

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Gordon G. Cooper, Master

Case No. 2016-CP-42-3107

Brandon Hendrickson.....Appellant,

v.

Dennis Wheeler.....Respondent

RECORD ON APPEAL

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SC Court of Appeals

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In the Court of Appeals

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Brandon Hendrickson.....Appellant,

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Order of February 1, 2017

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Brandon Hendrickson,

Plaintiff,

vs.

Dennis Wheeler,

Defendant.

ORDER

2016 - CP - 42 - 03107

This matter comes before my by way of Defendant's Motion to Set Aside Default.

A damages hearing was pending and set for January 30, 2017. Plaintiff's attorney consented to Defendant's request to have Defendant's Motion to Set Aside Default heard before the damages hearing. Jon E. Newlon, Esq., appeared for the Plaintiff who also appeared. Jeanmarie Tankersly, Esq., appeared the Defendant who did not appear. Mr. Newlon waived any objections as to this Court's ability to entertain and rule upon Defendant's Motion to Set Aside Default.

At the hearing, Defendant argued that (1) the entry of default and/or default judgment should be set aside because of good cause, (2) the default occurred because of mistake or excusable neglect, (3) the motion to set aside default was made within a reasonable time, (4) the Defendant was improperly served with the summons and complaint, (5) the Defendant was placed into default without proper notice and without proper service, and (6) valid defenses exist. Defendant's attorney noted that she could not find her client.

In response, Plaintiff argued that (1) the proper standard to be applied is under Rule 60(b) which does not include a "good cause" standard because there is judgment, (2) the Defendant has not shown any evidence of mistake or excusable neglect by way of

affidavit or other sworn testimony, (4) the affidavit of personal service on the Defendant by the officer is facially valid and Defendant has not presented any evidence to the contrary, (5) the Defendant, who did not make an appearance, was properly noticed of the default damages hearing according to the exhibits filed with Plaintiff's memorandum in opposition, and (6) the Defendant had not valid defense to liability because he pled guilty in the criminal case and no offer of evidence was made as to a claim challenging proximate cause or damages.

After a review of the evidence presented at the hearing, the memorandums submitted and the case file, along with a review of the applicable law, I make the following findings of fact and law. Procedurally,

1. On April 5, 2016, Defendant pled guilty in Spartanburg Magistrate's Court to Failure to Yield Right of Way during Left Hand Turn which arises from the same incident in this civil case.
2. On September 23, 2016, Defendant was properly served with the lawsuit.
3. Plaintiff properly followed the procedural steps to obtain an Default Judgment with a reference to a damages hearing before a Master.
4. On November 21, 2016, Judge Mark Hayes, II, signed and filed an Order of Default Judgment with a reference to the Master for a damages hearing.
5. On December 16, 2016, Defendant filed and served a Motion to Set Aside Default (54 days after service of the lawsuit).
6. On January 5, 2017, the Notice of Damages Hearing was filed and served upon Defendant's attorney and upon Defendant (by first class mail).

Regarding the arguments at the hearing, the standard for granting relief from default judgment is set forth in Rule 60, SCRPC because there is a judgment in this case. Regardless of whether this matter is reviewed under Rule 55(c) or Rule 60(b), Defendant is required to come forth with evidence to support his motion. The evidence may come in the

Order of February 1, 2017

form of an affidavit or sworn testimony. Defendant did not present any evidence to support his motion. BB&T v. Taylor, 369 S.C. 548, 633 S.E.2d 501 (2006). Attorney arguments are not evidence to support good cause, mistake or excusable neglect or meritorious defense. Standard Federal Sav. and Loan Ass'n v. Mungo, 306 S.C. 22, 410 S.E.2d 18 (Ct. App. 1991). In this case, Defendant presented no evidence in support of relief from default.

Regarding a meritorious defense, this is required for a judgment to be set aside. See Mitchell Supp. Co., Inc., v. Gaffney, 297 S.C. 160, 375 S.E.2d 321 (Ct. App. 1988). The meritorious defense as to liability cannot be shown when a Defendant pled guilty in criminal court to a charge giving rise to the subsequent civil case. Zurcher v. Bilton, 379 S.C. 132, 666 S.E.2d 224, 226-227 (2008) (citing Doe v. Doe, 346 S.C. 145, 148, 551 S.E.2d 257, 258 (2001)); S.C. Prop. and Cas. Ins. Guar. Assoc. v. Wal-Mart Stores, Inc., 304 S.C. 210, 213, 403 S.E.2d 625, 627 (1991). In this case, the Defendant pled guilty to the very charge giving rise to the civil case and, therefore, cannot show a meritorious defense as to liability.

Regarding service of the summon and complaint, the Affidavit of Service is valid on its face and cannot be overcome without proof. Fassett v. Evans, 364 S.C. 42, 47, 610 S.E.2d 841, 844 (Ct. App. 2005) (quoting Richardson Constr. Co. v. Meek Eng'g and Constr., Inc., 274 S.C. 307, 311, 262 S.E.2d 913, 916 (1980)) ("[A]n [officer's] return of process creates legal presumption of proper service that cannot be 'impeached by the mere denial of service by defendant'"). In this case, a law enforcement officer personally served the Defendant according to the officer's affidavit of service. This argument has no merit.

For the foregoing reasons, Defendant Motion to Set Aside Default is denied.

IT IS SO ORDERED.

Order of February 1, 2017

Gordon G. Cooper, Master-in-Equity
Seventh Judicial Circuit

_____, 2017
_____, S.C.

ELECTRONICALLY FILED - 2017 Feb 01 2:58 PM - SPARTANBURG - COMMON PLEAS - CASE#2016CP4203107

Order of February 1, 2017



Spartanburg Common Pleas

Case Caption: Brandon Hendrickson VS Dennis Wheeler

Case Number: 2016CP4203107

Type: Order/Other

It is So Ordered

s/Judge Gordon G Cooper-3065

Electronically signed on 2017-02-01 14:09:13 page 5 of 5

ELECTRONICALLY FILED - 2017 Feb 01 2:58 PM - SPARTANBURG - COMMON PLEAS - CASE#2016CP4203107

Order of February 7, 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
Brandon Hendrickson,	)	
	)	
Plaintiff,	)	ORDER
	)	
vs.	)	2016 - CP - 42 - 03107
	)	
Dennis Wheeler,	)	
	)	
Defendant.	)	
	)	

This matter comes before this Court by way of Judge Hayes' Order of Default Judgment with a reference for a damages hearing which was held on January 30, 2017. Present at the hearing was the Plaintiff, Brandon Hendrickson and his attorney Jon E. Newlon, Esq. Jeanmarie Tankersly, Esq., appeared for the Defendant Dennis Wheeler who was not present.

Plaintiff Brandon Hendrickson testified to his damages. He testified to the amount of his medical bills, \$7,675.00, and lost wages, \$1,300.00 which were set out in Plaintiff's Exhibit 4. Defendant did not object to the introduction of this Exhibit or to the amount of medical bills or lost wages claimed by Plaintiff.

Further, Plaintiff testified to his noneconomic loss in the form of shock, anxiety and mental disturbance immediately following the accident and at the scene. Plaintiff also, while referencing his emergency room record, testified to a pain level of 8 out of 10 just before he was administered pain medication on the day of the accident. Plaintiff also testified he was given prescriptions for muscle relaxers and pain medications which he took for a couple weeks after leaving the emergency room. Plaintiff also described the nature of the pain he experienced to his neck, low back and hips. Plaintiff also testified that his pain worsening after running out of his prescription medication so he

sought the services of Dr. Arcamone of River Falls Chiropractic. Plaintiff's Exhibit 4 indicates that he saw Dr. Arcamone for 20 visits for a total of \$5,930.00 and during that time, experienced pain from level 7/8 out of 10 at the beginning of treatment to 1/2 out of 10 by the time this treatment concluded. He also testified to a muscle spasm that was found during the emergency room visit which was also found and treated by Dr. Arcamone.

Defendant cross-examined Plaintiff regarding the time it took him to get from the accident scene to the emergency room. Plaintiff also pointed out that a nurse made an entry that "pain onset was 2 hours ago while exercising.

In response, Plaintiff pointed out that this was a mistaken entry because there were a number of nurses in training at the time she confused Plaintiff with another patient. Plaintiff also pointed out that the nurse made a mistaken entry by recording "no back tenderness" when the treating doctor found, upon examination of Plaintiff's back, "vertebral point tenderness at lumbar spine spasm in bilateral lower paraspinal muscles."

Defendant further cross-examined Plaintiff about an entry in the emergency room record that said "pain improved." In response, Plaintiff pointed out that the emergency room record stated showed he was given muscle relaxers and pain medications at 1905 which caused his pain to improve prior to his departure from the emergency room.

Defendant further cross-examined Plaintiff regarding a two week delay between going to the emergency room to and treatment by Dr. Arcamone. In response, Plaintiff pointed out that he was taking medications during this time, the medications ran out and, therefore, he sought Dr. Arcamone's services.

At the close of the evidence, Plaintiff argued for recovery of medical bills in the

amount of \$7,675 and lost wages in the amount of \$1,300, noneconomic damages in the form of shock, anxiety, disruption of life, pain and suffering as was presented by physical evidence, reference to medical records and testimony.

Plaintiff further argued that he was entitled to some measure of punitive damages for vindication of Plaintiff's private rights because, aside from Defendant's guilty plea, the pleadings were deemed admitted by the default and the reckless conduct along with the violation of South Carolina Statutes regarding the operation of motor vehicles on public roads (S.C. Code Ann. §§ 56-5-580. 56-5-2150. 56-5-2320). Plaintiff further argued that because Defendant was reckless as a matter of law under admitted pleadings and admitted liability, and pursuant to Magnolia N. Prop. Owners' Ass'n, Inc. v. Heritage Communities, Inc., 4943, 2012 WL 469730 (S.C. Ct. App. Feb. 15, 2012), reh'g denied (Apr. 20, 2012), Plaintiff was entitled to some award for punitive damages.

In response, Defendant argued that Plaintiff's injuries were insignificant and only soft tissue without ever challenging the amount or the accuracy of the charges. Defendant further argued the emergency room record suggests Plaintiff's pain was brought on by exercising even though the testimony and medical records discussed showed he went to the emergency room the same day and within hours of the accident, and the emergency room records stated, as Plaintiff testified, he was there for a motor vehicle accident. Defendant further questioned the hourly rate used to calculate Plaintiff's lost wage claim even though Plaintiff testified his minimum daily earnings of \$100 was used to calculate his lost wages.

After a review of the evidence presented at the damages hearing and the exhibits

put into evidence, I find for the Plaintiff in the amount of \$8,637.00 which is comprised of \$7,337.00 in medical bills and \$1,300.00 in lost wages. The Court does not award any damages for noneconomic damages nor punitive damages because Plaintiff did not show, by a preponderance of the evidence, any noneconomic loss nor show, by clear and convincing evidence, that he was entitled to punitive damages.

IT IS SO ORDERED.

Gordon G. Cooper, Master-in-Equity
Seventh Judicial Circuit

_____, 2017
_____, S.C.

Order of February 7, 2017



Spartanburg Common Pleas

Case Caption: Brandon Hendrickson VS Dennis Wheeler

Case Number: 2016CP4203107

Type: Master/Order/Other

It is So Ordered

s/Judge Gordon-G Cooper-3065

Electronically signed on 2017-02-07 14:02:02 page 5 of 5

ELECTRONICALLY FILED - 2017 Feb 07 2:16 PM - SPARTANBURG - COMMON PLEAS - CASE#2016CP4203107

Order of May 5, 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
Brandon Hendrickson,	)	
	)	
Plaintiff,	)	ORDER
	)	
vs.	)	2016 - CP - 42 - 03107
	)	
Dennis Wheeler,	)	
	)	
Defendant.	)	
	)	

This matter comes before my by way of Plaintiff's timely filed post trial motions. A hearing was held on March 27, 2017. Jon E. Newlon, Esq., appeared for the Plaintiff. Jeanmarie Tankersley, Esq., appeared for the Defendant. The Defendant was did not appear at the damages hearing and was held in default by previous order of this Court.

Plaintiff's Motion to Alter or Amend, Rule 52, SCRPC

Plaintiff moved to alter or amend the judgment pursuant to Rule 52, SCRPC, and asked the Court to explain its decision to reduce Plaintiff's medical bills by \$318.00. At the hearing, Plaintiff argued the testimony on the record regarding medical bills was \$7,675.00 which included the charges for the x-ray taken in the emergency room. Defendant argued the original order was clear on its face and should not be altered or amended to include the \$318.00 for the x-ray taken in the emergency room.

After considering the exhibits in the record, the testimony by Plaintiff at trial, argument of counsel and the law applicable to this issue, I find as a matter of fact and law that Plaintiff is entitled to total medical expenses in the amount of \$7,675.00 and, after adding Plaintiff's lost wages, an amended total judgment in the amount of \$8,975.00.

Plaintiff also moved to alter or amend the judgment pursuant to Rule 52, SCRPC,

Order of May 5, 2017

and asked the Court to explain its decision not to award noneconomic damages despite the evidence presented at the damages hearing. Plaintiff argued the evidence presented at trial and which is in the transcript provided evidence, more likely than not, that Plaintiff was entitled to noneconomic damages: (1) anxiety at the scene of the accident; (2) pain in the emergency room on the day of the accident at 8 out of 10 just before he was given pain medication; (3) documented muscle spasm in the emergency room; (4) prescriptions for muscle relaxers and pain medications which he took for a couple weeks after leaving the emergency room; (5) description of the nature of the pain he experienced to his neck, low back and hips; (6) worsening pain after running out of his prescription medication so he sought the services of Dr. Arcamone; and (7) Dr. Arcamone's documentation of Plaintiff's pain level from 7/8 out of 10 at the beginning of treatment to 1/2 out of by the time this treatment concluded three months after the accident. Again, Defendant argued the original order was sufficient and did not need to be altered or amended to add noneconomic damages.

After considering the evidence in the record, including the transcript of testimony, argument of counsel, and the law applicable to this issue, I find as a matter of fact and law that Plaintiff, more likely than not, did not experience noneconomic damages and, therefore, is not entitled to noneconomic damages, and the damages award of \$8,975.00 does not include any noneconomic damages.

Plaintiff also moved to alter or amend the judgment pursuant to Rule 52, SCRCP, and asked the Court to explain its decision not to consider nor award punitive damages. Plaintiff argued the Defendant was at least reckless as a matter of law because

Order of May 5, 2017

Defendant's guilty plea, which was part of the record, established he pled guilty to "failure to yield right of way on left turn", which is an admission of a conscious disregard of Plaintiff's rights and a violation of S.C. Code Ann. §§ 56-5-580 and 56-5-2150. Plaintiff argued this admitted violation of at least two statutes constituted clear and convincing evidence of Defendant's recklessness and Plaintiff was entitled to consideration of and an award of some punitive damages pursuant to Magnolia N. Prop. Owners' Ass'n, Inc. v. Heritage Communities, Inc., 397 S.C. 348, 364, 725 S.E.2d 112, 121(Ct. App. 2012), *reh'g denied* (Apr. 20, 2012), *cert. denied* (Sept. 30, 2015). Defendant argued that the original order was sufficient on its face and did not need to be amended.

After a consideration of the evidence in the record, to include Defendant's guilty plea, arguments of counsel and the law applicable to this issue, I find as a matter of fact and law that Defendant's guilty plea and violation of the aforementioned statutes do not support a finding of recklessness by clear and convincing evidence and, therefore, Plaintiff is not entitled to consideration of nor award of punitive damages.

Motion for a New Trial or Reopening of the Damages Hearing

Plaintiff also moved for a new trial or reopening of the damages hearing (1) to correct the economic damages award, (2) to obtain an award of noneconomic damages and (3) for this Court to consider an award punitive damages. Because this Court has already dealt with these issues under Plaintiff's motion pursuant to Rule 52, Plaintiff's motion for a new trial or reopen the damages hearing is denied. Again, I find as a matter of fact and law that Plaintiff is not entitled to any noneconomic damages or consideration

of punitive damages.

New Trial Nisi Additur

Plaintiff also moved for a new trial nisi additur and asked this Court to award noneconomic damages beyond the exact medical bills and lost wages award, \$8,975.00. Because this Court has already dealt with the issue of noneconomic damages under Plaintiff's motion pursuant to Rule 52, Plaintiff's motion for a new trial nisi additur is denied for the same reasons. Again, I find as a matter of fact and law that Plaintiff is not entitled to any noneconomic damages.

IT IS SO ORDERED.

Gordon G. Cooper, Master-in-Equity
Seventh Judicial Circuit

_____, 2017
_____, S.C.



Spartanburg Common Pleas

Case Caption: Brandon Hendrickson VS Dennis Wheeler

Case Number: 2016CP4203107

Type: Order/Other

It is So Ordered

s/Judge Gordon G Cooper-3065

Electronically signed on 2017-05-05 14:26:46 page 5 of 5

Summons and Complaint of August 27, 2016

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG) IN THE COURT OF COMMON PLEAS
) SEVENTH JUDICIAL CIRCUIT

Brandon Hendrickson,

Plaintiff,

vs.

Dennis Wheeler,

Defendant.

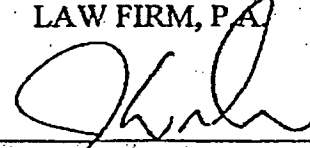
SUMMONS

16 - CP - 42 - 3107

TO: THE DEFENDANT:

THIS SUMMONS requires you to answer the attached Complaint and to serve a copy of your Answer on Plaintiffs' attorneys at their office, 1629 Bypass 72 NE, Greenwood, South Carolina 29649, within THIRTY (30) DAYS after service of this Summons, excluding the date of service, and if you fail to answer the Complaint within this time, judgment by default will be rendered against you for relief demanded in the Complaint.

~~MCCRAVY-NEWLON & STURKIE~~
~~LAW FIRM, P.A.~~

BY: 

Jon E. Newlon
State Bar #15617

Attorney for the Plaintiff
1629 ByPass 72 NE
Greenwood, S.C. 29649
864/388-9100, 9104 (FAX)

Greenwood, South Carolina
August 17, 2016

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2016 AUG 22 AM 10:08
M. HOPE BLACKLEY

Summons and Complaint of August 27, 2016

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG) SEVENTH JUDICIAL CIRCUIT

Brandon Hendrickson,

Plaintiff,

vs.

Dennis Wheeler,

Defendant.

COMPLAINT

16 - CP - 42 - 3107

Plaintiff, complaining of Defendant, respectfully alleges:

1. Plaintiff is a citizen and resident of Spartanburg County, South Carolina.
2. Defendant is a citizen and resident of Spartanburg County, South Carolina.
3. Defendant committed tortious acts in Spartanburg County, South Carolina.
4. On February 18, 2016, at about 12:00 pm, Plaintiff Brandon Hendrickson was traveling West on SEC Hwy 60 in Spartanburg County, S.C. At the same time, Defendant was traveling East on SEC Hwy 60 when he attempted to get on U.S. Hwy 176 and negligently turned left in front of Plaintiff and caused a collision. As a result, Plaintiff suffered personal injury and other damages.

5. Defendant was negligent, grossly negligent and reckless by:

- a. Failing to yield to the right of way;
- b. Failing to maintain proper lookout;
- c. Failing to maintain proper control of his vehicle;
- d. Failing to stop for oncoming traffic;
- e. For violating applicable South Carolina Statutes governing the operation of vehicles on public roads; and
- f. Failing to use the degree of care a reasonably prudent person would under the same or similar circumstances.

All of which were the direct and proximate cause of the injuries and damages suffered by Plaintiff, said acts being in violation of the laws of South Carolina.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2016 AUG 22 AM 10:08
M. HOPKINS
BLACKEY

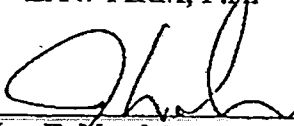
Summons and Complaint of August 27, 2016

6. As a result, Plaintiff suffered physical harm and injuries and emotional stress secondary to the accident, which caused him to undergo physical pain and suffering, mental anguish and impairment of health and bodily efficiency, and caused him to spend money for medical services.

7. Based on the above, Plaintiff believes he is entitled to judgment for actual damages and punitive damages.

WHEREFORE, Plaintiff prays for a judgment for negligence as well as an award of actual damages and punitive damages, for cost of this action, and for such other and further relief as this Court may deem just, equitable and proper.

McCRAVY NEWLON & STURKIE
LAW FIRM, P.A.

BY: 

Jon E. Newlon
State Bar #15617

Attorney for the Plaintiff
1629 ByPass 72 NE
Greenwood, S.C. 29649
864/388-9100, 9104 (FAX)

Greenwood, South Carolina
August 17, 2016

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2016 AUG 22 AM 10:08
M. HOPE BLACKLEY

Answer of December 16, 2016

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	
	)	
BRANDON HENDRICKSON,	)	Civil Action No. 2016-CP-42-03107
	)	
Plaintiff,	)	
	)	
vs.	)	ANSWER
	)	(Jury Trial Demanded)
DENNIS WHEELER,	)	
	)	
Defendant.	)	
	)	

Defendant, Dennis Wheeler, answers the Complaint and respectfully asserts the following:

FOR A FIRST DEFENSE

1. Each and every allegation of the Complaint not specifically admitted is denied.
2. With regard to Paragraph 1 of the Complaint, Defendant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in said paragraph and, therefore, denies the same.
3. Defendant admits Paragraph 2 of the Complaint upon information and belief.
4. With regard to Paragraph 3 of the Complaint, Defendant admits that an accident involving the parties occurred in Spartanburg County.
5. Defendant denies Paragraph 4 of the Complaint.
6. Defendant denies Paragraph 5 of the Complaint, including all subparts.
7. Defendant denies Paragraphs 6 and 7 of the Complaint.
8. Defendant denies Plaintiff's Prayer for Relief is denied to the extent it seeks any relief or other recovery from Defendant.

Answer of December 16, 2016

FOR A SECOND DEFENSE

9. Defendant would respectfully show each and every cause of action set forth in the Complaint fails to state a claim upon which relief can be granted and, therefore, the Complaint should be dismissed.

FOR A THIRD DEFENSE

10. Plaintiff's claim is barred for lack of sufficient process because Plaintiff failed to properly serve Defendant in compliance with the South Carolina Rules of Civil Procedure.

FOR A FOURTH DEFENSE

11. Plaintiff has failed to mitigate his damages and has incurred damages that were unnecessary or unreasonable in amount. Plaintiff is, therefore, barred in whole or part from recovery in this case

FOR A FIFTH DEFENSE

12. Defendant pleads the law and doctrine of comparative negligence and alleges the negligence and recklessness of Plaintiff were greater than the negligence, if any, which might be established against Defendant and, therefore, Plaintiff is barred from any recovery in this action. Defendant further alleges any injury and damage sustained by Plaintiff was due to and caused by the negligence and/or willfulness of Plaintiff combining, concurring, and contributing with the negligence and/or willfulness, if any, on the part of Defendant and, therefore, any amount of recovery awarded to Plaintiff for the injuries and damages alleged in the Complaint shall be reduced by the Court by the percentage of negligence and/or willfulness attributed to Plaintiff.

13. Defendant pleads the law and doctrine of comparative negligence and alleges the negligence and recklessness of Plaintiffs in the following particulars:

- i. In failing to take reasonable and prudent evasive action to avoid the accident;

Answer of December 16, 2016

- ii. In failing to act as a reasonable and prudent driver and/or passenger would have under the same or similar circumstances; and
- iii. Such other particulars as may be identified in the litigation.

FOR A SIXTH DEFENSE

14. The Defendant would show the claim for punitive damages cannot be had because any award of punitive damages would violate the Defendant's equal protection and due process rights as guaranteed by the United States and South Carolina Constitutions.

FOR A SEVENTH DEFENSE

15. Defendant specifically reserves the right to supplement and/or amend this Answer to include any defenses which may be revealed through discovery or investigation or to withdraw any defense as discovery develops as permitted by the South Carolina Rules of Civil Procedure.

WHEREFORE, having fully answered, Defendant prays that the Complaint be dismissed, for the costs of defending this action, and for such other relief as the Court and jury deem just and proper.

MCANGUS GOUDELOCK & COURIE, L.L.C.

s/Jeanmarie Tankersley

Jeanmarie Tankersley

S.C. Bar No: 101068

Post Office Box 2980

55 East Campdown Way, Suite 300 (29601)

Greenville, South Carolina 29602

(864) 239-4000

ATTORNEYS FOR DEFENDANT, DENNIS
WHEELER

December 16, 2016

Motion to Set Aside Default of December 16, 2016

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE CIRCUIT

BRANDON HENDRICKSON,

Plaintiff,

vs.

DENNIS WHEELER,

Defendant.

