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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
The Honorable Tanya A. Gee, Circuit Court Judge

RECEIVED

JAN 06 2017

SC Court of Appeals

Case No. 2014-CP-40-6228

Joseph C. Rivett,Respondent,

v.

Bruce Ludlum and Celadon Trucking Services, Inc.,Appellants.

MOTION FOR LEAVE TO FILE RULE 60 MOTION WITH TRIAL COURT

Appellants move, pursuant to Rule 60(b) of the South Carolina Rules of Civil Procedure, for leave to file a Rule 60(b) motion with the Trial Court in this matter. The basis for this motion is that Appellants have recently received an affidavit providing evidence for relief from the Trial Court's judgment pursuant to Rule 60(b)(3). See Affidavit of Trooper Brian Trotter, attached as Exhibit A. Specifically, during the trial of this matter, Respondent represented to the trial court that Trooper Brian Trotter, whom Respondent relied upon for causation evidence, represented to Respondent that he would be in court to testify by 2:30 p.m. on February 3, 2016. See Transcript of Trial Record at 132:15-16, 134:18-20, attached as Exhibit B. Trooper Trotter did not appear, however, and deposition testimony of Trooper Brian Trotter was introduced on the basis that Trooper Trotter was unavailable and that exceptional circumstances existed to allow the deposition to be used in his absence. *Id.* at 132-134. Nonetheless, in his affidavit, Trooper Trotter has indicated that at no point on February 3, 2016, did he indicate that he would be at trial. Exhibit A.

Rule 32(a)(3) of the South Carolina Rules of Civil Procedure provides that:

- (3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds:
 - (A) that the witness is dead; or
 - (B) that the witness is at a greater distance than 100 miles from the place of trial or hearing, or is out of the State, unless it appears that the absence of the witness was procured by the party offering the deposition; or
 - (C) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or

(D) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or
(E) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

At the trial, Respondent requested that he be permitted to introduce the deposition testimony of Trooper Trotter on the basis that exceptional circumstances existed for use of the testimony under Rule 32(a)(3)(E). Exhibit B at 134:1-135:4. Specifically, at 10:12 a.m. on the day that the Respondent intended to present the testimony of Trooper Trotter, the trial court recessed to permit Respondent the opportunity to attempt to reach Trooper Trotter. Id. at 117-118. When the trial court reconvened at 2:05 p.m. the same day, Respondent informed the trial court that he had subpoenaed Trooper Trotter during the recess and that the Trooper indicated he would be in court by 2:30 p.m. Id. at 132:15-16, 134:18-20. When Trooper Trotter did not appear, Respondent moved to introduce the Trooper's deposition testimony on the basis that he had subpoenaed the Trooper that day pursuant to Rule 32(a)(3)(D) and that exceptional circumstances existed pursuant to Rule 32(a)(3)(E), in that the Trooper had indicated he would appear in court by 2:30 p.m. Id. at 132-134.

Regarding the Respondent's subpoena, the trial court found that subsection (D) did not provide a basis for use of the deposition testimony because the subpoena had been served at 12:45 p.m. for a 2 p.m. appearance the same day, which is not "the type of subpoena that someone can normally answer." Id. at 140:3-8. Nonetheless, having heard testimony from the Respondent that Trooper Trotter stated he would be at court, the trial court found that exceptional circumstances existed to permit use of the deposition testimony under subsection (E). Id. at 142:13-15.

Following the trial court's ruling, the Respondent relied on the deposition testimony of Trooper Brian Trotter for evidence of causation to survive Appellants' motion for judgment as a matter of law. Id. at 147:15-156:2 156:2. As a result, the testimony was highly prejudicial, and in Trooper Trotter's absence, Appellants were unable to cross-examine Trooper Trotter in court before the jury as to causation issues.

For the foregoing reasons, Appellants move, pursuant to Rule 60(b) of the South Carolina Rules for Civil Procedure, for leave to file a Rule 60(b) motion with the Trial Court in this matter. A check for the filing fee accompanies this motion.

January 3, 2017

Respectfully,



Mark S. Barrow
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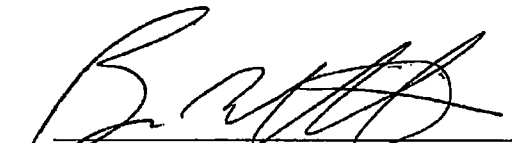
STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

**AFFIDAVIT OF
BRIAN TROTTER**


PERSONALLY APPEARED BEFORE ME, the undersigned, Brian Trotter, who after being duly sworn, deposes and says:

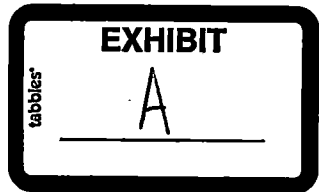
1. I am Brian Trotter, a resident of Lexington County, State of South Carolina and I currently reside at 838 Windy Road.
2. I am employed with the South Carolina Highway Department and was the responding officer at the accident scene that is the subject of the underlying case in this matter.
3. Plaintiff's counsel served a subpoena requiring my attendance on January 19, 2016, at 9:30 a.m., approximately two weeks prior to the date of the trial in this case.
4. Plaintiff's counsel did not serve a subpoena requiring my attendance on the dates of trial.
5. During the trial, on February 3, 2016, Plaintiff's counsel served a subpoena commanding my attendance at trial less than two hours later. I was unable to comply with the subpoena due to the short time frame and did not attend the trial.
6. At no point on February 3, 2016 did I tell Plaintiff's counsel or a representative for Plaintiff's counsel that I would be at trial.

FURTHER AFFIANT SAYETH NOT.


[Trooper Brian Trotter]

SWORN TO and subscribed before me
this 21st day of December, 2016.


Notary Public for South Carolina
My Commission Expires: Feb 16, 2020



State of South Carolina) In the Court of Common Pleas
County of Richland) Fifth Judicial Circuit
2014-CP-40-06228

Joseph Rivett,)
Plaintiff,)
Vs.) Transcript of Record
Bruce Ledlum and Celadon)
Trucking Services, Inc.,)
Defendant.)

February 2 - 4, 2016
Columbia, South Carolina

B e f o r e:

The Honorable Tanya Gee, Judge

A p p e a r a n c e s:

Tucker S. Player, Esquire
Attorney for the Plaintiff

J. Eric Cavanaugh, Esquire
Mark Barrow, Esquire
Attorneys for the Defendant

Bonnie H. Kelly, CVR
Circuit Court Reporter



1 THE COURT: All right. Anything further from the
2 attorneys?

3 (Brief pause.)

4 MR. PLAYER: Your Honor, I spoke with Trooper Trotter.
5 He was supposed to be here at 9:30 this morning, but it
6 took me an hour to get here where it usually takes 30
7 minutes. It was a wreck on I-20.

8 THE COURT: Oh, dear. Okay.

9 MR. BARROW: When did you -- when did you speak with
10 him?

11 MR. PLAYER: Around five.

12 MR. BARROW: Yesterday afternoon?

13 (No audible response.)

14 MR. BARROW: I released Trooper Trotter last night
15 from my subpoena. Told him I didn't need him. Did you
16 have him under subpoena?

17 MR. PLAYER: I did.

18 MR. BARROW: I just wanted to let the Court know ---

19 THE COURT: Sure.

20 MR. BARROW: --- I released ---

21 THE COURT: Sure. Right. There could have been some
22 confusion in that respect, but it sounds like he was under
23 ---

24 MR. BARROW: And I asked if he was coming and his
25 response to me was I can only come if I'm under subpoena

1 by, I guess, highway department rules.

