

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM CHESTERFIELD COUNTY  
Court of Common Pleas

Roger E. Henderson, Circuit Court Judge

---

Appellate Case No:

---

Caroll Freeman and Brooke Freeman,

Appellants,

v.

South Carolina Department of Transportation,  
and County of Chesterfield, South Carolina

Respondents.

---

**RECORD ON APPEAL**

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M.W. Cockrell, III  
Sarah C. Campbell  
Barrister Building  
Olde Town Centre  
159 Main Street  
Chesterfield, South Carolina 29709  
Phone: (843) 623-5911  
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Attorneys for Appellant

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Samuel F. Arthur, III, Esquire  
J. Rufus Bratton, III, Esquire  
Aiken, Bridges, Elliot, Tyler & Saleeby, P.A.  
Post Office Drawer 1931  
Florence, South Carolina 29503

**RECEIVED**  
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SC Court of Appeals

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STATE OF SOUTH CAROLINA  
COUNTY OF CHESTERFIELD

IN THE COURT OF COMMON PLEAS  
FOURTH JUDICIAL CIRCUIT  
C.A. NO.: 2015-CP-13-118

Caroll Freeman and Brooke Freeman

Plaintiffs,

vs.

South Carolina Department  
of Transportation and County of  
Chesterfield, South Carolina

Defendant.

2016 AUG 18 PM 4 03

ORDER  
(SUMMARY JUDGEMENT)

PAULEY  
CLERK

CHESTERFIELD

SC

*Handwritten signature: Steve S. Pauley*

CLERK OF COURT C.P. & G.S.  
CHESTERFIELD COUNTY, SC

This matter is before me on Defendant South Carolina Department of Transportation motion for summary judgement along with Defendant Chesterfield County's motion for summary judgement. Defendants motions for summary judgement were heard on May 23, 2016 with counsel for all parties present. This case arises out of an automobile accident that occurred April 18, 2014 in Chesterfield County, South Carolina. On that day, Plaintiff Caroll Freeman was traveling down Crowley Road, at or near the intersection of Crowley Road and Issac Road, when his vehicle veered off the side of the road down an embankment, and over a ditch. It is undisputed that Chesterfield County is responsible for the upkeep and maintenance of Issac Road and Defendant SCDOT is responsible for the upkeep and maintenance of Crowley Road. Plaintiff alleges in his complaint that no stop sign or other device was present at the intersection of Crowley Road and there was no guardrail in place to stop Plaintiff's vehicle from going into the ditch.

STANDARD OF REVIEW

Summary judgment is proper when "there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law." Rule 56(c) SCRPC. "In

determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party.” Robinson v Estate of Harris, 388 S.C. 630, 638, 698 S.E.2d 222, 226 (2010) (internal quotation marks omitted). To withstand a motion for summary judgment in cases applying a preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence showing a question of material fact exists. Froneberger v. Kirkland Dale Smith, et al., 406 S.C. 37, 748 S.E.2d 625 (S.C. App, 2013).

CONCLUSIONS OF LAW

AS TO DEFENDANT CHESTERFIELD COUNTY

Plaintiffs have asserted causes of action for negligence against Defendant Chesterfield County. The Court hereby grants Defendant Chesterfield County’s motion for summary judgement as it relates to Plaintiffs’ complaint based on evidence presented and arguments made at the hearing.

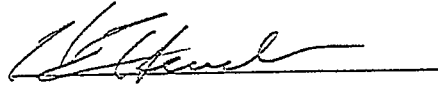
AS TO DEFENDANT SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION

Plaintiffs have likewise asserted causes of action for negligence against Defendant South Carolina Department of Transportation. The Court hereby denies Defendant South Carolina Department of Transportation’s motion for summary judgement as it relates to Plaintiffs’ complaint based on evidence presented and arguments made at the hearing.

IT IS THEREFORE ORDERED that Defendant Chesterfield County’s motion for summary judgment is GRANTED as to the claims and these causes of action are dismissed with prejudice.

IT IS FURTHER ORDERED that Defendant SCDOT's motion for summary judgment  
is DENIED as to all claims.

IT IS SO ORDERED.



Hon. Roger E. Henderson

Fourth Judicial Circuit

Chesterfield, South Carolina

August 10, 2016

STATE OF SOUTH CAROLINA

COUNTY OF CHESTERFIELD

Caroll Freeman and Brooke Freeman

Plaintiffs,

vs.

South Carolina Department  
of Transportation and County of  
Chesterfield, South Carolina

Defendant.

IN THE COURT OF COMMON PLEAS  
FOURTH JUDICIAL CIRCUIT  
C.A. NO.: 2015-CP-13- 118

SUMMONS


2015 MAR 3 PM 3 22  
FAYE L. SELLERS  
CLERK OF COURT  
CHESTERFIELD COUNTY, S.C.

TO: THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer to said Complaint on the subscribed, M. W. Cockrell, III, of Cockrell Law Firm, P.C., Olde Towne Centre, Barrister Building, 159 Main Street, Chesterfield, South Carolina 29709 within THIRTY (30) DAYS after the service hereof, exclusive of the date of such service; and if you fail to answer the Complaint, within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

COCKRELL LAW FIRM, P.C.

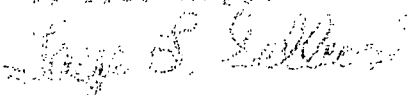
BY:

  
M. W. Cockrell, III  
Sarah C. Campbell  
Andrew M Privette  
Olde Towne Centre  
Barrister Building  
159 Main Street  
Chesterfield, South Carolina 29709  
Phone: (843) 623-5911  
Fax: (843) 623-5700

ATTORNEYS FOR PLAINTIFF

Chesterfield, South Carolina

March 2, 2015

A True Copy. Attest  
  
FAYE L. SELLERS  
CLERK OF COURT  
CHESTERFIELD COUNTY, S.C.

STATE OF SOUTH CAROLINA  
COUNTY OF CHESTERFIELD  
Caroll Freeman and Brooke Freeman

Plaintiffs,  
vs.

South Carolina Department  
of Transportation and County of  
Chesterfield, South Carolina

Defendant.

IN THE COURT OF COMMON PLEAS  
FOURTH JUDICIAL CIRCUIT  
C.A. NO.: 2015-CP-13- 118

COMPLAINT

2015 MAR 3 PM 3 22  
FAVE L. SELLERS  
CLERK OF COURT  
CHESTERFIELD COUNTY, S.C.

Plaintiffs, Caroll Freeman and Brooke Freeman, by and through their undersigned counsel, complaining of the above-named Defendant, South Carolina Department of Transportation, would respectfully show unto this Honorable Court the following:

JURISDICTIONAL STATEMENT

1. Plaintiffs are residents of Chesterfield County, South Carolina.
2. Defendant South Carolina Department of Transportation (Defendant SCDOT) is a political subdivision of the State of South Carolina, amenable to the jurisdiction of this Court pursuant to the South Carolina Tort Claims Act (S.C. Code '15-72-10 *et seq.*), and is charged by law and by statute with the maintenance of the highways of the state of South Carolina.
3. Defendant Chesterfield County, South Carolina (Defendant Chesterfield County) is a political subdivision of the State of South Carolina, amenable to the jurisdiction of this Court pursuant to the South Carolina Tort Claims Act (S.C. Code '15-72-10 *et seq.*).
4. This Court has jurisdiction over the parties and the subject matter of this Complaint in accordance with Article 5, Section 11 of the South Carolina Constitution, Section 14-1-80, 1976 SC Code, and the Common Law of South Carolina.

RECORD ON APPEAL 5  
JMC  
#1

FACTUAL ALLEGATIONS

5. That in the early morning hours of April 18, 2014, Plaintiff, Caroll Freeman, was operating a 2007 Honda vehicle in a north easterly direction on Crowley Road near Patrick, South Carolina, in the County of Chesterfield, State of South Carolina, and was on his way to work at or near the intersection of Crowley Road and Isaac Road, when his vehicle veered off the side of the road down an embankment, slamming over into a ditch.

6. That, upon information and belief, no stop sign or other traffic control device was present at the intersection of Crowley Road and Isaac Road, as well as, there was no guardrail in place to stop Plaintiff's vehicle from running off the shoulder, and into the adjacent ditch.

7. That the absence of a traffic control device and lack of guardrail created a hazardous/dangerous condition, and the Defendants, SCDOT and Chesterfield County, owed a duty to the driving public to inspect the highways, specifically Crowley and Isaac Roads, to prevent the existence of hazardous road conditions.

8. That, upon information and belief, the Defendants, SCDOT and Chesterfield County, had prior knowledge of the hazardous/dangerous condition on Crowley and Isaac Roads prior to the time Plaintiff's vehicle veered off the roadway and shoulder and down into the ditch on April 18, 2014.

9. Due to the defective condition of the intersection, Carrol Freeman collided with the embankment of the dead end of Crowley Road.

10. As a direct and proximate result of the collision, Caroll Freeman was injured.

11. That, upon information and belief, said agent, servant and/or employee of Defendants, SCDOT and Chesterfield County, breached their duty of due care to the public and to the

Plaintiff by not maintaining the traffic control devices and not placing a guardrail in the vicinity of the scene on Crowley and Isaac Roads.

12. At on the aforesaid day and time, the Defendant South Carolina Department of Transportation and Defendant Chesterfield County (hereinafter collectively referred to as Defendants) had the responsibility to erect and maintain traffic control devices governing travel at the intersection of Crowley Road and Isaac Road in Chesterfield County; that further, at all times relevant hereto, Defendants had the responsibility to design, construct, and/or modify the presence and location of traffic control devices at the aforementioned intersection.

13. That the failure to install a guardrail and failure to correct the traffic control device posed a severe safety hazard to the motoring public which the Defendants, agents, servants and employees, were fully aware of, and its failure to correct this defect was the direct and proximate cause of the aforementioned incident.

14. That Defendants have a duty to inspect and maintain its system of highways of the State of South Carolina, for their full right of way, to determine if any dangerous conditions exist thereon, including ditches and traffic control devices, and to take action to correct and/or repair such conditions if they present a hazard to the motoring public.

15. That Defendants, when aware of a condition presenting a hazardous condition to the motoring public, has an affirmative duty to respond to such notice in a timely manner, remedy such condition, and provide for the reasonably safe travel of the public upon the highway.

16. That Defendant, SCDOT, breached its duty of due care in failing to inspect and/or remedy the dangerous condition, and, further, in failing to timely respond and correct such condition.

FOR A FIRST CAUSE OF ACTION

RECORD ON APPEAL  7

17. Plaintiffs incorporate all of the foregoing Paragraphs as if fully set forth hereunder.

18. That the Defendants, by and through their duly authorized agents, servants, and/or employees were negligent, grossly negligent, reckless, willful and wanton including, but not expressly limited to one or more of the following particulars, to wit:

(a) in failing to initially place the proper traffic control devices at the aforementioned intersection;

(b) in failing to exercise discretion in its initial placement of traffic control devices at the above-mentioned intersection;

(c) if discretion was exercised, in exercising this discretion in a grossly negligent manner;

(d) in failing to properly maintain the intersection in such a way the signage was clearly visible to drivers and operators of the motor vehicles utilizing the intersection;

(e) in failing to initially erect additional warning signs to create a properly advise motorists of the impending intersection;

(f) in failing to initially erect additional warning signs to create and properly advise motorists of the impending intersection, within a reasonable time after actual or constructive notice of similar accidents at the above-mentioned intersection;

(g) in failing to warn motorists of the potentially dangerous condition existing at the intersection;

(h) in failing to hire adequate personnel to inspect the roadways and make the necessary modification to the intersection;

(i) in failing to weigh the appropriate factors and make a conscious decision to alter or modify the intersection to make it reasonably safe;

(j) In failing to maintain the highway, including its right of way, to prevent vehicles from running off the pavement and shoulder and into the ditch;

(k) In failing to use due diligence by regularly inspecting and/or maintaining their highways, including rights of way to discover defects that allowed the existence of ditches without guardrails or other warnings/protective measures to protect the motoring public;

(l) In failing to properly maintain their highway, including its right of way, to avoid risk of injury to motorists;

(m) In failing to take the steps necessary to prevent vehicles from running off the pavement and shoulder and into a ditch;

(n) In failing to keep the highway, including its right of way, in a reasonably safe condition for public travel;

(o) In failing to act as a reasonable person or agency charged with the duty of maintaining and repairing the highways, including rights of way, would have acted under the same or similar circumstances;

(p) In failing to use the degree of care and caution that a reasonably prudent person would have exercised under the conditions then and there existing;

(q) That the actions of Defendant, SCDOT, by and through its agents, servants and/or employees were done in the course and scope of their employment with the Defendant and that this Defendant is responsible pursuant to the doctrine of Respondeat Superior;

(r) In then and there hiring and retaining agents, servants and/or employees when it knew or should have known said individuals were unable to conduct themselves properly in the capacity of their employment;

(s) Violated the laws, statutes, regulations and/or ordinances of the State of South Carolina;

(t) In then and there failing to provide proper and necessary supervision and monitoring to ensure that its agents, servants and/or employees performed their duties in a proper and safe manner; and

(u) Is guilty of other negligent acts and omissions not specifically alleged but as the evidence at trial will show.