Civil Action No. 2016-CP-42-03107

MOTION TO SET ASIDE DEFAULT

TO: PLAINTIFF AND JON E. NEWLON, ATTORNEY FOR PLAINTIFF:

You will please take notice that ten (10) days after service hereof, or as soon thereafter as counsel may be heard, Defendant, Dennis Wheeler, by and through its undersigned counsel, will move before the Presiding Judge of the Circuit, Spartanburg County, for an order setting aside any entry of default and/or default judgment against this Defendant pursuant to Rules 55(c) and 60(b) of the South Carolina Rules of Civil Procedure. The basis of this motion is as follows: (1) there exists good cause to set aside the entry of default and/or default judgment in this case; (2) the default occurred due to mistake and/or excusable neglect; (3) this motion has been made within a reasonable time of the discovery of the default; (4) this Defendant was improperly and/or insufficiently served; (5) this Defendant was improperly placed into default without proper notice and without proper service; and, (6) this Defendant has valid defenses to the Plaintiff's Complaint. Accordingly, Defendant requests that this Court set aside any entry of default and/or default judgment, deny any motions by the Plaintiff for entry of default and/or default judgment, and allow this matter to proceed to trial.

Motion to Set Aside Default of December 16, 2016

This motion may be supported by affidavits, memoranda, briefs and evidence which may be received and/or required by the Court.

MCANGUS GOUDELOCK & COURIE, L.L.C.

s/Jeanmarie Tankersley

Jeanmarie Tankersley

Bar No: 101068

Post Office Box 2980

55 East Camperdown Way, Suite 300 (29601)

Greenville, South Carolina 29602

(864) 239-4000

ATTORNEYS FOR DEFENDANT, DENNIS
WHEELER

December 16, 2016

Memorandum in Support of Defendant's
Motion to Set Aside Default of January 30, 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	
 BRANDON HENDRICKSON,	)	 Civil Action No. 2016-CP-42-03107
Plaintiff,	)	
	)	
vs.	)	MEMORANDUM IN SUPPORT OF
	)	DEFENDANT'S MOTION TO SET
DENNIS WHEELER,	)	ASIDE DEFAULT
	)	
Defendant.	)	

Defendant, Dennis Wheeler, ("Defendant") by and through undersigned counsel, submits this Memorandum in Support of its Motion to Set Aside Default. Pursuant to Rule 55(c) of the South Carolina Rules of Civil Procedure, Defendants move to set aside the entry of default entered against them. There exists good cause in this case to set aside default. In further support of this Memorandum, Defendant shows the Court as follows:

STATEMENT OF FACTS

This case arises out of an accident that occurred on February 18, 2016 on Highway 60. Plaintiff, Brandon Hendrickson, filed a Complaint against Defendant on or about August 22, 2016 in the Spartanburg County Court of Common Pleas. Plaintiff alleges Defendant was negligent in operating his vehicle which resulted in injuries to Plaintiff. Plaintiff's affidavit of service states that Defendant was personally served on September 23, 2016. Shortly thereafter, Plaintiff filed a Motion for Default of November 14, 2016. An Order of Default was entered on November 21, 2016. Defendant then filed his Answer on December 16, 2016 along with this Motion to Set Aside Default.

Memorandum in Support of Defendant's
Motion to Set Aside Default of January 30, 2017

LAW

Rule 55(c) of the South Carolina Rules of Civil Procedure states that, "[f]or good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b)." A judgment has not yet been entered and, thus, Rule 55(c) governs in this case. The "good cause" standard of Rule 55(c), SCRPC, is not as strenuous as the Rule 60, SCRPC standard. The party seeking relief from an entry of default under Rule 55(c), SCRPC needs only to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice. *Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601-606, 681 S.E.2d 885 (2009); *Ricks v. Weinrauch*, 293 S.C. 372 (Ct.App. 1987).

The decision whether to set aside an entry of default or a default judgment lies within the sound discretion of the trial judge. *Sundown Operating Co. v. Intedge Indus.*, 383 S.C. 601, 606, 681 S.E.2d 885, 888 (2009). The discretionary element makes it clear that the party requesting a judgment by default is not entitled to one as of right, even when the defendant is technically in default. *In re Estate of Weeks*, 329 S.C. 251, 259, 495 S.E.2d 454, 459 (Ct.App. 1997). Additionally, the policy of South Carolina is to resolve cases on the merits, rather than default. (See, *Rochester v. Holiday Magic, Inc.*, 253 S.C. 147, 152, 169 S.E.2d 387, 390 (1969) (noting that the statute applicable to vacating a default judgment "should be liberally construed to see that justice is promoted and to strive for disposition of cases on their merits" (citation omitted))); *Melton v. Olenik*, 379 S.C. 45, 54, 664 S.E.2d 487, 492 (Ct. App. 2008) (stating that Rule 55(c), SCRPC, permitting the setting aside of a default, should be "liberally construed to promote justice and dispose of cases on the merits" (internal quotations and citations omitted)).

Memorandum in Support of Defendant's
Motion to Set Aside Default of January 30, 2017

In considering a motion under Rule 55(c), SCRCP the Court shall also consider (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted. *Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 381 S.E.2d 499 (Ct.App. 1989).

ARGUMENT

I. Good Cause Exists

The default judgment against Defendants must be set aside because good cause exists. Although Plaintiff filed an affidavit of service, counsel for Defendant has not been able to locate Defendant and, consequently, has not been able to determine whether service on Defendant was proper. The default must be set aside to allow investigation into service of Defendant. The initial investigation into the case has revealed that Defendant likely does not reside at the address on the affidavit of service. Setting aside the default at this time in order to give Defendant's counsel an opportunity to locate Defendant and investigate service, as well as to allow Defendant to fully participate in his defense, is sufficient to satisfy the good cause under Rule 55(c), SCRCP.

In considering whether to set aside a default judgment, South Carolina's appellate courts have recognized that "the law favors the resolution of disputes based upon all parties having their day in court." *Williams v. Watkins*, 384 S.C. 319, 327, 681 S.E.2d 914, 918 (Ct.App. 2009) (citing *McClurg v. Deaton*, 380 S.C. 563, 580, 671 S.E.2d 87, 96 (Hearn, C.J., dissenting)). "We have repeatedly expressed a strong preference that, as a general matter, defaults be avoided and that claims and defenses be disposed of on their merits." *Caldwell v. Wiquist*, 402 S.C. 565, 741 S.E.2d 583 (Ct.App. 2013).

Memorandum in Support of Defendant's
Motion to Set Aside Default of January 30, 2017

II. Timing of the Motion for Relief

The default should be set because Defendant's motion for relief was timely made. As aforementioned, Defendant filed his Motion to Set Aside Default only three weeks after the Order of Default was entered. Under the stricter Rule 60, SCRCP standard, the motion for relief must be filed within a reasonable time, but not later than one year. Here, Defendant certainly filed the Motion to Set Aside Default within a reasonable time, and did not cause any undue delay in seeking resolution of the default issue.

III. Meritorious Defense

To establish that he has a meritorious defense, a complainant need not show that he would prevail on the merits, but only that his defense is meritorious. *McClurg v. Deaton*, 380 S.C. 563, 671 S.E.2d 563 (Ct.App. 2008).

"[A] meritorious defense need not be perfect nor one which can be guaranteed to prevail at a trial. It need be only one which is worthy of a hearing or judicial inquiry because it raises a question of law deserving of some investigation and discussion or a real controversy as to real facts arising from conflicting or doubtful evidence."

Plaintiff alleges negligence in his complaint. The allegations in the case clearly identify a controversy involving questions of law and fact that deserve a resolution on the merits. This case arises out of a motor vehicle accident, which Plaintiff alleges caused his damages. Defendant contends that Plaintiff was the party responsible for the accident and that at the time of the accident, Defendant was stopped in his vehicle. Additionally, without the benefit of discovery, Defendant cannot investigate Plaintiff's alleged medical damages, pre-existing conditions, or nature of the accident. Further, Plaintiff requests punitive damages in this case, to which Defendant takes the position that the evidence will show that the alleged actions of

Memorandum in Support of Defendant's
Motion to Set Aside Default of January 30, 2017

Defendant does not rise to the level of recklessness wherein a jury would find punitive damages are reasonable.

Based on defenses arising from Defendant's initial and limited investigation, and the allegations of the Complaint, a justiciable controversy and meritorious defense exists that should be resolved on the merits. Therefore, the default judgment should be set aside.

IV. No Prejudice to Plaintiff if Relief is Granted

In this matter, the Plaintiff will not suffer any prejudice if an entry of default as to Defendant is set aside. This case is in its infancy considering no discovery has even begun in the case. Defendant filed his Answer within two months after it was originally due. To potentially extend the commencement of the case by less than 60 days certainly could not, and has not caused Plaintiff any prejudice. Plaintiff will be afforded sufficient time to conduct discovery as to Defendant, to include any necessary depositions, and setting aside the default will not affect Plaintiff's ability to diligently pursue his claim. Additionally, because no discovery has been conducted in this case or the other case, no risk of prejudice in the form of duplicate or unnecessary discovery is present. Rather, at most, setting aside the entry of default as to Defendant will simply require Plaintiff to pursue and prove his claims against Defendant rather than have a judgment that is not based on a resolution by the merits. The Fourth Circuit Court of Appeals has considered this issue and held that "no cognizable prejudice inheres in requiring a plaintiff to prove a defendant's liability, a burden every plaintiff assumes in every civil action filed in every federal court." *Colleton Preparatory Academy v. Hoover Universal*, 616 F.3d 419 (2010). Furthermore, an "[e]ntry of default raises no protectable expectation that a default judgment will follow, and a party's belief in the integrity of the system must include, to be reasonable, knowledge that a system of integrity makes exceptions for good cause shown. As

Memorandum in Support of Defendant's
Motion to Set Aside Default of January 30, 2017

numerous decisions make clear, prejudice may not be found from delay alone or from the fact that the defaulting party will be permitted to defend on the merits." *Id.* at 419, fn. 6 (citing *Johnson v. Dayton Elec. Mfg. Co.*, 140 F.3d 781, 785 (8th Cir. 1998)).

Setting aside the entry of default as to Defendant will result in a minimal delay, if any, in the progress of this case, allow Defendant to defend Plaintiff's claims on the merits, and simply require Plaintiff to prove Defendant's liability and Plaintiff's alleged damages. Accordingly, the default should be set aside because the South Carolina appellate courts and federal courts have recognized that these results do not amount to prejudice.

CONCLUSION

For the foregoing reasons, good cause exists to set aside the default judgment as to Defendants pursuant to Rule 55(c), SCRCP. Defendant's motion for relief was timely made, Defendant has meritorious defenses, and no prejudice to Plaintiff will result from setting aside the default. Therefore, Defendant respectfully requests that this Court exercise its discretion and set aside the entry of default as to Defendant to allow for the action to proceed on its merits.

MCANGUS GOUDELOCK & COURIE, L.L.C.

s/Jeanmarie Tankersley

Jeanmarie Tankersley

Bar No: 101068

Post Office Box 2980

55 East Camperdown Way, Suite 300 (29601)

Greenville, South Carolina 29602

(864) 239-4000

ATTORNEYS FOR DEFENDANT. DENNIS
WHEELER

January 30, 2017

Return and Memo in Opposition to Defendant's
Motion to Set Aside Default of January 30, 2017

STATE OF SOUTH CAROLINA)	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG)	)	SEVENTH JUDICIAL CIRCUIT
Brandon Hendrickson,	)	
	)	
Plaintiff,	)	RETURN AND MEMO IN OPPOSITION
	)	TO DEFENDANT'S MOTION TO SET
vs.	)	ASIDE DEFAULT
	)	
Dennis Wheeler,	)	2016 - CP - 42 - 03107
	)	
Defendant.	)	

TO: THE COURT:

Plaintiff, through his undersigned attorney, respectfully submits this Return and Memorandum in Opposition to Defendant's Motion Set Aside Default, and prays for an order denying Defendant's Motion according to the following:

FACTUAL AND PROCEDURAL BACKGROUND

On February 18, 2016, Plaintiff and Defendant were headed in the opposite direction and entering an intersection under a green light for through traffic only. Defendant did not have a green left turn arrow. Defendant turned left in front of Plaintiff and caused the accident. Plaintiff was injured and incurred economic losses of over \$7,360.00 in medical expenses and \$1,300.00 in lost wages.

On March 1, 2016, Plaintiff's attorneys sent a notice of representation letter to Shara White at Omni Insurance Company. (Ex. 1)

On April 5, 2016, Defendant pled guilty in Spartanburg Magistrate's Court to Failure to Yield Right of Way during Left Hand Turn. (Ex. 2)

On June 24, 2016, Plaintiff sent Settlement Brochure to Shara White at Omni Insurance Company. (Ex. 3)

By August 16, 2016, settlement negotiations stopped with Omni Insurance Company

Return and Memo in Opposition to Defendant's
Motion to Set Aside Default of January 30, 2017

giving a maximum offer of \$9,875.00. Plaintiff made a decision to file a lawsuit. (Ex. 4)

On August 22, 2016, Plaintiff filed the lawsuit. (Ex. 5)

On September 23, 2016, Defendant was personally served with a cover letter, civil action coversheet, summons, complaint, interrogatories and request for production. (Ex. 6) Defendant was served at the same address listed on the relevant SCTCR.

By November 1, 2016, Defendant did not answer, so Plaintiff filed an Affidavit of Default along with an Affidavit of Nonmilitary Service. (Ex. 7)

On November 2, 2016, Spartanburg County Clerk of Court entered default. (Ex. 8)

On November 9, 2016, Plaintiff filed a Motion for Default Judgment. (Ex. 9)

On November 21, 2016, Judge Mark Hayes, II, signed and filed an Order of Default Judgment with a reference to the Spartanburg Master for a damages hearing. (Ex. 10)

On December 12, 2016, Plaintiff coordinated for a damages hearing to be conducted on January 20, 2017. (Office Needles notes)

On December 16, 2016, Defendant filed and served a Motion to Set Aside Default. The grounds for Defendant's motion were: (1) Good cause; (2) Mistake or excusable neglect; (3) Motion made within a reasonable time; (4) Improper service or insufficiency of service; (5) Improper notice and improper service of default; and (6) Valid defenses. (Ex. 11)

On January 5, 2017, the Notice of Damages Hearing was filed and served upon Defendant's attorney and upon Defendant (by first class mail). (Ex. 12) The first class mailing to the Defendant was at the same address Defendant provided to law enforcement at the time of the accident and the same address where he was served with the lawsuit.

Neither Plaintiff nor his attorney initiated any communication or sent any documents to Defendant's insurer after the lawsuit was filed.

Return and Memo in Opposition to Defendant's
Motion to Set Aside Default of January 30, 2017

MOTION TO SET ASIDE DEFAULT¹

A. LAW:

The standard for granting relief from default judgment is set forth in Rule 60, SCRPC. A party "may" be relieved for: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence; (3) fraud, misrepresentation or other misconduct by an adverse party; (4) void judgment; and (5) satisfied judgment. Id. The motion "shall be" made within a reasonable time. Id.

When considering a motion to set aside a default judgment, a court must consider the promptness with which relief is sought, the reasons for the failure to act promptly, the existence of a meritorious defense and prejudice to the other party. McClurg v. Deaton, 380 S.C. 563, 573, 671 S.E.2d 87, 93 (Ct. App. 2010) (applying Wham factors) (McClurg I).

The spirit of liberal judicial discretion to grant relief from default judgment did not survive the adoption of the SCRPC. McClurg v. Deaton, 395 S.C. 85, 716 S.E.2d 887 (fn.2 (2011)); Sundown Operation Co., Inc. v. Intedge Industries, Inc., 383 S.C. 601, 681 S.E.2d 885 (2009) (standard of relief under Rule 60(b) is now rigorous).

A meritorious defense is required for a judgment to be set aside under Rule 60(b). See Mitchell Supp. Co., Inc. v. Gaffney, 297 S.C. 160, 375 S.E.2d 321 (Ct. App. 1988).

Where there is no meritorious defense as to liability and a party would seek discovery on this issue if relieved from entry of default, these circumstances do not support relief. See Wilder v. Blue Ribbon Taxicab Corp., 396 S.C. 139, 145-146, 719 S.E.2d 703, 707 (Ct. App.

¹ Defendant's motion states "Default" but Plaintiff obtained a "Default Judgment". Thus, a motion or argument, i.e., "good cause", under Rule 55(c), SCRPC, is not applicable. See Sundown Operating Co., Inc. v. Intedge Industries, Inc., 383 S.C. 601, 607-608, 681 S.E.2d 885, 888-889 (2009); see also Ricks v. Weinrauch, 293 S.C. 372, 374, 360 S.E.2d 535, 536 (Ct. App. 1987).

Return and Memo in Opposition to Defendant's
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2011) (appellate court upholding trial court's decision to deny relief from entry of default where defendant did not have a meritorious defense as to liability and trial court found plaintiff would be prejudiced if defendant sought discovery on undisputable liability).

Under the doctrine of collateral estoppel, a/k/a issue preclusion, when an issue has been litigated and determined by a valid and final judgment, the determination is conclusive in a subsequent action whether on the same or a different claim. S.C. Prop. and Cas. Ins. Guar. Assoc. v. Wal-Mart Stores, Inc., 304 S.C. 210, 213, 403 S.E.2d 625, 627 (1991).

"[O]nce a person has been criminally convicted, the person is bound by that adjudication in a subsequent civil proceeding based on the same facts underlying the criminal conviction." Zurcher v. Bilton, 379 S.C. 132, 666 S.E.2d 224, 226-227 (2008) (citing Doe v. Doe, 346 S.C. 145, 148, 551 S.E.2d 257, 258 (2001)).

The moving party moving for relief from entry of default has the burden of presenting evidence entitling him to relief. See e.g., BB&T v. Taylor, 369 S.C. 548, 633 S.E.2d 501 (2006) (my emphasis). This evidence must be presented by way of affidavit, deposition testimony, in-court testimony, or otherwise, when asking for relief under Rule 60. Standard Federal Sav. and Loan Ass'n v. Mungo, 306 S.C. 22, 410 S.E.2d 18 (Ct. App. 1991).

A memorandum or bare assertions by an attorney in support of a motion, without more, is not evidence. Harris Teeter, Inc. v. Moore & Van Allen, PLLC, 390 S.C. 275, 701 S.E.2d 742 (2010).

B. DISCUSSION:

1. Good cause.

The "good cause" standard does not apply where there is a judgment. In this case, a judgment was entered and damages hearing ordered by Judge Hayes on November 21, 2016.

Return and Memo in Opposition to Defendant's
Motion to Set Aside Default of January 30, 2017

"Once a default judgment has been entered, a party seeking to be relieved must do so under Rule 60(b), SCRPC." Sundown Operating Co. v. Intedge Indus., Inc., 383 S.C. 601, 608, 681 S.E.2d 885, 888 (2009). It does not matter that the judgment is entered without a damages hearing. See Thomas & Howard Co., Inc. v. T.W. Graham and Co., 457 S.E.2d 340, 318 S.C. 286 (1995) (a default judgment may entered as a judgment even without a damages hearing).

2. Mistake or excusable neglect.

Plaintiff has not been put on notice of the evidence to be presented on this issue, because the Defendant did not comply with Rule 7(b)(1) and put Plaintiff on notice of any alleged mistake or excusable neglect in order to allow Plaintiff to prepare for the hearing. A moving party is required to "state with particularity the grounds" for which relief is sought. Rule 7(b)(1), SCRPC. Without satisfying the "particularity" requirement, Plaintiff has not been properly put on notice of the evidence to be presented and, therefore, is prejudiced.

Even if Defendant presents alleged evidence of neglect at the hearing, there must also be a showing that the neglect was reasonable. Howard v. Holiday Inns, Inc., 271 S.C. 238, 246 S.E.2d 880 (1978) (court found neglect was not excusable just because of extensive traveling).

The negligent mishandling of a properly served complaint is not grounds for excusable neglect. See e.g., Roche v. Young Bros., Inc. of Florence, ___ S.C. ___, ___, 456 S.E.2d 897, 900 (1995) (applied to "good cause" standard under Rule 55©, SCRPC). The failure to timely request an attorney to answer a Complaint is not a ground for excusable neglect. See Williams v. Vanvolkenburg, 312 S.C. 373, ___, 440 S.E.2d 408, 409 (Ct. App. 1994) (applying this failure to a less rigorous standard of "good cause"). A failure to file a timely answer is not excused because of age, mental state, failure to understand the situation, not aware of the lawsuit or had no experience working with attorneys. ITC Commercial Funding L.L.C. v. Crerar, 393 S.C. 487, ___, 713 S.E.2d 335, 339 (Ct. App. 2011). Further, there is no

Return and Memo in Opposition to Defendant's
Motion to Set Aside Default of January 30, 2017

excusable neglect by simply losing the pleadings. White Oak Manor, Inc. v. Lexington Ins. Co., 407 S.C. 1, 753 S.E.2d 537 (2014). The negligence of an insured's insurance company is imputable to a defaulting insured. Roberts v. Peterson, 292 S.C. 149, 151, 355 S.E.2d 280, 281 (Ct. App. 1987).

3. Motion made within a reasonable time.

In this case, the records shows the Defendant was served on September 23, 2016, and the Motion to Set Aside Default was filed on or after December 16, 2016. The Defendant never answered and waited 54 days to file the Motion to Set Aside Default.

Our Court of Appeals has held that waiting two months or more is not timely. See Bage v. Southeastern Roofing Co. of Spartanburg, Inc., 373 S.C. 457, ___, 646 S.E.2d 153, 161 (Ct. App. 2007) (over 2 months between service and filing motion for relief); see also Dixon v. Besco Engineering, Inc., 320 S.C. 174, 177, 463 S.E.2d 636, 638 (Ct. App. 1995) (about ninety days between service and filing motion for relief).

But timing of the motion for relief does not end the inquiry. Even if the Court is inclined to find the Defendant made the motion for relief within a reasonable time, the Defendant must present a valid reason for the delay. McClurg v. Deaton, 380 S.C. 563, 573, 671 S.E.2d 87, 93 (Ct. App. 2010) (applying Wham factors) (McClurg I).

In this case, Defendant has not present any grounds in his motion for the reason for his delay of 54 days. In the absence of setting forth grounds with particularity, Plaintiff has not been put on notice of the same. Further, the Court must examined the reason for the 54 day delay and the reasonableness for the delay.

4. Improper service or insufficiency of service.

An Affidavit of Service is valid on its face and cannot be overcome without proof..” Roche v. Young Bros., Inc. of Florence, 318 S.C. 207, 210, 456 S.E.2d 897, 899 (1995) (“We

Return and Memo in Opposition to Defendant's
Motion to Set Aside Default of January 30, 2017

have never required exacting compliance with the rules to effect service of process"); Fassett v. Evans, 364 S.C. 42, 47, 610 S.E.2d 841, 844 (Ct. App. 2005) (*quoting* Richardson Constr. Co. v. Meek Eng'g and Constr., Inc., 274 S.C. 307, 311, 262 S.E.2d 913, 916 (1980)) ("[A]n [officer's] return of process creates legal presumption of proper service that cannot be 'impeached by the mere denial of service by defendant'").

In this case, a law enforcement officer personally served the Defendant according to the officer's affidavit of service. This argument has no merit.

5. Improper notice and improper service of default.

A defendant who does not appear in an action is only entitled to notice of the damages hearing and not notice of the entry of default or application for default judgment. Notice of a damages hearing is accomplished by First Class mail to defendant's last known address. Rule 55(b)(1) and (2), SCRCP.

In this case, Defendant did not appear in the action and was not entitled to notice of the Plaintiff's application for default judgment. Further, Plaintiff did send notice of the damages hearing as required by Rule 55(b)(2) and also served Defendant's attorney with that same notice through the electronic filing process. This argument is without merit.

6. Valid defenses.²

Further, the defendant cannot show a meritorious defense and that ends the inquiry. The defendant has already showed up in Magistrate's Court and pled guilty to the offense of "failure to yield during a left turn" for the same accident in the civil case. Accordingly, the defendant is bound by this guilty plea and cannot take a contrary position in this subsequent civil action. Zurcher v. Bilton; Doe v. Doe; S.C. Prop. and Cas. Ins. Guar. Assoc..

² Plaintiff assumes Defendant means "meritorious" defenses.

Return and Memo in Opposition to Defendant's
Motion to Set Aside Default of January 30, 2017

Accordingly, when there is no defense to liability, there is no meritorious defense." See Wilder v. Blue Ribbon Taxicab Corp., 396 S.C. 139, 145-146, 719 S.E.2d 703, 707 (Ct. App. 2001). And when a defendant cannot show a meritorious defense, his motion under Rule 60 fails. Mitchell Supp. Co., Inc., v. Gaffney, 297 S.C. 160, 375 S.E.2d 321 (Ct. App. 1988).

Last, the plaintiff can show prejudice. Defendant would seek discovery on the issue of liability. In this case, Defendant turned left in front of Plaintiff. Further, Defendant has already pled guilty to "failure to yield during a left turn". To allow the defendant to try and litigate liability and seek discovery on this issue would prejudice plaintiff's case.

