In the thirty days after being served with the lawsuit, other than the Watson Insurance Agency, the Defendant did not send the lawsuit to any lawyer, insurance agency, or insurance company. (R. p. 188)(Miller Depo. p. 77). The Defendant testified that she relied on the Watson Insurance Agency to hire her an attorney to file an answer and that is why she went into default. (R. p. 194)(Miller Depo. p. 83).

In this case, the trial court committed several errors of law in its decision and therefore it abused its discretion. The Defendant did not proffer a legally sufficient explanation for the entry of default. The trial court erred when it accepted an explanation that has already been rejected as without merit by the Supreme Court. The trial court erred because it reached the *Wham* factors in its analysis. The trial court erred when it failed to consider the fault of the Defendant in the entry of the default. The trial court erred when it failed to consider if setting aside the entry of default would serve the interests of justice. The trial court's evidentiary findings are without support. For these reasons, the order setting aside the entry of default should be reverse and the case should be remanded to the trial court for a damages hearing.

PART II

II. The Defendant should not have been Granted Summary Judgment by the Trial Court.

As an initial matter, since the Defendant was in default, and liability was therefore admitted by the Defendant, summary judgment should not have been granted by the Court. Since it was an error for the trial court to set aside the entry of default, it was an error for the trial court to then grant summary judgment to the Defendant. So, the issue of the granting of summary judgment is only reached on appeal if the Court of Appeals affirms the trial court's decision to set aside the entry of default.

A.

The Defendant argues that there is sufficient evidence to support the trial court grant of summary judgment to the Defendant. The Defendant's entire argument neglects the fact that this claim was dismissed at the summary judgment stage. In determining whether any triable issue of fact exists, the evidence and all inferences that can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party. *Medical Univ. of South Carolina v. Arnaud*, 360 S.C. 615, 602 S.E.2d 747 (2004). If triable issues exist, those issues must go to the jury. *Mulherin-Howell v. Cobb*, 362 S.C. 588, 608 S.E.2d 587 (Ct. App.2005).

Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRPC. On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and

inferences arising in and from the evidence in a light most favorable to the non-moving party. *Willis v. Wu*, 362 S.C. 146, 607 S.E.2d 63 (2004). Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. *Baugus v. Wessinger*, 303 S.C. 412, 401 S.E.2d 169 (1991). The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. *McCall v. State Farm Mut. Auto. Ins. Co.*, 359 S.C. 372, 597 S.E.2d 181 (Ct.App.2004). Summary judgment is a drastic remedy and should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues. *Helena Chem. Co. v. Allianz Underwriters Ins. Co.*, 357 S.C. 631, 594 S.E.2d 455 (2004).

In this case, the Plaintiff has produced sufficient evidence to establish that there are genuine issue of material fact that preclude summary judgment. In addition, the Defendant has failed to meet her burden of clearly establishing the absence of a genuine issue of material fact. There is evidence that the Defendant was negligent under both a common law standard and negligent per se because she violated a motor vehicle statute. As to the common law standard, there is a genuine issue of material fact as to whether the Defendant was keeping a proper lookout at the time of the collision, or if she was using reasonable care in the operation of her vehicle. The Defendant argues that the Plaintiff's argument that the Defendant failed to keep a proper lookout is speculative. (Def. Br. p. 8).

The Plaintiff's argument is not based on speculation, but on the testimony of the Defendant, and all reasonable inferences from the Defendant's own testimony. The Defendant testified that she was hit from the front-right side by Mr. Phillip Seay as he was entering S.C. 292 from a road that dead-ended into S.C. 292 at a right angle (a

"T" intersection). (R. pp. 141-142, 110)(Miller Depo. pp. 30-31; Collision Report). The Defendant admitted that she never saw Mr. Seay until after the impact even though he was coming from in front of her and she was looking forward. (R. pp. 143-144)(Miller Depo. pp. 32-33). However, her husband did see Mr. Seay prior to the collision and yelled "look out." (R. p. 132)(Miller Depo. pp. 21). Since she testified that she was only traveling 20 mph in a 35 mph zone, and she already had her foot on the brake before the impact, there are genuine issues as to whether she was keeping a proper lookout, and whether she could have stopped before the impact with Mr. Seay or stopped before she crossed the center line and hit the Plaintiff. (R. pp. 147, 149, 164)(Miller Depo. pp. 36, 38, 53). Instead of stopping at such a slow speed, her vehicle completely crossed the Plaintiff's lane of travel and come to a rest in the ditch on the Plaintiff's side of the road. (R. pp. 154-155)(Miller Depo. pp. 43-44).