19. As a direct and proximate result of Defendants breaches of statutory law and duties and/or negligence, reckless, willful and wanton acts and omissions, as set forth above, Plaintiffs are entitled to compensation for the following injuries and/or damages

- (1) Pecuniary loss including, but not limited to, medical expenses and related costs;
- (2) Suffered injuries, bruises, contusions, abrasions and lacerations about various parts of his head, body and/or other extremities;
- (3) Was severely, seriously, painfully and permanently injured;
- (4) Was forced to see medical treatment and was hospitalized for a period of time;
- (5) Loss of consortium;
- (6) Was subjected to the administration of strong and potent drugs and medications;
- (7) Permanent damage and loss of use of the automobile; and
- (8) Loss of the ability to earn money for the support.

20.As a direct and proximate result of Defendants breaches of statutory law and duties and/or negligence, reckless, willful and wanton acts and omissions, as set forth above, Plaintiffs incurred property damages, Caroll Freeman was injured, requiring medical attention and thereby incurring medical bills and other damages, and consortium loss sustained by Brooke Freeman, along with expenses and losses for which Defendant is responsible.

WHEREFORE, the Plaintiffs pray for judgment against the Defendants, for actual damages, in an amount to be determined by the jury as triers of fact.

**COCKRELL LAW FIRM, P.C.**



---

M. W. Cockrell, III  
Sarah C. Campbell  
Olde Towne Centre  
Barrister Building  
159 Main Street  
Chesterfield, South Carolina 29709  
(843) 623-5911

ATTORNEYS FOR PLAINTIFFS

March 2, 2015  
Chesterfield, South Carolina

#7

RECORD ON APPEAL 11

STATE OF SOUTH CAROLINA )  
 COUNTY OF CHESTERFIELD )  
 )  
 Carroll Freeman and Brooke Freeman )  
 Plaintiff, )  
 )  
 v. )  
 )  
 South Carolina Department of )  
 Transportation and County of )  
 Chesterfield, South Carolina )  
 Defendants. )  
 \_\_\_\_\_ )

IN THE COMMON PLEAS COURT FOR THE  
 FOURTH JUDICIAL CIRCUIT

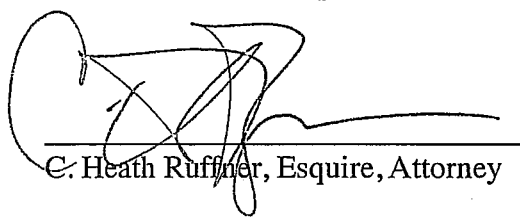
Case No. 15-CP-13-118

ACCEPTANCE OF SERVICE

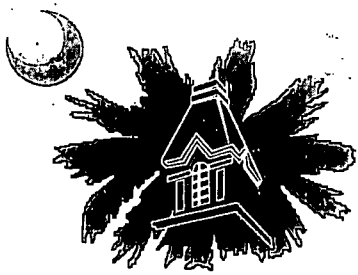
A TRUE COPY  
 JAMES O. RUFFNER  
 C. HEATH RUFFNER, ESQUIRE

2015 APR 14 PM 3 56  
 FAYE L. SELLERS  
 CLERK OF COURT  
 CHESTERFIELD COUNTY, S.C.

I, C. Heath Ruffner, Esquire, Attorney for County of Chesterfield, South Carolina, the Defendant herein, do hereby accept and Acknowledge due and legal service upon me this date of a true copy of the Summons and Complaint.

  
 \_\_\_\_\_  
 C. Heath Ruffner, Esquire, Attorney

\_\_\_\_\_ Cheraw \_\_\_\_\_, South Carolina  
 dated: March 19, 2015



**COCKRELL**  
LAW FIRM, P.C.

M.W. Cockrell, III  
Sarah C. Campbell  
Andrew M. Privette  
M.W. Cockrell, Jr. (T)

\*of coun.

+ Board Certified: Oil, Gas & Mineral L  
Treas Board of Legal Specializati

2015 APR 15 PM 2 00  
FEDERAL SELLERS  
CLERK OF COURT  
CHESTERFIELD COUNTY, S.C.

March 10, 2015

VIA CMRRR 7013 3020 0000 3163 1103  
Office of the South Carolina Attorney General  
The Honorable Alan Wilson  
Attn: Deputy Attorney General T. Stephen Lynch  
P.O. Box 11549  
Columbia, South Carolina 29211

A True Copy Attest

*Jaye J. Sellers*

CLERK OF COURT C.P. & G.S.  
CHESTERFIELD COUNTY, SC

Re: Carroll Freeman and Brooke Freeman v South Carolina Department of  
Transportation and County of Chesterfield, South Carolina  
Case No.: 2015-CP-13-118

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COLUMBIA SC 29211  
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Total Postage & Fees	\$ 66.70	03/11/2015

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*Atty General*  
Street, Apt. No.; or PO Box No.  
City, State, ZIP+4

1. Article Addressed to:  
*Office of the SC Atty General  
The Honorable Alan Wilson  
Attn: Deputy Atty General T Stephen Lynch  
PO Box 11549  
Columbia South Carolina 29211*

2. Article Number  
(Transfer from service label)

7013 3020 0000 3163 1103

to Rule 4(d)(5) of the South Carolina Rules of Civil  
the documents I have enclosed the following:

s and Complaint (filed 3/3/2015)

il information or have any questions, please contact

With Highest Regards,

**SECTION ON DELIVERY**

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.

3. Service Type  
 Certified Mail®     Priority Mail Express™  
 Registered     Return Receipt for Merchandise  
 Insured Mail     Collect on Delivery

4. Restricted Delivery? (Extra Fee)  Yes

B. Received by (Printed Name) *Anthony B. Mack*    C. Date of Delivery *3/16*

D. Is delivery address different from item 1?  Yes  
If YES, enter delivery address below:  No

**RECORD ON APPEAL 13**

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHESTERFIELD )

IN THE COURT OF COMMON PLEAS  
C/A NO.: 2015-CP-13-118

Caroll Freeman and Brooke Freeman,) )  
 )  
Plaintiffs, ) )  
 )  
vs. ) )  
 )  
South Carolina Department of ) )  
Transportation and County of ) )  
Chesterfield, South Carolina, ) )  
 )  
Defendants. ) )  
 )

**ANSWER OF DEFENDANT  
SOUTH CAROLINA DEPARTMENT  
OF TRANSPORTATION  
(Jury Trial Demanded)**

2015 APR 17 AM 10 50  
FAYE L. SELLERS  
CLERK OF COURT  
CHESTERFIELD COUNTY, S.C.

Defendant, South Carolina Department of Transportation (hereinafter "SCDOT"), answering the Complaint of the Plaintiffs would respectfully show unto this Honorable Court as follows:

**FOR A FIRST DEFENSE, BY WAY OF ANSWER**

1. Defendant SCDOT denies any and all allegations set forth in the Complaint not specifically admitted, qualified or otherwise explained herein.
2. Defendant SCDOT is without sufficient information at this time so as to form a belief as to the truth or falsity of any and all allegations set forth in Paragraph 1 of the Complaint and therefore denies same and respectfully requests strict proof thereof.
3. Defendant SCDOT admits so much of the allegations set forth in Paragraph 2 of the Complaint as allege that it is a political subdivision of the State of South Carolina subject to the *South Carolina Tort Claims Act*. Defendant SCDOT is of the opinion and belief that the remaining allegations set forth in Paragraph 2 of the Complaint call for a legal conclusion and therefore do not require a response. However, to the extent said paragraph contains any

A True Copy Attest  
Faye L. Sellers  
CLERK OF COURT C.P. & G.S  
CHESTERFIELD COUNTY, SC

allegations that are inconsistent with the above, Defendant SCDOT denies same and respectfully requests strict proof thereof.

4. Defendant SCDOT is of the opinion and belief that Paragraph 3 of the Complaint is directed to another party to this litigation and therefore do not require a response. However, to the extent said paragraph may be construed to require a response from Defendant SCDOT, any and all allegations set forth therein are denied and strict proof thereof requested.

5. Defendant SCDOT is of the opinion and belief that Paragraph 4 of the Complaint calls for a legal conclusion and therefore does not require a response. However, to the extent said paragraph may be construed to require a response from Defendant SCDOT, any and all allegations set forth therein are denied and strict proof thereof requested.

6. Defendant SCDOT is without sufficient information at this time so as to form a belief as to the truth or falsity of any and all allegations set forth in Paragraph 5 of the Complaint and respectfully requests strict proof thereof.

7. Defendant SCDOT is without sufficient information at this time so as to form a belief as to the truth or falsity of any and all allegations set forth in Paragraph 6 of the Complaint and respectfully requests strict proof thereof.

8. Defendant SCDOT is without sufficient information at this time so as to form a belief as to the truth or falsity of any and all allegations set forth in Paragraph 7 of the Complaint and respectfully requests strict proof thereof.

9. Defendant SCDOT is without sufficient information at this time so as to form a belief as to the truth or falsity of any and all allegations set forth in Paragraph 8 of the Complaint and respectfully requests strict proof thereof.



10. Defendant SCDOT is without sufficient information at this time so as to form a belief as to the truth or falsity of any and all allegations set forth in Paragraph 9 of the Complaint and respectfully requests strict proof thereof.

11. Defendant SCDOT is without sufficient information at this time so as to form a belief as to the truth or falsity of any and all allegations set forth in Paragraph 10 of the Complaint and respectfully requests strict proof thereof.

12. Defendant SCDOT denies any and all allegations set forth in Paragraph 11 of the Complaint to the extent said allegations are directed to Defendant SCDOT and respectfully requests strict proof thereof.

13. Defendant SCDOT is of the opinion and belief that the allegations set forth in Paragraph 12 of the Complaint call for a legal conclusion and therefore do not require a response from Defendant SCDOT. However, to the extent said paragraph may be construed to require a response from Defendant SCDOT, any and all allegations set forth therein are denied and strict proof thereof requested.

14. Defendant SCDOT denies any and all allegations set forth in Paragraph 13 of the Complaint and respectfully requests strict proof thereof.

15. Defendant SCDOT is of the opinion and belief that Paragraph 14 of the Complaint calls for a legal conclusion and therefore does not require a response. However, to the extent said paragraph may be construed to require a response from this Defendant, any and all allegations set forth therein are denied and strict proof thereof requested.

16. Defendant SCDOT is of the opinion and belief that Paragraph 15 of the Complaint calls for a legal conclusion and therefore does not require a response. However, to

the extent said paragraph may be construed to require a response from this Defendant, any and all allegations set forth therein are denied and strict proof thereof requested.

17. Defendant SCDOT denies any and all allegations set forth in Paragraph 16 of the Complaint and respectfully requests strict proof thereof.

18. Defendant SCDOT is of the opinion and belief that Paragraph 17 of the Complaint does not require a response. However, to the extent said paragraph may be construed to require a response from Defendant SCDOT, any and all allegations set forth therein are denied and strict proof thereof requested.

19. Defendant SCDOT denies any and all allegations set forth in Paragraph 18 of the Complaint, including any and all sub-parts, and respectfully requests strict proof thereof.

20. Defendant SCDOT denies any and all allegations set forth in Paragraph 19 of the Complaint, including any and all sub-parts, and respectfully requests strict proof thereof.

21. Defendant SCDOT denies any and all allegations set forth in Paragraph 20 of the Complaint and respectfully requests strict proof thereof.

22. In response to the final paragraph of the Complaint (not numbered), Defendant SCDOT denies any and all allegations set forth therein and respectfully requests strict proof thereof.