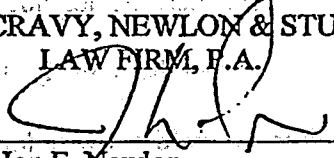
The S.C. Court of Appeals upheld the trial court's decision to deny relief under Rule 55© under similar circumstances. Wilder, 396 S.C. at 145-146, 719 S.E.2d at 707 (affirmed trial court's denial of relief from default where defense had admitted he had no meritorious defense to liability"). Defendant's unqualified guilty plea is binding and there cannot be any setting wherein Defendant can procedurally present a meritorious defense as to liability.

C. CONCLUSION:

Wherefore, Plaintiff prays for an order denying Defendant's motion to be relieved from default judgment.

Respectfully submitted,

McCRAVY, NEWLON & STURKIE
LAW FIRM, P.A.

BY: 

Jon E. Newlon
State Bar #15617

Attorney for Plaintiff
1629 Bypass 72 NE
Greenwood, S.C. 29649
864/388-9100, 9104 (fax)
jnewlon@mccravylaw.com

Greenwood S.C.
JAN. 30, 2017

Brad L. Smith
email:
bsmith@mccravylaw.com

Return and Memo in Opposition to Defendant's
Motion to Set Aside Default of January 30, 2017



Respond to: ■

Spartanburg Office
8801 Warren H Abernathy Hwy
Spartanburg, SC 29301
(864)804-5600
(864)804-5601 - Facsimile

March 1, 2016

ATTN:Shara White
Omni Insurance Company
P.O. Box 105109
Atlanta, GA 30348-5440

RE: Claimant: Brandon Hendrickson
Your Insured: Terri Wheeler
Claim #: [REDACTED]
Date of Loss: 2/18/2016

Dear Claims Department:

This is to advise that we represent the above-named client for personal injuries received on the date indicated. We also ask that you preserve any video or audio recordings which may be relevant to this matter. Please direct all future correspondence concerning this case to my attention.

Pursuant to South Carolina Code Section 38-77-250(A), I am-requesting a copy of your insured's declaration page or a statement, under oath, of a corporate officer or the insurer's claims manager stating with regard to each known policy of non-fleet private passenger insurance issued by you, the name of the insurer, the name of each insured and the limits of coverage.

Please allow this letter to serve as an official withdrawal of any medical authorizations my client may have previously signed for your company. Also, please provide us with a current address and phone number for your insured. We also request that you keep us advised of your insured's current home address and further notify us if your insured's home address changes or is different from the address recorded on the traffic collision report.

I ask that you forward to my attention any property damage photographs and/or estimates related to this claim.

Sincerely,

McCravy Newlon & Sturkie Law Firm, P.A.

Brad L. Smith
Brad L. Smith

EXHIBIT

1

Return and Memo in Opposition to Defendant's
Motion to Set Aside Default of January 30, 2017

SWORN TO BEFORE ME THIS

1st day of march, 2016

Kellie G. Gault

Notary Public for the State of South Carolina

My Commission expires:

8/25/2025

BLS/

Enclosures

cc: Brandon Hendrickson

ELECTRONICALLY FILED - 2017 Feb 10 11:03 AM - SPARTANBURG - COMMON PLEAS - CASE#2016CP4203107

Return and Memo in Opposition to Defendant's
Motion to Set Aside Default Judgment

CASE HISTORY FOR CASE H557446

The State of South Carolina VS Dennis Wheeler Jr

FILED DATE: 2/24/2016

CASE TYPE: TR

STATUS: Disposed

ASSIGNED JUDGE: Turner, David James

DISPOSITION JUDGE: Paslay, James Buckingham

ARRESTING AGENCY: S C Highway Patrol

CASE PARTIES:

Defendant Wheeler, Dennis Jr

331 E Blackstock Rd Apt 17, Spartanburg, SC 29301-3752

Officer Pittfenger, T M

8794 Fairforest Road, Spartanburg, SC 28303

CASE HISTORY FOR CASE H557446

Wheeler, Dennis Jr

331 E Blackstock Rd Apt 17

Spartanburg, SC 29301-3752

CHARGE	VIOL. DATE	DISPOSITION	DISP. DATE
2571 Traffic / Failure to yield right-of-way on left turn	2/18/2016	Pled Guilty	4/5/2016

COST	ORIGINAL	BALANCE DUE	DISBURSED	PAY PRIORITY
Charge: Traffic / Failure to yield right-of-way on left turn				
Fine to General Fund	\$24.58	\$0.00	\$24.58	999
Victim Services Asm 38.0013% / 5.783	2.95	0.00	2.95	999
Law Enforcement Funding Surcharge \$:	25.00	0.00	25.00	999
SC Criminal Justice Academy Training	5.00	0.00	5.00	999
State Assessment	23.47	0.00	23.47	999
Total:	\$81.00	\$0.00	\$81.00	

DATE	TIME	EVENT DESCRIPTION
4/5/2016	2:00 PM	Court event: Traffic Court
6/2/2016	2:18 PM	Received payment of \$81 from Dennis Wheeler Jr for Dennis Wheeler Jr. Printed receipt #4759000.
6/6/2016	12:00 AM	Scheduled Time Payment
6/6/2016	12:00 AM	Case STP frequency. One Time Payment STP Payments established for \$81 through 2016-06-06
6/8/2016	12:00 AM	C42MSEIBEL recorded the following Case Note: filed in 6/8/16

Print Date: 01/18/2017
Print Time: 2:01:48PM
Requested By: C42CGETTYS

CaseHistory.rpt V6.1

Page 1 of 1



1 P 7002 No

WJ65-1 2/24/2017 1:59PM

Brad L. Smith
email:
bsmith@mccravylaw.com

Return and Memo in Opposition to Defendant's
Motion to Set Aside Default of January 30, 2017



Respond to: ■

Spartanburg Office
8801 Warren H Abernathy Hwy
Spartanburg, SC 29301
(864)804-5600
(864)804-5601 - Facsimile

June 24, 2016

ATTN:Shara White
OMNI Indemnity Insurance
P.O. Box 105019
Atlanta, GA 30348-5019

RE: Claimant: Brandon Hendrickson
Your Insured: Terri Wheeler
Claim #: ~~XXXXXXXXXX~~
Date of Loss: ~~XXXXXXXXXX~~

Dear Shara White:

With regard to the above-referenced matter, I have enclosed a copy of a Settlement Brochure.
This Brochure includes the following:

1. Accident Report
2. Medical Bills
3. Medical Reports
4. Wage Verification

This Brochure and accompanying documents are submitted for settlement purposes only, and on the condition that it not be used in the event this matter goes to trial.

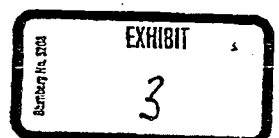
After you have had a chance to review these materials, please call me if you feel this is a case which might be settled prior to filing suit.

Sincerely,

Brad L. Smith

BLS/

ELECTRONICALLY FILED - 2017 Feb 10 11:03 AM - SPARTANBURG - COMMON PLEAS - CASE#2016CP4203107



Hendrickson, Brandon Return and Memo in Opposition to Defendant's LIM Date: 12/16/2016
Case #: [REDACTED] Motion to Set Aside Default of January 30, 2017 Date Opened: 3/1/2016

12/29/2016 10:46 AM

Page 1 of 1

Case Note - Page 38 of 58

Date: 08/16/2016 02:18 PM Staff: BLS

Topic: Posted Message

To: JEN

CC: JH; KNG

Taken By: BLS

Date: 8/16/2016 Time: 02:18 pm

From:

Firm:

Phone: Extension:

S&C drafted and saved in lit folder for review.

TOP: \$9875.00

Medicals: \$7675.00

Lost Wages: \$1300.00

Good PD (Car was totalled, but client fixed it and kept it)

Treated Day of accident at Pelham Medical (\$1407.00)

Went to River Falls Chiro 2 weeks later, 20 visits (\$5930.00)

Soft Tissue Back Pain

[REDACTED]

EXHIBIT
4

Return and Memo in Opposition to Defendant's
 STATE OF SOUTH CAROLINA
 Motion to Set Aside Default of January 30, 2017
 IN THE COURT OF COMMON PLEAS
 COUNTY OF SPARTANBURG

Brandon Hendrickson

Plaintiff(s)

CIVIL ACTION COVERSHEET

16-CP - 42-

3107

vs.

Dennis Wheeler

Defendant(s)

Submitted By: Jon E. Newlon, Esq.

Address: 1629 Bypass 72 NE, Greenwood, SC 29649

SC Bar #: 15617

Telephone #: (864)388-9100

Fax #: (864)388-9104

Other:

E-mail: jnewlon@mccravylaw.com

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

DOCKETING INFORMATION (Check all that apply)

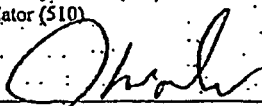
*If Action is Judgment/Settlement do not complete

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

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|---|---|--|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20 -NI-
☐ Notice/ File Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☒ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Administrative Law/Relief
☐ Reinstat Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers Compensation Settlement Approval (780)
☐ Other (799) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| Special/Complex /Other.
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Sexual Predator (510) | | |

Submitting Party Signature:



Date: August 19, 2016

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

Return and Memo in Opposition to Defendant's
 FOR MANDATED ADR COUNTIES ONLY
 Motion to Set Aside Default of January 30, 2017

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

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

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

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

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

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2016 AUG 22 AM 10:08
 H. HOPE BLACKLEY

Return and Memo in Opposition to Defendant's
Motion to Set Aside Default of January 30, 2017

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG) SEVENTH JUDICIAL CIRCUIT

Brandon Hendrickson,

Plaintiff,

vs.

Dennis Wheeler,

Defendant.

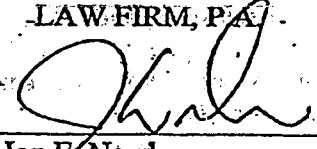
SUMMONS

16 - CP - 42 - 3107

TO: THE DEFENDANT:

THIS SUMMONS requires you to answer the attached Complaint and to serve a copy of your Answer on Plaintiffs' attorneys at their office, 1629 Bypass 72 NE, Greenwood, South Carolina 29649, within ~~THIRTY (30) DAYS~~ after service of this Summons, excluding the date of service, and if you fail to answer the Complaint within this time, judgment by default will be rendered against you for relief demanded in the Complaint.

McCRAVY NEWLON & STURKIE
LAW FIRM, P.A.

BY: 

Jon E. Newlon
State Bar #15617

Attorney for the Plaintiff
1629 ByPass 72 NE
Greenwood, S.C. 29649
864/388-9100, 9104 (FAX)

Greenwood, South Carolina
August 17, 2016

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2016 AUG 22 AM 10:08
M. HOPE BLACKLEY

ELECTRONICALLY FILED - 2017 Feb 10 11:03 AM - SPARTANBURG - COMMON PLEAS - CASE#2016CP4203107

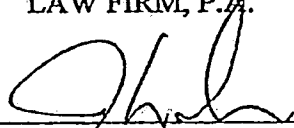
Return and Memo in Opposition to Defendant's
Motion to Set Aside Default of January 30, 2017

6. As a result, Plaintiff suffered physical harm and injuries and emotional stress secondary to the accident, which caused him to undergo physical pain and suffering, mental anguish and impairment of health and bodily efficiency, and caused him to spend money for medical services.

7. Based on the above, Plaintiff believes he is entitled to judgment for actual damages and punitive damages.

WHEREFORE, Plaintiff prays for a judgment for negligence as well as an award of actual damages and punitive damages, for cost of this action, and for such other and further relief as this Court may deem just, equitable and proper.

McCRAVY NEWLON & STURKIE
LAW FIRM, P.A.

BY: 

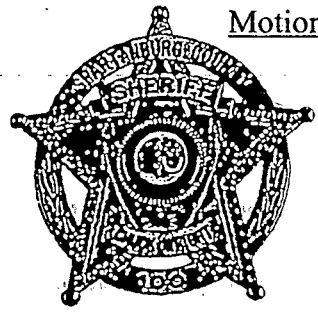
Jon E. Newlon
State Bar #15617

Attorney for the Plaintiff
1629 ByPass 72 NE
Greenwood, S.C. 29649
864/388-9100, 9104 (FAX)

Greenwood, South Carolina
August 17, 2016

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2016 AUG 22 AM 10:08
M. HOPE BLACKLEY

ELECTRONICALLY FILED - 2017 Feb 10 11:03 AM - SPARTANBURG - COMMON PLEAS - CASE#2016CP4203107



Return and Memo in Opposition to Defendant's
Motion to Set Aside Default
SPARTANBURG COUNTY SHERIFF'S OFFICE
CHUCK WRIGHT SHERIFF
PO BOX 771 SPARTANBURG SC 29304
TEL: (864) 503-4514

State of South Carolina
SPARTANBURG COUNTY

DOCKET NO.: 2016-cp-42-3107 112492 **RW**
☒ AFFIDAVIT OF SERVICE
☐ AFFIDAVIT OF NON-SERVICE

RE: BRANDON HENDRICKSON

-VS-

DENNIS WHEELER, JR., 200 S. BLACKSTOCK ROAD, SPARTANBURG, SC 29301

APPEARED BEFORE ME, C. Parnell, DEPUTY SHERIFF OF THE
SPARTANBURG COUNTY SHERIFF'S OFFICE, DULY SWORN, SAYS THAT HE/SHE SERVED OR ATTEMPTED TO SERVE
THE FOLLOWING CIVIL PAPER(S):

COVER LETTER, CIVIL ACTION COVERSHEET, SUMMONS, COMPLAINT,
INTERROGATORIES AND REQUEST FOR PRODUCTION

☒ BY DELIVERING TO Dennis Wheeler PERSONALLY
☐ BY DELIVERING TO _____ A PERSON OF AGE AND DISCRETION

RESIDING AT THE RESIDENCE OF THE DEFENDANT (S)
☐ BY DELIVERING TO _____ AT THE PLACE OF BUSINESS AND
LEAVING WITH HIM/HER COPIES OF THE SAME

PAPER(S) SERVED AT: ☐ ADDRESS ABOVE ☐ OTHER
SERVED ON 23 DAY OF September, 2016 @ 8:00 HOURS
DEPUTY C. Parnell (SIGNATURE)

SWORN TO BEFORE ME THIS 23 DAY OF September 2016
NOTARY PUBLIC FOR SOUTH CAROLINA Deborah R. Allen
MY COMMISSION EXPIRES 7 July 2019

NON-SERVICE RETURN
☐ WAS UNABLE TO LOCATE AND SERVICE ON THE DEFENDANT(S) AFTER DILIGENT EFFORTS BY CHECKING ALL RESOURCES
AVAILABLE TO SHERIFF'S OFFICE.
☐ MOVED ☐ VACANT ☐ DECEASED ☐ INCARCERATED ☐ REFUSED ANSWER DOOR
☐ NO SUCH ADDRESS ☐ NOT EMPLOYED ☐ OUT OF COUNTY/STATE
☐ OTHER COMMENTS _____

C. Parnell DEPUTY'S SIGNATURE

EXHIBIT
6

Return and Memo in Opposition to Defendant's
Motion to Set Aside Default of January 30, 2017

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG) SEVENTH JUDICIAL CIRCUIT

Brandon Hendrickson,

Plaintiff,

vs.

Dennis Wheeler,

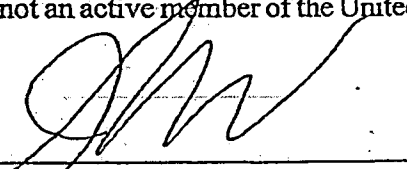
Defendant.

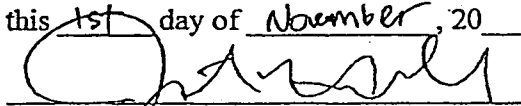
AFFIDAVIT OF DEFAULT

16 - CP - 42 - 3107

JON E. NEWLON of the McCRAVY, NEWLON & STURKIE LAW FIRM, P.A.,
being first duly sworn, deposes and states:

1. He is the attorney for the Plaintiff in this action;
2. A Summons and Complaint were filed on behalf of the plaintiff in the above-referenced matter on August 22, 2016, and the defendant was served with the same by Spartanburg County Sheriff's Deputy, C. Parnell on September 23, 2016, as evidenced by the Affidavit of Service attached hereto;
3. More than 35 DAYS have elapsed since service of the same;
4. Defendant has not answered or otherwise pled, nor been given an extension, and now, therefore, is in default.
5. Defendant, upon information and belief, is not an active member of the United States Armed Forces.


Jon E. Newlon
Attorney for the Plaintiffs

Sworn to and subscribed before me
this 1st day of November, 2016

Notary Public for South Carolina
My Commission Expires: 4/21/25

Return and Memo in Opposition to Defendant's Motion to Set Aside Default of January 30, 2017

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

SEVENTH JUDICIAL CIRCUIT

Brandon Hendrickson,

Plaintiff,

VS.

Dennis Wheeler,

Defendant.

AFFIDAVIT OF NONMILITARY SERVICE

16 - CP - 42 - 3107

JON E. NEWLON of the McCRAVY, NEWLON & STURKIE LAW FIRM, P.A.,

being first duly sworn, deposes and says that:

1. He is the attorney for the Plaintiffs in this action.
2. He is familiar with the provisions of 50 U.S.C.A. App. § 520, the Soldier and Civil Relief Act of 1940.

3. He represents to the Court, in order to introduce the Court to enter a default judgment against the Defendant, that, upon information and belief, the same Defendant is not in the military service of the United States and is not entitled to the protection of the Soldier and Sailors Civil Relief Act of 1940, nor any amendments thereto.

Sworn to and subscribed before me)

this ~~1st~~ day of November 2016

Notary Public for South Carolina
My commission expires: 4/21/25

Jon E. Newlon, Esquire
Attorney for the Plaintiff

Return and Memo in Opposition to Defendant's
Motion to Set Aside Default of January 30, 2017



SPARTANBURG COUNTY SHERIFF'S OFFICE
 CHUCK WRIGHT SHERIFF
 PO BOX 771 SPARTANBURG SC 29304
 TEL: (864) 503-4514

State of South Carolina
 SPARTANBURG COUNTY

DOCKET NO.: 2016-cp-42-3107 112492 RW

☒ AFFIDAVIT OF SERVICE
☐ AFFIDAVIT OF NON-SERVICE

RE: BRANDON HENDRICKSON

-VS-

DENNIS WHEELER JR., 200 S. BLACKSTOCK ROAD, SPARTANBURG, SC 29301

APPEARED BEFORE ME, [Signature], DEPUTY SHERIFF OF THE
 SPARTANBURG COUNTY SHERIFF'S OFFICE, DULY SWORN, SAYS THAT HE/SHE SERVED OR ATTEMPTED TO SERVE
 THE FOLLOWING CIVIL PAPER(S):

COVER LETTER, CIVIL ACTION COVERSHEET, SUMMONS, COMPLAINT,
INTERROGATORIES AND REQUEST FOR PRODUCTION

☒ BY DELIVERING TO Dennis Wheeler PERSONALLY
☐ BY DELIVERING TO _____ A PERSON OF AGE AND DISCRETION

RESIDING AT THE RESIDENCE OF THE DEFENDANT (S)
☐ BY DELIVERING TO _____ AT THE PLACE OF BUSINESS AND
 LEAVING WITH HIM/HER COPIES OF THE SAME

PAPER(S) SERVED AT: ☐ ADDRESS ABOVE ☐ OTHER

SERVED ON 23 DAY OF September, 2016 @ 8:00p HOURS
 DEPUTY [Signature] (SIGNATURE)

SWORN TO BEFORE ME THIS 23 DAY OF September, 2016

NOTARY PUBLIC FOR SOUTH CAROLINA [Signature]

MY COMMISSION EXPIRES 7 July 2019

NON-SERVICE RETURN

☐ WAS UNABLE TO LOCATE AND SERVICE ON THE DEFENDANT(S) AFTER DILIGENT EFFORTS BY CHECKING ALL RESOURCES
 AVAILABLE TO SHERIFF'S OFFICE.

☐ MOVED ☐ VACANT ☐ DECEASED ☐ INCARCERATED ☐ REFUSED ANSWER DOOR

☐ NO SUCH ADDRESS ☐ NOT EMPLOYED ☐ OUT OF COUNTY/STATE

☐ OTHER COMMENTS _____

[Signature] DEPUTY'S SIGNATURE

Return and Memo in Opposition to Defendant's
Motion to Set Aside Default of January 30, 2017



Common Pleas

Case Caption: Brandon Hendrickson VS Dennis Wheller

Case Number: 2016CP4203107

Type: Affidavit/Default

So Ordered

s/M. Hope Blackley, Spartanburg County Clerk of
Court by Marsha Long

Electronically signed on 2016-11-02 17:08:50 page 3 of 3

ELECTRONICALLY FILED - 2017 Feb 10 11:03 AM - SPARTANBURG - COMMON PLEAS - CASE#2016CP4203107
ELECTRONICALLY FILED - 2016 Nov 01 4:02 PM - SPARTANBURG - COMMON PLEAS - CASE#2016CP4203107



Return and Memo in Opposition to Defendant's
Motion to Set Aside Default of January 30, 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
Brandon Hendrickson,	)	
	)	
Plaintiff,	)	MOTION FOR
	)	DEFAULT JUDGMENT
vs.	)	
	)	2016 - CP - 42 - 3107
Dennis Wheeler,	)	
	)	
Defendant.	)	

TO: THE COURT:

PLEASE TAKE NOTICE that Plaintiffs, through their undersigned attorney, apply for judgment by default to be rendered against Defendant Dennis Wheeler and further requests that the Court hear the issue of damages or other relief.

This Application and Request is made pursuant to Rule 55 (b)(2), SCRPC, and is based on the fact that Defendant did not answer or otherwise plead after being served a copy of the Summons and Complaint as indicated by the court record and that more than thirty-five (35) days have passed since Defendant was served.

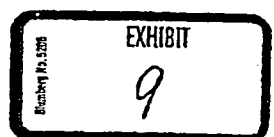
McCRAVY, NEWLON & STURKIE
LAW FIRM, P.A.

BY: s/ Jon E. Newlon
Jon E. Newlon
State Bar #15617

Attorney for Plaintiffs
1629 Bypass 72 NE
Greenwood, S.C. 29649
864/388-9100, 9104 (fax)

Spartanburg, S.C.
November 9, 2016

ELECTRONICALLY FILED - 2017 Feb 10 11:03 AM - SPARTANBURG - COMMON PLEAS - CASE#2016CP4203107
ELECTRONICALLY FILED - 2016 Nov 14 4:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2016CP4203107



Return and Memo in Opposition to Defendant's
Motion to Set Aside Default of January 30, 2017

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG)

SEVENTH JUDICIAL CIRCUIT

Brandon Hendrickson,

Plaintiff,

vs.

Dennis Wheeler,

Defendants.

ORDER OF DEFAULT

2016 - CP - 42 - 3107

Pursuant to Plaintiffs' Motion for an Order of Default against Defendant Dennis Wheeler, Plaintiff requests that an Order of Default be entered against Defendant Dennis Wheeler, as this Defendant did not answer or otherwise plead to the properly served Summons and Complaint within the required time. Plaintiffs further request that the matter of damages be referred to a Master with finality.

After considering all of the pleadings in this file, it appears to the Court that the Defendant Dennis Wheeler was legally served with a Summons and Complaint and proof thereof has been filed with the Court. It also appears that more than THIRTY-FIVE (35) DAYS have elapsed since the service of the Summons and Complaint and, therefore, the Defendant Dennis Wheeler is now in default as indicated by the Affidavit of Default filed by the Plaintiffs' attorney.

ELECTRONICALLY FILED - 2017 Feb 10 11:03 AM - SPARTANBURG - COMMON PLEAS - CASE#2016CP4203107
ELECTRONICALLY FILED - 2016 Nov 21 11:19 AM - SPARTANBURG - COMMON PLEAS - CASE#2016CP4203107



Return and Memo in Opposition to Defendant's
Motion to Set Aside Default of January 30, 2017

THEREFORE, IT IS ORDERED:

1. That Defendant Dennis Wheeler be held in default and that default be entered against him.
2. That this action be and the same hereby is referred to the Spartanburg Master, to take testimony and make findings of fact and conclusions of law with respect to the issue of damages and the propriety of entry of default and default judgment, with authority to enter final judgment in the case. An appeal from the final judgment so entered shall be made direct to the Court of Appeals for South Carolina.

Administrative Judge
Seventh Judicial Circuit

Spartanburg, South Carolina

_____, 2016

Return and Memo in Opposition to Defendant's
Motion to Set Aside Default of January 30, 2017



Spartanburg Common Pleas

Case Caption: Brandon Hendrickson VS Dennis Wheller

Case Number: 2016CP4203107

Type: Order/Entry of Default

IT IS SO ORDERED

s/ J. Mark Hayes, II #2132

Electronically signed on 2016-11-21 10:30:49 page 3 of 3

ELECTRONICALLY FILED - 2017 Feb 10 11:03 AM - SPARTANBURG - COMMON PLEAS - CASE#2016CP4203107
ELECTRONICALLY FILED - 2016 Nov 21 11:19 AM - SPARTANBURG - COMMON PLEAS - CASE#2016CP4203107

Return and Memo in Opposition to Defendant's
Motion to Set Aside Default of January 30, 2017

STATE OF SOUTH CAROLINA)

IN THE CIRCUIT

COUNTY OF SPARTANBURG)

BRANDON HENDRICKSON,)

Civil Action No. 2016-CP-42-03107

Plaintiff,)

vs.)