2 So I didn't see your subpoena, but I told him he was
3 released from mine.

4 THE COURT: Mr. Player, why don't you place another
5 phone call to him just to --

6 MR. PLAYER: The only way that we've been allowed to
7 get to him is through dispatch.s

8 THE COURT: I understand.

9 MR. PLAYER: But I'll certainly try.

10 THE COURT: Is that the only way you've been able to
11 get in touch with him, too, Mr. Barrow, dispatch?

12 MR. BARROW: I got in touch with him through a cell
13 phone number.

14 THE COURT: Can you -- can -- let's try to contact him
15 via cell phone.

16 (To the bailiff) Mr. Tolbert, you can go ahead and
17 release Juror No. 100. Tell him he can go down to the jury
18 assembly room. We'll seat the -- the alternate juror, but
19 don't bring the jurors in yet.

20 THE BAILIFF: I understand.

21 THE COURT: Okay. Thank you.

22 THE BAILIFF: So we're going to be seating 173?

23 THE COURT: That's correct.

24 THE BAILIFF: All right.

25 THE COURT: Do you have a copy of your subpoena, Mr.

1 Player?

2 MR. PLAYER: Yes, ma'am?

3 THE COURT: How about pass it up.

4 MR. PLAYER: I didn't hear what you said.

5 MR. BARROW: Copy of your subpoena.

6 THE COURT: Can you pass up a copy of your subpoena?

7 MR. PLAYER: We do it electronically. I'll get my
8 office ---

9 THE COURT: Sure.

10 (Brief pause.)

11 THE COURT: It sounds like Mr. Trotter does -- or
12 Trooper Trotter believed that he was released and he didn't
13 believe he had any additional subpoenas, that he just was
14 subpoenaed by the Defense. So ...

15 MR. PLAYER: Well, we do have his deposition
16 transcript.

17 THE COURT: I'm sorry?

18 MR. PLAYER: We do have his deposition transcript.

19 THE COURT: Okay.

20 MR. BARROW: You can't use it under the Rule.

21 THE COURT: Oh. Of -- oh. I thought you meant
22 another -- I thought you meant of another witness. You
23 mean Trooper Trotter's deposition. Right, we can't use
24 that under the rule. Agreed.

25 MR. BARROW: Your Honor, we talked to our doctor last

1 night, just so the Court knows, and he has two surgeries
2 this morning, but he says he's actually starting them
3 early. Slept in the -- said he was sleeping in the
4 hospital last night in order to get an early start to get
5 here. And he said, you know, I hope to be there between
6 1:00 and 1:30. That's his goal.

7 THE COURT: Okay. Great.

8 (Brief pause.)

9 THE COURT: Any luck?

10 MR. PLAYER: Not with his telephone. And I can get --

11 -

12 THE COURT: Subpoena?

13 MR. PLAYER: --- affidavit of service and I can pull
14 up the subpoena next.

15 MR. BARROW: What's the date on that?

16 THE COURT: I'm looking here.

17
18 MR. PLAYER: The first time it came up for trial.

19 THE COURT: January ---

20 MR. PLAYER: But typically we subpoena them, and they
21 know they're under subpoena until they get called to trial.

22 MR. BARROW: Did you subpoena him for that week or did
23 you -- because I subpoenaed him twice. When it didn't go
24 the first week, I sent another subpoena so he'd be under
25 subpoena.

1 MR. PLAYER: This is how I've done it in the past.
2 It's always -- they know they're under subpoena. Matter of
3 fact, I had them schedule with Eric ---

4 MR. BARROW: Well, does -- I guess my question is --
5 no. No. We sent two separate subpoenas. The way we do it
6 is subpoenas are only good for the week and we put the
7 dates in there.

8 THE COURT: Let me see the actual subpoena. That's
9 the affidavit of service. I see where it says, "You are
10 commanded to appear in the above-named court and place and
11 time specified below to testify." And it says date and
12 time: January 19, 2016, 9:30 a.m.

13 And then you didn't serve another subpoena? You just
14 assumed he would remain under subpoena for longer than that
15 time?

16 MR. PLAYER: Yes, ma'am, to avoid additional cost and
17 to ---

18
19 THE COURT: Sure.

20 MR. PLAYER: --- avoid additional inconvenience for
21 him.

22 THE COURT: And you talked to him yesterday.

23 MR. PLAYER: Yes. And he said he would be here at
24 9:30.

25 THE COURT: That's what's frustrating is that you

1 talked to him and he didn't let you know.

2 MR. PLAYER: No, he did not. If there was an issue, I
3 would have gotten a subpoena yesterday.

4 THE COURT: Sure.

5 MR. PLAYER: He said he would be here at Courtroom
6 3-B, at 9:30. Now, I can do my best to contact him and get
7 him a new subpoena and get him here this afternoon.

8 THE COURT: Uh-huh.

9 MR. BARROW: The problem is that you're at the close
10 of your case. And we don't want to put our case up while
11 your case is still pending.

12 THE COURT: Sure. Well, and -- and I can just
13 continue it until this afternoon.

14 MR. PLAYER: Okay.

15 THE COURT: But there's -- we don't know at this point
16 whether he can be here this afternoon. He's not compelled
17 to be here this afternoon. But I do -- I'm not
18 unsympathetic to what happened.

19 While certainly the subpoena's an issue: You did not
20 re-subpoena him, that would have been the appropriate thing
21 to do. Considering you talked to him yesterday, I see how
22 we're in this situation.

23 MR. BARROW: Did he tell you he was going to be here
24 because he was under my subpoena when you had the
25 conversation with him.

1 MR. PLAYER: No. I told him I had him under subpoena.

2 MR. BARROW: Okay. Well, I talked to him, probably
3 around 6:30 last night, when I called him to say I am
4 releasing you from my subpoena. We got what we needed
5 yesterday. And he said that you had called him and he said
6 he was searching for your subpoena.

7 THE COURT: Uh-huh.

8 MR. BARROW: That he had not found a subpoena from
9 you, and that their regulations do not require him to come
10 to court without a subpoena. I get that. I've always
11 known that.

12 THE COURT: Sure. Well, he had a subpoena -- I mean,
13 he showed me a subpoena. Now, it was from January the 19^t,
14 granted, but ...

15 And your -- tell me about your case. You have the
16 expert that's coming in.

17 MR. BARROW: We have our truck driver.

18 THE COURT: And you have your truck driver.

19 MR. BARROW: And we have another witness.

20 THE COURT: Okay.

21 MR. BARROW: So we won't finish it today if you
22 continue it, obviously.

23 THE COURT: Right.

24 MR. BARROW: I guess that means that -- of course,
25 we're going to have to have the doctor testify today.

1 THE COURT: Uh-huh. Right.

2 MR. BARROW: I mean, I can't ---

3 THE COURT: Sure. He can't come here ---

4 MR. BARROW: If I miss him today, I've lost him, I'm
5 afraid.

6 THE COURT: Uh-huh. All right. Mr. Player, the best
7 I can do is to give you until this afternoon to get to the
8 -- get -- get the trooper in. He's not under subpoena, so
9 it's not -- you know, you do have the problem that we have
10 and that's why I'll give you a short continuance until this
11 afternoon.

12 But otherwise, we need -- we're in the middle of the
13 trial. We're going to have to keep rolling on the trial.
14 We don't want to have this case mistried.

15 So we will break until -- tell me what time you need -
16 - we need -- we need to have time for the trooper to
17 testify and we need to have the expert testify. And if we
18 have to be here late, I don't care about that, but I don't
19 want to start -- I mean, two o'clock is probably about the
20 latest I can give you.

21 MR. PLAYER: The trooper won't take 30 minutes.

22 THE COURT: Okay. All right. Well, get him here by
23 two o'clock, or otherwise we'll close your case and move
24 on.

25 All right. Do you want me to bring the jurors out

1 here to tell them that, or we'll just let them know they're
2 released until two o'clock?