**FOR A SECOND DEFENSE**

23. This Defendant further alleges that the accident described in the Plaintiff's Complaint and any injuries or damages caused thereby were solely and proximately caused by the negligence, recklessness, willfulness and wantonness of others apart from this Defendant, for which this Defendant cannot be held accountable and thus recovery against this Defendant is barred. This Defendant pleads negligent acts of others as a defense in this action.

**FOR A THIRD DEFENSE**

24. This Defendant alleges that any injury or damages sustained by the Plaintiff was due to and proximately caused by the negligence, recklessness, willfulness or wantonness of one or more persons or entities other than this Defendant, over whom, this Defendant has no control, and therefore the Plaintiff is not entitled to recover from this Defendant.

**FOR A FOURTH DEFENSE**

25. This Defendant further alleges that any damages and injuries sustained by the Plaintiff, as a result of the matters alleged in the Complaint, if any, could not be avoided by this Defendant and this Defendant therefore pleads unavoidable accident in bar of this action.

**FOR A FIFTH DEFENSE**

26. This Defendant further alleges that if any injuries and/or damages were sustained by the Plaintiff, the said injuries and/or damages were caused by the greater negligence and/or willfulness of the Plaintiff, which negligence and/or willfulness exceeds that of the Defendant, if any, without which greater negligence and/or willfulness on the part of the Plaintiff, the said alleged injury and/or damage would not have occurred or have been sustained and for that reason, the Plaintiff is totally barred from recovery. Should it be determined that the Plaintiff's negligence does not outweigh any negligence on the part of the Defendant, any award to the Plaintiff should be reduced in proportion to the amount of negligence on the Plaintiff's part.

**FOR A SIXTH DEFENSE**

27. This Defendant alleges that an award of punitive damages in this case would violate the 5<sup>th</sup>, 6<sup>th</sup>, and 14<sup>th</sup> amendments to the United States Constitution and Article One, Section 3 of the South Carolina Constitution in that:

- a) The unfettered power to award punitive damages in any manner is wholly devoid of a meaningful standard and is inconsistent with due process guarantees; and,
- b) Even if it could be argued that the standard governing the imposition of punitive damages exists, the standard is void for vagueness.

**FOR A SEVENTH DEFENSE**

28. Defendant alleges that it is immune from civil tort liability pursuant to the Constitution of the State of South Carolina and § 15-78-10, *Code of Laws of South Carolina* (1976, as amended), et seq., commonly known as the *South Carolina Tort Claims Act* except to the limited extent to which sovereign immunity has been waived pursuant thereto. Defendant therefore pleads and incorporates herein each and every defense and limitation contained in the *South Carolina Tort Claims Act* as fully as if set forth herein verbatim.

**FOR AN EIGHTH DEFENSE**

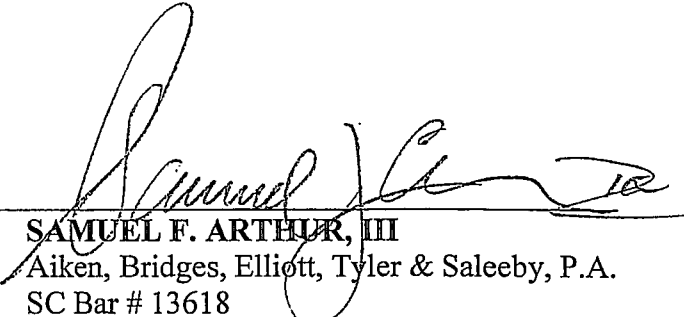
29. Defendant South Carolina Department of Transportation would plead the public duty rule as a total and complete bar to any recovery against Defendant South Carolina Department of Transportation.

**RESERVATION AND NON-WAIVER**

30. Defendant South Carolina Department of Transportation reserves the right to assert, and does not waive, any additional or further defenses as may be revealed by additional information that may be acquired in discovery or otherwise.

**WHEREFORE**, having fully answered the Complaint of Plaintiff, Defendant South Carolina Department of Transportation prays that said Complaint be dismissed, with all taxable costs awarded to Defendant South Carolina Department of Transportation and any further relief this court deems reasonable and proper.

By: \_\_\_\_\_

  
**SAMUEL F. ARTHUR, III**

Aiken, Bridges, Elliott, Tyler & Saleeby, P.A.

SC Bar # 13618

PO Drawer 1931

Florence, SC 29503

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[SFA@AIKENBRIDGES.COM](mailto:SFA@AIKENBRIDGES.COM)

Florence, South Carolina

April 14, 2015

**ATTORNEYS FOR DEFENDANT  
SOUTH CAROLINA DEPARTMENT  
OF TRANSPORTATION**

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHESTERFIELD )  
 )  
 Carroll Freeman and Brooke Freeman, )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 South Carolina Department of )  
 Transportation and County of )  
 Chesterfield, South Carolina, )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS

C/A #: 15-CP-13-118

ANSWER OF DEFENDANT  
 COUNTY OF CHESTERFIELD  
 (Jury Trial Demanded)

The Defendant, County of Chesterfield, South Carolina, answers the Complaint of the Plaintiffs as follows:

**FOR A FIRST DEFENSE**

1. The Summons and Complaint fails to state facts sufficient to state a cause of action. This Defendant reserved the right to file a motion pursuant to Rule 12(b)(6), SCRPC.

**FOR A SECOND DEFENSE**

2. This Defendant denies each and every allegation of the Plaintiffs' Complaint not hereinafter specifically admitted.

3. Paragraph 1 is admitted upon information and belief.

4. Paragraph 2 is not directed at this Defendant, and therefore, no response from this Defendant is required.

5. As to Paragraph 3, this Defendant admits that it is a political subdivision of the State of South Carolina. The remaining allegations in Paragraph 3 are denied.

6. Paragraph 4 asserts legal conclusions to which no response is required. To the extent Paragraph 4 intended to state factual allegations against this Defendant, those allegations are denied.

7. This Defendant lacks information sufficient to form a belief as to the truth of the allegations in Paragraph 5, and therefore, denies those allegations and demands strict proof thereof. This Defendant denies that it contributed in any way to the accident alleged in Paragraph 5.

8. As to Paragraph 6, this Defendant had no notice that there was no stop sign or traffic control device present at the intersection of Crowley Road and Isaac Road and further had no notice that there was no guardrail present. This Defendant denies the remaining allegations in Paragraph 6.

9. Paragraph 7 asserts legal conclusions that require no response, and this Defendant craves reference to South Carolina law as the best evidence of its content. The factual allegations in paragraph 7 are denied.

10. Paragraph 8 is denied as to this Defendant.

11. Paragraph 9 is denied.

12. This Defendant lacks information sufficient to form a belief as to the truth of the allegations in Paragraph 10, and therefore, denies those allegations and demands strict proof thereof.

13. Paragraphs 11, 12 and 13 are denied as to this Defendant.

14. Paragraph 14 asserts legal conclusions to which no response from this Defendant is required, and this Defendant craves reference to South Carolina law as the best evidence of its content. The factual allegations in Paragraph 14 are denied.

15. Paragraph 15 is denied as to this Defendant.

16. Paragraph 16 does not appear to be directed at this Defendant, and therefore, no response from this Defendant is required. To the extent Paragraph 16 intended to state factual allegations against this Defendant, those allegations are denied.

17. As to Paragraph 17, this Defendant craves reference to each corresponding provision and affirmative defense asserted herein.

18. Paragraph 18, including subparts (a) through (u), is denied as to this Defendant.

19. Paragraph 19, including subparts (1) through (8), is denied as to this Defendant.

20. Paragraph 20 is denied as to this Defendant.

**FOR A THIRD DEFENSE**

21. These Defendants are immune from suit pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, *et seq.*

**FOR A FOURTH DEFENSE**

22. These Defendants are entitled to immunity pursuant to the South Carolina Tort Claims Act including, but not limited to, §15-78-60(4).

**FOR A FIFTH DEFENSE**

23. These Defendants are entitled to immunity pursuant to the South Carolina Tort Claims Act including, but not limited to, §15-78-60(5).

**FOR A SIXTH DEFENSE**

24. These Defendants are entitled to immunity pursuant to the South Carolina Tort Claims Act including, but not limited to, §15-78-60(15).

**FOR A SEVENTH DEFENSE**

25. These Defendants are entitled to immunity pursuant to the South Carolina Tort Claims Act including, but not limited to, §15-78-60(20).

**FOR AN EIGHTH DEFENSE**

26. This Defendant is entitled to a setoff for any amounts of compensation that Plaintiffs have received from any other source pursuant to the terms of the South Carolina Tort Claims Act.

**FOR A NINTH DEFENSE**

27. This Defendant alleges that it is immune from suit and liability under the Doctrine of Sovereign Immunity.

**FOR A TENTH DEFENSE**

28. This Defendant is entitled to the limitations and caps upon recovery enumerated in the South Carolina Tort Claims Act.

**FOR AN ELEVENTH DEFENSE**

29. This Defendant is entitled pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, *et seq.*, to have its liability, if any, apportioned with that of any other tortfeasors so as to require each Defendant to pay their fair share.

**FOR A TWELFTH DEFENSE**

30. This Defendant alleges, upon information and belief, that any injuries or damages allegedly suffered by the Plaintiffs, without admitting same to be true, were due to and caused entirely by the negligence of the Plaintiffs or the Plaintiffs' negligence which is more than this Defendant's negligence, and that such is a complete bar to the minor's recovery herein. Further, this Defendant, upon information and belief, alleges that if the Plaintiffs' negligence was less

than this Defendant's negligence, that such negligence should be compared to that negligence of this Defendant, so as to apportion the relative fault as to each party.

FOR A THIRTEENTH DEFENSE

31. Defendants allege upon information and belief that the Plaintiffs' injuries and damages, if any, were due to, occasioned by, or caused by intervening acts or omissions on the part of someone other than this Defendant, its agents, servants, or employees, without which acts and/or omissions the Plaintiffs would not have sustained any injuries or damages as are set forth in the Complaint, all of which this Defendant pleads as a bar to this action.

WHEREFORE, having fully answered the Complaint of the Plaintiffs, the Defendant, County of Chesterfield prays that the Complaint be dismissed with prejudice, for the costs of this action, and for such other and further relief as the Court deems just and proper.

MORRISON LAW FIRM, LLC

By: Kassi B. Sandifer

David L. Morrison

Kassi B. Sandifer

Robert G. Cooper

7453 Irmo Drive, Suite B

Columbia, South Carolina 29212

Phone: (803) 661-6285

Fax: (803) 661-6289

E-mail: david@dmorrison-law.com

E-mail: kassi@dmorrison-law.com

E-mail: bob@dmorrison-law.com

ATTORNEYS FOR THE DEFENDANT  
COUNTY OF CHESTERFIELD, SC

Columbia, South Carolina

April 16, 2015

RECORD ON APPEAL 25

STATE OF SOUTH CAROLINA  
COUNTY OF CHESTERFIELD  
Caroll Freeman and Brooke Freeman

Plaintiffs,  
vs.

South Carolina Department  
of Transportation and County of  
Chesterfield, South Carolina  
Defendant.

IN THE COURT OF COMMON PLEAS  
FOURTH JUDICIAL CIRCUIT  
C.A. NO.: 2015-CP-13-118

REPLY

2015 MAY 4 PM 3 43  
FAYE L. SELLERS  
CLERK OF COURT  
CHESTERFIELD COUNTY, S.C.

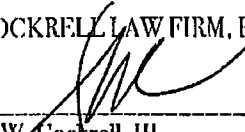
The Plaintiffs (Caroll Freeman and Brooke Freeman, by way of reply to the Answer of the Defendant, South Carolina Department of Transportation, would respectfully allege and show:

1. That the Plaintiff denies each and every allegation contained in the Answer which are not specifically admitted herein and demands strict proof thereof.
2. That paragraphs 1-22 do not require an admission or denial. To the extent a response is required, Plaintiff denies each and every allegation contained in paragraphs 1-22.
3. That the Plaintiff denies the allegations contained in Paragraphs 23-30 of the Answer and demands strict proof thereof.

WHEREFORE, the Plaintiff prays that the Court inquire into the matters and things alleged herein, dismiss the Defendants' Answer to the extent that it is inconsistent with the Plaintiff's Complaint and grant Plaintiff judgment upon its Complaint.