MOTION TO SET ASIDE DEFAULT

DENNIS WHEELER,)

Defendant.)

TO: PLAINTIFF AND JON E. NEWLON, ATTORNEY FOR PLAINTIFF:

You will please take notice that ten (10) days after service hereof, or as soon thereafter as counsel may be heard, Defendant, Dennis Wheeler, by and through its undersigned counsel, will move before the Presiding Judge of the Circuit, Spartanburg County, for an order setting aside any entry of default and/or default judgment against this Defendant pursuant to Rules 55(c) and 60(b) of the South Carolina Rules of Civil Procedure. The basis of this motion is as follows: (1) there exists good cause to set aside the entry of default and/or default judgment in this case; (2) the default occurred due to mistake and/or excusable neglect; (3) this motion has been made within a reasonable time of the discovery of the default; (4) this Defendant was improperly and/or insufficiently served; (5) this Defendant was improperly placed into default without proper notice and without proper service; and, (6) this Defendant has valid defenses to the Plaintiff's Complaint. Accordingly, Defendant requests that this Court set aside any entry of default and/or default judgment, deny any motions by the Plaintiff for entry of default and/or default judgment, and allow this matter to proceed to trial.



Return and Memo in Opposition to Defendant's
Motion to Set Aside Default of January 30, 2017

This motion may be supported by affidavits, memoranda, briefs and evidence which may be received and/or required by the Court.

MCANGUS GOUDELOCK & COURIE, L.L.C.

s/Jeanmarie Tankersley

Jeanmarie Tankersley

Bar No: 101068

Post Office Box 2980

55 East Camperdown Way, Suite 300 (29601)

Greenville, South Carolina 29602

(864) 239-4000

ATTORNEYS FOR DEFENDANT, DENNIS
WHEELER

December 16, 2016

Return and Memo in Opposition to Defendant's
Motion to Set Aside Default of January 30, 2017

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

BRANDON HENDRICKSON,
Plaintiff,

Civil Action No. 2016-CP-42-03107

vs.

**ANSWER
(Jury Trial Demanded)**

DENNIS WHEELER,
Defendant.

Defendant, Dennis Wheeler, answers the Complaint and respectfully asserts the following:

FOR A FIRST DEFENSE

1. Each and every allegation of the Complaint not specifically admitted is denied.
2. With regard to Paragraph 1 of the Complaint, Defendant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in said paragraph and, therefore, denies the same.
3. Defendant admits Paragraph 2 of the Complaint upon information and belief.
4. With regard to Paragraph 3 of the Complaint, Defendant admits that an accident involving the parties occurred in Spartanburg County.
5. Defendant denies Paragraph 4 of the Complaint.
6. Defendant denies Paragraph 5 of the Complaint, including all subparts.
7. Defendant denies Paragraphs 6 and 7 of the Complaint.
8. Defendant denies Plaintiff's Prayer for Relief is denied to the extent it seeks any relief or other recovery from Defendant.

Return and Memo in Opposition to Defendant's
Motion to Set Aside Default of January 30, 2017

FOR A SECOND DEFENSE

9. Defendant would respectfully show each and every cause of action set forth in the Complaint fails to state a claim upon which relief can be granted and, therefore, the Complaint should be dismissed.

FOR A THIRD DEFENSE

10. Plaintiff's claim is barred for lack of sufficient process because Plaintiff failed to properly serve Defendant in compliance with the South Carolina Rules of Civil Procedure.

FOR A FOURTH DEFENSE

11. Plaintiff has failed to mitigate his damages and has incurred damages that were unnecessary or unreasonable in amount. Plaintiff is, therefore, barred in whole or part from recovery in this case

FOR A FIFTH DEFENSE

12. Defendant pleads the law and doctrine of comparative negligence and alleges the negligence and recklessness of Plaintiff were greater than the negligence, if any, which might be established against Defendant and, therefore, Plaintiff is barred from any recovery in this action. Defendant further alleges any injury and damage sustained by Plaintiff was due to and caused by the negligence and/or willfulness of Plaintiff combining, concurring, and contributing with the negligence and/or willfulness, if any, on the part of Defendant and, therefore, any amount of recovery awarded to Plaintiff for the injuries and damages alleged in the Complaint shall be reduced by the Court by the percentage of negligence and/or willfulness attributed to Plaintiff.

13. Defendant pleads the law and doctrine of comparative negligence and alleges the negligence and recklessness of Plaintiffs in the following particulars:

- i. In failing to take reasonable and prudent evasive action to avoid the accident;

Return and Memo in Opposition to Defendant's
Motion to Set Aside Default of January 30, 2017

- ii. In failing to act as a reasonable and prudent driver and/or passenger would have under the same or similar circumstances; and
- iii. Such other particulars as may be identified in the litigation.

FOR A SIXTH DEFENSE

14. The Defendant would show the claim for punitive damages cannot be had because any award of punitive damages would violate the Defendant's equal protection and due process rights as guaranteed by the United States and South Carolina Constitutions.

FOR A SEVENTH DEFENSE

15. Defendant specifically reserves the right to supplement and/or amend this Answer to include any defenses which may be revealed through discovery or investigation or to withdraw any defense as discovery develops as permitted by the South Carolina Rules of Civil Procedure.

WHEREFORE, having fully answered, Defendant prays that the Complaint be dismissed, for the costs of defending this action, and for such other relief as the Court and jury deem just and proper.

MCANGUS GOUDELOCK & COURIE, L.L.C.

s/Jeanmarie Tankersley

Jeanmarie Tankersley
S.C. Bar No: 101068
Post Office Box 2980
55 East Camperdown Way, Suite 300 (29601)
Greenville, South Carolina 29602
(864) 239-4000

ATTORNEYS FOR DEFENDANT, DENNIS
WHEELER

December 16, 2016

Return and Memo in Opposition to Defendant's
Motion to Set Aside Default of January 30, 2017

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
Brandon Hendrickson,)
Plaintiff,)
vs.)
Dennis Wheeler,)
Defendants.)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

DAMAGES HEARING NOTICE

2016 - CP - 42 - 3107

TO: DEFENDANT DENNIS WHEELER:

YOU WILL PLEASE TAKE NOTICE that a hearing to determine damages has been scheduled before the presiding Spartanburg Master-In-Equity on Wednesday, January 30, 2017 at 2:30 p.m. at the Spartanburg County Courthouse, Courtroom 901, 180 Magnolia Street, Spartanburg, SC 29306. You are requested to attend and present any testimony or other evidence relevant to the issue of damages at that time.

McCRAVY, NEWLON & STURKIE LAW FIRM, P.A.

BY: s/ Jon E. Newlon
Jon E. Newlon
State Bar #15617
Attorney for Plaintiff

1629 By-Pass 72 NE
Greenwood, S.C. 29649
864/388-9100/388-9104 (Fax)

Greenwood, SC
January 5, 2017

ELECTRONICALLY FILED - 2017 Feb 10 11:03 AM - SPARTANBURG - COMMON PLEAS - CASE#2016CP4203107
ELECTRONICALLY FILED - 2017 Jan 05 9:52 AM - SPARTANBURG - COMMON PLEAS - CASE#2016CP4203107

Return and Memo in Opposition to Defendant's
Motion to Set Aside Default of January 30, 2017

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Brandon Hendrickson,

Plaintiff,

vs.

Dennis Wheeler,

Defendants.

**CERTIFICATE OF SERVICE
DAMAGES HEARING NOTICE**

2016 - CP - 42 - 3107

The undersigned of McCRAVY NEWLON & STURKIE LAW FIRM, P.A., Attorney for the Plaintiff, hereby certifies that on January 5, 2017, he served a copy of the pleadings specified below, *First-Class Mail*, by mailing the same in an envelope with sufficient postage attached and depositing the same in the U.S. Mail, Greenwood, South Carolina, to the address below.

PLEADINGS:

1. Damages Hearing Notice;
2. Certificate of Service by Mail.
3. Summons and Complaint

SERVED:

Dennis Wheeler
2815 Hwy 414
Taylors, SC 29687

McCRAVY, NEWLON & STURKIE LAW FIRM, P.A.

BY: s/ Jon E. Newlon
Jon E. Newlon, Esq.
State Bar #15617

Attorney for Plaintiff
1629 By-Pass 72 NE
Greenwood, S.C. 29649
864/388-9100/388-9104 (Fax)

Greenwood, SC
January 5, 2017

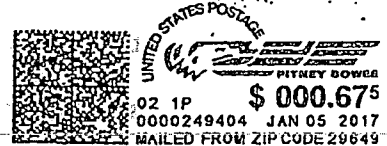
ELECTRONICALLY FILED - 2017 Feb 10 11:03 AM - SPARTANBURG - COMMON PLEAS - CASE #2016CP4203107
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Return and Memo in Opposition to Defendant's
Motion to Set Aside Default of January 30, 2017



1629 Bypass 72 NE
GREENWOOD, SC 29649

SPARTANBURG
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DENNIS WHEELER
200 S. BLACKSTOCK ROAD, APT. 17
SPARTANBURG, SC 29301

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RETURN TO SENDER
NOT DELIVERABLE AS ADDRESSED
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SC 29649160629 2964-02315-05-41

ELECTRONICALLY FILED - 2017 Feb 10 10:35 AM - SPARTANBURG COMMON PLEAS - GASSER2017CP4203107

Return and Memo in Opposition to Defendant's
Motion to Set Aside Default of January 30, 2017



Spartanburg Common Pleas

Case Caption: Brandon Hendrickson VS Dennis Wheeler
Case Number: 2016CP4203107
Type: Memo/Memo in Opposition

It is So Ordered

s/Judge Gordon G Cooper-3065

Electronically signed on 2017-02-10 09:53:25 page 35 of 35

ELECTRONICALLY FILED - 2017 Feb 10 11:03 AM - SPARTANBURG - COMMON PLEAS - CASE#2016CP4203107 -

Post Trial Motions of February 13, 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
Brandon Hendrickson,	)	
	)	
Plaintiff,	)	POST TRIAL MOTIONS
	)	
vs.	)	2016 - CP - 42 - 03107
	)	
Dennis Wheeler,	)	
	)	
Defendant.	)	
_____	)	

TO: THE COURT:

Plaintiff, through his undersigned attorney, makes the following post trial motions and requests a hearing on these matters.

Motion to Alter or Amend the Judgment (Rule 52, SCRPC)

~~Plaintiff requests that this Court set forth the sufficiency of the evidence which supports a reduction of Plaintiff's medical bills in the amount of \$318.00 despite the actual testimony on the record and the total medical bills amount submitted on the Damages summary submitted under Exhibit A. There was no evidence presented that these amounts were inaccurate and the Defendant did not object to the amount of the medical bills claimed. Further, proximate cause was not an issue before the court because of the default as well as Defendant's guilty plea.~~

Plaintiff requests that this Court set forth the sufficiency of the evidence that supports the Court's finding that Plaintiff did not meet its burden of proof regarding noneconomic claims for shock, anxiety, upset state of mind, pain according to pain scales and medical record entries and suffering despite all the uncontroverted testimony by Plaintiff. There is no requirement for expert testimony in this case.

Post Trial Motions of February 13, 2017

Plaintiff requests that this Court set forth the sufficiency of the evidence establishing Defendant was not reckless as a matter of law under the default (admitted pleadings) and punitive damages should not be awarded for admitted and legally established recklessness despite the holding in Magnolia N. Prop. Owners' Ass'n, Inc. v. Heritage Communities, Inc., 397 S.C. 348, 364, 725 S.E.2d 112, 121 (Ct. App. 2012), reh'g denied (Apr 20, 2012), cert. denied (Sept. 30, 2015):

"This court has previously held that in South Carolina, the award of punitive damages does not rest in the jury's discretion, but is recoverable as a matter of right. Broom v. Se. Highway Contracting Co., 291 S.C. 93, 98, 352 S.E.2d 302, 305 (Ct. App. 1986), abrogated on other grounds, Davenport v. Cotton Hope Plantation Horizontal Prop. Regime, 333 S.C. 71, 508 S.E.2d 565 (1998) (citing Sample v. Gulf Ref. Co., 183 S.C. 399, 410, 191 S.E. 209, 214 (1937)). In Sample, our supreme court held there was no error in charging the jury that it would have a duty to award punitive damages if it found that the plaintiff's rights "had been consciously, willfully, and recklessly violated." 183 S.C. at 410, 191 S.E. at 214. In that case, the court stated:

[U]nder the settled rule prevailing in this state punitive damages are awarded not only as punishment for a wrong, but also as vindication of [a] private right, and when under proper allegations a plaintiff proves a willful, wanton, reckless, or malicious violation of his rights, it is not only the right but the duty of the jury to award punitive damages.

Id. at 410, 191 S.E. at 214 (my emphasis). Appellants argue Broom and Sample are no longer controlling in light of the concerns expressed in Campbell and Mitchell. We disagree."

Motion for a New Trial or Reopening of the Damages Hearing

Plaintiff requests a new trial on damages because the uncontroverted and correct amount of damage presented in the record is \$318.00 more than what the Court awarded.

Whether or not a copy of a medical bill was submitted by exhibit, Plaintiff clearly testified to the amount of his medical bills.

Post Trial Motions of February 13, 2017

Plaintiff further requests a new trial on damages because of error in the failure to award noneconomic damages when liability was admitted and proximate cause testimony by a treating physician was not required. Further, Plaintiff requests a new trial on punitive damages given that Defendant was reckless as a matter of law and punitive damages, in some amount, should have been awarded according to Magnolia.

Motion for New Trial Nisi Additur

Plaintiff requests a new trial nisi additur and asks this court to award the entire amount of medical bills and noneconomic damages where expert testimony is not required and Plaintiff presented uncontroverted evidence of the same.

WHEREFORE, Plaintiff requests that the Court consider these motions, permit a hearing and either alter or amend its Order, grant a New Trial or Reopen the Damages Hearing, or grant a New Trial Nisi Additur.

Respectfully submitted,

McCRAVY, NEWLON & STURKIE
LAW FIRM, P.A.

BY: s/Jon Newlon
Jon E. Newlon
State Bar #15617

Attorney for the Plaintiff
1629 ByPass 72 NE
Greenwood, S.C. 29649
864/388-9100, 9104 (fax)

Greenwood, S.C.
February 13, 2017

Defendant's Reply to Plaintiff's Post Trial Motions of February 13, 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	
	)	
BRANDON HENDRICKSON,	)	Civil Action No. 2016-CP-42-03107
	)	
Plaintiff,	)	
	)	
v.	)	DEFENDANT'S REPLY TO
	)	PLAINTIFF'S POST TRIAL MOTIONS
DENNIS WHEELER,	)	
	)	
Defendant.	)	

TO: THE HONORABLE GORDON COOPER AND JON NEWLON, ESQUIRE,
ATTORNEY FOR PLAINTIFF:

Defendant, by and through his undersigned attorney, submits the following reply to Plaintiff's Post Trial Motions and requests the Court deny Plaintiff's motions for the following reasons:

Argument

I. Motion to Alter or Amend the Judgment

Plaintiff's post-trial filing entitled "Post Trial Motions" includes a Motion to Alter or Amend the Judgment under Rule 52, SCRCF. Plaintiff requests that the Court set forth the sufficiency of the evidence supporting the Court's findings, but does not specifically request that the Court's findings be altered or amended. Rule 52(a), SCRCF states "[i]f an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein." An order containing the findings of fact and conclusions of law has been submitted and executed in this case. No additional submissions by the Court are necessary or required.

II. Motion for a New Trial and Motion for New Trial Nisi Additur

Plaintiff moves both for a new trial and new trial nisi additur, as well as for a reopening of the damages hearing. The motion for a new trial is addressed to the sound discretion of the judge hearing it, and his refusal to grant such motion will not be interfered with by the reviewing court unless an abuse of discretion is shown, amounting to error of law. Evatt v. Campbell, 234 S.C. 1, 106 S.E.2d 447 (1959). A trial judge may grant a new trial nisi additur when he finds the verdict to be inadequate. See Green v. Fritz, 356 S.C. 566, 590 S.E.2d 39 (Ct.App. 2003). Rule 59, SCRCP states “[o]n a motion for new trial in an action tried without a jury, the court may open the judgment if one has been entered; take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.”

Plaintiff argues that a new trial should be granted or the damages hearing reopened because the amount of damage presented in the record is \$318.00 more than the Court's award. Plaintiff further asserts that the amount of medical bills was “clearly testified to” by Plaintiff at the hearing. Plaintiff does not provide for any additional evidence or testimony that would be presented or taken if the Court granted a new trial or reopened the damages hearing. The Court has already heard all relevant and admissible evidence and, therefore, reopening the damages hearing or granting a new trial would not provide the Court with any additional testimony as provided for by Rule 59, SCRCP. Plaintiff has failed to offer compelling reasons for granting a new trial or reopening the damages hearing.

Conclusion

The facts presented at the damages hearing support the Court's award. Accordingly, Defendant requests that Plaintiff's Post Trial Motions be denied.

Defendant's Reply to Plaintiff's Post Trial Motions of February 13, 2017

MCANGUS GOUDELOCK & COURIE, L.L.C.

s/ Jeanmarie Tankersley

Jeanmarie Tankersley

Bar No.: 101068

Post Office Box 2980

55 East Camperdown Way, Suite 300 (29601)

Greenville, South Carolina 29602

Phone: (864) 239-4000

Email: jeanmarie.tankersley@mgclaw.com

ATTORNEYS FOR DEFENDANT

March 7, 2017

Transcript: Damages Hearing

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF SPARTANBURG

3 BRANDON HENDRICKSON,

4)
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PLAINTIFF,

-VS-

DENNIS WHEELER,

DEFENDANT.

TRANSCRIPT OF TESTIMONY

(2016CP42-3107)

Spartanburg, South Carolina

REFERENCE HELD:

JANUARY 30, 2017.

HONORABLE GORDON G. COOPER,
MASTER-IN-EQUITY FOR SPARTANBURG COUNTY.

MCCRAVY, NEWLON & STURKIE LAW FIRM, P.A.
BY: **JONE E. NEWLON, ESQUIRE**
Attorneys for the Plaintiff.

MCANGUS, GOUDELOCK & COURIE, L. L. C.
BY: **JEANMARIE TANKERSLEY, ESQUIRE**
Attorneys for the Defendant.

Sarah Hollis, Court Reporter

1 THE COURT: This is case Number 2016-CP42-3107. Brandon Hendrickson versus Dennis
2 Wheeler. We are here on the Motion to Set Aside Default filed by the Defendant.

3 MS. TANKERSLEY: Yes, Your Honor.

4 MR. NEWLON: Your Honor, I don't know if there is a jurisdictional issue about the Motion
5 but I just want to put on the record that I waive any jurisdictional argument for this Court to hear
6 the Motion to Set Aside Default.

7 THE COURT: All right. This matter was never referred was it?

8 MR. NEWLON: Well the way that I drafted the request for a reference it says to rule on the
9 priority of default which I view that as if there happened to be somebody show up to challenge
10 the default. And so that is why I am saying I am waiving any jurisdictional objection just to
11 expedite this case to allow the Court to hear that, is what I am saying. And I don't know if I can
12 do that but I am doing it, if that is allowable.

13 THE COURT: Well I understand. It is my understanding that you did not refer this case. It
14 was sent originally here just for, in fact, well it is here but it is not here as a referred case. It is
15 here as a circuit court case.

16 MR. NEWLON: Yes sir. And under the Order that was signed by Judge Hayes it says that
17 Dennis Wheeler be held in default and default be entered against him. That this action be hereby
18 referred to the Master, to take testimony and make findings of fact and conclusions of law with
19 respect to the issue of damages and the propriety of entry of default and default judgment.

20 THE COURT: All right.

21 MR. NEWLON: So I view that as a grant of jurisdiction and if there is any question about it, I
22 waive the argument.

23 THE COURT: All right. Counsel on the Motion to Set Aside Default.

24 MS. TANKERSLEY: Yes, Your Honor. Jeanmarie Tankersley on behalf of the Defendant. If
25 I may, I have got a copy of the Motion and the Memo.

1 THE COURT: I have got the Memo.

2 MS. TANKERSLEY: All right.

3 THE COURT: And I think the Memo was e-filed as well.

4 MS. TANKERSLEY: Yes sir, just this afternoon.

5 THE COURT: Right. It is here.

6 MR. NEWLON: And just for the record, I left the office today at 11:00 a.m. So I don't know
7 when this was sent out.

8 MS. TANKERSLEY: It was just this afternoon. And for your perusal this is not going to say
9 anything other than what I am about to argue. But I just wanted to have it for the hearing.

10 MR. NEWLON: Okay. I have no objections to it being submitted. I am just letting the Court
11 know that this is the first time that I have seen it.

12 THE COURT: I understand.

13 MR. NEWLON: Thank you.

14 MS. TANKERSLEY: Your Honor just by way of background this case arises out of a car
15 accident that happened I believe in February of 2016 and the Complaint was filed on August 22,
16 2016 and purportedly served on Defendant on September 23, 2016 and default was entered
17 shortly thereafter, on November 21, 2016. We then filed an Answer and this Motion to Set
18 Aside Default on December 16, 2016. Because a judgment has not yet been entered this is
19 governed by Rule 55(c) of the South Carolina Rules of Civil Procedure, which requires only
20 good cause to be shown in order to set aside default. The courts in South Carolina have held
21 that aside from looking at the good cause standard that the court should also look to the
22 timeliness of when the motion was filed. Whether or not there are any meritorious defenses and
23 whether or not any prejudice would result against the Plaintiff if default was set aside. I believe
24 that there is good cause to set aside the default in this case, as I mentioned the Answer and this
25 Motion was filed within three (3) weeks of the default being entered. This hasn't been a long

1 drawn out case where a lot of time has elapsed. The accident itself happened less than a year
2 ago. The ultimate issue that we have come across right now is that we have been unable to
3 locate the Defendant recently. The Affidavit of Service says that he was personally served at the
4 address that is listed on the Affidavit. And I don't remember what the specific address is off the
5 top of my head but to our knowledge the Defendant is no longer located there. So we have not
6 been able to do any sort of investigation into whether or not he was actually personally serve or
7 whether there was any issues at all with service. But consequently, we would like the default to
8 be set aside so that we can open that up. One, just to look at the service and whether or not it
9 was proper and then, of course, to continue with the investigation of the claim. And looking
10 specifically at the three factors that the South Carolina courts recommend that the court look at
11 when evaluating whether or not to set aside default. Timeliness, like I said I don't think is going
12 to be disputed or is in issue really in this case at all. We filed for relief from default three (3)
13 weeks after it was entered. The more rigorous standard of Rule 60 of the South Carolina Rules
14 of Civil Procedure allows for a year. This isn't governed by Rule 60 because this is too early for
15 that and is much less of a rigorous standard. So I certainly think that filing within three (3)
16 weeks is timely. In addition to being filed three weeks outside of when the default was entered it
17 is less than sixty (60) days from when the original due date of when the Answer was back in
18 October. Looking secondly at the meritorious defenses. Because we have not been able to
19 speak to the Defendant recently, you know obviously we have some limitations when it comes to
20 discovering what all of our defenses are but knowing what we know just based on our initial
21 conversations with the Defendant prior to suit being filed he disputes liability. He contends that
22 his car was at a stop when the impact occurred. That he is not at fault for this accident. So
23 from a liability prospective there are some defenses that the Defendant will be able to pursue.
24 And according to the law in South Carolina when it comes to meritorious defenses the Court held
25 a meritorious defense need not be perfect nor one which can be guaranteed to prevail at trial. It

1 need to be only one which is worthy of a hearing or judicial inquiry because it raises a question
2 of law deserving of some investigation or discussion or a real controversy as to real facts arising
3 from conflicting or doubtful evidence. So we certainly believe that there is a controversy as it
4 relates to the liability in the case and further as it relates to the damages, the allegations in this
5 case. Without the benefit of discovery we of course do not know the extent of the Plaintiff's
6 previous conditions, if any. His other treatment by any other physicians. What we do know
7 thus far is that he didn't go to the hospital right away. There was some delay in treatment. The
8 remaining treatment was by a chiropractor. There is some indication that his complaints were
9 less than what he alleges in his ER record. And that is all something that if the default is set
10 aside we will be able to investigate further, a quick discovery. Looking finally at the third factor
11 which is whether or not prejudice relies against the Plaintiff. I don't believe that any prejudice
12 would result in setting aside the default at this point. Again this is a pretty new case. Default
13 has only been since November 21, 2016. The accident was less than a year ago, 2016. If the
14 default is set aside at this point we would be able to continue with discovery in a very timely
15 fashion and there wouldn't be any reason that Plaintiff wouldn't be able to continue as if the case
16 had never gone into default. Consequently, we believe that there is good cause in this case to set
17 aside the default which is all that is required under Rule 55(c) and just to highlight for the Court,
18 I am sure that you have already seen it in the Motion, but the South Carolina courts have made it
19 pretty clear that they prefer that an action be tried on its merits instead of being dismissed on a
20 technicality. That is our argument to set aside default in this case, today. Thank you.