3 MR. BARROW: Right.

4 THE COURT: I'll just have the bailiff let them know
5 they're released 'til two.

6 MR. BARROW: Right.

7 THE COURT: We'll get them back in here 1:45.

8 (To the bailiff) Thank you, Mr. Tolbert.

9 THE BAILIFF: You're welcome, Your Honor.

10 (Off the record at 10:12 a.m.)

11 (On the record at 2:05 p.m.)

12 THE COURT: Thank y'all. Be seated.

13 All right. Every time we take a break, I come back
14 with a note. This one is just a housekeeping matter and
15 it's not a big deal.

16 One of the jurors wrote a note -- he's Juror No. 144.
17 He says (as read): "This is to inform you that after
18 Friday, February 5, 2016, I will be unable to serve as a
19 juror as my wife is having hip replacement surgery on
20 Monday, February 8, 2016, and I will be assisting in her
21 recovery until approximately May 1, 2016. Therefore, I
22 will be unavailable to serve as a juror. Thank you for
23 your consideration, Thomas Landrum, Jr., Juror 144."

24 I'll just generally let the jury know that we do plan
25 to be through with this tomorrow. Is that fair?

1 MR. PLAYER: Yes, Your Honor.

2 MR. BARROW: I mean, it -- it's possible ---

3 THE COURT: Today -- how about I say this is not going
4 to last ---

5 MR. BARROW: Right.

6 THE COURT: --- beyond Friday, don't worry about that.
7 And we can pleasantly surprise them; how about that?

8 MR. BARROW: Right. I like that.

9 THE COURT: All right. And I'll just make this a
10 Court's Exhibit.

11 (Marked Court's Exhibit No. 6, juror note.)

12 THE COURT: Mr. Player?

13 MR. PLAYER: Your Honor, I was preoccupied with my
14 panic this morning. This lists William Joe Jackson as a
15 defendant and he's been dismissed from the case.

16 THE COURT: Yes, for the verdict form. Let's take his
17 name off of there. And I can --

18 MR. PLAYER: Yeah. I do it all the time. It's an
19 oversight ---

20 THE COURT: Yeah.

21 MR. PLAYER: --- I'm sure ---

22 MR. CAVANAUGH: Your Honor, I'll get my office to ---

23 THE COURT: Or hand it up to -- I've got a law clerk
24 right here who is willing and ready to help with that. She
25 can just redo the form and she'll take the -- make the

1 caption different.

2 MR. CAVANAUGH: It's -- it's short, so ...

3 THE COURT: All right. And Mr. Player, who -- you'll
4 be calling the trooper first or someone else first?

5 MR. PLAYER: Mr. Jackson is here

6 THE COURT: Okay.

7 MR. PLAYER: We'll call him first. The trooper's
8 supposed to be here between 2:00 and 2:30.

9 THE COURT: Great.

10 MR. PLAYER: I just emailed the proof of service of
11 the subpoena. Even though it was today, he -- he is now
12 under subpoena.

13 THE COURT: Great.

14 MR. PLAYER: And did not indicate any -- I don't think
15 he was terribly pleased, but didn't indicate he was not
16 going to appear.

17 THE COURT: Okay. Wonderful.

18 All right. Well, let's bring this jury back in. I
19 know they're probably a little frustrated. And we'll try
20 to ease them back in, and we'll get this show on the road.

21 (To the bailiff) Mr. Tolbert, thank you.

22 (The jury enters the courtroom at 2:08 p.m.)

23 THE BAILIFF: The jury is seated, Your Honor.

24 THE COURT: All right. Thank you.

25 Thank you, ladies and gentlemen. I know it's been

1 quite a delay this morning. I want you to know that I take
2 full responsibility for that. So to the extent you feel
3 any frustration about the strange schedule we have, that
4 falls completely on my shoulders and I apologize to you.

5 We are in the middle of the Plaintiff's case. One of
6 you has expressed a little bit of concern about the
7 schedule, worried about whether we would go into next week.
8 You do not need to worry about that. We will not go into
9 next week. That -- that will not be an issue at all. We
10 hope to be done tomorrow. I don't want to get anybody's
11 hopes up too high and maybe we can pleasantly surprise you.
12 So we'll -- we'll see. But certainly, we won't go into
13 Monday at all. This will be your -- your week of jury
14 service.

15 And with that being said, I'll turn it over to you,
16 Mr. Player, and you can call your next witness.

17 MR. PLAYER: Thank you, Your Honor. The Plaintiff
18 calls William Joe Jackson.

19 WILLIAM JOE JACKSON, having been
20 first duly sworn, testifies as follows:

21 THE CLERK: Have a seat in the witness box, please.
22 State your name for the record with the spelling.

23 THE WITNESS: William Joe Jackson.

24 DIRECT EXAMINATION

25 BY MR. PLAYER:

1 Q Good afternoon, Mr. Jackson.

2 A Hey.

3 Q Can you tell the jury where you live?

4 A Yacht Cover, on Lake Murray, here in -- in Columbia.

5 Q Okay. And what do you do for a living?

6 A I'm an ATM technician. I -- I fix ATMs.

7 Q Okay. You're aware of what we're about -- what we're
8 here about today ---

9 A Oh --

10 Q --- the traffic accident?

11 A Yes, sir.

12 Q What do you know about the traffic accident that
13 occurred on September 8, 2012?

14 A I know pretty much everything about that accident.

15 Q And why is that?

16 A Because I was involved in it.

17 Q Okay. So what were you driving that day?

18 A A 2012 Ford Focus hatchback.

19 Q Okay. And where exactly did the accident occur?

20 A I-20. I was on my way to Camden for a service call.
21 Going down I-20 in the fast lane -- would you like me to
22 tell you?

23 Q Sure.

24 A Okay. The -- it was moderately raining. Wasn't hard
25 raining, wasn't light raining. Just kind of moderate rain.

1 As I approached the -- where the traffic was slowing
2 down, there was a car overturned in the ditch and there was
3 a highway patrolman on the scene tending to that accident.

4 So traffic had started slowing down. I slowed down
5 and got in line with the traffic. I can't tell you if the
6 traffic was stopped or rolling forward because right when I
7 got in line, I looked in my rearview mirror because it's
8 what I would do. You're on I-20 in the fast lane and you
9 stop, you're going to look behind you.

10 And I looked behind me and I saw the truck coming. I
11 said, "He's -- he might not stop."

12 So I braced. I put my feet on the brake, my hands on
13 the -- on the steering wheel, and I remembered one thought
14 went through my mind was, "It'll be over in a second."

15 And the truck impacted the rear of my car, bumped me
16 forward, where I tapped the rear of his vehicle. And want
17 me to continue on what -- what happened after -- after the
18 tap and everything?

19 Q Sure.

20 A Okay. So I -- I relaxed and went, "Oh, my gosh, it's
21 okay."

22 I look out my right-side window and I see the police
23 officer, that was tending to that previous wreck, looking
24 right at me.

25 Q Let's not say what the police officer said.

1 A I didn't -- he didn't say anything.

2 Q I know. I was just -- just in case ---

3 A Oh. Okay.

4 Q Sometimes people say, "... and then he said ..."

5 A Oh, no. I just noticed he was looking at me. I'm
6 sorry.

7 So I get out of my car and I go around behind it, and
8 I see -- survey the damage that happened when the truck hit
9 me from the rear. And it was -- the back was smashed in a
10 little. The glass showered me -- the rear glass of the
11 hatchback showered me when it cracked and broke open. And
12 it was raining.

13 I had my -- I walked over toward the tractor-trailer.
14 He was still in the cab, way up high, and I said - and I
15 looked at him and he looked at me, He goes, "Sir, there's
16 no way I could have stopped in time." And I gave him a
17 thumbs up and I walked back to my car.