Signature page to follow

COCKRELL LAW FIRM, PC

  
M.W. Cockrell, III  
Sarah C. Campbell  
Andrew Privette  
Attorney for Plaintiff  
159 Main Street  
Chesterfield, SC 29709

(843) 623-5911

Chesterfield South Carolina  
April 30 2015


#2

STATE OF SOUTH CAROLINA  
COUNTY OF CHESTERFIELD  
Caroll Freeman and Brooke Freeman

Plaintiffs,  
vs.

South Carolina Department  
of Transportation and County of  
Chesterfield, South Carolina  
Defendant.

IN THE COURT OF COMMON PLEAS  
FOURTH JUDICIAL CIRCUIT  
C.A. NO.: 2015-CP-13-118

REPLY

2015 MAY 4 PM 3 43  
FAVE L. SELLERS  
CLERK OF COURT  
CHESTERFIELD COUNTY, S.C.

The Plaintiffs, Caroll Freeman and Brooke Freeman, by way of reply to the Answer of the Defendant, County of Chesterfield, would respectfully allege and show:

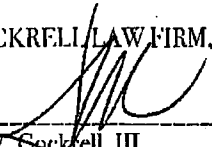
1. That the Plaintiff denies each and every allegation contained in the Answer which are not specifically admitted herein and demands strict proof thereof.
2. That the Plaintiff denies the allegations contained in Paragraphs 1 of the Answer and demands strict proof thereof.
3. That paragraphs 2-20 do not require an admission or denial. To the extent a response is required, Plaintiff denies each and every allegation contained in paragraphs 2-20.
4. That the Plaintiff denies the allegations contained in Paragraphs 21-31 of the Answer and demands strict proof thereof.

WHEREFORE, the Plaintiff prays that the Court inquire into the matters and things alleged herein, dismiss the Defendants' Answer to the extent that it is inconsistent with the Plaintiff's Complaint and grant Plaintiff judgment upon its Complaint.

Signature page to follow

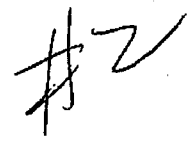
Handwritten signature and initials, possibly "JAC" and "#1".

COCKRELL LAW FIRM, PC



M.W. Cockrell, III  
Sarah C. Campbell  
Andrew Privette  
Attorney for Plaintiff  
159 Main Street  
Chesterfield, SC 29709  
(843) 623-5911

Chesterfield, South Carolina  
April 30 2015





law which may be filed and served prior to the hearing.

AIKEN, BRIDGES, ELLIOTT, TYLER &  
SALEEBY, P. A.

By: 

J. RUFUS BRATTON, III  
181 EAST EVANS STREET (29506)  
P. O. DRAWER 1931 (29503)  
FLORENCE, SC  
Telephone: 843-669-8787  
Facsimile: 843-664-0097  
jrb@aikenbridges.com

Florence, South Carolina  
March 14, 2016

ATTORNEY FOR DEFENDANT SOUTH CAROLINA  
DEPARTMENT OF TRANSPORTATION

STATE OF SOUTH CAROLINA )

COUNTY OF CHESTERFIELD )

Carroll Freeman and Brooke Freeman, )

Plaintiffs, )

v. )

South Carolina Department of )  
Transportation and County of )  
Chesterfield, South Carolina, )

Defendants. )

IN THE COURT OF COMMON PLEAS

C/A #: 15-CP-13-118

**NOTICE OF MOTION AND  
MOTION FOR SUMMARY JUDGMENT**

2016 MAR 30 PM 2:08  
FAVE L. SELLERS  
CLERK OF COURT  
CHESTERFIELD COUNTY, S.C.

**TO: M.W. COCKRELL, III, ESQ., ATTORNEY FOR PLAINTIFFS**

YOU WILL PLEASE TAKE NOTICE that the undersigned attorneys for the Defendant, County of Chesterfield, will move before the Presiding Judge of the Fourth Judicial Circuit at the Chesterfield County Courthouse, Chesterfield, South Carolina, on the tenth (10th) day after service hereof at 10:00 a.m. or as soon thereafter as counsel may be heard, or at such time and place as may be set by the Court, for an Order granting summary judgment in favor of the County of Chesterfield and dismissing the Plaintiff's Complaint pursuant to Rule 56 of the South Carolina Rules of Civil Procedure on the grounds that there is no genuine issue as to any material fact and the County of Chesterfield is entitled to a judgment as a matter of law on the following grounds:

1. **Chesterfield County does not own the downed stop sign in issue in this case.**
2. **Crowley Road, where this stop sign is located, is a SCDOT owned and maintained road. Chesterfield County has no duty to place stop signs on South Carolina Department of Transportation roads.**
3. **Chesterfield County did not have actual notice of the downed stop sign.**
4. **Chesterfield County did not have constructive notice of the downed stop sign.**
5. **Plaintiff has no evidence of actual or constructive notice of the downed stop sign.**

6. There is no genuine issue of material fact and Chesterfield County is entitled to summary judgment as a matter of law.

This motion is based upon the pleadings filed in this case, deposition excerpts, Affidavit of Tim Eubanks, discovery responses, rules of Court, and such other matters as may be properly presented to the Court.

MORRISON LAW FIRM, LLC

By: 

David L. Morrison

J. Jordan Johnson

7453 Irmo Drive, Suite B

Columbia, South Carolina 29212

Phone: (803) 661-6285

Fax: (803) 661-6289

E-mail: david@dmorrison-law.com

E-mail: jordan@dmorrison-law.com

ATTORNEYS FOR THE DEFENDANT COUNTY  
OF CHESTERFIELD

Columbia, South Carolina

March 30, 2016

# Exhibit #1

*Carroll Freeman and Brooke Freeman v. South Carolina Department of Transportation  
and County of Chesterfield, South Carolina*  
C/A #: 15-CP-13-118

2016 MAR 30 PM 2 08  
FAVE L. SELLERS  
CLERK OF COURT  
CHESTERFIELD COUNTY, S.C.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHESTERFIELD )

IN THE COURT OF COMMON PLEAS

Carroll Freeman and Brooke Freeman, )  
 )  
Plaintiffs, )

C/A #: 15-CP-13-118

v. )

**AFFIDAVIT OF TIM EUBANKS**

South Carolina Department of )  
Transportation and County of )  
Chesterfield, South Carolina, )

Defendants. )

2015 MAR 30 PM 2 08  
FAYE L. SELLERS  
CLERK OF COURT  
CHESTERFIELD COUNTY, S.C.

PERSONALLY APPEARED BEFORE ME, Tim Eubanks, who first being duly sworn  
deposes and states as follows:

1. I am the public works director for Chesterfield County and have been employed by Chesterfield County for approximately twenty years.
2. I am familiar with the allegations in this litigation. I am familiar with the intersection of Crowley Road and Isaac Road. Crowley Road is owned by SCDOT, not Chesterfield County. Isaac Road is a dirt road owned by Chesterfield County.
3. I understand that the Plaintiff alleges that the stop sign on Crowley Road at the intersection was down. The stop sign is on Crowley Road and is placed and maintained by SCDOT, not Chesterfield County.
4. As public works director for Chesterfield County, I would be made aware of any downed stop sign that was reported to or found by the County. In this instance, Chesterfield County was not aware that the SCDOT stop sign was down. Chesterfield County had no notice that the sign was down.

5. Chesterfield County has no knowledge of why the stop sign was missing or how long the stop sign had been missing.

FURTHER AFFIANT SAYETH NOT.

  
TIM EUBANKS

SWORN TO BEFORE ME THIS 30<sup>th</sup>

DAY OF March, 2016

  
NOTARY PUBLIC FOR S.C.

COMMISSION EXPIRES: 10-20-18

# Exhibit #2

*Carroll Freeman and Brooke Freeman v. South Carolina Department of Transportation  
and County of Chesterfield, South Carolina*  
C/A #: 15-CP-13-118

2016 MAR 30 PM 2 08  
FAYE L. SELLERS  
CLERK OF COURT  
CHESTERFIELD COUNTY, S.C.

State of South Carolina

In Common Pleas Court

County of Chesterfield

Caroll Freeman and Brooke  
Freeman,



plaintiffs,

V.

2015-CP-13-118

South Carolina Department of  
Transportation and  
County of Chesterfield,

defendants.

Deposition of: Caroll Freeman  
Location: 159 Main Street  
Chesterfield, South Carolina

Date: Tuesday, October 27, 2015

Time: 10:30 a.m. - 11:49 a.m.

Court Reporter: Roger Williamson

The deposition is taken pursuant to notice and/or agreement, in the above-entitled cause pending in the above-named court and pursuant to the South Carolina Rules of Civil Procedure.

Q & A Court Reporting Services  
Post Office Box 4563 (29502)  
273 West Evans St. (29501)  
Florence, South Carolina  
Telephone: (843) 673-9845  
E-mail: info@qacourtreporting.com  
Visit: www.qacourtreporting.com

2016 MAR 30 PM 2 03  
FAYE L. SELLERS  
CLERK OF COURT  
CHESTERFIELD COUNTY, S.C.

1 Q Have you at any time since this accident  
2 been able to determine how the stop sign came to be  
3 missing?

4 A No, sir.

5 Q Do you know how long the stop sign had  
6 been missing?

7 A I do not. No.

8 Q Do you know whether anybody from  
9 S.C.D.O.T. knew the stop sign was missing?

10 A I don't.

11 Q Do you know whether anybody from  
12 Chesterfield County knew the stop sign was missing?

13 A I do not -- I mean, I don't know that. I  
14 don't --

15 Q Okay.

16 A You know, I don't.

17 Q Well, certainly, if they didn't know it  
18 was missing, they can't put it back up, can they?

19 A I would think not. I mean...

20 Q Have you taken any photos of this area or  
21 of your injuries -- any photo of your vehicle, any  
22 photos of anything at all relevant to this accident?

23 A I have not took any pictures. No, sir.

24 Q And you're certainly not a traffic  
25 engineer. Right?

1 sign. Did the county do anything wrong here to  
2 cause your accident?

3 Mr. Bratton: Object to the form.

4 The Deponent: No. I mean, if --

5 By Mr. Morrison:

6 Q Okay. As far as the stop sign is  
7 concerned, you agree that they can't put it back up  
8 if they don't know it's down. Right?

9 A I guess. I -- yeah.

10 Q And you have no knowledge of whether they  
11 knew that it was down.

12 A Sir, I didn't investigate it -- the thing,  
13 you know. I'm not an investigator.

14 Q And you're not aware of any witnesses that  
15 would be able to testify about any of that.

16 A I -- there was a guy stopped by the night  
17 I wrecked that said, you know, the stop sign had  
18 been down, but I couldn't tell you -- I don't know  
19 the guy. I don't know the people that live over  
20 there. I don't know who he is. I just -- you know,  
21 granted, it was pouring down rain. I don't know who  
22 the guy was, you know. I don't -- I don't just hang  
23 out over there in their territory or nothing.

24 Q So there's nobody that you can call or  
25 refer your lawyers to call as a witness, that you're

1 aware of, to testify about anything to do with this  
2 stop sign or how long it had been down. Correct?

3 A I'm not saying that's correct. I'm sure I  
4 could talk to the community and, I mean, you know...

5 Q As we sit here today, are you aware of  
6 anybody?

7 A No, sir.

8 Q Okay. Do you know if there had ever been  
9 a stop sign there?

10 A No, sir.

11 Q You're not alleging that there was a stop  
12 sign there that was just obscured by tree limbs or  
13 brush or something, are you?

14 A No, sir.

15 Q And again, some of these questions are  
16 because of the way lawyers draft their pleadings and  
17 try to cover everything.

18 A Yes, sir.

19 Q Are you aware of what regulations require  
20 for placement -- the placement of stop ahead signs?

21 A I -- no, sir.

22 Q Okay. Are you aware of any similar  
23 accidents at this intersection?

24 A No -- no, sir.

25 Q Are you aware of any modifications that

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CERTIFICATE OF REPORTER

State of South Carolina  
County of Florence

I, Roger Williamson, Court Reporter and Notary Public for the State of South Carolina, do hereby certify that the deponent in the foregoing deposition was, by me, first duly sworn to testify to the truth, the whole truth and nothing but the truth; that said deposition transcript contains a true record of the deposition of said deponent.

I further certify that I am neither attorney nor Counsel for, nor related to or employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this the 21st day of November, 2015.