21 THE COURT: All right. Counsel any response?

22 MR. NEWLON: Thank you, Your Honor. As I said I did not get the memorandum but as I
23 always do out of an abundance of caution, I always prepare a Return Memo to kind of frame my
24 argument. So it doesn't fall in line with exactly what she just argued or what is in her Motion.
25 So with the Court's indulgence, I would like to hand you a Return Memo for the file. And I am

1 going to try to cherry pick out of here because this covers more than what needed to be covered
2 and I will provide a copy to Ms. Tankersley. Let me see if I can follow along with what she is
3 talking about. Good cause, that is the wrong standard. South Carolina finds that when you enter
4 a judgment even though the reference for a damage hearing 60(b) is the proper standard not good
5 cause. In that case, let me see I think that I have it in here somewhere. It says good cause
6 standards does not apply when there is a judgment, in this case the judgment was entered on
7 November 21, 2016. *Sundown Operating* which I think was actually sort of recited, it says once
8 the default judgment has been entered, a party seeking to be relieved must do so under Rule
9 60(b). And in *Thomas & Howard Co., v. T.W. Graham*, it is a Supreme Court 2009, it says it
10 does not matter that the judgment is entered without a damages hearing. A default judgment
11 may be entered as a judgment even without a damages hearing. This is a matter of processing
12 and a standard of review. This would actually be reviewed under 60(b) in the wham factors and
13 the Court knows that the wham factors would apply whether you are looking at it under 55(c) or
14 60(b). So to the extent that there is any argument that good cause is the standard, I take
15 exception to that and say that it is actually under Rule 60(b). Looking at excusable neglect and
16 mistake and advertence. Those kind of things. The other problem that we have with the
17 Defendant's motion is yes you can have a meritorious defense and bring that to a hearing,
18 however, as I understand the law in South Carolina says the moving party with leave from default
19 has the burden of presenting evidence entitling him to relief. That is *BB&T v. Taylor*, that is a
20 Supreme Court 2006 opinion. It says, this evidence must be presented by way of affidavit,
21 deposition testimony, in-court testimony, or otherwise, when asking for relief under Rule 60.
22 That is *Standard Federal Sav. and Loan v. Mungo*. And then *Harris Teeter v. Moore & Van*
23 *Allen*, it says a memorandum or bare assertions by an attorney in support of a motion, without
24 more, is not evidence. So whether it is under the 55 (c) standard or the 60(b), in this particular
25 case there has been no affidavits presented or deposition testimony. Essentially, there has been

1 no facts presented for the Court to consider when analyzing the standard either under 60(b) or the
2 wham factors. The next issue has to do with timing. She indicated that it was several weeks.
3 However, the cases that I reviewed the timing of it has to do with from the date of service to the
4 actual filing of the motion. In this case it was fifty four (54) days. There are a couple of cases
5 that I carry in these kind of hearings. One of them has sixty (60) days as being too long. One of
6 them says over 90 days is too long. But even with the timing itself, the case law, it is not enough
7 just to say that you did it within time. The question has to do with the reasonableness
8 requirement of that time. In other words, you have to be able to come in and give the Court an
9 argument as to what was the reason for the delay and it has to be reasonable. And the cases are
10 cited in the memorandum. In this case we have no evidence of the reasonableness for the delay.
11 We have no idea why this particular gentleman did whatever he did to not answer in a timely
12 fashion. There is no evidence because there is no affidavit. And unfortunately, for Ms.
13 Tankersley she can't find her client but that is not grounds for excusable neglect. There is no
~~14 case in this jurisdiction that even suggest that just because someone can't be found and you can't~~
15 get a default, there is excusable neglect. Otherwise, every time a Defendant went off the radar
16 all these defaults would be set aside and that is not happening. And the last thing that I want to
17 point out is whether it is under 55(c) or under 60 (b) every time, and it is not just part of it or it is
18 optional, it has to be part of the motions. There has to be a meritorious defense as to liability.
19 In this particular case if you look at Exhibit 2, which is from the Spartanburg Magistrate's Court
20 case, this is a document from the Magistrate's court, where this gentlemen under the charge of
21 traffic and failure to yield the right of way on left turn pled guilty. As the Court is well aware
22 that if an individual pled guilty in a criminal matter that in a subsequence civil case he can not
23 take an arbitrary position. He is bound by his guilty plea which means he has admitted liability
24 even if the default itself is not an admission of liability by virtue of the default. He himself pled
25 guilty and now can not be heard to come in and say that he has a way out of this thing because he

1 thinks that the accident happened a different way. He would actually be concluded from
2 testifying contrary to his guilty pleas. The case that I am looking at is at the tail end of my initial
3 citation, I think. Excuse me, it is under valid defenses, page 7. I basically said can not show a
4 meritorious defense and that ends the inquiry. He has already shown up and pled guilty.
5 accordingly, Defendant is bound by their guilty plea and that is under *Zucher v. Bilton, Doe v.*
6 *Doe, and South Carolina Property and Casualty Insurance Guarantee Association.* And the
7 Court went on to say the case with *Wilder v. Blue Ribbon*, I believe that was on Judge Barber's
8 when there is no defense or liability there is no meritorious defense. When a Defendant can not
9 show a meritorious defense his Motion under Rule 60 fails. And at this point from the
10 Plaintiff's prospective the inquiry ends but if the Court considers prejudice, the prejudice
11 occurred, that was recognized by Judge Barber in *Wilder* where he found that there was prejudice
12 when the Defense have admitted fault and then wanted to get out of default so they can analyze
13 the issue of liability. That is on Page 8, the last paragraph. That was the grounds for prejudice
14 provided by Judge Barber in that opinion and upheld by the - - well affirmed by I believe that
15 was the Court of Appeals in 2001. So in summary, Your Honor, the standard is 60(b) which is
16 as counsel has indicated much more rigorous than 55 (c) and then you have to analyze the wham
17 factors but the problem is that in order to come in and present evidence that would even provide -
18 - that would support a claim for excusable neglect, mistake or inadvertence. There is no
19 evidence. There is no affidavit. And the comments by the attorney is not evidence in a case.
20 There is no evidence supporting either standard in this particular case plus he pled guilty which
21 he could not take a contrary position. So he does not have meritorious defense in this particular
22 case. There is no explanation for the reasonableness of waiting fifty four (54) days and there is
23 prejudice in this case consistent with the Barber opinion in *Blue Ribbon Taxicab*. So I would
24 ask this Court to deny the Motion and let us then go forward with the damages hearing. Thank
25 you.

1 THE COURT: Counsel?

2 MS. TANKERSLEY: Just briefly in response. To clarify the issue of 55 (c) versus 60(b). If
3 you just look at the language of the Rule 55 (c), it states for a good cause shown the Court may
4 set aside an entry of default and if a judgment by default has been entered may likewise set it
5 aside in accordance with Rule 60(b). An entry of default has clearly been made in this case. It
6 was made on November 21, 2016, which is why this is governed by 55(c). A judgment of
7 default has not yet been entered. That is for the purpose of the damages hearing. Because a
8 judgment has not yet been entered 55 (c) is clearly the standard and the Rule that applies to this
9 case. Looking at the arguments for timeliness they say that fifty four (54) days is not reasonable,
10 it is too long. Again even under the stricter standard of Rule 60, they give you a year to file your
11 response, or to file a Motion to Set Aside Default. So clearly fifty four (54) days or three weeks
12 as the case may be is certainly reasonable. There has been no extensive delay in responding to
13 the default. He mentioned excusable neglect. That is not something that you need under Rule
14 55 (c). That is a Rule 60 issue and it is not applicable in this case. As for the meritorious
15 defenses, his argument that a guilty plea in traffic court precludes you from disputing liability in
16 the Common Pleas Court it is not the case. There is a specific statute that says guilty pleas in
17 traffic courts do not come in as evidence in civil cases. And that is obviously because people
18 often pled guilty in traffic court in order to just get rid of the ticket and to move on. It doesn't
19 carry the same sort of weight as pleading guilty in a general sessions case. So that is not really
20 something that is at issue here. Obviously, if we went to trial as people go to trial in car accident
21 cases all the time. They dispute liability even though there has been a different admission at
22 traffic court. So that is not something that is really applicable in this case and even if it was we
23 would still have the meritorious defense argument about damages. Whether or not Plaintiff's
24 damages are as he alleges but are not as extensive as he alleges whether or not he has any pre-
25 existing conditions and that type of thing. Further, he mentions that there will be prejudice

1 because the Defendant has already admitted guilt. But as I just mentioned admitting guilt in
2 traffic court is not the same thing as admitting guilt in general sessions court. That would not be
3 admissible at trial. It is not relevant when it comes to meritorious defenses. And again based
4 on what we know about the timeliness, the lack of prejudice and the existence of meritorious
5 defenses there is good cause in this case and the default should be set aside.

6 MR. NEWLON: Very briefly, Your Honor, just two points. I was simply looking for the
7 language that she was looking at or reading a couple of minutes ago about the judgment and I
8 can't find it but I will simply say that I read it so many doggone times. If what counsel says is
9 true, then an entry of default and an order of judgment with reference for damages hearing would
10 be a distinction about a difference. And that is not the case. When an entry of default is put in
11 55 (c) standard applies up until such time as there is a judgment entered and there was a case on
12 point that I cited for this Court that there was actually a Rule 60 Motion made, it analyzes under
13 Rule 60 (b) whether there was an actual judgment entered and a damages hearing to be heard.
14 So according to the law in South Carolina that is the way that it is. The standard is 60 (b) it is
15 not 55 (c). And with regard to this criminal statute, I have never heard of that. I will say that
16 what I have heard is that a plea of no contest, nolo contendere or a conviction by a jury is not
17 admissible and that is not admissible I think as a admission against interest in any set of
18 circumstances. I have never seen the statute and I am going to have to see it, where a criminal
19 Defendant, whether it is in traffic court or criminal general sessions comes in and pled guilty to a
20 criminal charge of failure to yield during a left hand turn that that is not admissible in a civil
21 court as an admission of negligence or an admission against interest or an admission that he can
22 not now come back later and challenge in a civil setting. I have had this come up a dozen times
23 over the years, I have had the same thing presented and to my knowledge no one has ever made
24 that argument. I have never seen the statute that says that. I understand the issue about no
25 contest but as far as a criminal conviction if you plead guilty that is admissible and he is bound

Brandon Hendrickson - Direct Examination by Mr. Newlon

1 by that. He can not come back and argue liability in the civil case. And more importantly, as I
2 said before it doesn't matter what standard it is in this case, when you come to this hearing
3 whether it is under 55 (c) or whether it is under 60 (b) an attorney's arguments is not evidence
4 and you have to come to this hearing with some evidence and there is none. Thank you.

5 THE COURT: All right. As far as the Motion to Set Aside the Default I am going to deny that
6 motion. There was service on the Defendant on September 23, 2016. I have no reason to
7 believe that the service was not good and the officer signed the appropriate affidavit under oath
8 and what appears in this case is that counsel has been unable to locate the client to determine if
9 there is a meritorious defense but that is not good grounds in my mind to set aside that maybe
10 there is some in the future. You have got to come or file at the time that you file your Motion
11 your grounds or setting out a meritorious defense. So the Motion to Set Aside the Default is
12 therefore denied.

13 MR. NEWLON: The Plaintiff is ready to proceed with the damages hearing. I have one (1)
14 witness.

15 THE COURT: All right. Counsel are you prepared to proceed?

16 MS. TANKERSLEY: Yes, Your Honor.

17 THE COURT: All right. Then lets press on then.

18 **BRANDON HENDRICKSON, BEING DULY**
19 **SWORN, TESTIFIES AS FOLLOWS:**

20 THE COURT: State your full name and address for the Court reporter?

21 A. My name is Brandon Hendrickson. And my address is 242 Cool Water Court,
22 Spartanburg, South Carolina.

23 THE COURT: All right. Have a seat. Thank you. Counsel.

24 MR. NEWLON: Thank you, Your Honor.

25 **DIRECT EXAMINATION BY MR. NEWLON.**

1 Q. Please state your name?
2 A. Brandon Hendrickson.
3 Q. And what do you do for a living?
4 A. I am a tattoo artist.
5 Q. Okay. And were you involved in an accident in the past?
6 A. Yes sir.
7 Q. Do you remember when?
8 A. February 18.
9 Q. Of last year?
10 A. Of 2016, yes sir.
11 Q. Okay. And were you injured?
12 A. Yes sir.
13 Q. Okay. At the scene mentally how were you doing?
14 A. I was pretty shocked. I was razzed up. I was really anxious. I didn't really know what
15 was really going on. I was pretty upset.
16 Q. Okay. As a result of that accident did you seek medical attention?
17 A. Yes.
18 Q. All right. And where did you seek it?
19 A. At Pelham Medical Center.
20 Q. And how soon?
21 A. The day of.
22 Q. All right. And why did you seek medical treatment?
23 A. I had a lot of pain in my lower back, my middle back, well pretty much my whole back.
24 Numbness in my hands.
25 Q. Any other part of your body?

1 A. No. My hips. Well everything to do with my vertebral. My whole back, from my
2 lower to my upper back.

3 Q. All right. And with regards to your back what was the pain like?

4 A. It was pretty bad. Like I said I had the numbness of hands. My neck, I couldn't really
5 twist it, or turn it well. And my hips and my neck particularly was really tight.

6 Q. Okay, And you say that you had numbness in your hands?

7 A. Yes sir.

8 Q. All right. What would bring that on?

9 A. I would suppose my back because everything goes around your back.

10 Q. I mean would you have to do something to make it numb or it was just numb all the time?

11 A. No, they were just numb. They were ice cold.

12 Q. All right. And who saw you at Pelham?

13 A. A doctor and a nurse.

14 Q. Okay. And did they take your history? How it happened and everything?

15 A. Yes.

16 Q. Did they examine you?

17 A. Yes.

18 Q. Did you get any x-rays?

19 A. Yes.

20 Q. Okay. Following the examination and the x-ray and everything were you given any
21 medications?

22 A. Yes.

23 Q. Do you remember what they were?

24 A. Ibuprofen 800. I don't remember what the muscle relaxer was but there was a muscle
25 relaxer and a pain patch for the back pain.

1 Q. Flexural, does that ring a bell?

2 A. Yes.

3 Q. And did the doctor and the hospital staff give you instructions?

4 A. Yes.

5 Q. Did you follow them?

6 A. Yes.

7 Q. And as a result of that visit did you incur medical expenses?

8 A. Yes.

9 Q. Okay. And you actually received a medical bill?

10 A. Yes.

11 Q. Are you responsible for that bill?

12 A. Yes.

13 Q. And after you went to Pelham did you seek any followup?

14 A. Yes.

15 Q. Do you remember about how long after?

16 A. I guess twelve (12) days, two weeks or so.

17 Q. Okay. Do you remember who it was with?

18 A. River Fall Chiropractic. It was Dr. Arcamone.

19 Q. Arcamone?

20 A. Yes.

21 Q. And why did you go see Dr. Arcamone?

22 A. My pain didn't get better after I was done with my prescription.

23 Q. Okay. Did it get worse?

24 A. Yes.

25 Q. Where?

- 1 A. My lower back was uncomfortable the whole two weeks. It just kept getting worse and
2 worse, I couldn't really sleep. My numbness of hands was really bad. Like I still have a
3 lot of pain with my neck.
- 4 Q. And what did he basically do for you?
- 5 A. He did x-rays to check my back. A lot of alignment and e-stem therapy.
- 6 Q. And did it help?
- 7 A. Yes.
- 8 Q. All right. And as far as during this course of treatment do you remember about how long
9 you were treated?
- 10 A. I believe it was twenty (20) sessions.
- 11 Q. From March to when?
- 12 A. I want to say it was March to May.
- 13 Q. Okay. During that time frame did your pain evolve or get better?
- 14 A. I went in at about a seven or an eight and by the time that I was done with therapy it was
15 still a one or a two.
- 16 Q. Were you having spasms at any time?
- 17 A. Yes, my lower back was spamming a whole lot.
- 18 Q. How were your spasms at the conclusion of this treatment?
- 19 A. Manageable. I could deal with it but it was still there.
- 20 Q. Okay. And did he give you follow-up instructions?
- 21 A. Yes.
- 22 Q. And did you incur medical expenses with him?
- 23 A. Yes.
- 24 Q. Did he bill you?
- 25 A. Yes.

1 Q Are you responsible for those bills?

2 A Yes.

3 Q And once it was within the month or two months or three months following the

4 completion of that treatment, how are you doing?

5 A It hurts still but I can manage.

6 Q What is it that is giving you problems and how did it come about?

7 A It is still my neck and the middle of my upper back is still really cramped up and

8 everything.

9 Q When do you experience it the most?

10 A Weather. Weather is a big factor in it.

11 Q Okay. Were you working at the time of the accident?

12 A Yes.

13 Q And who were you working for?

14 A The Gallery Tattoo.

15 Q Okay. And who is your boss?

16 A Wayne Gallinger.

17 Q Okay. How much were you earning a week approximately?

18 A About five to six hundred a week.

19 Q Okay. Did you have a minimum that you would earn a day?

20 A Typically a hundred a day, that was the minimum.

21 Q And did you miss work as a result of the accident?

22 A Yes. I couldn't work while on the Flexural.

23 Q Okay. How many days did you miss, do you think?

24 A I believe thirteen (13).

25 Q Okay. Were you on the way to work the day of the accident?

1 A. Yes.

2 Q. So you missed that day. Do you remember when the last day it was that you didn't

3 work?

4 A. I believe it was the first.

5 Q. All right. And so if you make a minimum of a hundred dollars a day what were your

6 total loss wages?

7 A. About thirteen hundred dollars.

8 Q. Okay.

9 MR. NEWLON: Your Honor, if I may approach the witness?

10 THE COURT: Yes.

11 Q. I am going to hand you what I have marked as Exhibit A. I want to you take a few

12 minutes and look through that for me?

13 A. Yes.

14 Q. What is that document?

15 A. My damages.

16 Q. All right. What were your total medical expenses?

17 A. Total expenses Seven thousand six hundred seventy five & no/100 (\$7,675.00) dollars.

18 Q. Total loss wages?

19 A. Thirteen hundred.

20 Q. Are you asking the Court for an award of noneconomic damages?

21 A. Yes.

22 Q. And you understand what that is, like pain and suffering and shock and anxiety?

23 A. Yes.

24 Q. And to consider punitive damages?

25 A. Yes.

Brandon Hendrickson - Cross Examination by Ms. Tankersley

1 MR. NEWLON: Your Honor, I move to have Exhibit A put into evidence and I hand the
2 witness over to Ms. Tankersley.

3 THE COURT: All right.

4 **MR. NEWLON INTRODUCES INTO EVIDENCE A DOCUMENT REFERRED TO AS**
5 **THE DAMAGES OF THE PLAINTIFF, MARKED AS PLAINTIFF'S EXHIBIT A.**

6 THE COURT: All right. Counsel.

7 **CROSS EXAMINATION BY MS. TANKERSLEY.**

8 Q. Mr. Hendrickson, I want to talk just briefly about the accident that you were involved in.

9 MR. NEWLON: Your Honor, I am going to object to any questions regarding the nature and the
10 extent of the accident. It is an admission of liability. The only question before the Court that
11 may be opposed to the witness has to do with damages only and there is a case that I cited- - -

12 THE COURT: I will sustain it.

13 MR. NEWLON: Thank you.

14 MS. TANKERSLEY: Your Honor, just for the record the question that I am about to ask is not
15 about liability. It is the impact which goes directly to his damages.

16 MR. NEWLON: Again, Your Honor, I would object.

17 THE COURT: Sustained as well.

18 MR. NEWLON: Thank you.

19 THE COURT: The question is numbers.

20 MS. TANKERSLEY: I am sorry.

21 THE COURT: The question is numbers.

22 MS. TANKERSLEY: Yes, Your Honor.

23 Q. All right. Mr. Hendrickson you went to the emergency room on the same day as the
24 accident?

25 A. Yes.

1 Q. How long of a delay before you went to the emergency room?

2 A. I am not exactly sure. I had a damaged car. It was a couple of hours but it wasn't

3 directly afterwards.

4 Q. Does six (6) hours sound correct to you?

5 A. I couldn't say.

6 Q. Did you go in the EMS after the accident to the hospital?

7 A. No.

8 Q. The Exhibit that Mr. Newlon has submitted, if you will look at the second page of that for

9 me, at the very bottom it says litigation liability. Had you already filed a lawsuit?

10 MR. NEWLON: Your Honor, we object to relevance. We are here for damages only.

11 THE COURT: He can answer that question.

12 A. I didn't understand the question.

13 MS. TANKERSLEY: If I may approach, Your Honor.

14 THE COURT: Okay.

15 Q. At the bottom of Page 2, it says the litigation liability.

16 A. Are you asking me.

17 Q. Had you filed suit at this point in time?

18 A. When I had gone to Pelham.

19 Q. Yes, when you went to the emergency room?

20 A. Oh, no.

21 Q. Do you know why it says litigation or liability at the bottom of the page?

22 A. No.

23 MS. TANKERSLEY: I have a copy of his medical records from Pelham. Do you have any

24 objections to me putting those in evidence?

25 MR. NEWLON: No, you can ask him about them.

1 MS. TANKERSLEY: Okay, great.

2 Q. These are your medical records just from the emergency room. While you were at the
3 emergency room do you recall already noting that you were in a decreased amount of
4 pain?

5 A. No, I do not.

6 Q. If you will look at Page 20, the plain number at the very bottom, you see that they have
7 these numbers, Look at Claim 0022?

8 A. Yes.

9 Q. And the clinical note that says patients records a decrease in pain, reclined and looking at
10 cell phone. Family at bedside. Do you dispute that?

11 A. Am I looking at the wrong page.

12 Q. Right here.

13 A. And what am I looking for?

14 Q. It says clinical note. It says patient reports a decrease in pain. Reclined. Patient
15 reclined looking at cell phone.

16 A. There was no decrease in pain. Who said this.

17 Q. This is in your medical record?

18 A. But who had entered this into my medical record?

19 Q. Presumably your attending physician or nurse, I am not sure.

20 A. The nurse part, okay. The nurse, that was when they had six (6) nurses doing clinical
21 training while I was in there so I don't know. They must have had me mistaken with
22 someone else because there was still pain.

23 Q. Okay.

24 A. Yes.

25 Q. And prior to this accident on the same day, did you have any injury while exercising?

1 A. No.

2 Q. Okay. If you will look at that same page, musculus skeletal where it says onset two (2)

3 hours ago while exercising. You don't remember reporting that you had an injury while

4 exercising?

5 A. I did not report it. As I remember that I did not report that.

6 Q. Okay. While you were at the emergency room they did take some x-rays and did some

7 evaluations, is that right?

8 A. Yes.

9 Q. Did you have anything that was broken?

10 A. No.

11 Q. You were diagnosis with a back strain is that right?

12 A. I am not sure. They had said that they I guess that they were also in the middle of their

13 training, so I don't feel like that I got the best medical attention I needed while I was

14 there.

15 Q. Okay. You mentioned in direct examination that you were told to take ibuprofen daily

16 and the muscle relaxer as needed, is that right?

17 A. I was told to take the muscle relaxer throughout the date until the prescription was done.

18 Q. Okay. But was there a certain amount of time each day that you were supposed to take

19 that?

20 A. Whatever the pill bottle told me to.

21 Q. Okay. If you will look at Page 23 where it says at the bottom of the page, these were

22 your instruction for leaving?

23 A. Yes.

24 Q. Where it says please take the ibuprofen three (3) times a day with food and may take the

25 muscle relaxer as needed, correct?

1 A. No, it told me three (3) times a day for the Flexural.
2 Q. Okay. But that is not what the medical record says, correct?
3 A. No, it says right here Flexural tablet, one (1) tablet by mouth three (3) times a day as
4 needed for pain. Am I looking at the wrong thing because I don't understand what you
5 are talking about.
6 Q. Right here. Three (3) times a day you may take the - - -
7 A. The ibuprofen.
8 Q. Muscle relaxer as needed, correct?
9 A. No, that says ibuprofen right there. Take three (3) times a day with food.
10 Q. Right. Take one (1) with - - -
11 A. If you look at the top one above it though it says Flexural tablets, one tablet by mouth
12 three times a day.
13 Q. What does the second sentence say right here?
14 A. You may take the muscle relaxer. But why is the muscle relaxer under the ibuprofen
15 part.
16 Q. It is just your discharge instructions but I don't want to get caught up on this.
17 A. Yes.
18 Q. You were also given some discharge instructions, is that right? I believe you testified to
19 on direct examination?
20 A. That says no driving or work while taking that.
21 MR. NEWLON: I am sorry, what does it say?
22 Q. Where does it say that?
23 A. It says it right where you are talking about. It says no drug - - you may take the muscle
24 relaxer as needed but no driving or work while taking the medication.
25 Q. Correct, okay. Were you given instructions to follow up with a primary care physician?