18 And I looked -- the officer came to me and said, "Are
19 you okay?" I said, "Yeah, I'm -- I'm fine." And he asked
20 me if my vehicle was driveable. I said, "I don't know
21 yet".

22 And then he -- I started picking up all my bank keys
23 off the -- my bank keys are kept in the hatchback of the
24 car, keys I use to open the banks to get in to fix ATMs. I
25 didn't want to lose any of those. So I -- I was picking up

1 all the bank keys off the highway. And the officer was
2 like -- I was like, "I'm so sorry, sir. I've just got to
3 get these. I can't lose a bank key."

4 And I picked up all my bank keys. And then I got in
5 the car and limp -- it limped off to the side of the road.

6 The Plaintiff's vehicle was pulled to the side of the
7 road, mine behind his, and the tractor-trailer behind me.

8 It's still raining. I didn't want to sit in the car
9 because it was right on the edge of the road and I'm always
10 thinking I might get hit by someone going by. So I get out
11 of the car, put on my rain gear that I wear when I'm
12 working in the rain, and I sit on the -- what's it called,
13 the -- the guard rail. And I -- I'm sitting on the guard
14 rail making a bunch of phone calls, calling my manager
15 telling him, "Oh, my gosh, I -- I've been in a wreck."
16 Calling my teammates to tell them I can't make it to the --
17 to the ATM to fix it, can someone take over the call.
18 Called my wife to let her know that I'm okay. Just a bunch
19 of phone calls. And while that was going on -- it was
20 while, it was probably over 20 minutes. And the officer
21 was talking to either -- I -- I can't say what he was
22 doing, like you said, but he wasn't tending to us yet. He
23 -- he hadn't come to talk to me yet.

24 The Plaintiff walked up and said, "How much longer is
25 this going to take? Can I just go?" And I said, "I -- I

1 don't -- it can't that much longer. Let's just kinda
2 wait".

3 So -- and it took a little longer. The officer then
4 came to me and gave me some paperwork and verified, "Are
5 you sure you're okay?" I went, "Oh, yeah, I'm great". And
6 then I called PHH, which is a -- this is a fleet vehicle,
7 so I called the company that owns the fleet vehicle, PHH,
8 and said, "Can you please send me a wrecker?" And they
9 sent me a tow truck.

10 Q Now, the 18-wheeler that struck you --

11 A Yes.

12 Q -- did -- do you see the driver of the 18-wheeler in
13 the courtroom today?

14 A I never could place my -- I never saw him beyond being
15 in the cab on a rainy day, and so I couldn't really make
16 out his face. So I can't promise you that.

17 Q Okay.

18 A Because it was really - because this happened 40
19 minutes before dark roughly, right. And it was dark by the
20 time this all ended. I never really got to see him
21 clearly.

22 Q Okay.

23 A So, I mean, I can't -- I'm sure he's here.

24 Q Is there anybody that you recognize from the wreck?

25 A The -- the gentleman who was in front of me, right

1 there, the Plaintiff. That was all of us, I guess.

2 Q Okay.

3 A It -- it was just the three of us and the officer.

4 Q Did you get the driver of the truck's name?

5 A I saw it after the fact on the paperwork that I was
6 handed.

7 Q Okay. Was there anything written on the side of the
8 truck?

9 A Well, the name of the company.

10 Q Do you remember what that was?

11 A Like Celadon.

12 Q Celadon Trucking?

13 A Uh-huh.

14 Q Were you able to drive your vehicle away from the
15 scene?

16 A No. I could get it to the side of the road, but I had
17 to have -- a flatbed came and towed it away.

18 Q Okay. Do you know if the 18-wheeler, was that driven
19 away or did it have to get towed?

20 A I don't -- I'm unaware of that.

21 Q Okay.

22 A I didn't see any of that happen. Uh-uh.

23 Q And I assume you weren't injured in the accident?

24 A You assume I ...?

25 Q You weren't injured in the accident.

1 A I were -- I was not.

2 Q Okay. And how old are you, Mr. Jackson?

3 A Fifty-two.

4 Q Okay.

5 MR. PLAYER: No further questions, Your Honor.

6 THE COURT: All right. Thank you.

7 Mr. Cavanaugh.

8 MR. CAVANAUGH: May it please the Court, Your Honor?

9 THE COURT: Yes, sir.

10 CROSS-EXAMINATION

11 BY MR. CAVANAUGH:

12 Q Mr. Jackson?

13 A Yes, sir.

14 Q Good to see you today. You're a little bit under the
15 weather?

16 A Yeah. It's pretty bad.

17 Q Right. Well, I -- I want to get you up and down as
18 quick as I can, and hopefully we'll stay far enough part
19 that I don't get sick and infect my family.

20 A No problem.

21 Q Thanks for being here today, especially under the
22 circumstances. I certainly appreciate it.

23 A Uh-huh.

24 Q I -- I -- I do just have a couple of questions for
25 you. You mentioned -- Mr. Player asked you some questions

1 about the accident, and you indicated that you tapped the
2 rear of the Plaintiff's vehicle. Would that -- wouldn't
3 that be an accurate description?

4 A Yeah. I mean, I -- I chose that word carefully.

5 Q All right. And -- and you say "tapped," if I gave you
6 a scale of 1 to 10, with 10 being the most severe accident
7 you can think of -- the most -- the most severe accident
8 you can think of, and 1 being the least severe accident you
9 can think of, can you rate the -- the severity of the
10 impact between your vehicle and the Plaintiff's vehicle?

11 A Well, if 10 is like a fatal collision and you saying,
12 like, 1 is like a speed bump?

13 Q One ---

14 A Like ---

15 Q The least severe you can think of.

16 A Well, then, slightly less than 1.

17 Q Okay. So -- so it really was a tap?

18 A It was a tap.

19 Q Right. Okay. Now, isn't it correct that your air --
20 your airbags did not deploy at any time during the
21 accident?

22 A No, no airbags.

23 Q Right. And you were not injured.

24 A No.

25 Q And isn't it true that you never heard the Plaintiff

1 say he was injured?

2 A No.

3 Q And isn't it true the Plaintiff never complained of
4 being sore?

5 A No. But like I said, I only heard one sentence
6 between us.

7 Q Right. I understand. But you never heard him
8 complain about being sore.

9 A No.

10 Q You never heard him complain about being injured.

11 A Uh-uh.

12 Q And you were fine.

13 A Yes.

14 Q Great. All right. Now, you're here today under
15 subpoena from us; is that correct? I subpoenaed you.

16 A Well, yeah, that's true.

17 Q Right. Okay. Well, great.

18 MR. CAVANAUGH: Well, thank you, Mr. Jackson. I
19 appreciate your time today. And answer any further
20 questions Mr. Player may have for you.

21 THE COURT: Any re-direct?

22 RE-DIRECT EXAMINATION

23 BY MR. PLAYER:

24 Q There was damage to the front of your vehicle after
25 the accident, correct?

1 A Yeah, there was a ding on the top of the hood where
2 his trailer hitch had touched the car.

3 Q Okay.

4 A And the -- the front of a Ford Focus that year -- I
5 guess they're the same still -- is plastic, and it was kind
6 of cracked.