Next, there is evidence that the Defendant was negligent per se. The violation of a state statute may constitute negligence per se. *Norton v. Opening Break*, 319 S.C. 469, 462 S.E.2d 861 (1995). This issue is fully briefed in the Brief of the Appellant. The Defendant argues that the Defendant did not violate a criminal statute. For the reasons articulated in the Brief of the Appellant, the Defendant is incorrect on this issue.

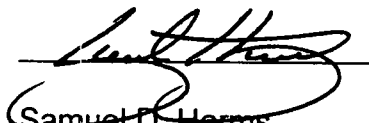
B.

For these reasons, the trial court should not have granted the Defendant's motion for summary judgement.

CONCLUSION

The Plaintiff respectfully requests the Court of Appeals to reverse the trial court's order setting aside the entry of default. In addition, the Plaintiff requests the Court to reverse the trial court's order granting summary judgment to the Defendant.

July 16, 2015



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Appellate Case No. 2015-000359
Case No. 2011-CP-42-3951

Dickie Shults, ...Appellant,

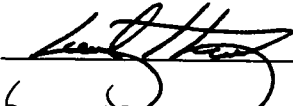
v.

Angela G. Miller, ...Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Reply Brief complies with Rule 211(b),
SCACR.

July 16, 2015



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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Dickie Shults, Appellant,

v.

Angela G. Miller, Respondent.

Appellate Case No. 2015-000359

Appeal From Spartanburg County
J. Derham Cole, Circuit Court Judge

Unpublished Opinion No. 2016-UP-336
Submitted April 1, 2016 – Filed June 29, 2016

AFFIRMED

Samuel Darryl Harms, III, of Harms Law Firm, PA, of
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Robert Eric Davis, of The Ward Law Firm, PA, of
Spartanburg, for Respondent.

PER CURIAM: Dickie Shults appeals the circuit court's order granting Angela Miller's motion to set aside an entry of default and her motion for summary

judgment. We affirm¹ pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether the circuit court erred in setting aside the entry of default: *Sundown Operating Co., Inc. v. Intedge Indus., Inc.*, 383 S.C. 601, 606, 681 S.E.2d 885, 888 (2009) ("The decision whether to set aside an entry of default . . . lies solely within the sound discretion of the [circuit court]."); *id.* ("The [circuit] court's decision will not be disturbed on appeal absent a clear showing of an abuse of that discretion."); *id.* at 607, 681 S.E.2d at 888 ("An abuse of discretion occurs when the judge issuing the order was controlled by some error of law or when the order, based upon factual, as distinguished from legal conclusions, is without evidentiary support."); *Williams v. Vanvolkenburg*, 312 S.C. 373, 375, 440 S.E.2d 408, 409 (Ct. App. 1994) ("The issue before the [appellate court] . . . is not whether we believe good cause existed to set aside the default, but rather, whether the [circuit court's] determination is supportable by the evidence and not controlled by an error of law."); Rule 55(c), SCRCPP ("For good cause shown the court may set aside an entry of default"); *Sundown*, 383 S.C. at 607, 681 S.E.2d at 888 ("This standard requires a party seeking relief from an entry of default under Rule 55(c) to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice."); *id.* at 607-08, 681 S.E.2d at 888 ("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."); *id.* at 609, 681 S.E.2d at 889 ("Although the presence of other factors, in the totality of the circumstances, may amount to a showing of 'good cause,' a defendant may not be relieved from the entry of default *solely* because it relied to its detriment on a negligent insurance agent.").