1 A. No.

2 Q. Okay. Right above that where it says no primary physician listed. Call to establish a
3 new one. Right above where you were just looking. Well let me ask you this Mr.
4 Hendrickson, did you call a primary care physician?

5 A. No.

6 Q. Did you follow up with a primary care physician?

7 A. No, I did not.

8 Q. And you mentioned - - -

9 A. I didn't have insurance for a primary care physician when that was set up.

10 Q. Okay. And you did follow up with the chiropractor, correct?

11 A. Correct.

12 Q. And that was two (2) weeks later?

13 A. Twelve (12) days, not two (2) weeks.

~~14 Q. Okay. I am sorry your testimony was twelve (12) days to two (2) weeks earlier. So~~
15 twelve (12) days is fine. But there was a delay in going to the chiropractor, correct?

16 A. There wasn't a delay. I just went back after my muscle relaxers were done.

17 Q. Okay. And why did you decide to go see this chiropractor?

18 A. He was suggested. A client suggested him.

19 Q. A client recommended that you go to him?

20 A. Yes.

21 Q. Recommended that you go to the chiropractor?

22 A. Yes.

23 Q. Okay. And why did you decide to go to a chiropractor instead of a primary care
24 physician?

25 MR. NEWLON: Your Honor, I am going to object to this line of questioning as going far field

1 of damages in this case. Getting into the areas of approximate cause and unrelated matters.

2 MS. TANKERSLEY: Your Honor, if I may respond.

3 THE COURT: All right.

4 MS. TANKERSLEY: Where he was treated I think goes directly to damages. The amounts

5 that he incurred. The extent of treatment that he received could have been prevented had he

6 gone originally to a primary care physician instead of the chiropractor.

7 MR. NEWLON: Your Honor, that is - - -

8 THE COURT: I will sustain that.

9 MR. NEWLON: Thank you.

10 Q. Had you ever had previous chiropractic treatment?

11 A. No.

12 Q. Okay. At the chiropractor is that the first time that you complained of neck pain?

13 A. What is that.

14 Q. When you were treated at the chiropractor is that the first time that you complained of

15 neck pain?

16 A. No. I complained when I went to Pelham.

17 Q. Are there any medical records in that exhibit in front of you that says that you were

18 complaining of neck pains?

19 A. From Pelham.

20 Q. Yes sir?

21 A. If they didn't put it in there that is on them. I definitely complained about neck pains, my

22 entire back and my hands but I am not really - - -

23 Q. If you will look at the claim at the bottom of 17, which is the second page.

24 A. Okay.

25 Q. And you can see a list of your systems and it has a negative for neck pain. Are you

1 denying that you were negative on pain at the time that you went to the emergency room?

2 A. Yes. Are you asking me if I had neck pain when I went to the doctor.

3 Q. Did you tell the doctor that you had neck pain?

4 A. Yes. I told the doctors at Pelham that my entire back was out of whack. Something did

5 not feel right in my back and I had a numbness in my hands. People don't normally have

6 numbness of hands.

7 Q. I am disputing that. I am asking you if you told them that you had neck pain?

8 A. Yes, I did.

9 Q. Okay. So you are disputing that they put that you were negative for neck pain on the

10 records?

11 A. Absolutely.

12 Q. Okay.

13 A. I had neck pain. I had numbness of pain in my lower back. And I don't know what this

14 ding on my thumb or what this other stuff is that they are talking about here.

15 Q. Okay. Was the chiropractor the last place you treated in regards to this accident?

16 A. Yes.

17 Q. And that was in May of 2016, is that right?

18 A. Yes.

19 Q. Have you ever had any pre-existing or prior treatment for neck or back injuries?

20 A. No.

21 Q. Looking at the exhibit that your attorney put up. It has your wage verification form.

22 Can you turn to that for me please?

23 A. Yes.

24 Q. Do you see it?

25 A. Yes.

- 1 Q. All right. Who was that prepared by?
- 2 A. Myself.
- 3 Q. You filled this out?
- 4 A. Yes.
- 5 Q. Okay. Who signed it?
- 6 A. My shop owner.
- 7 Q. Okay. And it has that you have an hourly wage or annually salary of Thirty thousand &
8 no/100 (\$30,000.00) dollars a year, correct?
- 9 A. Correct.
- 10 Q. Are you salaried at Thirty thousand & no/100 (\$30,000.00) dollars a year?
- 11 A. No.
- 12 Q. How do you make your money? How does that - - How do you get to Thirty thousand?
- 13 A. By appointments.
- 14 Q. Okay. And that is the gross amount, Thirty thousand?
- 15 A. Correct.
- 16 Q. Okay. You have hours per week on an average of five hundred to six hundred a week, I
17 am assuming that means that is how much you make a week?
- 18 A. Correct.
- 19 Q. Okay. And that is based on appointments?
- 20 A. Yes.
- 21 Q. Do different tattoos cost different amounts of money?
- 22 A. Correct.
- 23 Q. Okay. Do you have like a goal that you are making that week? Are you always making
24 five hundred to six hundred dollars a week?
- 25 A. Making more or less, sometimes less it just depends.

Brandon Hendrickson - Redirect Examination by Mr. Newlon

1 Q. Okay.

2 A. But it could be more.

3 Q. Okay. Total days absent, thirteen (13) working days, total loss wage Thirteen hundred,
4 gross, is that correct?

5 A. Yes.

6 Q. Did you have a doctor's note or anything that excused you from work other than what we
7 talked about just a minute ago?

8 A. I wasn't allowed to work on the Flexural.

9 Q. Okay.

10 A. The Flexural said that I can't work.

11 Q. Were you taking Flexural every day for 13 days?

12 A. I took it until I was out, yes.

13 Q. Okay. All right. I think that is all the questions I have. Yes. Thank you.

~~14 MR. NEWLON: I just have a few follow-up, Your Honor.~~

15 THE COURT: All right.

16 **REDIRECT EXAMINATION BY MR. NEWLON.**

17 Q. Earlier you were asked the question about decreased pain while you were there. I am
18 going to hand you a record. This is a triage portion of the note, page 7, down under the
19 medications Flexural. First of all had you read through your medical records before this
20 trial?

21 A. No.

22 Q. If you had an opportunity to see your medical records would it help to refresh your
23 memory?

24 A. Absolutely.

25 Q. Okay. I am going to hand you what is page 7 of your Pelham Emergency Room. And

1 under Flexural, if you would, just take a moment and read that for me and then I have got
2 a question.

3 A. Out loud.

4 Q. No, just read it to yourself and then I have a question.

5 A. All right.

6 Q. Did it indicate a pain scale?

7 A. Pain scale.

8 Q. Under Flexural?

9 A. Flexural. Am I looking at the wrong thing. Yes.

10 Q. What is this word right here?

11 A. One tablet.

12 Q. Right here?

13 A. Level of pain.

14 Q. Okay. What is that?

15 A. Eight out of ten.

16 Q. Okay. Is it pre-med pain?

17 A. Correct.

18 Q. Okay. So that was before you took any medication?

19 A. That was before. I am sorry, I just didn't understand the - - -

20 Q. That is okay.

21 A. Yes.

22 Q. So before you took - - -

23 A. Yes. Rate pain.

24 Q. So eight out of ten. Did they actually give you some medication?

25 A. Yes.

1 Q. When? What time?
2 A. At 7:00 o'clock.
3 Q. So they were actually giving you pain medication while you were in the hospital?
4 A. Correct.
5 Q. That would explain how you improved?
6 A. Correct. Because I couldn't even sit whenever they were trying to go through the
7 examination and everything.
8 Q. I understand. It was pointed out to you that you did not make a neck complaint, the word
9 neck does not appear in the record, in the Pelham record. Do you recall that line of
10 questioning?
11 A. What is that.
12 Q. Do you recall the line of questioning where counsel pointed out to you that the word neck
13 did not appear in the Pelham records?
14 A. Yes.
15 Q. I am going to hand you what is Page 2, under history of present illness there is a series of
16 language in there?
17 A. Pain is located in the upper and middle back.
18 Q. Did it say upper back?
19 A. Yes.
20 Q. Thank you. And as I understand it you had testified that the nurse made an entry in here
21 about two hours ago, onset two hours ago while exercising. He has no recollection of
22 saying that?
23 A. No. I was on my way to work.
24 Q. Okay. Fine. Well that same nurse that examined you, did she examine your back?
25 A. Yes.

1 Q. What did she say under your back?

2 A. What I remember.

3 Q. Right here that says back?

4 A. No back tenderness.

5 Q. Okay. So she examined you, this nurse or one of these six (6) nurses, and said that you

6 reported no back tenderness, is that right?

7 A. Correct.

8 Q. But when you saw the doctor who examined you, what did he find under your back?

9 A. There was a lot of - - -

10 Q. I want you to find it and I want you to read it.

11 A. Vertebral point tenderness at lumbar spine. Spasm in lower, I can't pronounce that word.

12 Q. Okay. As far as the hundred dollars a day is that a minimum or is that a maximum or

13 how do you characterize that?

14 A. A dead minimum for me.

15 Q. Okay.

16 MR. NEWLON: No further questions, Your Honor. Thank you.

17 THE COURT: All right.

18 MS. TANKERSLEY: Nothing further, Your Honor.

19 THE COURT: You may step down sir. Thank you. Counsel?

20 MR. NEWLON: Just very brief, Your Honor. In this particular case, in a default situation like

21 this the Plaintiff has testified what his medical bills are and the Court should have the exhibit to

22 the extent of loss wages and asking the Court to consider noneconomic damages that would

23 include what he testified to, the shock and the anxiety and being upset at the scene to include the

24 pain scale that was in the hospital of eight out of ten, before medication. Seven to eight at the

25 beginning of the chiropractic treatment, down to one to two. Still having some residual

1 problems with him saying that he can manage it. So there is in the record evidence of shock and
2 anxiety, pain and suffering , and disruption of life. On the issue of punitive damages there are
3 two purposes for punitive. One is to punish and one is vindicate a private right to operate on a
4 public highway safe from harm. This is not so much a case that punishes somebody because we
5 can't find them. This is more of a case of his right to operate a motor vehicle on a public
6 highway free from harm. The question is has there been any negligence per say. Yes, there has.
7 It has been pled as apart of the pleadings and it is admitted and it has to do with the violation of
8 statute 56-5-580 and 56-5-2150 and 2320. Having to do with failure to yield, improper left turn
9 and those kinds of things. With that in mind under our *juris prudence*. I know that there is not
10 a jury here to be charged but I would ask the Court to consider the behavior. It was pled that he
11 was reckless. And it was a finding as a matter of fact because it is in default that he was reckless
12 and I would ask the Court to consider a punitive award on the issue of vindication of a private
13 right to be safe from harm, when the Court is considering the damages. And I thank you for
14 your time.

15 THE COURT: All right. Counsel.

16 MS. TANKERSLEY: Thank you, Your Honor. This really is a case of soft tissue injuries. I
17 don't think that is being disputed here. The injuries weren't significant enough that he needed to
18 go in an ambulance after the accident or significant enough that he even needs to go to the
19 emergency room directly after the accident. There was a six (6) hour delay before he went and
20 while he was there he was diagnosis with a back strain. And there are some, and obviously it is
21 in dispute, but there are some notes in the record which state that he was in a decreased amount
22 of pain and that the onset was caused by exercise two (2) hours prior and that he was not in any
23 distress in the ER. And subsequently he waited another two (2) weeks to go to anyone else. He
24 went to a chiropractor who we know is not a medical doctor and he did not follow-up with a
25 primary care physician as instructed by the emergency room records. He has not seen anyone

1 about any of these injuries since May of 2016. Despite arguing that he has some ongoing issues.
2 And as it relates to the lost wage documents the only evidence presented is a form that was filled
3 out by the Plaintiff himself. It is not a sworn Affidavit. There are no tax documents supporting
4 his Thirty thousand & no/100 (\$30,000.00) dollars a year or five hundred to six hundred dollars a
5 week. And further that is the estimate of his gross income not his net income. And as far as
6 punitive damages go I do not dispute that if this was a jury case that they would be able to get a
7 charge on punitive damages but I certainly don't think that alone means that there is a cause for
8 punitive damages. I don't think that there is anything in this case that arises to an accident that
9 would deserve punitive damages or that anyone should be punished in this case. In saying all of
10 that and given the evidence that is front of us, we absolutely do not dispute that you know if
11 someone is in a car accident they have the right to go get checked out by an ER and potentially
12 even a subsequent doctor and so we have no objections to providing the amounts of his ER bills
13 and even - - although I dispute the need for the chiropractor and even paying for the chiropractic
14 bills. I certainly don't think that this is something where he has undergone any significant pain
15 and suffering or has any ongoing medical injuries. Thank you, Your Honor.

16 THE COURT: All right.

17 MR. NEWLON: Just a couple of things. Real quick.

18 THE COURT: All right.

19 MR. NEWLON: The characterization of the injuries as being insignificant I find, I would ask
20 the Court to consider that which is significant as what is significant to the Plaintiff and how it
21 affected his life and him not being able to work and take medications and loss money over a
22 period of time and it is not like he went and did whatever he did which was unreasonable. It is
23 significant to him even if it is a minor case. He is fortunate that he didn't have any more
24 significant injuries and to belittle this case because you have a view that is insignificant in the
25 grand scheme of things is inappropriate to consider and we need to consider the Plaintiff. And

1 with regards to the exercising, I saw it being drawn out in the record. The chief complaint - -
2 well this particular nurse who made that entry also noted no back tenderness when the doctor
3 actually found spasms in the lower back. So it calls into question the actions of one of these six
4 (6) nurses standing around being upgraded. And the hundred dollars was a minimum. In this
5 particular case he took the low road on this and he doesn't have to provide tax information. And
6 as far as the punitive goes, I will simply say that there is an entitlement to a charge and there was
7 a case that was on appeal and I don't know if it has been decided yet or not that addressed this. I
8 would have to look at it but there is a case out there called *Broom v. Southeast Highway*
9 *Contracting*, that holds for the proposition that the award of punitive damages does not rest in the
10 jury's discretion but is recoverable as a matter of right. And they also looked at *Davenport v.*
11 *Cotton Hope Plantation*, and I will give this to Your Honor. You can have this and we will
12 make copies for counsel but they basically said and this case went up on appeal, it says the jury
13 has the duty to award punitive damages. The jury in this case, the fact finder, finds that the
14 Plaintiff's rights have been consciously, willfully or recklessly violated. In this case in default
15 the pleadings stand as they are. It is a finding of fact that it is reckless and that he would be
16 entitled to some measure of punitive damages. Also, another case that talks about this and I
17 think this is the one that went up on appeal. Yes, a rehearing was denied. Cert. denied. On
18 June 15, 2014, it is *Magnolia North Property Owner's Association*, the cite on it is *West law*
19 469730. I would just simply submit to the court that some measure of punitive damages as a
20 matter of right should be awarded. Thank you.

21 THE COURT: All right. Then I will review the pleadings and email you both as far as my
22 decision. Counsel if you will go ahead and prepare the order as far as the Motion to Set Aside
23 Default denying that.

24 MR. NEWLON: Yes sir.

25 THE COURT: Can you e-file from Greenwood?

1 MR. NEWLON: I can.
2 THE COURT: All right. Just go ahead and e-file that and as soon as you e-file that I will sign
3 that and I will let both of you know as far as my decision on the case.
4 MR. NEWLON: Just for my benefit, I do a lot of electric filing in Federal court but State court,
5 I let my staff handle that for me. I am not actually filing the order. You want me to try to get it
6 to you through e-filing so you can review it and edit it?
7 THE COURT: Well you will file a proposed Order. And then it will come to me.
8 MR. NEWLON: Okay.
9 THE COURT: And then it will come to me and then I will sign it, electronically sign it.
10 MR. NEWLON: Okay. That is how I will do it. As opposed to emailing you.
11 THE COURT: No, don't email it to me. You need to e-file it.
12 MR. NEWLON: Yes sir.
13 THE COURT: And then she will pick it up on the e-filing.
14 MR. NEWLON: All right. Good enough. I just hadn't done it before.
15 THE COURT: All right.
16 MS. TANKERSLEY: Thank you, Your Honor.
17 THE COURT: All right. Thank you.
18 MR. NEWLON: Thank you.

19 ----- END OF MOTION HEARING -----
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1 STATE OF SOUTH CAROLINA

2 COURT OF COMMON PLEAS

3 COUNTY OF SPARTANBURG

4
5 CERTIFICATE

6
7 I, the undersigned Sarah Hollis, Court Reporter for the Master-In-Equity for the County
8 of Spartanburg, State of South Carolina, do hereby certify that the foregoing is a true and
9 accurate Transcript of Testimony of the proceedings had at the hearing of the captioned case,
10 before the Honorable Gordon G. Cooper, Master-In-Equity for Spartanburg County, South
11 Carolina, on the 30th day of January, 2017.

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

13 *Sarah Hollis*
14 Sarah Hollis

15 Court Reporter

16
17 SWORN to before me this

18 16th day of March, 2017.

19 Spartanburg, South Carolina.

20
21 *Sharon B. Winstead*

22 Notary Public for South Carolina

23 My Commission Expires: 9-13-2026

Transcript: Post Trial Motions Hearing

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) COURT OF COMMON PLEAS
2016-CP-42-3107

3 Brandon Hendrickson,)
4 Plaintiff(s),)
5 vs.) TRANSCRIPT OF RECORD
6 Dennis Wheeler,)
7 Defendant(s).) March 27, 2017
Spartanburg, South Carolina

8
9 BEFORE:

10 HONORABLE GORDON G. COOPER, Master-in-Equity

11 APPEARANCES:

12 Jon Newlon, Esquire
13 McCRAVY, NEWTON, & STURKIE LAW FIRM, P.A.
Attorney for Plaintiff

14 Jeanmarie Tankersley, Esquire
15 McANGUS GOUDELOCK & COURIE
Attorney for Defendant

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20 DOROTHY HUNTSINGER
Court Reporter

1 THE COURT: All right. We are on case number 2016-3107, Brandon
2 Hendrickson versus Dennis Wheeler. And this is a motion filed by the attorney for
3 the Plaintiff, a Motion to Alter or Amend the Judgment that was previously entered
4 in this case. Counsel, are you ready to proceed:

5 MR. NEWLON: I am.

6 THE COURT: All right.

7 MR. NEWLON: And for the record it was a Motion to Alter or Amend
8 under Rule 52 including a motion for a new trial, reopen the damages hearing, as
9 well as a motion for Nisi Additur. Your Honor, the motion for -- under Rule 52
10 had to do with the failure to award Three hundred and eighteen (\$318.00) Dollars
11 in actual damages regarding the medical bills and it has to do with the
12 establishment that the defendant was reckless under his admission as it relates to
13 punitive damages. The new trial, or reopen it had to do with the exhibit that was
14 included in the prior testimony, which I have not seen the Court exhibit and I'm
15 not sure the basis for the Court's decision because all the copies I have show
16 medical expenses with all of the medical bills adding up to that number. And did
17 not award noneconomic damages as well as the punitive damages and the additur
18 has to do with the Three hundred and Eighteen (\$318.00) Dollars as well as the
19 noneconomic damages. And I'm going to address this under medical bills,
20 noneconomic damages and punitive damages. In looking at the medical bills,
21 reviewing Pearson versus Bridges, there is great latitude in the introduction of
22 evidence when it comes to medical expenses like this, in a case like this and any
23 evidence of nature and character like there was in this case is admissible. And
24 under Moultrie versus Checker, which I am sure the Checker Yellow Cab the Court
25 is aware of. In Walters versus Littlejohn, a lay person's testimony is sufficient for

1 a foundation and there is no expert required. And particularly necessity and
2 reasonableness can be shown by a lay person when they testify that they incurred
3 the medical expenses, they received those bills and they are responsible for those
4 bills. There was a case on that. In this particular case, Mr. Hendrickson's
5 testimony on the amount of the bills, they come in two places, had to do with
6 medical expenses from his emergency room visit and then with the chiropractor,
7 Dr. Arcamone. Those are the only two sources of medical expenses. The Three
8 Eighteen -- Three hundred and eighteen (\$318.00) Dollars was incurred on the
9 same day and the same place in the hospital. The interesting thing about those two
10 bills was that he testified to x-rays that he actually received and at that time and
11 both those bills, one was the taking and one was the reading of the x-rays, which
12 there was no objection to during the course of the trial. As a matter of fact, there
13 was no objection to the amount of the medical bills or whether or not those medical
14 bills were corroborated by either the presence or absence of the actual bills. I
15 submitted a copy to the Court, not the original, which I actually have the original
16 with the original stickers and I remember asking Counsel previous to that if at
17 some point post-trial if she had actually received all the bills when I gave her a
18 copy and of course I never got a response. I have a copy of those missing pages --
19 those two pages. But even if those pages weren't included, his testimony, basically
20 I asked him what were his medical expenses and he gave them. I asked him to just
21 take a moment to look at that. He never testified that his medical expenses were
22 less than Seven thousand, Six hundred and Seventy-five (\$7,675.00) Dollars and
23 there was no testimony that there was an assertion that the medical bills themselves
24 were representative of his actual medical expenses. The testimony was Seven
25 thousand, Six hundred and Seventy-five (\$7,675.00) Dollars and it seems like there

1 is a denial of the obvious without an objection from Counsel. And so given those
2 sets of circumstances, all I ask the Court to do, and if it requires additional
3 testimony, I can have the client testify to reopen but simply to come in to put in the
4 correct exhibit or the exhibit that has medical expenses that add up to what he
5 testified to at trial. In other words, correct the record. But be that as it may, his
6 testimony, the acceptance of his testimony for these bills in and of itself should be
7 sufficient to show what his medical expenses are and not to punish him for what
8 may be a clerical mistake by an attorney if in fact the exhibit that was submitted to
9 the Court doesn't have those two bills in it as every other copy I have, and I
10 assume that Ms. Tankersley has the same thing. It was concluded in that and
11 again, it was never raised at trial and there is no objection to it. So again, it seems
12 like it's form over substance in this particular case. With regard to the
13 noneconomic damages, there's a whole line of cases that deal with nisi additur and
14 an award of to-the-penny medical expenses and it's easy to ascertain in this case
15 that the medical expenses awarded were those that were -- followed the
16 attachments to the actual Plaintiff's damages sheet which was submitted as an
17 exhibit. So there was no noneconomic damages award. A lay person's testimony
18 is sufficient under our case law to testify to noneconomic damages and expert
19 testimony is not required, although I have seen in one default setting where there
20 was a doctor -- I think it might have even be a chiropractor -- testify and that was
21 on that particular record that that really didn't have any authority or guidance for
22 our case, but I did see that one time, but it's not even required. Hearing some
23 testimony for noneconomic damages, going back and looking at the record itself,
24 which I now have, it talked about -- I asked him questions. He--- I asked him
25 about location of pain, his back, his hips, where it was located, hands numb. I had

1 him--- I asked him to describe as best he could the type of pain he experienced,
2 the medications he was provided, muscle relaxers, pain, plus a patch, the fact that
3 he incurred those medical expenses, why did he go to the chiropractor, what were
4 his complaints at the time, which he testified his back and neck and lower back
5 were worse. That he talked about pain evolution. During that time he went from
6 a seven to eight with spasms to a pain scale of one to two with spasms for about
7 twenty visits and then he incurred those medical expenses. His testimony which
8 was captured actually in the Order that I drafted for the Court, not only did it
9 include that, but it also included questioning by Defense Counsel and followup
10 questioning by me with referencing the actual records themselves where it was
11 recorded in the Emergency Room he had a pain level of eight out of ten just before
12 he was administered his pain medication. There was an issue about his pain level
13 being lower and I brought out the fact that if he had actually been issued a pain
14 medication, but before that his pain level was eight out of ten and their reference
15 in the medical records to those pain levels. And so not only do we have his
16 testimony, but on direct, cross and redirect, it has references in the records to pain
17 scales he was experiencing, plus medications he was taking, one in particular that
18 reduced his pain level while he was in the emergency room. So given that
19 information, Your Honor, and the standard being more likely than not
20 preponderance of the evidence, I would submit to the Court that there is a -- more
21 likely than not there was some measure of pain and suffering certainly. Also
22 testified to anxiety or shock and anxiety he experienced at the accident scene,
23 which he is the only person that can do that. So there is testimony clearly in the
24 record that supports more likely than not a noneconomic damage award and to
25 ignore that is to ignore the medical records of the doctors who find pain scales and

1 pain scales being improved by medications. In his testimony -- this man's
2 testimony, he's the only one that can testify pretty much to noneconomic damages
3 and it does require an expert. On the issue of punitive damages, the case that I was
4 talking about before actually did go to the Supreme Court and was dismissed as
5 being properly granted so that is basically the law of the state now. That is that
6 Magnolia case. The argument that I made in closing and what I have presented and
7 what I present now was that in most default cases that I see that went up on appeal
8 that dealt with punitive damages, and I think one of them was actually one of your
9 cases, that the Court basically held that a default by itself and the pleadings by
10 themselves don't lay a foundation or basis for a charge of punitive damages or
11 even award of punitive damages and I understand that. But this case, we don't
12 have that. What I have in this case is something more than that. I have in the
13 record an admission of guilt by the Defendant so then the question comes under
14 that case law, looking at Berberich implies when you look at whether someone is
15 reckless or not, implies doing a negligent act knowingly and by virtue of his guilty
16 plea, and he's not here to testify, but by virtue of his guilty plea which is Exhibit
17 2 in the Memorandum submitted by the -- in this case, he actually pled guilty to
18 failure to yield the right of way on a left turn, which by virtue of his admission he
19 is admitting that he knowingly did this. And I cannot find a case that addresses a
20 guilty plea in this kind of setting in a default hearing. So, it may be first
21 impression, but that this does represent a conscious act that would justify punitive
22 damages. Looking at Berberich, in that particular case the bank just simply didn't
23 follow procedures and the trial Court was reversed by the Appellate Court, saying
24 it should have allowed punitive damages charge and an award of damages in that
25 case. There is also--- Well, that case doesn't apply. Excuse me. So, I go to

1 Magnolia and I look at this. In Magnolia it says the Court previously held the
2 award of punitive damages does not rest in the jury's discretion but is recoverable
3 as a matter of right. That is under Broom. And what--- They set aside Broom and
4 Sample as no longer controlling and they settled the rule prevailing in this state
5 punitive damages are awarded not only as punishment for a wrong, but also as
6 vindication of a private right if the Plaintiff can prove the defendant was reckless.
7 And reckless is a conscious disregard and by virtue of his guilty plea he is
8 admitting to consciously failing to yield the right of way on a left turn that he knew
9 he shouldn't have done and he did it. And so the plaintiff in this case felt like that
10 while it's not as egregious as a DUI or running a red-light and the injuries weren't
11 that severe, it's still a conscious disregard knowingly making a turn, admitting to
12 it, and under Magnolia the Plaintiff would ask the Court if we -- to reconsider the
13 ~~punitive damage award. And so, Your Honor, in summary, for the relief that the~~
14 Plaintiff is seeking there is multiple things that it's asking for. Number one, alter
15 the judgment to include all of the medical bills whether by way of submission at
16 this hearing or by way of reopening the record to allow the introduction of those
17 two bills which apparently I have and I believe Counsel had and somehow is not
18 in the record. Again, I have not seen that exhibit so I don't know if that's the case.
19 Or allow the Plaintiff to reopen the record to get that testimony, to get it in. Also
20 we are asking for a new trial on the issue of actual damages and noneconomic
21 damages. That would include the Three hundred Eighteen (\$318.00) Dollars that
22 form over substance apparently was left out and noneconomic damages and a new
23 trial on the issue of punitive damages, or in addition to that, be added on the actual
24 damages and noneconomic damages if the Judge so chooses to go that route.
25 Thank you.