7 Q Okay. Do you crack your bumper and ding your hood
8 when you go over a speed bump?

9 A Well, no.

10 Q Okay. So you still say it's less than 1?

11 A The impact was less than 1.

12 Q And yet it cracked your bumper and dinged your hood to
13 the point where you couldn't drive away.

14 A Well, no. The damage that kept me from driving the
15 vehicle was done to the rear of the vehicle.

16 Q Okay.

17 A The front was not bad at all.

18 Q But there was still damage that you had to have
19 repaired?

20 A Well, yes.

21 MR. PLAYER: No further questions.

22 THE COURT: All right.

23 MR. CAVANAUGH: Your Honor, no further questions.

24 THE COURT: All right. You may step down. Thank you

25 ---

1 THE WITNESS: Thank you.

2 THE COURT: --- so much.

3 THE WITNESS: Thank you.

4 THE COURT: Does anyone object to him being released
5 from his subpoena?

6 MR. BARROW: No objection.

7 MR. PLAYER: No objection, Your Honor.

8 THE COURT: All right. And you may -- you are free to
9 go as well. Thank you.

10 All right. Mr. Player?

11 MR. PLAYER: Your Honor, can I check and see if the
12 trooper is outside?

13 THE COURT: Sure.

14 (Brief pause.)

15 MR. PLAYER: Don't see him yet, Your Honor. He told
16 me he would be here by 2:30.

17 THE COURT: Okay. We'll take a five-minute break. If
18 he isn't here by 2:30, then we're going to go ahead and
19 move on, okay?

20 MR. PLAYER: Okay.

21 THE COURT: All right. Let's go ahead and take about
22 a five-minute break, and we'll come back in the courtroom.
23 Thank you. Please don't discuss this case while you're in
24 the jury room.

25 (The jury exits the courtroom at 2:23 p.m.)

1 THE COURT: Did you say you were also going to call
2 the Defendant, or did you mean Mr. Jackson when you said
3 that?

4 MR. PLAYER: No, that was -- when they stipulated
5 that, you know, Celadon ---

6 THE COURT: Okay. We'll be back on the record in a
7 little bit.

8 (Off the record at 2:24 p.m.)

9 (Back on the record at 2:37 p.m.)

10 THE COURT: Mr. Player.

11 MR. PLAYER: Your Honor, considering he's not here, I
12 would ask to be allowed to read his transcript of the
13 deposition. He is -- he was served with a subpoena today,
14 12:48. That's one of the conditions to be allowed to
15 recite his deposition. And the other one is under
16 extraordinary circumstances.

17 I mean, I spoke with the man yesterday, he told me he
18 would be here at 9:30. I assumed he was still under
19 subpoena and he was. Everybody in this courtroom knew I
20 intended to call him first today. And he's not here
21 because of Mr. Barrow withdrawing his subpoena.

22 THE COURT: And what rule -- let me go to the rule.
23 Can you tell me which rule that is?

24 MR. PLAYER: 32, Your Honor.

25 THE COURT: Okay. Thank you.

1 MR. PLAYER: 32(A)(3), deposition of a witness (as
2 read): "Whether or not a party could be used by any party
3 for any purposes, if the Court finds the witness is dead or
4 a distance greater than a hundred miles, unable to testify
5 -- unable to attend or testify due to age, illness, or term
6 of imprisonment, that the party offering the deposition has
7 been unable to procure attendance through subpoena, and
8 such exception -- exceptional circumstances exist to make
9 it desirable, in the interest of justice and with due
10 regard to the importance of presenting testimony of
11 witnesses orally in open court, to allow a deposition to be
12 used.

13 So under the last two, we did put him under subpoena
14 today. I understand the lateness of that, but it wasn't
15 like it was a surprise to him that he was wanted to be in
16 court today by either side. It's certainly not a surprise
17 in terms of his testimony to anybody in this courtroom.
18 And considering that we got him under subpoena and he
19 indicated he would be here by 2:30 and he's not here -- I
20 don't know if it's because of weather. He was traveling
21 from Gilbert.

22 Due to the necessity of testimony happening today
23 because of Defendant's expert witness -- which, by the way,
24 we started a day late to accommodate their witness, I
25 think, at this point, I should be allowed to read the

1 testimony into the testimony --

2 THE COURT: All right.

3 MR. PLAYER: -- I mean, the deposition into the
4 record.

5 THE COURT: Okay. Thank you.

6 Mr. Barrow.

7 MR. BARROW: Yes, Your Honor, if it pleases the Court.
8 We -- we're here right now because the Court was indulgent,
9 if you will, with the Plaintiff when it was shown and
10 proven that the Plaintiff actually did not serve a subpoena
11 on the trooper to be here today. And that's the sole
12 reason why we're standing here before the Court at 20 'til
13 3, having taken off -- otherwise, he would have had to --
14 at that point, he would have had to of -- of ended his
15 case.

16 Now, the Court's given him several hours and he's
17 gotten Mr. Jackson here, even though he still wasn't under
18 his subpoena, put him up. And now he's asking for
19 additional allowances to put in the deposition of the
20 trooper.

21 And respectfully, I think it is prejudicial to the --
22 to the Defendant because if the Court had required him to
23 go forward, at that point he would have had to have ended
24 his case.

25 THE COURT: Well, here's where I'm sympathetic to Mr.

1 Player. Yesterday when we talked about this trooper coming
2 in to testify and the convenience of allowing him to just
3 testify one day because you both were going to call him, at
4 that point, y'all weren't sure whether you would or would
5 not call him. But that -- and that was probably yesterday
6 afternoon.

7 And then at some point thereafter, say six o'clock at
8 night, y'all decided that you weren't going to need him ---

9 MR. BARROW: Right.

10 THE COURT: --- and you told him he was relieved of
11 your subpoena.

12 MR. BARROW: Right.

13 THE COURT: Which is a confusing situation for someone
14 who's a witness. Maybe less so confusing for someone who's
15 a trooper who gets subpoenaed a fair amount.

16 And what I'm concerned about is that it seems as
17 though there was some discussion with the trooper about
18 whether or not he needed to be here. And I don't know what
19 was said after that point, but it should have been clear
20 that he was expected here tomorrow at 9:30.

21 And so I'm a little concerned about that aspect of his
22 being relieved from the subpoena and perhaps being told
23 that he did not need to be here by 9:30.

24 MR. BARROW: Well, no one -- no -- and -- and I'm glad
25 the Court has raised that because I didn't know the Court

1 was thinking that. And I'm happy to address it because
2 that's the last thing I want you to think.

3 THE COURT: Sure.

4 MR. BARROW: And I think I indicated this this morning
5 that he told me he had had a conversation with him and said
6 he would be here at 9:30, and I said, "That's fine. I'm
7 just telling you I'm releasing you from my subpoena."

8 And he said -- and I think I relayed this to you that
9 he said, "Well, I -- I can only show up if I've been
10 subpoenaed per our regulations or something". And I said,
11 "That's fine." And he said, "I'm going to go check and see
12 if I've got a subpoena."

13 THE COURT: Uh-huh.

14 MR. BARROW: In no ---

15 THE COURT: So there was no conversation ---

16 MR. BARROW: --- in no -- and I would never do that.

17 THE COURT: Sure.

18 MR. BARROW: Why would I want to do that? I would
19 never do that.

20 My sole purposes for calling him was as a damages
21 witness because he testified that this man told him that he
22 wasn't -- that he wasn't -- didn't need an ambulance, just
23 wanted to get out of there, wasn't injured and wanted to go
24 home. That's ---

25 MR. PLAYER: No, he did not. No, he did not.

1 MR. BARROW: He did. He did. I've got -- I've got --

2 -

3 THE COURT: I'll hear from you, Mr. Player ---

4 MR. BARROW: --- right here.

5 THE COURT: --- in a moment. I'll let you ---

6 MR. PLAYER: Please ---

7 THE COURT: --- respond to that.

8 MR. PLAYER: --- read it to me. Please read it to me.

9 THE COURT REPORTER: One at a time, gentlemen.

10 MR. BARROW: It's all on Page 12 where he says Mr.

11 Rivett made comments to him about wanting to leave and that

12 there was no damage to his vehicle (as read): "Did anyone

13 appear injured?" Depo, Page 12. "No."