2. As to whether the circuit court erred in granting Miller's motion for summary judgment: *Wogan v. Kunze*, 379 S.C. 581, 585, 666 S.E.2d 901, 903 (2008) (stating when reviewing a circuit court's grant of summary judgment, appellate courts apply the same standard that governs the circuit court); Rule 56(c), SCRCPP (providing summary judgment is appropriate when "there is no genuine issue as to any material fact"); *Wogan*, 379 S.C. at 585, 666 S.E.2d at 903 ("In determining whether triable issues of fact exist[], the evidence and all factual inferences must be viewed in the light most favorable to the nonmoving party.") *Nelson v. Piggly Wiggly Cent., Inc.*, 390 S.C. 382, 391, 701 S.E.2d 776, 780 (Ct. App. 2010) ("A plaintiff prosecuting a negligence claim must demonstrate (1) the defendant[] owed

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

her a duty of care; (2) the defendant[] breached that duty by a negligent act or omission; and (3) she suffered damage as a proximate result of that breach."); *Winburn v. Ins. Co. of N. Am.*, 287 S.C. 435, 443, 339 S.E.2d 142, 147 (Ct. App. 1985) ("The absence of any one of these elements renders the evidence insufficient.").

AFFIRMED.

LOCKEMY, C.J., and WILLIAMS and MCDONALD, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Appellate Case No. 2015-000359
Case No. 2011-CP-42-3951

RECEIVED

JUL 12 2016

SC Court of Appeals

Dickie Shults, ...Appellant,

v.

Angela G. Miller, ...Respondent.

APPELLANT'S PETITION FOR REHEARING

Pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, the Appellant respectfully moves the Court for a rehearing of its unpublished Per Curiam Opinion filed June 29, 2016 which affirmed the trial court's order granting Angela Miller's motion to set aside an entry of default and her motion for summary judgment.

I. The Opinion Overlooks or Misapprehends Points Made by the Plaintiff Regarding the Trial Court's Setting Aside of the Entry of Default.

Rehearing of the Opinion is needed because the unpublished Opinion misinterprets *Sundown Operating Company, Inc. v. Intedge Industries, Inc.*, 383 S.C. 601, 681 S.E.2d 885 (2009). The Opinion cites *Sundance* in support of the affirmance of the trial court, yet it fails to perform any analysis of the facts and procedural history of

this case under the *Sundance* framework. As such, the Opinion conflicts with *Sundance* and longstanding precedent addressing the issue of setting aside an entry of default. Specifically, the Defendant and the trial court failed to provide a satisfactory explanation for the default, the purported explanation is without evidentiary support and is not legally sufficient under the case law, and the trial court did not determine if vacation of the default would serve the interests of justice.

First, the Defendant and the trial court failed to provide a satisfactory explanation for the default. In this case, the "standard requires a party seeking relief from an entry of default under Rule 55(c) to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice." *Sundown Operating Company, Inc. v. Intedger Industries, Inc.*, 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009). "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 Operating Company, Inc. v. Intedger Industries, Inc.*, 383 S.C. 601, 607-08, 681 S.E.2d 885, 888 (2009)(emphasis added) (*citing Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 465, 381 S.E.2d 499, 501-02 (Ct.App.1989). The first step in the analysis is to determine if the party put forth a satisfactory explanation for the default that constitutes good cause. The Court does not reach the three *Wham* factors if there is not a satisfactory explanation for the default. *Regions Bank v. Owens*, 402 S.C. 642, 649, 741 S.E.2d 51, 55 (Ct.App.2013) ("Because we find the master did not err in finding Owens failed to show good cause for

failing to answer the complaint, we need not consider the *Wham* factors.”). In *Sundown*, the Supreme Court did not reach the *Wham* factors in its analysis of the facts.

In this case, the Per Curiam Opinion did not address in its order whether the Defendant had a satisfactory explanation for the default that constituted good cause. In fact, the Defendant does not have a satisfactory explanation for the default. The Court should rehear this case to determine if the Defendant has a satisfactory explanation for the default.