1 THE COURT: All right. Counsel?

2 MS. TANKERSLEY: Yes, Your Honor. Just very, very briefly. First for
3 the Rule 52 Motion to Alter or Amend the Judgment, as I put in my Reply Memo,
4 Rule 52 states that if an opinion or a memorandum of decision is filed it will be
5 sufficient if the findings of facts and conclusions of law appear therein. An
6 opinion has been filed in this case. I think that is sufficient to set forth the rulings
7 and findings of fact from this Court. I don't think there is any reason to open it up
8 in order to put forth the sufficiency of the Court's evidence as requested by
9 Plaintiff's Counsel in his Memorandum. Furthermore, Your Honor, as Mr.
10 Newlon just stated, all of the evidence has already been introduced in regards to
11 the Plaintiff's testimony. He testified to his medical bills. I don't think there was
12 any dispute over what he testified to at the time and because of that, I don't think
13 there is really any grounds to open up the hearing. There is no additional
14 testimony to be heard and the same goes for the period of damages, allegations,
15 everything that would be argued if we opened it back up has already been argued.
16 There isn't anything new for the Court to hear. Nothing that -- no new evidence
17 or anything like that that would be sufficient grounds for a new hearing or to open
18 up a hearing or to alter the judgment. Additionally, just very briefly, the Magnolia
19 case states--- And first of all, this deals with juries. But it talks about it being the
20 duty of the jury to award punitive damages only after they have evaluated the
21 evidence and concluded that punitive damages are appropriate. So, you know, this
22 isn't the same as this case. There is still--- A jury is still able to evaluate the
23 evidence and determine the punitive damages are not appropriate. I think that is
24 more akin to what has happened in this case. So, just in summary, Your Honor, I
25 think that all the evidence has already been presented. There really isn't any

1 reason to open this back up. Mr. Newlon stated that his Plaintiff -- or that the
2 Plaintiff testified to his medical damages. There really isn't anything new to be put
3 into evidence and so I don't think it's appropriate to reopen the hearing. Thank
4 you.

5 THE COURT: All right. Counsel?

6 MR. NEWLON: A brief followup, Your Honor. Rule 52, yes it is in the
7 motion and as this Court actually had me draft that Order, I included in there the
8 testimony and reference to the medical records that were actually accomplished or
9 heard at trial and by virtue of that, that information which was found in the Order
10 in and of itself supports a claim for noneconomic damages, so I would agree with
11 Counsel that the opinion is sufficient and it is sufficient to reconsider noneconomic
12 damages. And with the punitive, looking at Magnolia, what they were trying to
13 figure out or what the jury was to be allowed to do was to make a determination
14 clear and convincing whether the driver was reckless. They did not have a case
15 where a defendant admitted to it, and in this case I have the admission. You don't
16 need a jury to determine whether or not he was reckless because he consciously
17 disregarded his obligation to fail to yield right of way in his admission. So, that
18 is why I have made that argument. Thank you.

19 THE COURT: All right. I will take a look again at the motion, the replies
20 and let you know as to my decision.

21 MR. NEWLON: Your Honor, for the record would like a copy of the exhibit
22 that was submitted. I don't think I've got that. I haven't opened up the sealed
23 Transcript, but that exhibit which would have been Exhibit A, to see exactly what
24 was submitted to the Court.

25 THE COURT: I will get that for you because the Court Reporter who did that

1 will be back in tomorrow. She has been on vacation. So she will get that to you.

2 MR. NEWLON: That is fine. She can just scan it and e-mail it to me and
3 that will be fine.

4 THE COURT: Fine. I will have it to you and at the same time, provide it to
5 both of you.

6 MR. NEWLON: Thank you, Your Honor.

7 MS. TANKERSLEY: Thank you, Your Honor.

8 THE COURT: All right.

9 ----- **END OF RECORD** -----

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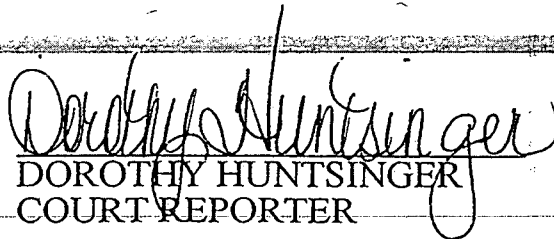
25

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) **C E R T I F I C A T E**

3 I, the undersigned **Dorothy Huntsinger**, Court Reporter for the Office of the
4 Master-in-Equity for the County of Spartanburg, State of South Carolina, do
5 hereby certify that the foregoing is a true, accurate and complete transcript of
6 testimony of the proceedings had and evidence introduced at the hearing of the
7 captioned case, before **Honorable Gordon G. Cooper, Master in Equity** for
8 Spartanburg County, South Carolina, on the **27** day of **March, 2017**.

9 No exhibits were marked or left with the Court Reporter at the conclusion
10 of the trial.

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

13
14 
15 DOROTHY HUNTSINGER
COURT REPORTER

16 April 7, 2017
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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF SPARTANBURG) SEVENTH JUDICIAL CIRCUIT

Plaintiff,

Dennis Wheeler,

Defendant.

2016 - CP - 42 - 03107

Medical expenses		\$7,675.00
Lost wages		\$1,300.00
Noneconomic		By Court
Punitive		By Court

804-3601

Dwy

PELHAM MEDICAL CENTER 250 WESTMORELAND ROAD GREER SC 296519013 8645604123										PELHAM MEDICAL CENTER P O BOX 198886 ATLANTA GA 30384										EXHIBITS: HENDRICKSON 1604930126 V000108559 14-1996067 021816 021816										0131																																							
1 PATIENT NAME HENDRICKSON, BRANDON										2 PATIENT ADDRESS 242 COOL WATER CT BOILING SPRINGS SC 29316										3 STATE SC										4 ZIP CODE 29316																																							
10 BIRTHDATE 06121981										11 SEX M										12 DATE 18 1 20										13 TIME 01										14 CONDITION CODES 042																													
31 OCCURRENCE CODE 01										32 OCCURRENCE DATE 021816										33 OCCURRENCE FROM 11										34 OCCURRENCE THROUGH 021816										35 OCCURRENCE FROM 11										36 OCCURRENCE THROUGH 021816																			
37 HENDRICKSON BRANDON 242 COOL WATER CT BOILING SPRINGS SC 29316 8644940874										38 VALUE CODES 45 1200										39 VALUE CODES 40										41 VALUE CODES 42																																							
43 REV CODE 0320										44 DESCRIPTION X-RAY EEXAM OF LOWER SPI										45 HCPCS / RATE / HSPS CODE 72100										46 SERV DATE 021816										47 SERV UNITS 1										48 TOTAL CHARGES 63200										49 NONCOVERED CHARGES 77500									
0450										ED VISIT LEVEL 3										99283 25										021816										1										77500																			
0001										PAGE 001 OF 001										CREATION DATE										030216										TOTALS										140700																			
50 PRIOR NAME HENDRICKSON, BRANDON										51 HEALTH PLAN ID 18 434655839										52 PRIOR PAYMENTS Y Y										53 EST AMOUNT DUE 63200										54 NET 77500																													
55 INURED'S NAME HENDRICKSON, BRANDON										56 PREL 18										57 INSURED'S UNIQUE ID 434655839										58 GROUP NAME 999999										59 INSURANCE GROUP NO 999999																													
60 TREATMENT AUTHORIZATION CODES 839012A M545 M25552 M25551 R200 F17200										61 DOCUMENT CONTROL NUMBER UNKNOWN										62 EMPLOYER NAME UNKNOWN																																																	
63 ADMIT 839012AM545										64 PATIENT REASON 839012AM545										65 FPG CODE V4352XA										66 Y92410																																							
67 PRINCIPAL PROCEDURE 839012AM545										68 OTHER PROCEDURE 839012AM545										69 OTHER PROCEDURE 839012AM545										70 ATTENDING NP1457586448										71 QUAL LAST GERRALD FIRST QUINCY																													
72 OTHER NP1457586448										73 OTHER NP1457586448										74 OTHER NP1457586448										75 OTHER NP1457586448										76 OTHER NP1457586448																													
77 OTHER NP1457586448										78 OTHER NP1457586448										79 OTHER NP1457586448										80 OTHER NP1457586448										81 OTHER NP1457586448																													
82 REMARKS LITIGATION LIABILITY 1001 NORTH PINE STREET SPARTANBURG SC 29303										83 BIC 33282N00000X										84 BIC 33282N00000X										85 BIC 33282N00000X										86 BIC 33282N00000X																													

Exhibits: Plaintiff

FROM: MED GRP OF THE CAROLINAS EMERGENCY MED PELHAM PO BOX 402074 ATLANTA GA 30384-2074		CODE DOCTOR NAME I.D. NUMBER 717 DOWLING 14-1996067	
ACCT. svh 2074140	ITEMIZATION DATE 07/28/2016	Personal amt. due .00	
TO: BRANDON HENDRICKSON 242 COOL WATER CT BOILING SPRINGS SC 29316	OFFICE PHONE: (877) 828-9116 MAKE CHECKS PAYABLE/REMIT TO: MED GRP OF THE CAROLINAS EMERGENCY MED PELHAM PO BOX 402074 ATLANTA GA 30384-2074		

PLACE OF SERVICE (PS) CODES 01. HOSPITAL IN-PATIENT 04. RESIDENCE 07. INTERMEDIATE CARE FACILITY 02. HOSPITAL OUT-PATIENT 05. EMERGENCY ROOM 08. SKILLED NURSING HOME 03. OFFICE 06. CONGREGATE CARE 09. OTHER 10. INDEPENDENT LAR		TO ASSURE PROPER CREDIT TO YOUR ACCOUNT PLEASE RETURN THE UPPER PORTION OF THIS ITEMIZATION WITH YOUR PAYMENT.	
ACCOUNT WITH MED GRP OF THE CAROLINAS		DETACH HERE. AMOUNT PAID	
OFFICE PHONE (877) 828-9116		ITEMIZATION DATE 07/28/2016	
DATE OF SERVICE 07/28/2016		ACCOUNT # svh 2074140	

DATE	PS	SURGEON	REFERRING	OFFICE	PATIENT	PHYSICIAN	ROOM	SERVICE	ICD	AMOUNT
021816	23				BRANDON	717	99284	EMER DEPT HI SEVER ENT EVAL	S39.01	315.00

Due From:

This account has not been included in any hospital bill or statement.
This itemization reflects emergency physician's services only.

Telephone hours are 8 A.M. - 8 P.M. ET
This itemization shows information that has been billed previously.

CHARGES ARE FOR PROFESSIONAL SERVICES RENDERED. YOU MAY RECEIVE SEPARATE BILLING FOR ADDITIONAL SERVICES AND/OR FACILITY CHARGES. SEE REVERSE SIDE OF THIS FORM FOR DIRECTIONS

Exhibits: Plaintiff

UPSTATE CAROLINA RADIOLOGY, PA
P O BOX 678207
DALLAS TX 75267-8207
(800)841-4236

Patient:

Acct #: 643039
HENDRICKSON, BRANDON
242 COOL WATER CT
BOILING SPRINGS, SC 29316

Responsible party:

HENDRICKSON, BRANDON
242 COOL WATER CT
BOILING SPRINGS, SC 29316

Srvc. Date	CPT	Proc. Description	Charge	Balance	Physician
02/18/2016	72100	RADEX SPI LUMBOSAC 2/3 V	\$23.00	\$23.00	LAZENBY, BARRY M

Payment Information

TOTAL BALANCE: \$23.00
Print Date: 06/24/2016

Exhibits: Plaintiff

Dr Craig Arcamone D.C.
2156 E Main Street
Duncan, SC 29334-9456
(864) 804-6530

June 2, 2016

Brandon J. Hendrickson
242 Cool Water Ct
Spartanburg, SC 29316

Claim# 201055362

Patient #: 784

RE: Brandon J. Hendrickson

Date	Service Descriptions	Charge	Receipt	Total
03/01/16	9920425 NP-OV Extensive	160.00		160.00
03/01/16	72040 AP/Lat Cervical	110.00		270.00
03/01/16	98941 Chiropractic Manipulation 3-4 Reg	55.00		325.00
03/01/16	97110 Therapeutic Exercise - 2 units	100.00		425.00
03/01/16	97032 EMS, Attended - 2 units	80.00		505.00
03/01/16	97010 Hot/Cold Packs - 2 units	50.00		555.00
03/03/16	98941 Chiropractic Manipulation 3-4 Reg	55.00		610.00
03/03/16	97110 Therapeutic Exercise - 2 units	100.00		710.00
03/03/16	97032 EMS, Attended - 2 units	80.00		790.00
03/03/16	97010 Hot/Cold Packs - 2 units	50.00		840.00
03/08/16	98941 Chiropractic Manipulation 3-4 Reg	55.00		895.00
03/08/16	97110 Therapeutic Exercise - 2 units	100.00		995.00
03/08/16	97032 EMS, Attended - 2 units	80.00		1075.00
03/08/16	97010 Hot/Cold Packs - 2 units	50.00		1125.00
03/10/16	98941 Chiropractic Manipulation 3-4 Reg	55.00		1180.00
03/10/16	97110 Therapeutic Exercise - 2 units	100.00		1280.00
03/10/16	97032 EMS, Attended - 2 units	80.00		1360.00
03/10/16	97010 Hot/Cold Packs - 2 units	50.00		1410.00
03/15/16	98941 Chiropractic Manipulation 3-4 Reg	55.00		1465.00
03/15/16	97110 Therapeutic Exercise - 2 units	100.00		1565.00
03/15/16	97032 EMS, Attended - 2 units	80.00		1645.00
03/15/16	97010 Hot/Cold Packs - 2 units	50.00		1695.00
03/17/16	98941 Chiropractic Manipulation 3-4 Reg	55.00		1750.00
03/17/16	97110 Therapeutic Exercise - 2 units	100.00		1850.00
03/17/16	97032 EMS, Attended - 2 units	80.00		1930.00
03/17/16	97010 Hot/Cold Packs - 2 units	50.00		1980.00
03/22/16	98941 Chiropractic Manipulation 3-4 Reg	55.00		2035.00
03/22/16	97110 Therapeutic Exercise - 2 units	100.00		2135.00
03/22/16	97032 EMS, Attended - 2 units	80.00		2215.00
03/22/16	97010 Hot/Cold Packs - 2 units	50.00		2265.00
03/24/16	98941 Chiropractic Manipulation 3-4 Reg	55.00		2320.00
03/24/16	97110 Therapeutic Exercise - 2 units	100.00		2420.00
03/24/16	97032 EMS, Attended - 2 units	80.00		2500.00
03/24/16	97010 Hot/Cold Packs - 2 units	50.00		2550.00
03/29/16	98941 Chiropractic Manipulation 3-4 Reg	55.00		2605.00
03/29/16	97110 Therapeutic Exercise - 2 units	100.00		2705.00
03/29/16	97032 EMS, Attended - 2 units	80.00		2785.00
03/29/16	97010 Hot/Cold Packs - 2 units	50.00		2835.00
03/31/16	98941 Chiropractic Manipulation 3-4 Reg	55.00		2890.00
03/31/16	97110 Therapeutic Exercise - 2 units	100.00		2990.00
03/31/16	97032 EMS, Attended - 2 units	80.00		3070.00
03/31/16	97010 Hot/Cold Packs - 2 units	50.00		3120.00
04/05/16	98941 Chiropractic Manipulation 3-4 Reg	55.00		3175.00

Claim # 2010553-2 Exhibits: Plaintiff

RE: Brandon J. Hendrickson

June 2, 2016

Date	Service Descriptions	Charge	Receipt	Total
04/05/16	97110 Therapeutic Exercise - 2 units	100.00		3275.00
04/05/16	97032 EMS, Attended - 2 units	80.00		3355.00
04/05/16	97010 Hot/Cold Packs - 2 units	50.00		3405.00
04/07/16	98941 Chiropractic Manipulation 3-4 Reg	55.00		3460.00
04/07/16	97110 Therapeutic Exercise - 2 units	100.00		3560.00
04/07/16	97032 EMS, Attended - 2 units	80.00		3640.00
04/07/16	97010 Hot/Cold Packs - 2 units	50.00		3690.00
04/12/16	98941 Chiropractic Manipulation 3-4 Reg	55.00		3745.00
04/12/16	97110 Therapeutic Exercise - 2 units	100.00		3845.00
04/12/16	97032 EMS, Attended - 2 units	80.00		3925.00
04/12/16	97010 Hot/Cold Packs - 2 units	50.00		3975.00
04/14/16	98941 Chiropractic Manipulation 3-4 Reg	55.00		4030.00
04/14/16	97110 Therapeutic Exercise - 2 units	100.00		4130.00
04/14/16	97032 EMS, Attended - 2 units	80.00		4210.00
04/14/16	97010 Hot/Cold Packs - 2 units	50.00		4260.00
04/19/16	98941 Chiropractic Manipulation 3-4 Reg	55.00		4315.00
04/19/16	97110 Therapeutic Exercise - 2 units	100.00		4415.00
04/19/16	97032 EMS, Attended - 2 units	80.00		4495.00
04/19/16	97010 Hot/Cold Packs - 2 units	50.00		4545.00
04/22/16	98941 Chiropractic Manipulation 3-4 Reg	55.00		4600.00
04/22/16	97110 Therapeutic Exercise - 2 units	100.00		4700.00
04/22/16	97032 EMS, Attended	40.00		4740.00
04/22/16	97010 Hot/Cold Packs - 2 units	50.00		4790.00
04/26/16	98941 Chiropractic Manipulation 3-4 Reg	55.00		4845.00
04/26/16	97110 Therapeutic Exercise - 2 units	100.00		4945.00
04/26/16	97032 EMS, Attended - 2 units	80.00		5025.00
04/26/16	97010 Hot/Cold Packs - 2 units	50.00		5075.00
04/28/16	98941 Chiropractic Manipulation 3-4 Reg	55.00		5130.00
04/28/16	97110 Therapeutic Exercise - 2 units	100.00		5230.00
04/28/16	97032 EMS, Attended - 2 units	80.00		5310.00
04/28/16	97010 Hot/Cold Packs - 2 units	50.00		5360.00
05/03/16	98941 Chiropractic Manipulation 3-4 Reg	55.00		5415.00
05/03/16	97110 Therapeutic Exercise - 2 units	100.00		5515.00
05/03/16	97032 EMS, Attended - 2 units	80.00		5595.00
05/03/16	97010 Hot/Cold Packs - 2 units	50.00		5645.00
05/05/16	98941 Chiropractic Manipulation 3-4 Reg	55.00		5700.00
05/05/16	97110 Therapeutic Exercise - 2 units	100.00		5800.00
05/05/16	97032 EMS, Attended - 2 units	80.00		5880.00
05/05/16	97010 Hot/Cold Packs - 2 units	50.00		5930.00
		\$5930.00	\$0.00	\$5930.00

Exhibits: Plaintiff

WAGE VERIFICATION FORM FOR Brandon Hendrickson

Full Name of Employee	Brandon Jordan Hendrickson
Full Name of Employer	The gallery tattoo
Mailing Address of Employer	
Dates of Employment:	
Begin	Feb 2015
End	NA
Job Title	tattoo artist
Description of Duties	tattooing
Hourly Wage (gross) or Annual Salary	30,000 / year
Hours Per Week (average)	500 - 600 / week
Dates Absent	2-18-206 thru March 5
Total Days Absent	13 working days
Total Lost Wages (gross)	\$1,300

D. Gallagher
For the Employer (signature)

Deweyne Gallagher
For the Employer (printed name)

Owner
Title

_____, S.C.

_____, 20____

NOTE: "Days Absent" are days when the employee could have worked but did not work due to injury or illness and was not paid hourly or annual wages. "Days Absent" may include days the employee used annual leave, sick leave or some other earned form of leave due to injury or illness because use of annual, sick or other form of earned leave does not preclude a claim for lost wages.

7/25/2016 3:52:38 PM (GMT-04:00)

Exhibits: Defendant

0014/0043

Mar-02-2016 10:30 Village Hospital 8645303628

4/14

Pelham Medical Center
250 Westmoreland Road
Greer, South Carolina 29651 Phone: 864-530-6000

2/18/2016

Patient: Hendrickson, Brandon
Arrival: 2/18/2016 1822
Pt Acct: 1604930126
Med Rcd: 000108559

ED RECORD

Patient: Hendrickson, Brandon
Home Address: 242 Cool Water Ct

DOB: 6/12/1981
Age: 34yr
Sex: M

City: Bolling Springs
State: SC Zip: 29316

Insurance Companies

Insurance Company

LITIGATION/LIABILITY F/C LI

Home Ph: (864) 494-0874

Created Record: 2/18/2016 1822
Mode of Arrival: Walk-In NOS

Acculy: 4

Mode of Departure: With Designated Driver

Decision To Admit:
Dispo Summary Printed: 2/18/2016 1910
Time Left ED: 2/18/2016 1931

Disposition: Home
Condition at Dispo: Stable

Pt Weight: 63.6 kg (164.3 lbs)
Pt Height: 6'1" (185cms)

Chief Complaint:

Triage Impression: MVC

Precautions: Standard Precautions

CDC Early Warning Sx: None Identified

RN Triage: Holliday, Kayla R.N.

PCP: No Primary Physician Listed,
Call To Establish A New One

RN Primary: Keri R.

PCP Ph: 864-591-7999

NLP/Res: Dowling, Stephanie N.P.

Referring Phys:
Referring Phys Ph:
Consult Phys:
Consult Phys Ph:

Admit Info

Diagnosis

Sx 1: Strain lower back muscle, fascia & tendon

Created and Electronically Authenticated By: Leshkerav, Anna (Scribe) Created: 2/18/2016 1840 Last Entry: 1850

PHYSICIAN H&P MVC

Patient seen at: 2/18/2016 1842.

— **PREHOSPITAL CARE:** Arrived by Private vehicle.

— **History** not limited.

— **Chief Complaint:** MVC.