\_\_\_\_\_  
Roger Williamson

MY COMMISSION EXPIRES:  
March 18, 2022

# Exhibit #3

*Carroll Freeman and Brooke Freeman v. South Carolina Department of Transportation  
and County of Chesterfield, South Carolina*  
C/A #: 15-CP-13-118

State of South Carolina

In Common Pleas Court

County of Chesterfield

Caroll Freeman and Brooke  
Freeman,



plaintiffs,

V.

2015-CP-13-118

South Carolina Department of  
Transportation and  
County of Chesterfield,

defendants.

Deposition of: Brooke Freeman

Location: 159 Main Street  
Chesterfield, South Carolina

Date: Tuesday, October 27, 2015

Time: 12:05 p.m. - 12:28 p.m.

Court Reporter: Roger Williamson

The deposition is taken pursuant to notice and/or agreement, in the above-entitled cause pending in the above-named court and pursuant to the South Carolina Rules of Civil Procedure.

Q & A Court Reporting Services  
Post Office Box 4563 (29502)  
273 West Evans St. (29501)  
Florence, South Carolina  
Telephone: (843) 673-9845  
E-mail: info@qacourtreporting.com  
Visit: www.qacourtreporting.com

1 Q Okay. Who's the -- who are the physicians  
2 at Palmetto Family Medicine?

3 A There's one physician and his --  
4 Dr. Novinger, N-O-V-I-N-G-E-R. The rest of them are  
5 nurse practitioners. He's the only actual  
6 physician.

7 Q Is that Travis Novinger?

8 A Uh-huh. Uh-huh. Yes.

9 Q All right. You're named as a plaintiff in  
10 this lawsuit and what in -- have brought what  
11 appears to be a loss of consortium claim, which can  
12 mean a lot of things. Is -- is there -- what is  
13 your understanding of -- of -- of your claim in this  
14 case?

15 A Kind of explain that again, what -- what  
16 -- what are you asking me?

17 Q What -- what are you claiming? How have  
18 you been injured as a result of or relative to this  
19 matter?

20 A 'Cause -- you were saying loss of  
21 consortium. I mean, that's not only, like, sexual  
22 relations. That's like -- just like in general,  
23 like, with my marriage with him, like, so...

24 Q Okay. And I want you to tell me and -- on  
25 all those matters you just mentioned how you feel

1 this has affected you.

2 A Him as a father, mainly. I mean, him as  
3 -- he wasn't able to do anything. I mean, he didn't  
4 -- he was sore. He wouldn't -- you know, he  
5 wouldn't do anything. He was on the couch. I done  
6 it all. We -- I mean, he coached my son's baseball  
7 team. He wasn't able to do that. I -- I mean, I  
8 was a single parent for a little while.

9 Q Okay.

10 A Like that.

11 Q He told us he was sore for about two to  
12 three weeks.

13 A Uh-huh.

14 Q Do you disagree with that?

15 A No.

16 Q Okay.

17 A No, sir.

18 Q So that the period of time that you're  
19 claiming this -- this was the case is about that  
20 same period of time?

21 A Yes, sir.

22 Q And you say he couldn't coach baseball?

23 A No. He did not.

24 Q Any -- what -- what type of activities  
25 around the house are -- are you claiming he couldn't

1 Q Haven't ever seen him since?

2 A No.

3 Q And he didn't give y'all any contact  
4 information that night?

5 A No.

6 Q Okay.

7 A No. Sorry.

8 Q Did -- did he elaborate on the timing --  
9 the time frame that he was discussing?

10 A No. I know the logging company he said  
11 was still logging at that time.

12 Q Okay. Do you know whether the department  
13 of transportation or the County of Chesterfield had  
14 any knowledge of a stop sign being down?

15 A I do not. No.

16 Q Were you with your husband when he went  
17 back to the scene after the accident?

18 A No, sir.

19 Q Have you ever been back to that  
20 intersection?

21 A No, sir.

22 Q Okay. Did -- did you ever ride up Crowley  
23 Road or Crowley Road after the accident or did  
24 you --

25 A No, sir.

1 money to me, but I mean, not to everybody else,  
2 so...

3 Q As far as the other parts of this lawsuit  
4 not involving you --

5 A Uh-huh.

6 Q -- the liability side for -- do you know  
7 anything about the stop sign, how long it had been  
8 down, how it came to be down? Do you know anything  
9 about anything like that?

10 A I don't. Other than what the guy told us  
11 that drove up, I don't.

12 Q Okay. As far as the dirt road and the  
13 maintenance of the dirt road or the design of the  
14 dirt road, do you know anything about that?

15 A It's a dirt road. That's all I know.

16 Q Okay.

17 A I didn't know one belonged to the other,  
18 if that tells you. I didn't have a clue.

19 Mr. Morrison: Okay. Thank you,  
20 ma'am. That's all I have.

21 Mr. Bratton: Nothing further.

22 (Deponent excused.)  
23 (Whereupon, at 12:28 p.m.,  
24 the taking of the foregoing  
25 deposition was concluded.)

CERTIFICATE OF REPORTER

State of South Carolina

County of Florence

I, Roger Williamson, Court Reporter and Notary Public for the State of South Carolina, do hereby certify that the deponent in the foregoing deposition was, by me, first duly sworn to testify to the truth, the whole truth and nothing but the truth; that said deposition transcript contains a true record of the deposition of said deponent.

I further certify that I am neither attorney nor Counsel for, nor related to or employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this the 21st day of November, 2015.

Roger Williamson

MY COMMISSION EXPIRES:  
March 18, 2022

# Exhibit #4

*Carroll Freeman and Brooke Freeman v. South Carolina Department of Transportation  
and County of Chesterfield, South Carolina*  
C/A #: 15-CP-13-118

2016 MAR 30 PM 2 09  
FAYE L. SELLERS  
CLERK OF COURT  
CHESTERFIELD COUNTY, S.C.

310.0501

RECEIVED MAR 2 1 2016

STATE OF SOUTH CAROLINA )  
COUNTY OF CHESTERFIELD )

IN THE COURT OF COMMON PLEAS  
C/A NO.: 2015-CP-13-118

Caroll Freeman and Brooke )  
Freeman, )

Plaintiffs, )

vs. )

South Carolina Department of )  
Transportation and County of )  
Chesterfield, South Carolina, )

Defendants. )

SOUTH CAROLINA DEPARTMENT  
OF TRANSPORTATION'S ANSWERS  
TO PLAINTIFF'S INTERROGATORIES

MAR 30 PM 2 03  
FAYE L. SELLENS  
CLERK OF COURT  
CHESTERFIELD COUNTY, S.C.

TO: M.W. COCKRELL, III, COUNSEL FOR PLAINTIFFS

This Defendant, South Carolina Department of Transportation, by and through its undersigned attorneys, hereby answers the Interrogatories of the Plaintiff as follows:

GENERAL OBJECTIONS

1. This Defendant objects to these Interrogatories to the extent that they seek documents or other materials protected by the attorney-client privilege or Work Product Doctrine. If any document or other material protected by either of these doctrines is inadvertently produced, that is not to be deemed a waiver of the protection afforded to those documents, and this Defendant requests that you return such document and all copies thereof immediately.

2. This Defendant objects to these Interrogatories to the extent that they seek documents and things that are not relevant to the issues in this litigation; are not reasonably calculated to lead to discovery of relevant or admissible evidence; or seek information related to matters beyond the scope of the issue raised by this action.

3. This Defendant objects to these Interrogatories to the extent that they are overly broad and/or unduly burdensome and to the extent that they seek information not within its possession or control.

4. This Defendant objects to these Interrogatories to the extent that they contain vague and undefined terms that render them unsuitable for response.

5. These responses are made solely for the purpose of responding to discovery requests promulgated in this action and should not be construed as an admission of relevancy, materiality, or admissibility. This Defendant reserves the right to seek exclusion of any response (or any document produced in connection with any such response) at trial and preserves all evidentiary objections, including but not limited to, objections as to confidence, relevance, materiality, and admissibility and preserves any other objections to exclude any statement contained in a document produced in response to these requests as if such statement had been made by a witness present and testifying in court. All such objections and grounds are reserved and may be interposed at the time of trial.

6. The responses set forth herein are based upon information that has been collected and/or reviewed for the purpose of responding to these requests. This Defendant reserves the right to supplement its responses in the event that it obtains additional information that has been requested.

7. Each of the above general objections is incorporated into all of the responses set forth below and no response is to be deemed a waiver of any of the above general objections whether or not specifically set forth in the response.

ANSWERS TO INTERROGATORIES

1. Please identify all persons answering these interrogatories, stating their names, addresses, and occupations.

ANSWER: a. J. Rufus Bratton, III;  
b. Carolyn Kendrick (Special Investigator for South Carolina Department of Transportation).

2. List each person known to the parties or counsel who will be a witness concerning the facts of this case and set forth a summary sufficient to inform the other party of the important facts know or observed and indicate whether or not written or recorded statements have been taken. If so, indicate who has possession of such statements.

ANSWER:

a. Carroll Freeman  
c/o Cockrell Law Firm, P.C.

No statement in possession of this Defendant other than the Plaintiff's deposition. Upon information and belief, Plaintiff is expected to testify regarding the facts and circumstances surrounding the accident as well as any injuries and/or damages sustained in the accident.

b. Brooke Freeman  
c/o Cockrell Law Firm, P.C.

No statement in possession of this Defendant other than her deposition transcript. Upon information and belief, Plaintiff is expected to testify regarding the facts and circumstances surrounding the accident.

c. Trooper Toler  
South Carolina Highway Patrol

No statement in possession of this Defendant outside the South Carolina Traffic Report Form. Upon information and belief, Trooper Toler investigated the accident and is expected to testify regarding his observations and conversations at the scene.

d. Greg Williams  
Resident Construction Engineer for Chesterfield County w/ SCDOT

No statement in possession of this Defendant.

- e. **Jerry Shaw**  
**Chesterfield Maintenance w/ SCDOT**

**No statement in possession of this Defendant.**

- f. **Kent Wagner**  
**Resident Maintenance Engineer for Chesterfield County w/ SCDOT**

**No statement in possession of this Defendant.**

g. **In order to avoid unnecessary duplication, this Defendant lists any and all witnesses identified by Plaintiff or Co-defendant in response to this or any similar interrogatory.**

3. **Set forth a list of photographs, plats, sketches, and other prepared documents in the possession of the party that relate to the claim or the defense in this case.**

**ANSWER:**

**See documents labeled SCDOT 0001 through 00031, which includes photographs of the accident scene location and SCDOT documents pertaining to the location.**

4. **List the names and addresses of all insurance companies which have liability insurance coverage relating to the claim. Give the number(s) of the policy or policies involved and the amount(s) of the liability coverage provided in each policy.**

**ANSWER:**

**South Carolina Insurance Reserve Fund Policy No. T111210014A. Limits of coverage - \$300,000/\$600,000 for claims pursuant to the South Carolina Tort Claims Act.**

5. **List the names and addresses of any expert witnesses the party proposes as a witness at the trial of this case. If you expect to call any person as an expert witness in the issues involved in this case, please state the following:**

- a. **the name and address of each such person;**  
b. **the subject matter on which each expert is expected to testify;**

c. the substance of the facts and opinions to which each expert is expected to testify;  
and

d. a brief statement as to the educational background and training and experience which you content qualifies each person as an expert.

**ANSWER:**

No expert witnesses have been retained at this time. Counsel for this Defendant reserves the right to engage the services of an expert witness at a later date and supplement this response.

6. To the best of your knowledge, state Defendant's whereabouts for the twenty-four (24) hours preceding the accident.

**ANSWER:**

This Interrogatory appears to be directed at an individual and not Defendant SCDOT.

7. Describe in detail any conversations taking place between Defendants regarding the accident.

**ANSWER:**

None known to this Defendant unless the 911 dispatch person that contacted SCDOT's on call foreman the night of the accident is a County of Chesterfield employee.

8. Describe in detail any conversations taking place between Defendants and Plaintiff regarding the accident.

**ANSWER:**

None known to this Defendant.

9. Indicate whether either Defendant has been a party to any lawsuit within the last five (5) years and state the caption name and civil action number of any such lawsuit.

**ANSWER:**

This Defendant objects to this interrogatory in that it is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Further responding, this information is a matter of public record equally accessible to the Plaintiff.