14 MR. PLAYER: That's not what he just represented ---

15 THE COURT: Okay. Mr. Player, you ---

16 MR. PLAYER: --- to the Court.

17 THE COURT: I'll give you a chance to respond. Let me
18 hear from Mr. Barrow right now.

19 MR. BARROW: The -- the point is this: At no time,
20 Judge, in that conversation did I ever advise this trooper
21 not to show up or ever counsel him not to show up.

22 THE COURT: Okay.

23 MR. BARROW: I on -- I -- I know better than that. I
24 only told him he was released from my subpoena because I
25 had gotten everything out of the Plaintiff that I was going

1 to get from the trooper.

2 THE COURT: Okay.

3 MR. BARROW: And that was all it was.

4 THE COURT: Okay. Thank you.

5 Mr. Player.

6 MR. PLAYER: Your Honor, everybody in this room knew I
7 intended to call him as a witness in the morning.

8 THE COURT: I -- but having good intentions ---

9 MR. PLAYER: So -- so ---

10 THE COURT: Wait, wait, wait. Having good intentions
11 isn't enough. You do have to subpoena him, and there was
12 an issue with your subpoena, which I gave you an
13 opportunity to get the trooper here by two o'clock. When
14 we got here at two o'clock, he said he'll be here by 2:30.

15 Again, I gave you that half an hour because I
16 understand what a shock it was to you this morning. And I
17 -- I don't think that -- that -- that, you -- you know, you
18 intended for this to happen. And I can understand how it
19 happened. I know how it is practicing law. I get -- I see
20 -- I see how it unfolded. I absolutely see how it
21 unfolded. And I'm not unsympathetic.

22 But now, here we are: We're going to say two o'clock,
23 then, okay, 2:30; and now, here we are 2:45 and still no
24 trooper.

25 And so the question really is all based on the rules.

1 We all know what happened. And now, based on the rules, is
2 a deposition appropriate?

3 And you're saying that it's appropriate under Rule 32
4 subsection D and subsection E. Now, D requires a subpoena,
5 and I don't think subpoenaing someone at 12:45, to be at
6 court by two o'clock, is the type of subpoena that someone
7 can normally answer. So I don't know whether D is going to
8 work for you, but I'll -- I'll hear you on that.

9 And then subsection E is why I just had that
10 conversation with Mr. Barrow, to understand the
11 circumstances and whether the circumstances are exceptional
12 enough as to allow, in the interest of justice, this
13 deposition testimony.

14 MR. PLAYER: If he knew I intended to call him, if he
15 knew I intended him to be here this morning, there was ---

16 THE COURT: There was no prejudice.

17 MR. PLAYER: --- no need to release him from his
18 subpoena except to cause that confusion.

19 MR. BARROW: May I add this because I think this is
20 important for the Court's consideration. When the Court
21 asked me yesterday, when we had this discussion was I
22 calling the trooper, and I said yes, my plans are to cause
23 -- to call the trooper, but ---

24 THE COURT: But. Right.

25 MR. BARROW: --- those plans can change. And I

1 remember the Court saying of course, something to the
2 effect of yes. I telegraphed to him what I was thinking,
3 that those -- not that I'd made a decision.

4 And this happens all the time at trial, as the Court
5 knows. You go back, you review the evidence, you sit there
6 with your clients and the other lawyers and you make -- you
7 make a game plan.

8 But I advised the Court and the co-counsel yesterday,
9 I said those plans could change. That is clearly putting
10 him on notice that I may not call him. So this -- this --
11 this inference that I did something unethical is ---

12 THE COURT: And I'm sorry if I -- I'm the one who
13 brought up that inference. And I think it's good that we
14 got it cleared up on the record because I do think there is
15 some confusion over exactly what happened and that has been
16 cleared up.

17 MR. BARROW: Thank you.

18 THE COURT: You called the trooper to let him know
19 that you were releasing him from subpoena.

20 MR. BARROW: Right.

21 THE COURT: So in the event that the Plaintiff also
22 was releasing him from subpoena, he didn't show up just to
23 testify for you because you weren't going to need him
24 anymore.

25 MR. BARROW: Correct.

1 THE COURT: And you had -- you never indicated to him
2 that he did not need to be here at 9:30.

3 MR. BARROW: Not in any way, shape, or form. I would
4 never say that.

5 THE COURT: All right. All right.

6 MR. PLAYER: And Your Honor, under E, it's in the
7 interest of justice. The man's been deposed. He was
8 expected to be here. It's not any type of surprise to
9 anyone. I did everything I could -- and -- and you know,
10 when Mr. Barrow said that yesterday, that's why I called
11 the trooper and verified that he would be here at 9:30 this
12 morning.

13 THE COURT: All right. I find in the interest of
14 justice that the deposition testimony can be read in under
15 Rule 32, subsection E, and I'll allow that to happen.

16 Let's bring in the jury.

17 How are you going to read it in? You don't have a
18 cohort here with you to read.

19 MR. PLAYER: No. I'm willing to use one of theirs --

20 THE COURT: All right.

21 MR. PLAYER: -- or read it myself.

22 THE COURT: All right.

23 MR. PLAYER: Or have the clerk read it.

24 THE COURT: Mr. Barrow, would you prefer for Mr.

25 Player to just read the question and answers or would you

1 like to put someone on the stand to play the part of the
2 trooper? I know you don't want either, I get that, so ---

3 MR. BARROW: Yeah.

4 THE COURT: --- but that being my ruling, which would
5 you prefer?

6 MR. BARROW: He can read it himself. It's fine.

7 THE COURT: Okay. That's what we'll do.

8 Just make sure you always say question and then
9 answer, question and then answer, so there's no confusion.

10 Do you have a copy for me so I can follow along? And
11 do we have any objections we need to deal with?

12 MR. BARROW: Again, Your Honor, just for the record, I
13 would object to this based on all of the discussion had
14 right now.

15 THE COURT: Sure.

16 MR. BARROW: I don't think under 32(e) there's any
17 exceptional circumstances. But I understand the Court's
18 ruling and we're prepared to go forward.

19 THE COURT: Okay. Thank you. And do -- I thank you
20 for putting that objection on the record. What I also
21 wanted to know is are there objections in the deposition
22 transcript that we need to deal with before we bring this
23 jury out?

24 MR. BARROW: Well, I guess that's an issue because we
25 weren't prepared for that.

1 THE COURT: Sure. Right.

2 MR. BARROW: You know, there's a rule ---

3 THE COURT: Go ahead and take a look.

4 MR. BARROW: There's a rule dealing -- dealing with
5 that as well for publication of depositions and --

6 THE COURT: Were there -- were there objections in the
7 depo? How long is the deposition?

8 MR. BARROW: That's what I'm looking for now.

9 THE COURT: Okay. And if someone could pass me up a
10 copy, I would appreciate it.

11 (Brief pause.)

12 MR. BARROW: I -- I don't see any objections, Your
13 Honor. It's only 20 -- 19 pages, but I don't see any
14 objections in the deposition.

15 Do -- do you have a copy?

16 THE COURT: I don't, not yet.

17 MR. BARROW: Oh, I'm sorry. I thought he had handed
18 one up.

19 THE COURT: Y'all, there's a tornado warning that's
20 just been issued for downtown Columbia and we're to seek
21 safe shelter immediately, move to an interior hallway at a
22 lower level.

23 So let me -- I want to make sure that we -- I mean, I
24 want to keep y'all safe, but I really want to make sure our
25 jurors are safe, too. I feel like I've got a

1 responsibility to make sure that we take care of them.

2 Let me -- we're going to go ahead and I would tell you
3 all to get down to the lower level of the building, stay
4 away from windows and glass doors, don't go on the
5 elevators. And we will get back when we have that
6 opportunity.

7 MR. BARROW: I do want to let the Court know this, my
8 orthopedic surgeon's right here. He cannot come back
9 tomorrow.