— **HPI:** Mr. Hendrickson is a 34 y/o male presenting to the ED with complaints of back pain s/p MVC that occurred at 1205. Pt was the restrained driver of a car that was hit by another car on the driver side. On 2/18/2016 at 1205.

CLAIM 0016

Mar-02-2016 10:30 Village Hospital 8645303628

5/14

Pelham Medical Center
250 Westmoreland Road
Greer, South Carolina 29651 Phone: 864-530-8000

2/18/2016 Pg 2

Patient: Hendrickson, Brandon
Arrival: 2/18/2016 1822
Pt Acct: 1804930126
Med Rcd: 000108559

LOC, hitting head, airbag deployment or required extrication. Pain is located in the upper and middle back described as throbbing. He complains of hip pain with R hip worse than L. Pt notes coldness and numbness in his bilat hands. Denies abd pain, nausea, vomiting, diarrhea, bladder or bowel incontinence.

ROS:

() Unable to obtain full ROS due to non ros reason

CONST(System): () fatigue (-) headache.
ENT(System): () tooth pain, () nose bleed.
EYES(System): () blurry vision, () pain, () eye pain.
CV(System): () palpitations, (-) chest pain.
RESP(System): (-) cough, () wheezing, (-) SOB, () hemoptysis.
GI(System): (-) abdominal pain, (-) nausea, (-) vomiting.
GU(System): () difficulty urinating, () hematuria.
MS(System): (+) back pain, (-) joint pain, (-) leg pain, (-) extremity pain, (-) neck pain.
SKIN(System): (-) redness, (-) abrasions, (-) lacerations.
NEURO(System): (+) numbness, (-) weakness (-) difficulty walking, (-) difficulty with speech, (-) confusion.
PSYCH(System): () anxiety, () depression.

(+) Except as marked, all systems above reviewed and found negative or are noted in HPI.

PMH List (See PMH Table) PSH List (See PSH Table)

(+) PMH, PSH, Family Hx, and Social Hx reviewed and agree with or are modified in the table.
(+) Medications and allergies reviewed and confirmed or modified in table.
(+) MLP triage assessment and/or nursing notes reviewed and agree unless otherwise noted or supplemented in chart.

FH: no significant inheritable diseases.

SH: smokes tobacco, lives at home, employed

PHYSICAL EXAM:**(+) VITAL SIGNS REVIEWED**

GENERAL APPEARANCE: well nourished, alert, cooperative, no obvious discomfort.

HEAD: no abrasions/lacerations on the head.

EYES: conjunctiva clear PERRL, EOMI

NOSE: (-) injury, no swelling/tenderness.

THROAT: no airway obstruction

NECK: trachea midline.

C-SPINE: no cervical spine tenderness.

RESPIRATORY: (-) respiratory distress, good air exchange bilateral, no wheezing, no rhonchi, no rales.

CHEST WALL: no chest tenderness

CVS: normal rhythm, normal rate, (-) friction rub, no murmur.

ABDOMEN/GI: (-) rebound, (-) guarding, soft, normal BS, no abd tenderness, no abd masses, (-) distended, no seatbelt sign

SKIN: good color, other trauma: none.

EXTREMITIES: DTRs intact and normal

(+) pulse in all extremities

HIP: Bilateral (-) external rotation of the leg, (-) shortening of the leg, (-) deformity, no swelling/tenderness,

(-) decreased range of motion.

BACK: vertebral point tenderness at lumbar spine, dorsiflexion of great toes Normal bilaterally, spasm in bilateral lower paraspinal muscles, (-) straight leg raise.

NEURO: motor intact, sensory grossly intact.

MENTAL STATUS: speech clear, oriented X 3, responds appropriately to questions.

PSYCH: normal affect.

PRINTED BY: FM20261

DATE 03/02/20:

CLAIM 0017

7/25/2016 5:52:38 PM (GMT-04:00)

Exhibits: Defendant

0016/0043

Mar-02-2016 10:30 Village Hospital 8545303628

6/14

Pelham Medical Center
250 Westmoreland Road
Greer, South Carolina 29651 Phone: 864-530-8000

2/18/2016 Pg 3

Patient: Hendrickson, Brandon
Arrival: 2/18/2016 1822
Pt Acct: 1604830126
Med Rcd: 000108559

Created and Electronically Authenticated By: Lashkarev, Anna (Scribe) Created: 2/18/2016 1840 Last Entry: 1844

Provider Note:

SCRIBE MLP NOTE - This documentation has been scribed by me as dictated by Dowling, Stephanie N.P..

Created and Electronically Authenticated By: Dowling, Stephanie N.P. Created: 2/18/2016 1910 Last Entry: 1910

Results Reviewed by ED Provider:

XR SPINE LUMBAR 2 OR 3 VIEWS

Report: IMPRESSION-

Report: 1. No acute osseous abnormality of the lumbar spine evident by plain

Report: film imaging.

Created and Electronically Authenticated By: Dowling, Stephanie N.P. Created: 2/18/2016 1911 Last Entry: 1911

Provider Note: Discharge Note Plan of care discussed with patient or caregiver. Questions were answered. Verbal and printed instructions were provided. If prescription(s) were given, the prescribed medications were reviewed, including relevant side effects and interactions. The patient is to seek outpatient follow up as noted in the discharge instructions. They verbalized understanding and ability to comply. The patient is discharged in stable condition. They were instructed to return to the emergency department for worsening symptoms or other concerns.

CLINICAL IMPRESSION: Diagnosis: Back Strain (Not Otherwise Specified).

Created and Electronically Authenticated By: Dowling, Stephanie N.P. Created: 2/18/2016 1926 Last Entry: 1926

Provider Note:

SCRIBE ATTESTATION NOTE - The documentation recorded by the scribe accurately reflects the service I personally performed and the decisions made by me.

Created and Electronically Authenticated By: Garfield, Quincy D.O. Created: 2/18/2016 2009 Last Entry: 2010

Provider Note:

NOT SEEN BY PHYSICIAN - I was personally available for consultation in the Emergency Department. I have reviewed the documentation including the diagnosis and discharge plan.

Clinical Decision Support		
Alert	OFT II	Compliance
No Entries		

Vital Signs										
Sys	Dia	Pulse	Resp	SAT	O2 Delivered	Temp (F)	Route	Pain Scale	Comment	Taken at
134	84	65	18	100%	RA	98.5 F	oral	6/10	Throaty Male	2/18/2016 1828
								6/10	Disposition	2/18/2016 1827
									Wife Not	
									Applicable	

Home Medications			
Arrival Medication	Indication	Last Dose	Comments
Note: No Medication in Requested Time Period			

CLAIM 0018

7/25/2016 3:52:36 PM (GMT-04:00)

Exhibits: Defendant

0018/0043

Mar-02-2016 10:30 Village Hospital 8645303628

8/14

Pelham Medical Center
250 Westmoreland Road
Greer, South Carolina 29651 Phone: 864-530-6000

2/18/2016 Pg 6

Patient: Hendrickson, Brandon
Arrival: 2/18/2016 1822
Pt Acct: 1804830126
Med Rcd: 000108559

Orders (Meds) (continued)			
Order	Sched D/T	Infusion Started	Administered D

TIMI Scale	
Criteria	Present
Age $\geq$ 65	
$\geq$ 3 CAD risk factors	
Known coronary stenosis $\geq$ 50%	
Aspirin use in past 7 days	
2 or more episodes in prior 34 hours	
Elevated serum cardiac markers	
ST depression $\geq$ 0.5mm on admission ECG	
===== TOTAL TIMI Score	
===== Mortality/chemo RISK	
===== Date/Time Performed	
===== User Name	

Pneumonia Scale		
Pneumonia Criteria	Present	Points
Age $\geq$ 75		+10
Female		+10
Not living Home Resident		+10
Neoplastic Disease History		+20
Liver Disease		+20
Concurrent heart failure		+10
Cardiovascular disease		+10
Renal Disease		+10
Altered Mental Status		+20
Respiratory Rate $\geq$ 25/min		+20
Systolic Blood Pressure $\leq$ 90 mm Hg		+20
Temperature $\leq$ 96°F or $\geq$ 101.5°F		+10
Pulse $\geq$ 124 beats/min		+10
pH $\leq$ 7.35		+20
BUN $\geq$ 20mg/dL		+20
Bodily $\leq$ 150 mmol/L		+10
Glucose $\geq$ 250mg/dL		+10
Hemoglobin $\leq$ 50%		+10
Oxygen saturation $\leq$ 90%		+10
Pleural Effusion on X-ray		+10
===== TOTAL Score		
===== MORTALITY RISK		
===== Date/Time Performed		
===== User Name		

PRINTED BY: FM20261

DATE 03/02/2016

CLAIM 0020

7/25/2016 3:52:38 PM (GMT-04:00)

Exhibits: Defendant

0019/0043

Mar-02-2016 10:30 Village Hospital 8645303628

9/14

Pelham Medical Center
250 Westmoreland Road
Greer, South Carolina 29651 Phone: 864-530-6000

2/18/2018 Pg 8

Patient: Hendrickson, Brandon
Arrival: 2/18/2018 1822
Pt Acct#: 1604930126
Med Rcd#: 000108559

NIH Stroke Scale (new)	
No Entries	

Procedures - Transitional Record	
Procedure Alias	
No Entries	

Inpatient Medication Orders					
Medication	Dose	Route	Comments	Entered	Administered By
No Entries					

Created and Electronically Authenticated By: Holliday, Kayla R.N. Created: 2/18/2018 1827 Last Entry: 1828

NURSING TRIAGE (Adult)**HPI:**

MVC (Adult) - Occurred today ago. Pt was restrained driver of a car that collided with another car at approx unknown speed. Severity Indicators: (-)air bag deployed driver, (-)extrication required, (-)LOC. Patient complaining of pain in lower and upper back.

PREHOSPITAL CARE:

Support System: lives w family or significant other.

Special Considerations: None Identified.

LEARNING BARRIERS: None Identified.

TRIAGE DATA:

History obtained from: patient

Tetanus: Immunization status:.

PHYSICAL EXAM:

AIRWAY: oral, (-)obstructed.

BREATHING: no breathing compromise.

CIRCULATION: no circulatory compromise, capillary refill <2 seconds.

GENERAL APPEARANCE: (adult) - well nourished, alert, oriented X 3, no acute distress, no obvious discomfort.

SKIN: warm, dry, good color.

NURSING INTERVENTION: None

Created and Electronically Authenticated By: Rexrode, Keri R.N. Created: 2/18/2018 1833 Last Entry: 1834

Clinical Note:

ASSESS MVA: Assessment performed at 2/18/2018 1829.

see triage note

PMH List (See PMH Table) PSH List (See PSH Table)

SH: no alcohol, drug usage PRINTED BY: FM20261

DATE 03/02/20:

CLAIM 0021

Mar-02-2016 10:30 Village Hospital 8645303628

10/14

Pelham Medical Center
250 Westmoreland Road
Greer, South Carolina 29651, Phone: 864-530-6000

2/18/2016 Pg 7

Patient: Hendrickson, Brandon
Arrival: 2/18/2016 1822
Pt Acct: 1804930126
Med Rcd: 000108559

PHYSICAL EXAM: AIRWAY: (+)patent, (-)obstructed.
BREATHING: no breathing compromise. (-)accessory muscle use, good air exchange bilateral.
CIRCULATION: no circulatory compromise, capillary refill <2 seconds.
MENTAL STATUS: speech clear, oriented X 3, normal affect, responds appropriately to questions, alert, cooperative.
LUNGS: no wheezing, no rales, no rhonchi, (-)accessory muscle use, good air exchange bilateral
MUSCULOSKELETAL: Onset 2hrs ago while exercising, nothing improves symptoms, nothing makes it worse. (-)deformity, (-)distal neuro deficits, (-)altered sensation.
C-SPINE: no cervical spine deformities, no cervical spine tenderness.
BACK: no back tenderness

SKIN: warm, dry, good color, no rash, no abrasions/lacerations

NEURO: motor intact, sensory intact

EXPOSURE: Family at bedside, Clothing removal deferred.

SAFETY: Call light at bedside, Use of call bell explained to patient. Side rails raised for patient safety.

FALLS ASSESSMENT ADULT:

FALL HISTORY: No history of falling 0

SECONDARY DIAGNOSIS: No secondary diagnosis 0

IV ACCESS: No IV Access 0

AMBULATORY AID: None/bed rest/nurse assist 0

GAIT: Gait Normal bed rest or wheelchair 0

MENTAL STATUS: Oriented to own ability 0

FALL RISK SCORE: Low Risk (0-44).

Plan of Care to Decrease Fall Risk:

fast track patient.

Created and Electronically Authenticated By: Mattox, Mandy R.N. Created: 2/18/2016 1925 Last Entry: 1925

Orders Performed by Nurse:

- FLEXERIL TAB (cyclobenzaprine hcl) 10mg (1 tablet of 10mg/tablet) by mouth once - Gave 10mg.

Verified: 2 patient IDs and allergies, Pre Med Pain: 8/10, Given At: 2/18/2016 1905

- Ibuprofen TAB (MOTRIN) 800mg (2 tablets of 400mg/tablet) by mouth once - Gave 800mg, Verified:

2 patient IDs and allergies, Given At: 2/18/2016 1905

- Lidocaine 5% PATCH (LIDODERM PATCH) 1 patch transdermal once - Gave 1 patch, Verified: 2

patient IDs and allergies, Given At: 2/18/2016 1905

Order Notes: Pt placed on right lower back per pt request. Privacy provided by pulling curtains in RP.

Created and Electronically Authenticated By: Mattox, Mandy R.N. Created: 2/18/2016 1925 Last Entry: 1926

Clinical Note:

Pt reports a decrease in pain. Reclined in RP looking at cell phone. Family at bedside.

Created and Electronically Authenticated By: Mattox, Mandy R.N. Created: 2/18/2016 1931 Last Entry: 1931

Clinical Note:

DSP DISCHARGE with Prescription(s) - Plan of care discussed with patient. Patient discharged with printed instructions. Prescriptions given to patient. Reviewed prescribed medications with patient, including potential interactions with other substances. Patient verbalized understanding and ability to comply.

The following items were received by the patient on discharge:

(+) Discharge/Dx

(+) Diagnostic specific discharge instructions

(+) Medication Reconciliation Form

(+) Follow up plans

(+) A list of major procedures or test done in EC.

Wellsoft Interface Created: 2/18/2016 1910 Last Entry: 1910

Patient: HENDRICKSON, BRANDON ; Date/Time: 2/18/2016 1851 ; 70000291964

----- XR SPINE LUMBAR 2 OR 3 VIEWS -----

Transcription: NIEA

PRINTED BY: FM20261

DATE

03/02/20

CLAIM 0022

7/25/2016 5:22:36 PM (GMT-04:00)

Exhibits: Defendant

0021/0043

Mar-02-2016 10:30 Village Hospital 8645303628

11/14

Pelham Medical Center
260 Westmoreland Road
Greer, South Carolina 29651 Phone: 864-530-6000

2/18/2016 Pg 8

Patient: Hendrickson, Brandon
Arrival: 2/18/2016 1822
Pt Acct: 1604930126
Med Rcd: 000108559

Read By: BARRY M LAZENBYMD
Report: LUMBAR SPINE RADIOGRAPHS, 2/18/2016
Report: CLINICAL HISTORY- MVA with low back pain 8 on a scale of 10.
Report: TECHNIQUE- AP and lateral views of the lumbar spine with coned down
Report: view of the lumbosacral junction.
Report: FINDINGS-
Report: Five lumbar type vertebrae are visualized. Alignment is maintained at
Report: all levels. Vertebral body height is maintained at all levels. The
Report: posterior elements, transverse processes, and sacroiliac joints are
Report: intact.
Report: IMPRESSION-
Report: 1. No acute osseous abnormality of the lumbar spine evident by plain
Report: film imaging.
Report:
Report: Transcriptionist- NVEA
Report: Reading Radiologist- BARRY M LAZENBY MD
Report: Releasing Radiologist- BARRY M LAZENBY MD
Report: Released Date Time- 02/18/16 1810
Report:
Released By: BARRY M LAZENBYMD

Prescribed Meds / Rx

Rx 1: Flexeril Tablets (cyclobenzaprine)
Dose/Conc: 6mg/tablet
Freq/Rte: 1 tablet by mouth 3 times a day as needed for pain
Disp: #24 tablets Refill: 0 Do Not Substitute:
Rx 2: Ibuprofen Tablets
Dose/Conc: 800mg/tablet
Freq/Rte: 1 tablet by mouth every 6-8 hrs (with food) as needed
Disp: #30 tablets Refill: 0 Do Not Substitute:

Disposition

Follow-up 1: No Primary Physician Listed, Call To Establish A New One
Follow-up 1 Date: As Needed
FU MD Ph: 864-591-7999
FU MD Fax:

Other Note: Please take the Ibuprofen 3 times a day with food. You may take the muscle relaxant as needed - but no driving or working while taking the medication. You may use moist heat and light massage to the affected area as tolerated. No heavy lifting, strenuous exercise until feeling better. Return for any worsening/concerning symptoms.

Signatures

Electronically Authenticated By Provider: Garrald, Quincy D.O. 2/18/2016 2010

Electronically Authenticated By RN: Mattox, Mendi R.N. 2/18/2016 1833

Electronically Authenticated by Res/NP/PA: Dowling, Stephanie N.P. 2/18/2016 1808

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PRINTED BY: FM20261

DATE 03/02/20

CLAIM 0023

Mar-02-2016 10:30 Village Hospital 8645303628

12/14



Pelham Medical Center
 A Division of Pelham Health Services
 Pelham Medical Center
 250 Westmoreland Road
 Greer, South Carolina 29635 Phone: 864-530-6000

Patient: Hendrickson, Brandon
 Arrival: 2/18/2016 1822
 Pt. Acct.: 1804930126
 Med Recd.: 000108558

Disposition Summary (for discharged patient, English)

Patient: Hendrickson, Brandon
 Home Address: 242 Cool Water Ct

DOB: 8/12/1981Age: 34yrHome Ph: (864) 494-0874City: Bolling Springs SC: 29316Arrival: 2/18/2016 1822RN Triage: Bolliday, Kayla R.N.Disposition: HomeRN Primary: Karl R.MLP/Res: Dowling, Stephanie N.P.Provider: Gerrald, Quincy D.O.

PCP: No Primary Physician Listed. Call To Establish
A New One

PCP Ph: 864-591-7099Triage Impression: WVC

Diagnoses	
Diagnosis	ICD
Strain, lower back muscle, fascia & tendon	S98.012A

Aftercare/Instructions: Sprains And StrainsRx 1: Strain, lower back muscle, fascia & tendonRx 1: Flexen Tablets (cyclobenzaprine)6mg tablet1 tablet by mouth 3 times a day as needed for pain#24 tabletsRx 2: Ibuprofen Tablets800mg/tablet1 tablet by mouth every 6-8 hrs (with food) as needed#30 tablets

Disposition

Follow-up 1: No Primary Physician Listed. Call To Establish
A New One

FU MD Ph: 864-591-7099

FU MD Fax: _____

Follow-up Date: As Needed

Other Instructions: Please take the ibuprofen 3 times a day with food. You may take the muscle relaxant as needed -
but no driving or working while taking the medication. You may use moist heat and light massage
to the affected area as tolerated. No heavy lifting, strenuous exercise until feeling better. Return
for any worsening/concerning symptoms.

MY SIGNATURE BELOW INDICATES:

☐ I understand that I have had emergency treatment and that I may be released before all of my medical problems are known or treated.

☐ I have received and understood the instructions regarding my current condition.

☐ I will arrange follow-up care as instructed above.

☐ I acknowledge receipt of the written instructions as outlined on this and any previous page(s).

☐ I will read and review these instructions.

☐ I understand the hospital and attending physician are authorized to release any medical information required in the processing of applications or submission of information for financial coverage, discharge planning and further medical treatment. To include information referring to psychiatric care, sexual assault or tests for infectious diseases including AIDS/HIV for services provided.

PRINTED BY: FM20261

DATE 03/02/201

CLAIM 0024

7/25/2016 3:52:36 PM (GMT-04:00)

Exhibits: Defendant

0023/0043

Mar-02-2016 10:30 Village Hospital 8645303628

13/14



A Division of Healthcare Corporation of the Americas
Pelham Medical Center
250 Westmoreland Road
Greer, South Carolina 29615 Phone: 864-530-6000

Patient: Hendrickson, Br Pg: 2
Arrival: 2/18/2016 1622
Pt Acct: 7804930126
Med Rcd: 000108859

during this admission, I/we also agree to the release of medical or other information about me to government (federal or state) regulatory agencies as required by law.

X [Signature] Relationship to patient _____
Patient or Legal Guardian
X [Signature] _____
Signature Staff (Witness) Signature

PRINTED BY: FM20261

DATE 03/02/201

CLAIM 0025

7/25/2016 5:52:38 PM (GMT-04:00)

Exhibits: Defendant

0024/0043

Mar-02-2016 10:30 Village Hospital 8645303628

14/14

Village Hospital
Radiology Report

NAME: HENDRICKSON, BRANDON
ORDERING PHYSICIAN: Dowling Stephanie
LOC: ERV-WF6-A
Pt. Type: ERV
UNIT #: 000108559
CI#: 4546747
AN#: V1604930126
DOB: 06/12/81
EMERGENCY DEPARTMENT - VILLAGE

FINAL

Exam

50697 XR SPINE LUMBAR 2 OR 3 VIEWS Date: 02/18/16 1847
72100 Ord Diag: point tenderness s/p mva

LUMBAR SPINE RADIOGRAPHS, 2/18/2016

CLINICAL HISTORY: MVA with low back pain 8 on a scale of 10.

TECHNIQUE: AP and lateral views of the lumbar spine with coned down view of the lumbosacral junction.

FINDINGS:

Five lumbar type vertebrae are visualized. Alignment is maintained at all levels. Vertebral body height is maintained at all levels. The posterior elements, transverse processes, and sacroiliac joints are intact.

IMPRESSION:

1. No acute osseous abnormality of the lumbar spine evident by plain film imaging.

Transcriptionist- N/A
Reading Radiologist- BARRY M LAZENBY MD
Releasing Radiologist- BARRY M LAZENBY MD
Released Date Time- 02/18/16 1910

Page 1

PRINTED BY: FM20261

DATE 03/02/201

CLAIM 0026

Other Materials

Jon Newlon

From: "Cooper, Gordon" <gcooper@spartanburgcounty.org>
Date: Tuesday, January 31, 2017 4:36 PM
To: <jnewlon@mccravylaw.com>; "Jeanmarie Tankersley" <jeanmarie.tankersley@mgclaw.com>
Subject: Hendrickson vs Wheeler Case No. 2016CP44203107

Mr. Newlon and Ms. Tankersley:

In the above matter, I find for the Plaintiff in the total amount of \$8,637.00 which is comprised of lost wages of \$1,300.00 plus medicals in the amount of \$7,337.00. I am not awarding pain/suffering or punitive damages in that the Plaintiff did not carry the burden of proving those claims.

Mr. Newlon, please prepare the Order and efile same.

Judge Gordon G. Cooper

Room 901, Spartanburg County Judicial Center

180 Magnolia Street

Spartanburg, SC 29306

Phone (864) 596-2501

Fax (864) 596-2078

gcooper@spartanburgcounty.org

Other Materials**Jon Newlon**

From: "Cooper, Gordon" <gcooper@spartanburgcounty.org>
Date: Monday, March 27, 2017 4:41 PM
To: "Jon Newlon" <jnewlon@mccravylaw.com>; "Jeanmarie Tankersley" <jeanmarie.tankersley@mgclaw.com>
Subject: RE: Hendrickson vs. Wheeler Case No 2016CP4203107

Based on that opinion from Ms. Kitchings, my ruling is as follows:

1. My previous finding was based on the addition of \$1,407.00 plus \$5,930.00 which totaled \$7,337.00. When added to the loss of income in the amount of \$1,300.00 equaled \$8,637.00.
2. Mr. Newlon original Return and Memo set out medical expenses of \$7,360.00 when added to income loss of \$1,300.00 equaled \$8,660.00.
3. Testimony at final hearing from Plaintiff was medical expenses of \$7,675.00 when added to income loss of \$1,300.00 equaled \$8,975.00.

Based on the three different totals, I will grant Plaintiff's Motion to Amend the Final Judgment to provide for a total of \$8,975.00 which is Plaintiff's testimony. All other provisions of the Order entered on February 7, 2017 shall remain the same.

Plaintiff's Motion for a New Trial or to Re-Open the damages hearing is denied.

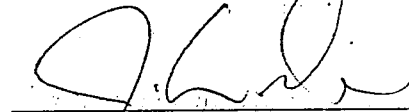
Plaintiff's Motion for New Trial Nisi Additur is denied

Mr. Newlon: Please prepare an Order that is consistent with my ruling.

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

JUNE 26, 2017



Jon E. Newlon
1629 ByPass 72 NE
Greenwood, S.C. 29649
864/388-9100, 9104 (FAX)
Attorney for Appellant