10. Who is responsible for maintaining the roads, or more specifically, the road on which Plaintiff was travelling at the time the accident occurred?

**ANSWER:**

This Defendant would state that Crowley Road is a State owned and maintained road and that Isaac Road is under the jurisdiction and responsibility of the County of Chesterfield.

11. How often are maintenance or road checks performed on roads and highways?

**ANSWER:**

Maintenance and/or road checks on secondary roads are performed annually.

12. Who is responsible for making sure that Stop signs are properly in place?

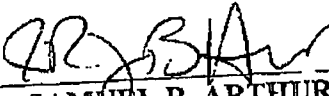
**ANSWER:**

SCDOT is responsible for stop signs including the initial erection of stop signs and maintenance of stop signs on state maintained roads.

13. Who is responsible for replacing Stop signs when they are damaged, or missing?

**ANSWER:**

SCDOT to the extent the stop sign is on a State maintained road and SCDOT has notice of the issue.

By:   
\_\_\_\_\_  
SAMUEL R. ARTHUR, III  
J. RUFUS BRATTON, III  
Aiken, Bridges, Elliott, Tyler & Saleeby, P.A.  
SC Bar # 13618  
PO Drawer 1931  
Florence, SC 29503  
Telephone: 843.669.8787  
Fax: 843.664.0097  
[jrb@aikenbridges.com](mailto:jrb@aikenbridges.com)  
[SFA@AIKENBRIDGES.COM](mailto:SFA@AIKENBRIDGES.COM)

Florence, South Carolina

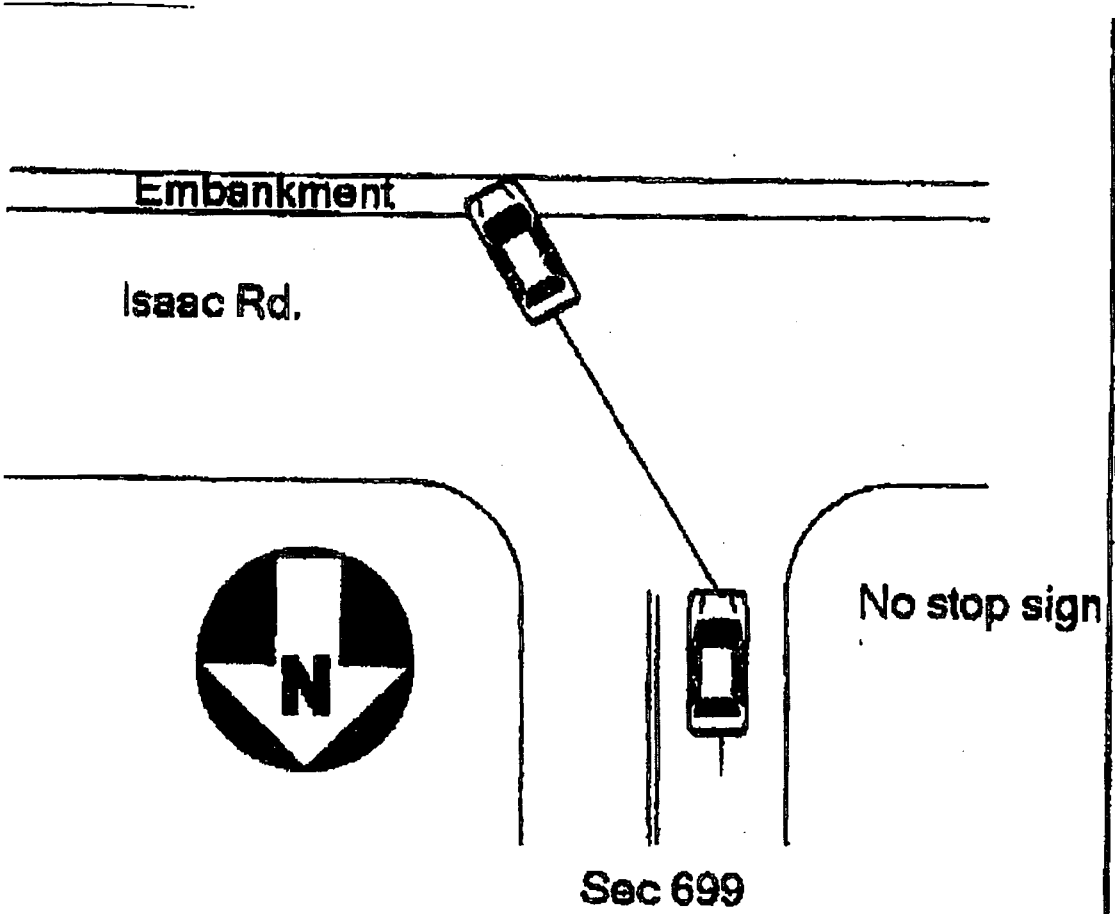
March 4, 2016

ATTORNEYS FOR DEFENDANT  
SOUTH CAROLINA DEPARTMENT  
OF TRANSPORTATION

# Exhibit #5

*Carroll Freeman and Brooke Freeman v. South Carolina Department of Transportation  
and County of Chesterfield, South Carolina*  
C/A #: 15-CP-13-118

2015 MAR 30 PM 2 09  
FAYE L. SELLERS  
CLERK OF COURT  
CHESTERFIELD COUNTY, S.C.



2016 MAR 30 PM 2 09  
FAYE L. SELLERS  
CLERK OF COURT  
CHESTERFIELD COUNTY, S.C.

STATE OF SOUTH CAROLINA )  
 COUNTY OF CHESTERFIELD )  
 )  
 Caroll Freeman and Brooke Freeman, )  
 )  
 Plaintiffs, )  
 )  
 vs. )  
 )  
 South Carolina Department of Transportation )  
 and County of Chesterfield, South Carolina, )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 C/A NO.: 2015-CP-13-118

**AFFIDAVIT OF KENTON HAROLD WAGNER**

2016 MAY 16 AM 9 55  
 FAYE L. CLEGG  
 CLERK OF COURT  
 CHESTERFIELD COUNTY

PERSONALLY appeared before me, Kenton Harold Wagner, who, being duly sworn, states as follows:

1. My name is Kenton Harold Wagner and I am employed by the South Carolina Department of Transportation.
2. I currently serve as the Resident Maintenance Engineer for Chesterfield County and held the same position on April 18, 2014.
3. I am familiar with the allegations set forth in Plaintiff's Complaint wherein it is alleged that the Stop Sign at the intersection of Crowley Road and Isaac Road was down on April 18, 2014.
4. I have reviewed the South Carolina Department of Transportation's records which indicate the South Carolina Department of Transportation had no notification of a downed Stop Sign at the location of the accident until the on-call foreman, Jerry Shaw, was notified by the 911 dispatcher after the subject accident.
5. Attached hereto as Exhibit A is a document entitled Daily Work Report Selection for the dates of April 20, 2013 through April 20, 2014.

6. I hereby certify that Exhibit A is a true and accurate copy of the original document maintained by the South Carolina Department of Transportation.
7. Specifically, Exhibit A indicates that on March 18, 2014, the sign crew for South Carolina Department of Transportation performed maintenance on Crowley Road (Route 699) at the intersection of Isaac Road at Mile Point 1.51.
8. The Report indicates that the Stop Sign at Mile Point 1.51 which is the alleged downed Stop Sign was in place upon the completion of maintenance on March 18, 2014.
9. Attached hereto as Exhibit B is a document entitled Work Request Tracking Selection for signs on Route 699.
10. I hereby certify that Exhibit B is a true and accurate copy of the original document maintained by the South Carolina Department of Transportation.
11. Exhibit B indicates no work requests for downed Stop Signs on Route 699 were received by South Carolina Department of Transportation between the months of March 2013 and April 2014.
12. Exhibit A indicates on April 18th, the Vegetation Control Foreman, who was on call, went out to Route 699 to Mile Point 1.49 through 1.51.
13. Mile Point 1.51 is the area where the accident occurred and Exhibit A shows the work performed by the on-call foreman to replace the Stop Sign following the accident.


14. Therefore, the records of the South Carolina Department of Transportation indicate the Stop Sign was in place one month prior to the accident and that no information indicating the sign was down was received until after the accident occurred on April 18<sup>th</sup>.

**FURTHER AFFIANT SAYETH NOT.**

  
\_\_\_\_\_  
KENTON HAROLD WAGNER

SWORN to and subscribed before me

this 4<sup>th</sup> day of May, 2016.

  
\_\_\_\_\_  
Notary Public for South Carolina

My commission expires: 4/16/2025

SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION  
HIGHWAY MAINTENANCE MANAGEMENT SYSTEM

ALL DWRL

Daily Work Report Selection

District 4 Org. County 13 Organization Unit \_\_\_\_\_ Work County CHESTERFIELD From Date SATURDAY - APR 20, 2013 To Date SUNDAY - APR 20, 2014

Activity \_\_\_\_\_ Work Description \_\_\_\_\_ Asset Group \_\_\_\_\_ Asset \_\_\_\_\_

Route 699 Aux \_\_\_\_\_ Begin MP \_\_\_\_\_ End MP \_\_\_\_\_ Off System Descr. \_\_\_\_\_ Special Event \_\_\_\_\_ Accident \_\_\_\_\_

Report No. \_\_\_\_\_ Date \_\_\_\_\_ Activity \_\_\_\_\_ Work County \_\_\_\_\_ Type \_\_\_\_\_ Route \_\_\_\_\_ Aux \_\_\_\_\_ Beg MP \_\_\_\_\_ End MP \_\_\_\_\_ Accom. Qty \_\_\_\_\_ Off System Descr. \_\_\_\_\_

Organization Unit: 41301 - CHESTERFIELD -ADMINISTRATION

9405029 S 10/02/2013 908 CHESTERFIELD S 699 00 0.00 1.51 0.37

Organization Unit: 41314 - CHESTERFIELD -VEGETAT CONTROL

9842486 04/18/2014 603 CHESTERFIELD S 699 00 1.49 1.51 1.00

Organization Unit: 41315 - CHESTERFIELD -SIGN/TRAFFIC LGT

9772665 S 03/18/2014 603 CHESTERFIELD S 699 00 1.51 1.51 2.00

9725537 S 02/25/2014 603 CHESTERFIELD S 699 00 0.00 0.00 2.00

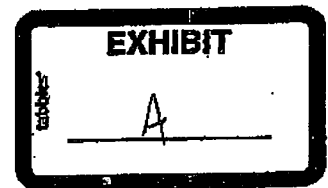
9418473 S 10/08/2013 603 CHESTERFIELD S 699 00 0.00 0.00 1.00

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STATE OF SOUTH CAROLINA )  
COUNTY OF CHESTERFIELD )

IN THE COURT OF COMMON PLEAS  
C/A NO.: 2015-CP-13-118

Caroll Freeman and Brooke Freeman,)  
Plaintiffs, )

vs. )

South Carolina Department of )  
Transportation and County of )  
Chesterfield, South Carolina, )  
Defendants. )

**MEMORANDUM IN SUPPORT OF  
MOTION FOR SUMMARY JUDGMENT**

FILED  
CLERK  
CHESTERFIELD COUNTY  
MAY 23 9 11 02

TO: PRESIDING JUDGE, CHESTERFIELD COUNTY COURT OF COMMON PLEAS:

**I. STATEMENT OF THE CASE**

This matter arises out of an action filed by Plaintiffs Caroll and Brooke Freeman pursuant to the South Carolina Tort Claims Act (hereinafter "SCTCA") alleging negligence against the Defendants. Presently before the Court is Defendant South Carolina Department of Transportation's ("SCDOT") Motion for Summary Judgment pursuant to Rule 56, SCRPC.

**II. FACTUAL AND PROCEDURAL HISTORY**

This matter arises out of an automobile accident that occurred on April 18, 2014 in Chesterfield County, South Carolina. On that day, Plaintiff Caroll Freeman was traveling down Crowley Rd. at or near the intersection of Crowley Road and Isaac Road, when his vehicle veered off the side of the road down an embankment and over a ditch. *See Complaint* at ¶ 5. Plaintiff alleges that no stop sign or other device was present at the intersection of Crowley Road and there was no guardrail in place to stop Plaintiff's vehicle from going into the ditch. *Id.* at ¶

6. It is alleged that Defendants had prior knowledge of the conditions, which has been denied. *Id.* at ¶ 8; see also *Answer of Defendant SCDOT*.