10 THE COURT: Okay. Well --

11 MR. BARROW: He -- he -- he has his own medical issues
12 he has to deal with first thing in the morning.

13 THE COURT: I -- I understand that. We're going to
14 have to deal with this one thing at a time.

15 MR. BARROW: I -- I got you.

16 (Off the record at 2:52 p.m.)

17 (On the record at 3:46 p.m.)

18 THE COURT: This is from Juror No. 111. She says,
19 "Hi. I only have childcare until 6:00 p.m. and need to
20 leave by 5:30."

21 So let's be through with the Plaintiff's case and
22 through with the expert by 5:30. I think we can do that.
23 Let's get started right off the bat. And I'll mark this as
24 a Court's Exhibit, and we can bring in the jurors.

25 (Marked Court's Exhibit No. 7, juror note.)

1 (The jury enters the courtroom at 3:47 p.m.)

2 THE BAILIFF: Jury's seated, Your Honor.

3 THE COURT: All right. Ladies and gentlemen, thank
4 you very much. I cannot even begin to say that this is the
5 smoothest trial you've ever seen. Mother Nature has not
6 been kind. There's been several interruptions to the
7 trial.

8 But I will say that y'all are fantastic jurors. Thank
9 you for rolling with the punches. I said at the beginning
10 that I hoped y'all can be friends. And if you can't be
11 friends after a tornado warning -- I think we've got some
12 flash floods going on -- I don't know how we can make y'all
13 friends. It's like you've gone through basic training with
14 each other.

15 I do understand that people have childcare issues. We
16 will get you out of here by 5:30 this evening so that you
17 can pick up kids. And we will -- I will not delay you any
18 further.

19 And we'll go to Mr. Player for the next witness.

20 MR. PLAYER: Your Honor, Plaintiff would like to read
21 portions of the deposition of Trooper Brian N. Trotter.

22 THE COURT: All right. Ladies and gentlemen, you're
23 going to hear deposition testimony read to you by Mr.
24 Player and ---

25 MR. YARBOROUGH: William Yarborough.

1 THE COURT: Go ahead. And -- William -- what was the
2 last name again?

3 MR. PLAYER: Yarborough.

4 THE COURT: The -- Mr. Yarborough is answering the
5 written deposition testimony that was transcribed during a
6 deposition. This testimony was given under oath by -- it's
7 Trooper Trotter; is that correct?

8 MR. PLAYER: Correct.

9 THE COURT: -- by a trooper, Mr. Trotter. And so this
10 was transcribed during a deposition while both attorneys
11 were present. They could answer questions and the answers
12 were under oath.

13 Go ahead, Mr. Player.

14 MR. PLAYER: Thank you.

15 (Whereupon, the deposition was read
16 into the record by Mr. Player and Mr. Yarborough.)

17 BY MR. PLAYER:

18 Q Give us your full name, if you would.

19 A Okay. Brian Nelson Trotter.

20 Q All right. You're with the South Carolina Highway
21 Patrol?

22 A Yes, sir.

23 Q And how long have you been with the highway patrol?

24 A Since December of 2011.

25 Q All right. Now, what was your position with the

1 highway patrol on September the 8, 2012?

2 A I was a trooper.

3 Q And as I told you, this lawsuit arises out of an
4 accident that was eastbound on '20 on that day. And it
5 involved a pickup truck driven by Mr. Rivett, Ford Focus
6 driven by Mr. Jackson, and a tractor-trailer being driven
7 by ---

8 MR. PLAYER: I think if you'll scratch that last
9 question, Your Honor, and I apologize.

10 The next question is:

11 Q All right. Do you recall this incident?

12 MR. PLAYER: And this is on eight, starting at seven.

13 A I do.

14 Q You do?

15 A I do.

16 Q All right. We've taken the deposition of Plaintiff
17 and I understand that there's another accident that
18 occurred before this one, and you were investigating that
19 accident; is that correct?

20 A Yes, sir, it is.

21 Q Do you recall anything about that accident?

22 A No, I can't remember anything about the first one.

23 Q All right. What was the weather like on this day,
24 Trooper?

25 A It was heavy rain on that day.

1 Q And what -- what were the traffic conditions like on
2 I-20 eastbound?

3 A Very heavy and slow moving.

4 Q Do you know, Trooper, if the prior accident also --
5 was also in the eastbound lane?

6 A It was.

7 Q Did you actually witness this accident involving these
8 three vehicles?

9 A Yes, sir, I did.

10 Q Tell me what you saw -- and tell me what you saw.

11 A Well, I was working the first collision, whatever it
12 was, on the shoulder of the eastbound lane of I-20 between
13 Exits 70 and 71. I heard the sound of brakes locking up,
14 which I assume -- but I don't know for sure, I assume was
15 on the tractor-trailer. I looked up from what I was doing.
16 I saw the tractor-trailer under heavy braking, struck the
17 rear of Mr. Jackson's blue Ford Focus; and as a result of
18 that, push it into the rear of Mr. Rivett's Chevrolet
19 pickup truck.

20 Q So the only collision you saw was -- so the only
21 collision you saw between Mr. Jackson's Ford Focus and Mr.
22 Rivett's vehicle was after it was struck by the tractor-
23 trailer.

24 A Yes, sir. It was pushed.

25 Q Pushed into it?

1 A Yeah.

2 Q What were the speed of the vehicles? Were they going
3 very fast at the time?

4 A No. Well, on my report, I have Mr. Jackson and Mr.
5 Rivett at 25 miles per hour; and then Mr. Ledlum, who was
6 in the tractor-trailer, at 30 miles per hour.

7 Q And what was that based on?

8 A That was an estimate from my observation.

9 Q Okay. Did you see any type of second collision or
10 initial collision before the one you just described?

11 A No. This is the only thing I saw.

12 Q So you only saw one impact between my client, who
13 would be Mr. Jackson's vehicle, and the Plaintiff's truck?

14 A Your client being Mr. Jackson?

15 Q That is correct.

16 A That's correct. He was struck first by the tractor-
17 trailer and he pushed, he being the tractor-trailer, pushed
18 Mr. Jackson into the rear of Mr. Rivett's pickup truck.

19 Q And that caused your attention -- and what caused your
20 attention to that was the noise of the brakes on the
21 tractor-trailer.

22 A That's correct.

23 Q Did you have a chance to talk to the Plaintiff, Mr.
24 Rivett, following the accident?

25 A I did. And I reviewed my video from this collision

1 and unfortunately, there's a hole in there. There's a gap
2 where the interview with these three drivers is not
3 recorded on video.

4 Q Okay.

5 A So it's been so long now, but I believe I can remember
6 it; but I'm not positive enough to really testify as to
7 what they told me.

8 Q Do you recall them telling you there were two impacts
9 at any time?

10 A I don't recall that.

11 Q That he got hit twice?

12 A I don't recall that, no.

13 Q Do you recall any of the three parties with whom you
14 spoke indicating that there were two impacts?

15 A Not that I recall, no.

16 Q Did you ask the Plaintiff, Mr. Rivett, if he was
17 injured or hurt?

18 A I don't recall whether I asked him or not.

19 Q Is that a standard practice of yours? When you
20 interview someone who's been in an accident, do you ask if
21 they've been injured or hurt?

22 A It's the norm that I would ask. I don't always ask
23 it.

24 Q Why would you not ask it?

25 A Well, if they're up and around and talking to me and,

1 you know, people are very willing to ask for an ambulance
2 if they need one.

3 Q Okay. Did Mr. Rivett ask for an ambulance?

4 A Not that I recall. He was not transported by
5 ambulance. I can tell you that with certainty, so ...

6 Q Okay. Did anybody ask for an ambulance?

7 A No.

8 Q Did anybody appear injured, any of the three
9 individuals involved appear injured in this case?

10 A No.

11 Q Did you notice any cuts or blood or bleeding, any type
12 of injury on the Plaintiff, Mr. Rivett?

13 A Not that I recall.

14 Q As we sit here today, is there anything else you can
15 recall that may have been said by any of the three parties
16 to this accident?