Second, the unpublished Opinion overlooks and misapprehends that the Defendant’s purported explanation for the default is without evidentiary support. The Defendant alleges that the trial court’s statement in the first order and second order that the “Defendant explained there was some confusion with Seay’s insurance accepting liability for the accident and a change of her own insurance companies” is an explanation for the default. (R. pp. 4, 8). However, the undisputed testimony, by the Defendant herself, is that she was not confused about her responsibilities. Instead, she had a complete lack of communication with the insurance agent she had at the time of the accident and with the agent she had on the day she was served with the Complaint. She said she gave the Summons and Complaint to her husband with the understanding that the husband would take it to the Watson Insurance Agency, Inc., her automobile liability insurance company at the time of the accident. (R. pp. 173-175)(Miller Depo. pp. 62-64). She was not present at the agency when her husband dropped off the lawsuit. (R. p. 174)(Miller Depo. p. 63). She does not know the name of the person that her husband gave the lawsuit to at the agency and he did not get a receipt. (R. p. 189)(Miller Depo. p. 78). The Defendant never called the Watson Insurance Agency in

the 35 days following service of the Complaint to confirm that it had the Summons and Complaint or that it was going to respond to the Complaint. (R. pp. 184, 186)(Miller Depo. pp. 73, 75).

The Defendant never testified that she was confused about Seay's insurance company paying for the claim (she had no contact with Seay's insurance company about this lawsuit). She never mentions any confusion caused by her changing insurance agencies. She changed from the Watson Insurance Agency to the Cornerstone (Haygood) Insurance Agency after the accident, but both agencies placed her with Nationwide. (R. pp. 177-178, 180-182)(Miller Depo. pp. 66-67, 69-71). She had absolutely no contact with the Cornerstone (Haygood) Insurance Agency after being served, and never gave it the Complaint, because Cornerstone was not her agent at the time of the accident. (R. pp. 180-182)(Miller Depo. pp. 69-71). There was no confusion – just a lack of communication. She testified that she had no conversations, for any reason, with the Watson Insurance Agency after being served with the lawsuit. (R. p. 186)(Miller Depo. p. 75). In the thirty days after being served with the lawsuit, the Defendant did not call anyone at either Nationwide or Allied Insurance Company. (R. p. 188)(Miller Depo. p. 77). In the thirty days after being served with the lawsuit, other than the Watson Insurance Agency, the Defendant did not send the lawsuit to any lawyer, insurance agency, or insurance company. (R. p. 188)(Miller Depo. p. 77). The Defendant testified that she relied on the Watson Insurance Agency to hire her an attorney to file an answer and that is why she went into default. (R. p. 194)(Miller Depo. p. 83).

Third, the unpublished Opinion overlooks and misapprehends that the Defendant's purported explanation has been rejected by the Court's precedent. The trial court's order was controlled by an error of law. Specifically, this case is controlled by *Sundown Operating Company, Inc. v. Intedge Industries, Inc.*, 383 S.C. 601, 681 S.E.2d 885 (2009). In *Sundown*, the Supreme Court reiterated that a Defendant cannot establish good cause to be relieved of default by arguing that it relied upon an insurance agent to respond to the Complaint. The Supreme Court specifically said that:

This argument is without merit, as the law is clear that an attorney or insurance company's misconduct is imputed to the client. See *Williams v. Vanvokenburg*, 312 S.C. 373, 375, 440 S.E.2d 408, 409 (Ct.App.1994) (observing that an attorney's negligence in failing to answer is imputable to the defendant); *Roberts v. Peterson*, 292 S.C. 149, 151, 355 S.E.2d 280, 281 (Ct.App.1987) (recognizing that negligence of an attorney or insurance company is imputable to a defaulting litigant)."

Sundown, 383 S.C. at 609, 681 S.E.2d at 889.

The Defendant testified that she relied on the Watson Insurance Agency to hire her an attorney to file an answer and that is why she went into default. (R. p. 194)(Miller Depo. p. 83). This is the only reason ever given by the Defendant as to why she went into default. Since the Defendant's proffered excuse has already been declared to be without merit by the Supreme Court, it was an error of law for the trial court to set aside the entry of default.

Fourth, the Per Curiam Opinion fails to address the Plaintiff's argument that the trial court failed to consider if the vacation of the default entry would serve the interests of justice. The *Sundown* decision is clear that the "standard requires a party seeking relief from an entry of default under Rule 55(c) to provide an explanation for the default

and give reasons why vacation of the default entry would serve the interests of justice."
Sundown Operating Company, Inc. v. Intedge Industries, Inc., 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009). The trial court did not consider or discuss whether the vacation of the default entry would serve the interests of justice, and the Defendant did not provide any such argument. As such, it was an error of law and an abuse of discretion to set aside the entry of default.