### III. STANDARD OF REVIEW

A court will grant a moving party's motion for summary judgment when no genuine issue of material fact exists, and that party is entitled to judgment as a matter of law. Rule 56(c), SCRPC. In determining whether any genuine issues of fact exist, the court must view both the evidence and all reasonable inferences able to be drawn from the evidence in the light most favorable to the non-moving party. *Simmons v. Tuomey Regional Medical Center*, 341 S.C. 32, 39, 533 S.E.2d 312, 316 (2000). Nonetheless, the court must search the proof to ascertain whether it discloses a real issue, rather than a formal, perfunctory, or shadowy one. *Saluda Motor Lines v. Crouch*, 300 S.C. 43, 46, 386 S.E.2d 290, 292 (Ct.App.1989). The presence of a factual dispute is not enough to preclude summary judgment; the issue must be one which a party is entitled to litigate. *Id.* "In order to resist a motion for summary judgment, the nonmoving party must come forward with specific facts showing genuine issues necessitating trial." *Nationsbank v. Scott Farm*, 320 S.C. 299, 303, 465 S.E.2d 98, 100 (Ct.App.1995).

The moving party need not support his motion with affidavits or other similar materials negating the opponent's claim. Once the moving party carries its initial burden, the opposing party "may not rest upon the mere allegations or denials of his pleading, but his response . . . must set forth specific facts showing that there is a genuine issue for trial." *Midland Mut. Life Ins. Co. v. Harrell*, 331 S.C. 394, 397-98, 503 S.E.2d 189, 190-91 (Ct.App.1998) *reh'g denied* (Aug. 1998), *cert. denied* (Apr. 1999).

#### IV. DISCUSSION

**Summary judgment is proper as to Plaintiffs' claims against SCDOT as Plaintiffs have failed to present evidence that SCDOT had actual or constructive notice of the stop sign being down.**

S.C.Code Ann. § 15-78-60(15) (2005) states: "a governmental entity is not liable for a loss that results from the absence, condition, or malfunction of any sign, signal, warning device, illumination device, guardrail, or median barrier unless the absence, condition, or malfunction is not corrected by the governmental entity responsible for its maintenance within a reasonable time after actual or constructive notice."

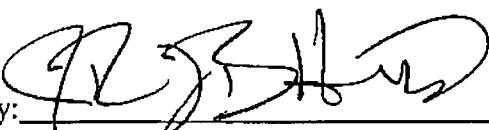
Plaintiffs in this case have been deposed and during the course of discovery have offered no evidence to support its allegation that Defendant SCDOT had any prior knowledge of the condition allegedly at issue on Crowley Road. To the contrary, Kenton Wagner, the Resident Maintenance Engineer employed by SCDOT for Chesterfield County, has reviewed SCDOT records regarding the intersection where the accident occurred and has indicated in an affidavit (attached hereto as Exhibit A) that the records show SCDOT did not have notice of the stop sign being down. *See Affidavit of Kenton Wagner*. Specifically, the affidavit reflects that SCDOT performed maintenance at the specific location of the accident approximately one month prior to the accident and the stop sign was in place at that time. *Id.* at ¶¶ 7-8. Additionally, no notifications of the sign being down were received from that time until the 911 dispatch call reporting the accident. *Id.* at ¶ 4.

As the Defendant SCDOT has shown that no material fact exists, Plaintiff may not rest on mere allegations alone. Therefore, as Plaintiff has the burden to establish notice and has presented no evidence to show actual or constructive notice, Defendant is not liable for Plaintiffs' loss as set forth in S.C.Code Ann. § 15-78-60(15).

**V. CONCLUSION**

As discussed in detail above, summary judgment is proper as to Plaintiffs' claims against Defendant SCDOT. Based upon the foregoing, Defendant SCDOT respectfully asks the court to grant its Motion for Summary Judgment, dismissing all of Plaintiff's claims against SCDOT with prejudice.

AIKEN, BRIDGES, ELLIOTT, TYLER &  
SALEEBY, P. A.

By: 

J. RUFUS BRATTON, III  
181 EAST EVANS STREET (29506)  
P. O. DRAWER 1931 (29503)  
FLORENCE, SC  
Telephone: 843-669-8787  
Facsimile: 843-664-0097  
jrb@aikenbridges.com

Florence, South Carolina  
May 20, 2016

ATTORNEYS FOR THE DEFENDANT SOUTH  
CAROLINA DEPARTMENT OF TRANSPORTATION


STATE OF SOUTH CAROLINA  
COUNTY OF CHESTERFIELD

)  
) AFFIDAVIT OF MELISSA EASON ROSCOE  
)  
)

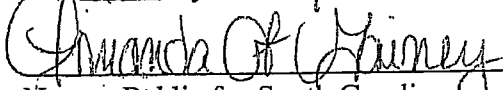
Personally appeared before me, the undersigned, who, upon being duly sworn, deposes and states as follows:

1. My name is Melissa Eason Roscoe.
2. I am familiar with the Isaac road T intersection with Crowley Road.
3. The stop sign at the intersection has been down multiple times.
4. I travel this road almost daily.
5. I specifically remember the sign being down in early April 2014.
6. I called Chesterfield county administration to report the sign being down for fear of an accident; I made this call the first week of April 2014.
7. I do not know the exact date of the call, but do know it was prior to April 18, 2014, as I felt upset that no one at the county cared to correct the sign because it stayed down after my call and a wreck actually occurred.
8. I hate it took someone getting hurt to for the county to listen.

Further Deponent sayeth not.

  
\_\_\_\_\_  
Melissa Eason Roscoe  
Deponent

Sworn to and subscribed before me  
This 20<sup>th</sup> day of May, 2016

  
Notary Public for South Carolina  
My Commission Expires: 9/10/2025



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WITNESSES

PAGE

(NO WITNESSES INTRODUCED DURING HEARING)

EXHIBITS

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NO.

DESCRIPTION

EV.

(NO EXHIBITS INTRODUCED DURING HEARING)

1 THE COURT: Mr. Bratton, is this your motion.

2 MR. BRATTON: Yes, Your Honor. I think your clerk  
3 indicated that he was going to print a copy of the  
4 memorandum I forwarded but if not I've got an extra copy -  
5 - -

6 THE COURT: I think I've got it right here.

7 MR. BRATTON: - - - in the statute from the Tort  
8 Claims Act.

9 THE COURT: Okay. Mr. Bratton, if you would  
10 identify this matter for the record please.

11 MR. BRATTON: Yes, Your Honor. I'm Rufus Bratton  
12 with the Aiken, Bridges Law Firm here on behalf of the  
13 South Carolina Department of Transportation. This is our  
14 motion for summary judgment that was filed back on March  
15 16<sup>th</sup> of this year.

16 This action arises out of a single car automobile  
17 accident that occurred back on April 18, 2014. Involved in  
18 that accident was the plaintiff, Carroll Freeman. Brook  
19 Freeman has brought a consortium claim. The claim is  
20 brought pursuant to the South Carolina Tort Claims Act as  
21 DOT is a governmental entity. The accident occurred at an  
22 intersection on Crowley Road and Isaac Road. It's alleged  
23 in the complaint that the stop sign at the end of Crowley  
24 Road was down at the time of the accident. The plaintiff  
25 then went through and subsequently wrecked his vehicle.

1 The complaint also alleges that DOT knew of these  
2 conditions prior to the accident which, again, we would  
3 argue it's simply nothing more than a mere allegation.  
4 We've conducted the deposition of the plaintiffs in this  
5 matter and conducted written discovery and there's been no  
6 indication of notice, evidence of notice to SCDOT of the  
7 stop sign being down at that time, thus, we filed our  
8 motion for summary judgment. And based on the statute, SC  
9 Code 15-78-60 and specifically, (15), which I've given to,  
10 Your Honor, and it basically indicates, "that a  
11 governmental entity is not liable for loss resulting from",  
12 and then reading it, "absence, condition, of malfunction of  
13 any sign, signal, warning device, illumination device  
14 guardrail or medium barrier unless the absence, conditions,  
15 or malfunction is not corrected by the governmental entity  
16 responsible for its maintenance within a reasonable time  
17 after actual or constructive notice." Again it's our  
18 position that SCDOT had no actual or constructive notice  
19 and thus, we feel we're entitled to summary judgment. I  
20 will indicate that we did receive, I received it yesterday  
21 my office, an affidavit from plaintiff's counsel, that I  
22 anticipate she will bring to the Court's attention. It  
23 looks like that was faxed over the weekend. First of all,  
24 I argue that it's untimely and should not be considered.  
25 Regardless of that fact, I still believe that this does not

1 indicate that SCDOT had notice of the stop sign being down.  
2 Specifically, it references an individual who some two  
3 years later and, at least, two months after we filed  
4 motion, coming forward with a sworn affidavit indicating  
5 that she remembers calling back in April, 2014. But the  
6 person, the entity that she called, indicated in the  
7 affidavit is the Chesterfield County Administration. No  
8 affiliation of the South Carolina Department of  
9 Transportation. Thus we still remain, it's still our  
10 position that SCDOT had no notice of a sign being down.

11 Furthermore, the memorandum that has been submitted I  
12 prepared, I provided an affidavit of Kent Wagoner, who is  
13 the Resident Maintenance Engineer for South Carolina  
14 Department of Transportation. He's indicated in the  
15 affidavit that he's reviewed the records and based on that  
16 review there's an indication that, that sign, specific  
17 sign, was up on March 18, 2014 which is approximately a  
18 month prior to and that the first indication of any type of  
19 the records indicating that DOT was ever notified of that  
20 sign being down was the 911 dispatch call that occurred  
21 after this accident. Again, that's further indication that  
22 they had no notice and I think, quite frankly, that's going  
23 above and beyond. I think the burden is on them to prove  
24 that we did have notice and they have simply not done that  
25 by way of deposition, testimony, discovery or any of the

1 contents of the affidavit that was provided over the  
2 weekend. For those reasons, we feel that 15-78-60 (15),  
3 complies and DOT is entitled to summary judgment. Thank  
4 you.

5 THE COURT: Thank you, Mr. Bratton. Mrs. Campbell?

6 MRS. CAMPBELL: Thank you, Your Honor. Sara  
7 Campbell on behalf of the plaintiffs, and for Mr. Trey  
8 Cockrell which is counsel of record in this case. In  
9 response to the defendant's motion for summary judgment,  
10 the plaintiff - - well, I'll address the affidavit first.  
11 The plaintiff did provide an affidavit to counsel for the  
12 defendants. It was signed by the affiant on Friday. It  
13 was put in the mail to them on Friday and then it was faxed  
14 to them, either late Friday or Saturday, I'm not sure  
15 which. As far as the - - I do have that affidavit and will  
16 hand it up to the Court. As far as the time limits of that  
17 affidavit, the rule provides that we have two days before  
18 the hearing to provide any response to or any affidavit in  
19 response to their motion for summary judgment. However, we  
20 just received their memorandum. It was mailed to us on May  
21 12<sup>th</sup>. The rule certainly allows us ten days to respond or  
22 reply to the memorandum of the defendants, that was put in  
23 the mail to us on the 12<sup>th</sup>. Ten days from the date of the  
24 mailing would've been yesterday. So the affidavit was  
25 provided in replying from plaintiff's to the defendant's

1 within ten days of our receipt of their memorandum. Now,  
2 obviously, Rule 6, allows us five extra days for mailing  
3 and so arguably we have fifteen days to respond to their  
4 memorandum. The fact that the hearing is today shouldn't  
5 have any bearing on the times that the plaintiffs are  
6 allowed to respond or offer some reply.

7 In the deposition of both plaintiffs, they both  
8 indicated that there is an individual that they are not  
9 familiar with and do not know the name of, who told them on  
10 the date of the accident that, that stop sign was missing.  
11 They had to do an investigation to find who this person was  
12 because they didn't know his name. In locating that guy,  
13 figure out where he lived, and so in speaking with him,  
14 they then found this person who had called and reported  
15 that the stop sign was missing to Chesterfield County.  
16 That's as far as the affidavit which I'll hand up to the  
17 Court, I believe, y'all have.