17 A Well, like I said, I did review the video and none of
18 this is recorded unfortunately. It's certainly not
19 anything I did intentionally, but I do recall Mr. Rivett --
20 let me make sure I've got the names right. Mr. Rivett
21 saying something to the effect of do I need to stick around
22 or do I need to wait here because there was little to no
23 damage to his vehicle. And I don't remember exactly what
24 it was. I just said zero here, which means none or minor.

25 But anyway, I remember him saying something to the

1 effect of he wanted to know if I could leave -- if he could
2 leave, and I said, "No, sir, you're part of this now and I
3 need to have you on the report."

4 So then he stuck around and I finished what I needed
5 to do and gave his copy of everything.

6 Q Was an ambulance called to the scene?

7 A No, sir.

8 Q When you released the parties, did the Plaintiff drive
9 off in his truck?

10 A He did.

11 Q What about the tractor-trailer, did it drive off or
12 was it towed?

13 A It was towed, and I -- I'm not positive, but I believe
14 it was a ruptured radiator.

15 Q Okay. And what about the Blue Focus, that was the
16 middle vehicle, was it towed or was it driven off?

17 A It was towed by Wingard Trucking or Towing.

18 MR. PLAYER: That's all I have. Eric's going to read
19 for --

20 THE COURT: Okay. Go ahead.

21 MR. CAVANAUGH: May it please the Court? This is on
22 page 17, line 6.

23 Whereupon Mr. Cavanaugh and Mr
24 Yarborough continue to read from the deposition transcript
25 of Trooper Trotter as follows:

1 BY MR. CAVANAUGH:

2 Q And I believe you indicated that you do not recall Mr.
3 Rivett asking for any medical assistance; is that correct?

4 A That's correct.

5 Q Okay. So based upon the fact that he didn't need any
6 medical assistance and he had no damage to his vehicle, is
7 that why Mr. Rivett was asking you if he could go ahead and
8 get on down the road? Was that your impression?

9 A That was my general impression, yes.

10 Q Thank you.

11 MR. PLAYER: That's it, Your Honor.

12 THE COURT: All right. Thank you. You may step down.

13 (Mr. Yarborough complies.)

14 THE COURT: Any further witnesses, Mr. Player?

15 MR. PLAYER: No, Your Honor. The Plaintiff rests.

16 THE COURT: All right. Ladies and gentlemen, at this
17 times I need to take up a matter of law with the attorneys.
18 I'm going to have you step into the jury room and I'll get
19 you back out here as soon as possible. Thank you.

20 (The jury exits the courtroom at 3:57 p.m.)

21 THE COURT: All right. Mr. Barrow.

22 MR. BARROW: Mr. Cavanaugh.

23 THE COURT: Mr. Cavanaugh.

24 MR. CAVANAUGH: Your Honor, this is the appropriate
25 time. I -- I believe the evidence is clear that there is

1 no evidence of negligence on behalf of Mr. -- of Celadon
2 Trucking and Mr. Ledlum. The Plaintiff's presented no
3 evidence that we actually struck the Plaintiff's vehicle,
4 Your Honor, as a result, there's no evidence of negligence.
5 And for that reason, I believe it would be appropriate to -
6 - I move for judgment as a matter of law for the Defendants
7 as to the claims of the Plaintiff.

8 THE COURT: All right. Mr. Player.

9 MR. PLAYER: Your Honor, the testimony of the
10 Plaintiff about the impact, obviously, that he was struck.
11 Mr. Jackson testified, you know, exactly what happened when
12 the truck struck him. You know, he said that he was
13 stopped, saw the truck coming, didn't think it was going to
14 stop. He said, you know, it was Celadon Trucking. Trooper
15 Trotter just named Mr. Ledlum as the driver.

16 So I think there's sufficient evidence to demonstrate
17 -- at least to submit to the jury with regards to the
18 impact. Mr. Jackson said -- admitted that it was the
19 impact from the truck that pushed him into the Plaintiff.
20 The trooper testified that's what he saw. The truck
21 traveling, locking its brakes, then hitting Mr. Jackson and
22 pushing Mr. Jackson into Mr. Rivett. So we think there's
23 sufficient evidence to submit this to the jury.

24 THE COURT: All right. Viewing the evidence in the
25 light most favorable to the Plaintiff, as I must, I find

1 that there is sufficient evidence and deny the motion for
2 directed verdict respectfully.

3 MR. CAVANAUGH: Thank you, Your Honor. I do have one
4 other motion to make.

5 THE COURT: Sure.

6 MR. CAVANAUGH: Your Honor, as -- as it relates to
7 causation, Your Honor, I -- I am moving also for a directed
8 verdict as to causation, Your Honor. There is no evidence
9 in the record that would tend to show the collision between
10 my driver and -- between Mr. Ledlum and the -- Mr. Jackson
11 actually caused or led to the injuries that the Plaintiff's
12 complaining about in the case -- this case. I think, in
13 fact, the evidence is contrary.

14 And as a result, I believe the Plaintiff's failed to
15 prove his case as to causation; and therefore, move
16 respectfully for directed verdict as to causation in this
17 case.

18 THE COURT: All right. Mr. Player?

19 MR. PLAYER: Thank you, Your Honor. I will just point
20 to the deposition testimony of Dr. Boucree who said that,
21 in his medical opinion to the -- to the reasonable degree
22 of medical certainty, that the injuries for which my -- my
23 client underwent surgery were caused by the traffic
24 accident.

25 THE COURT: All right.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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JAN 06 2017

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
The Honorable Tanya A. Gee, Circuit Court Judge

Case No. 2014-CP-40-6228

Joseph C. Rivett,Respondent,

v.

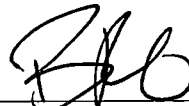
Bruce Ludlum and Celadon Trucking Services, Inc.,Appellants.

PROOF OF SERVICE

I certify that I have served the Motion for Leave to File Rule 60 Motion with Trial Court on Joseph C. Rivett by depositing a copy of it in the United States Mail, postage prepaid, on January 6, 2017 addressed to his attorney of record, Tucker S. Player, Esquire, Player Law Firm, LLC, 1415 Broad River Road, Post Office Box 21005, Columbia, SC 29221.

January 6, 2017

Respectfully,



Mark S. Barrow
J. Eric Cavanaugh
Brandon R. Gottschall
Sweeny Wingate & Barrow, P.A.
Post Office Box 12129
Columbia, South Carolina 29211
(803)256-2233
Attorneys for Appellant

S·W·B

SWEENEY WINGATE & BARROW P.A.

January 6, 2017

Reply to: Main Office

Brandon R. Gottschall
(803) 256-2233 x7132
brg@swblaw.com

BY HAND DELIVERY

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

RECEIVED

JAN 06 2017

SC Court of Appeals

RE: Joseph C. Rivett v. Celadon Trucking
Civil Action No.: 2014-CP-40-6228 - Appellate No. 2016-000462
Our File: 2772-9340

Dear Ms. Kitchings:

Enclosed for filing is a Motion for Leave to File Rule 60 Motion with Trial Court and a Proof of Service in the above case. Please file the originals and return a filed copy to the courier. Also enclosed is a \$25.00 filing fee.

Thank you for your assistance and should you have any questions or concerns please do not hesitate to contact me.

Yours truly,

SWEENEY, WINGATE & BARROW, P.A.



Brandon R. Gottschall

BRG/bjp

Enclosures

cc: Tucker S. Player, Esquire, Player Law Firm, LLC