II. The Opinion Overlooks or Misapprehends Points Made by the Plaintiff Regarding the Trial Court's Granting of Summary Judgment to the Defendant.

Rehearing of the Opinion is needed because the unpublished Opinion overlooks or misapprehends the Plaintiff's arguments concerning the trial court's granting of summary judgment to the Defendant. The Per Curiam Opinion fails to discuss the factual evidence that precludes the granting of summary judgment. The Opinion acknowledges that in determining whether any triable issue of fact exists, the evidence and all inferences that can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party. *Medical Univ. of South Carolina v. Arnaud*, 360 S.C. 615, 602 S.E.2d 747 (2004). If triable issues exist, those issues must go to the jury. *Mulherin-Howell v. Cobb*, 362 S.C. 588, 608 S.E.2d 587 (Ct. App.2005). However, the Opinion fails to view the evidence in the light most favorable to the Plaintiff.

In addition, the Opinion fails to discuss that even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. *Baugus v. Wessinger*, 303 S.C. 412, 401 S.E.2d 169 (1991). The party seeking summary judgment has the burden of clearly establishing

the absence of a genuine issue of material fact. *McCall v. State Farm Mut. Auto. Ins. Co.*, 359 S.C. 372, 597 S.E.2d 181 (Ct.App.2004). Summary judgment is a drastic remedy and should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues. *Helena Chem. Co. v. Allianz Underwriters Ins. Co.*, 357 S.C. 631, 594 S.E.2d 455 (2004).

In this case, the Plaintiff has produced sufficient evidence to establish that there are genuine issue of material fact that preclude summary judgment. In addition, the Defendant has failed to meet her burden of clearly establishing the absence of a genuine issue of material fact. There is evidence that the Defendant was negligent under both a common law standard and was negligent per se because she violated a motor vehicle statute. As to the common law standard, there is a genuine issue of material fact as to whether the Defendant was keeping a proper lookout at the time of the collision, or if she was using reasonable care in the operation of her vehicle.

The Plaintiff's argument is based on the testimony of the Defendant, and all reasonable inferences from the Defendant's own testimony. The Defendant testified that she was hit from the front-right side by Mr. Phillip Seay as he was entering S.C. 292 from a road that dead-ended into S.C. 292 at a right angle (a "T" intersection). (R. pp. 141-142, 110)(Miller Depo. pp. 30-31; Collision Report). The Defendant admitted that she never saw Mr. Seay until after the impact even though he was coming from in front of her and she was looking forward. (R. pp. 143-144)(Miller Depo. pp. 32-33). However, her husband did see Mr. Seay prior to the collision and yelled "look out." (R. p. 132)(Miller Depo. pp. 21). Since she testified that she was only traveling 20 mph in a 35 mph zone, and she already had her foot on the brake before the impact, there are

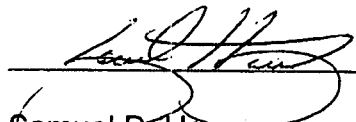
genuine issues as to whether she was keeping a proper lookout, and whether she could have stopped before the impact with Mr. Seay or stopped before she crossed the center line and hit the Plaintiff. (R. pp. 147, 149, 164)(Miller Depo. pp. 36, 38, 53). Instead of stopping at such a slow speed, her vehicle completely crossed the Plaintiff's lane of travel and come to a rest in the ditch on the Plaintiff's side of the road. (R. pp. 154-155)(Miller Depo. pp. 43-44).

Next, there is evidence that the Defendant was negligent per se. The violation of a state statute may constitute negligence per se. *Norton v. Opening Break*, 319 S.C. 469, 462 S.E.2d 861 (1995). This issue is fully briefed in the Brief of the Appellant. The unpublished Opinion does not address the Plaintiff's argument that the Defendant was negligent per se.

CONCLUSION

The Appellant's Petition for Rehearing should be granted because the Per Curiam Opinion overlooks or misapprehends the case law and the factual arguments concerning the trial court's order setting aside the entry of default and the trial court's order granting summary judgment to the Defendant.

July 11, 2016



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Appellate Case No. 2015-000359
Case No. 2011-CP-42-3951

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SC Court of Appeals

Dickie Shults, ...Appellant,

v.