18 As far as notice, actual or constructive notice goes,  
19 to either Chesterfield County or to the Department of  
20 Transportation there is case law which I've provided a copy  
21 of counsel and provided a copy to the Court, I believe the  
22 plaintiff's name is pronounced Giannini versus South  
23 Carolina Department of Transportation. In that case there  
24 is a finding of the Court that publication - - in that  
25 particular incidence it refers to the same statute that

1 they're barriers missing and the plaintiff in that case  
2 alleges that because the barriers were not placed by the  
3 Department of Transportation, his car veered into the  
4 opposite lane of traffic and caused an accident. The Court  
5 found that publication in a newspaper of prior traffic  
6 accidents within two miles of that same stretch of highway  
7 constituted notice to the Department of Transportation. In  
8 that case, that's just a newspaper article that was printed  
9 that constituted notice. Here we have an individual saying  
10 that she travels that road often, is familiar with that  
11 road, notice that, that stop sign was missing and then  
12 called and reported it to the county, another government  
13 entity. Now, what the county did with that information and  
14 whether they pass it on to the Department of Transportation  
15 regardless, I believe, at least at the summary judgment  
16 stage, creates a question of fact. I know that this Court  
17 is well aware that plaintiff only has to provide a  
18 scintilla of evidence and question the fact to repeat  
19 summary judgment and I believe that plaintiff's affidavit  
20 achieves that. I believe, and the plaintiff's position is  
21 that it's timely and we would ask the Court to find that in  
22 light most favorable to the plaintiff's as nonmoving party.  
23 A summary judgment at this stage would not be proper  
24 because there is a question of fact as to whether or not  
25 there was notice to the department and to the county. So

1 for those reasons we would ask that the Court dismiss both  
2 the DOT's and the county's motion for summary judgment.

3 MR. BRATTON: Your Honor, just briefly in reply.  
4 She's handed us a case that mentions a newspaper article  
5 which I don't see how that's has any connection to this  
6 case. There's certain limited published about this area in  
7 question. As for the affidavit, it's very clear and I'm  
8 not sure if, Your Honor, has a copy of the one that she's  
9 provided but it specifically reads, "I called Chesterfield  
10 County Administration to report the sign being down for  
11 fear of an accident. I made this call the first week of  
12 April, 2014." It goes no further to say anything with  
13 respect to the South Carolina Department of Transportation  
14 and to assume or anything like that would be, I mean,  
15 there's no duty on anything further. She's provided no  
16 evidence to support that subsequent to that call that DOT  
17 ever received notice of this, Your Honor, and I think  
18 they're reaching to, to basically, say that I don't know  
19 what was done next. Well, she's got to prove that  
20 something was or was not done next. And I think, we feel  
21 like, that based on the contents of this affidavit and  
22 based on the affidavit that's been submitted by the  
23 resident name of Cindy Riordan it shows that they never  
24 received no notifications during that time frame. The DOT  
25 had no notice of this. Thank you, Your Honor.

1 THE COURT: Okay. Anything else, Mrs. Campbell?

2 MRS. CAMPBELL: Your Honor, just briefly. Your  
3 Honor, the annex that in our mentioning of bringing the  
4 case law up is that if a newspaper article constitutes  
5 notice, certainly a phone call to a government entity  
6 constitutes notice to the DOT and that's the position the  
7 plaintiff - - there was notice, whether it's enough notice  
8 to satisfy them or not, I don't think really is the  
9 question today. We don't have to reach, we only have to  
10 provide the Court with the scintilla of evidence of the  
11 question of fact and I believe the affidavit achieves that.

12 THE COURT: Okay.

13 MR. BRATTON: Just on that note, these two entities  
14 have no connection and I think based on that argument  
15 that's if you're saying you call the police department that  
16 the city water department is going to know the same thing,  
17 they're supposed to have notice of whatever you call the  
18 police department about. There's no mingling of these two  
19 governmental entities and to say you called one and told  
20 them something and to have that imputed onto another, would  
21 not be correct under the statute.

22 THE COURT: Now, Mr. Morrison, you get to stand up.

23 MR. MORRISON: I was trying. My name is David  
24 Morrison. I'm here on behalf of Chesterfield County. And  
25 we, too, have a summary judgment motion pending. At first,

1 addressing again the timeliness of the affidavit, I  
2 received the affidavit by fax on Saturday. So I saw it for  
3 the first time yesterday. I don't believe that complies  
4 with the timeliness under the rules. Our motion was filed  
5 on March 30<sup>th</sup> so they - - let me make sure that's right.  
6 Yes, our motion was filed on March 30<sup>th</sup> so they've had it  
7 for some seven weeks now, eight weeks and just file the  
8 affidavit. I presume it's been filed today or maybe they  
9 filed it Friday. I didn't receive it into yesterday.

10 In any event, the undisputed facts in this case are  
11 that there was a stop sign down at Crowley Road. Crowley  
12 Road is a road that is owned and maintained by DOT. The  
13 stop sign in issue is a stop sign that was owned and  
14 maintained by DOT. Chesterfield County has no relationship  
15 whatsoever with regard to that road and that stop sign.  
16 This was a 't' intersection where Crowley Road ended at a  
17 dirt road called Isaac Road. Chesterfield County does own  
18 the dirt road, Isaac Road but the stop sign is not on Isaac  
19 Road. The stop sign is on Crowley Road. There's no  
20 dispute in this record that DOT owns the stop sign, DOT  
21 owns the road that the stop sign goes on. Chesterfield  
22 County does not own or maintain any of that. When Mr. - -  
23 when Rufus was reading the part about 15-78-60 (15), one  
24 phrase out of that statute talked about the government  
25 entity is responsible for its maintenance has to be on

1 notice. Chesterfield County is not the governmental entity  
2 responsible for the maintenance of that stop sign. We have  
3 provided an affidavit to that affect. I think it's clear  
4 specific from the fact that there's no dispute about the  
5 ownership. We've also provided an affidavit that, in fact,  
6 Chesterfield County does not maintain Crowley Road or that  
7 stop sign. We've provided the affidavit of Tim Eubanks to  
8 that affect. It's attached to our motion. If you do  
9 consider the affidavit, the affidavit does indeed say that  
10 the plaintiff put Chesterfield County on notice of the down  
11 stop sign. However, that really makes no difference even  
12 if you do consider it. It makes no difference to the  
13 outcome here because Chesterfield County doesn't own or  
14 maintain that road or that stop sign. Calling Chesterfield  
15 County and telling there's a problem on I-77 doesn't give  
16 Chesterfield County the duty to go to do something on I-77.  
17 Likewise, calling Chesterfield County and telling them  
18 there's a stop sign down on Crowley Road, doesn't give  
19 Chesterfield County a duty to go do something about that  
20 stop sign. It's just not there's and they're not  
21 responsible for the upkeep or the maintenance and they  
22 don't do any maintenance at that area on DOT roads and all  
23 that somehow - - so the facts here really are undisputed.  
24 Chesterfield County has no responsibility, no legal  
25 responsibility for the ownership or maintenance of this

1 road, Crowley Road or of this stop sign, regardless, if  
2 whether we have notice of it or not. We contend that the  
3 affidavit is not timely but our affidavit establishes that  
4 there was no notice. If you consider her affidavit, it  
5 goes back to the issue as to whether notice was provided  
6 and we would need to take a deposition to clarify some of  
7 that. But duly it doesn't matter the outcome because even  
8 if we had this is simply not Chesterfield County's to  
9 maintain.

10 THE COURT: Thank you, Mr. Morrison. Mrs.  
11 Campbell?

12 MRS. CAMPBELL: Thank you, Your Honor. The  
13 plaintiffs would stand by and reiterate our argument as to  
14 DOT's motion for summary judgment and in response to  
15 county's argument would offered. First, that in the  
16 affidavit of Tim Eubanks, in paragraph four, he is asserts  
17 under oath that he would be made aware of any down stop  
18 signs. Chesterfield County was not aware that the SCDOT  
19 stop sign was down. Chesterfield County had no notice that  
20 the stop sign was down. To me that implies in his  
21 affidavit that Chesterfield County if they had known would  
22 have let SCDOT know. I believe, again, though we have a  
23 question of material of fact as to whether or not Tim  
24 Eubanks knew or the county knew based on their affidavit  
25 that the stop sign was down and I don't believe that we

1 have to go any further as to whether or not a question of  
2 material of fact exist.

3 As far, again, timeliness of our affidavit, we were  
4 able to locate and procure this witness on Friday. We  
5 immediately gave notice to the defendants via mail and via  
6 fax of our affidavit in response. Today is Tuesday. You  
7 know, there's certainly, we would welcome the DOT and the  
8 county to depose the affiant of the plaintiffs affidavit.  
9 If they feel like, you know, more time would, in some way,  
10 allow them to defeat that affidavit, we would certainly  
11 disagree and would disagree that the end of justice would  
12 be served by excluding it at a summary judgment motion.

13 We're only here as to whether or not the question of  
14 fact. I believe that we have shown that there is and again  
15 in the deposition that are given by both plaintiffs, they  
16 indicate that there is somebody, we just don't know who  
17 they are. Well, finally we found them and we've gotten an  
18 affidavit and we've provided that. As a citizen of  
19 Chesterfield County, I find it disheartening that they  
20 would argue that even if you report a problem on a road in  
21 Chesterfield County. We're not talking about I-77, we're  
22 talking about a road in Chesterfield County. If they feel  
23 like they have no duty under the law to make sure that  
24 roads within this county are well maintained. Be at the  
25 responsibility of the South Carolina Department of

1           Transportation or the county that's very disheartening  
2           because there are admitting that road that crosses that  
3           intersection is their road, but because the stop sign, 5  
4           feet from there, is maintained by the Department of  
5           Transportation and they have no duty and own no liability.  
6           We believe it is just - - there's certainly, at least, the  
7           question of fact as to whether based on the affidavit of  
8           Tim Eubanks, the county did have some duty to the  
9           plaintiffs to report and make them aware of the report that  
10          the affiant made to the county and would assert that, that  
11          does leave some question of fact as to the liability of  
12          both DOT and the county and on that basis we would ask the  
13          Court to deny the summary judgment.

14                 THE COURT:         Yes, sir, Mr. Morrison?

15                 MR. MORRISON:    In the first incidences, the existence  
16          of a duty is a question of law for the Court. Here there  
17          can be no dispute that Chesterfield County has no duty to  
18          maintain roads that do not belong to Chesterfield County.  
19          It's simply not their road. They've never done the  
20          maintenance on it. They don't do the maintenance on the  
21          stop sign and we've got an affidavit to that affect. It's  
22          simply does not belong to Chesterfield County. The  
23          plaintiff can claim that it's disheartening all they want  
24          but Chesterfield County is under no obligation to maintain  
25          other folks roads and in this incidences DOT's roads. So

1           there simply is no duty. The affidavit doesn't change that  
2           fact. Whether somebody called Chesterfield County by  
3           mistake, it doesn't change that fact. It's just not the  
4           county's.

5           THE COURT:       All right. Mrs. Campbell, do you have  
6           a copy of this affidavit, this looks like the original.

7           MRS. CAMPBELL: That's not the original? Oh, I'm  
8           sorry. I thought I handed up to you, Judge.

9           THE COURT:       I said this is the original but I  
10          didn't know if you had an extra copy.

11          MRS. CAMPBELL: Oh, yes, Your Honor.

12          THE COURT:       All right. Counsel, I'll let you hear  
13          from me. I'll take this matter under advisement. I'll let  
14          you hear from me in the next couple of days.

15          MR. MORRISON: Thank you, Your Honor.

16          MR. BRATTON: Thank you, Your Honor.

17          MRS. CAMPBELL: Thank you, Your Honor.

18          (CONCLUSION OF THE HEARING ON MAY 23, 2016)

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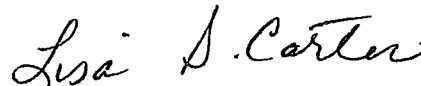
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CERTIFICATE

1  
2  
3 I, the undersigned Lisa S. Carter; Official Court  
4 Reporter for the Fourth Judicial Circuit of the State  
5 of South Carolina, do hereby certify that the  
6 foregoing is a true, accurate, and complete excerpt of  
7 transcript of record of all the proceedings had and  
8 evidence introduced in the hearing of the captioned  
9 cause, relative to appeal, in the Fourth Circuit Court  
10 for Chesterfield County, South Carolina, on the 2nd  
11 day of August, 2016.

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

14  
15 

16  
17 Lisa S. Carter

18 Circuit Court Reporter

19 December 10, 2016  
20  
21  
22