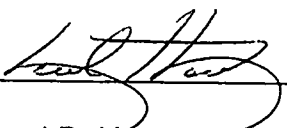
Angela G. Miller, ...Respondent.

PROOF OF SERVICE

I certify that I have served the Appellant's Petition for Rehearing on Angela G. Miller by depositing a copy of it in the United States Mail, postage prepaid, on July 11, 2016, addressed to her attorney of record:

Robert E. Davis, Esq.
The Ward Law Firm, P.A.
P.O. Box 5663
Spartanburg, SC 29304

July 11, 2016


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THE STATE OF SOUTH CAROLINA
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APPEAL FROM SPARTANBURG COUNTY
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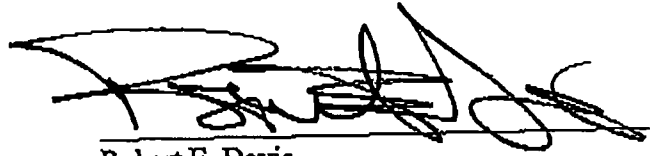
Appellate Case No. 2015-000359
Case No. 2011-CP-42-3951

Dickie Shults Appellant,
Angela G. Miller Respondent.

Respondent's Return to Appellant's
Motion to Reconsider

This case should have never been filed. This appeal should have never been filed. This Motion to Reconsider should have never been filed. This Court correctly affirmed the trial court based on the appropriate law.¹ Appellant does not raise anything new. This case should end.

¹ Respondent incorporates by reference the legal analysis contained in its brief, the trial court's orders, and the Opinion of this Court.



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7 | 15, 2016.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

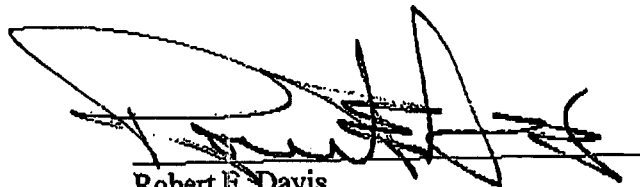
Appellate Case No. 2015-000359
Case No. 2011-CP-42-3951

Dickie Shults Appellant,
Angela G. Miller Respondent.

PROOF OF SERVICE

I certify that I have served Respondent's Return to Appellant's Motion to Reconsider by US Mail, on July 18, 2016, addressed to Appellant's attorney of record, Samuel D. Harms, Harms Law Firm, PA, 33 Market Point Drive, Greenville, SC 29607.

July 18 2016.



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The South Carolina Court of Appeals

Dickie Shults, Appellant,

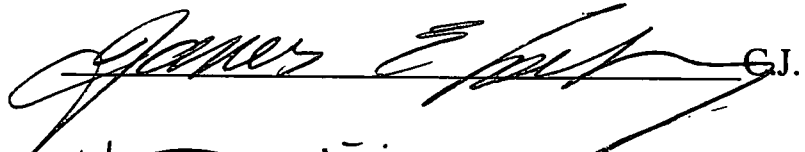
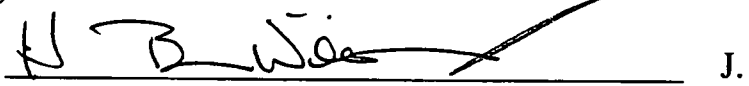
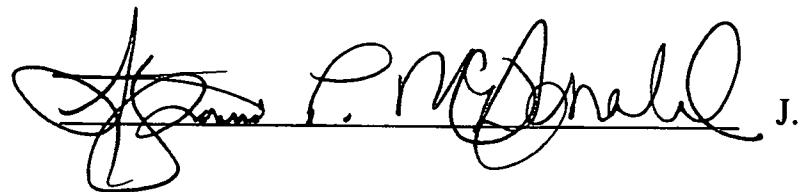
v.

Angela G. Miller, Respondent.

Appellate Case No. 2015-000359

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 G.J.
 J.
 J.

Columbia, South Carolina

cc:

Samuel Darryl Harms, III, Esquire

Robert Eric Davis, Esquire

The Honorable J. Derham Cole

FILED

August 18, 2016 27

APPENDIX 370