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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Diane Schafer Goodstein, Circuit Court Judge

Unpublished Opinion No. 2018-UP-221 (S.C. Ct. App. filed May 30, 2018)
Appellate Case No. 2015-002466
Case No. 2012-CP-07-03782

Rebecca Delaney, as Personal
Representative of the Estate of
Justin Nicholas Miller,

Petitioner,

v.

CasePro, Inc.,

Respondent.

Appendix: Volume 1

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
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Diane Schafer Goodstein, Circuit Court Judge

Case No. 2012-CP-07-03782

Rebecca Delaney, as Personal
Representative of the Estate of
Justin Nicholas Miller,

Appellant,

v.

CasePro, Inc.,

Respondent.

Record on Appeal: Volume I
PAGES 1-500

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SC Court of Appeals

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

REBECCA DELANEY, *as Personal*
Representative of the Estate of Justin
Nicholas Miller,

Plaintiff,

vs.

CASEPRO, INC. and BEAUFORT
COUNTY,

Defendants.

No. 9:13-cv-00476-DCN

ORDER

CASEPRO, INC.,

Third-Party Plaintiff,

vs.

UNITED STATES OF AMERICA,

Third-Party Defendant.

This matter is before the court on plaintiff's motion to remand. For the reasons set forth below, the court grants plaintiff's motion and remands this case to the Beaufort County Court of Common Pleas.

I. BACKGROUND

This case arises from the death of Justin Miller on February 24, 2012. Plaintiff Rebecca Delaney represents Miller's estate.¹ Defendant CasePro, Inc. (CasePro)

¹ On June 17, 2013, the decedent's brother, Christopher D. Miller, filed a motion to intervene, claiming to be the appropriate personal representative of the decedent's estate. This motion was not ripe at the time of the court's hearing on plaintiff's motion to remand.

employs medical personnel at the Naval Hospital Beaufort (the Naval Hospital) that are alleged to be responsible for Miller's death.

On November 1, 2012, plaintiff filed suit against defendants CasePro and Beaufort County in the Beaufort County Court of Common Pleas, bringing claims for negligence, wrongful death, and negligent undertaking of duty. On January 9, 2013, CasePro filed an answer and third-party complaint against the United States, seeking equitable and contractual indemnification of any damages owed to plaintiff. CasePro also filed a motion to dismiss. On February 21, 2013, the United States filed a Notice of Removal in federal court. As a result, the state court stayed consideration of CasePro's motion to dismiss.

The United States claims that it did not receive service of the third-party complaint until January 22, 2013. In its Notice of Removal, it alleges that the "third-party action constitutes an action that is removable to this Court pursuant to 28 U.S.C. §§ 1441 and 1446. This Court has original jurisdiction pursuant to 28 U.S.C. § 1331." Gov't's Notice of Removal ¶ 5.²

On March 4, 2013, plaintiff filed a motion to remand, arguing that the government's removal was improper. On March 18, 2013, the United States filed a motion to dismiss the third-party complaint for lack of subject matter jurisdiction. The court heard argument on these motions on July 1, 2013.

In her complaint, plaintiff alleges that on February 24, 2012, Justin Miller was struck and killed by a fire truck driven by Calvin Hunt, a former United States Marine

² Although the United States only alleges that the "third-party action" is removable to federal court, it seeks to remove "the entire civil action, including the Complaint and Third-Party Complaint." Notice of Removal ¶ 4.

Corps corporal suffering from service-related PTSD. Compl. ¶¶ 1, 6-7. Prior to the accident, Edward Ray, a Beaufort County employee and Veterans Affairs Officer, received a call from Hunt's grandmother to report erratic behavior by Hunt. Id. ¶ 8. Ray visited Hunt in the morning of February 24, 2012. Id. ¶ 9. Approximately three hours later, Ray escorted Hunt to the Naval Hospital, which CasePro was responsible for staffing pursuant to a contract with the Naval Medical Logistics Command. Id. ¶¶ 15, 17.

Plaintiff alleges that Hunt conveyed a desire to hurt himself and others, not only in front of Ray, but also while in the presence and control of Naval Hospital healthcare personnel. Id. ¶¶ 20-22, 24. The healthcare personnel became aware that Hunt posed a serious danger of violence. Id. ¶ 21. Ray and the healthcare personnel began to escort Hunt to the Emergency Room. Id. ¶ 29. Along the way, they allowed Hunt to step outside and get a breath of fresh air. Id. ¶ 30. Upon exiting the Naval Hospital, Hunt stripped naked and climbed into an unoccupied fire truck. Id. ¶¶ 32, 34. Hunt stole the truck, drove it onto the highway, and fatally struck Justin Miller as he was walking across the street. Id. ¶¶ 34-35.

Plaintiff claims that CasePro and Beaufort County were negligent by breaching their duty of care owed to Justin Miller. In its third-party complaint, CasePro asserts that the United States operates the Naval Hospital and contractually agreed to maintain day-to-day control and supervision of CasePro personnel at the Hospital. Third-Party Compl. ¶¶ 75-76. According to CasePro, the United States should ultimately be held liable for any damages owed to plaintiff.

II. STANDARD

The party seeking to remove a case from state to federal court—here, the United States—bears the burden of demonstrating that jurisdiction is proper at the time the petition for removal is filed. Caterpillar Inc. v. Lewis, 519 U.S. 61, 73 (1996). If federal jurisdiction is doubtful, remand is necessary. Mulcahey v. Columbia Organic Chems. Co., 29 F.3d 148, 151 (4th Cir. 1994); see Marshall v. Manville Sales Corp., 6 F.3d 229, 232 (4th Cir. 1993) (noting Congress’s “clear intention to restrict removal and to resolve all doubts about the propriety of removal in favor of retained state court jurisdiction”).

III. DISCUSSION

The United States bears the burden of demonstrating federal jurisdiction. In its Notice of Removal, it claims that removal is proper under 28 U.S.C. §§ 1441 and 1446, and that this court has original jurisdiction pursuant to 28 U.S.C. § 1331.

Section 1441(a) provides,

[A]ny civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

28 U.S.C. § 1441(a). Under § 1446, the Notice of Removal must be filed “within 30 days after the receipt by the defendant” of the complaint. Id. § 1446(b)(1).

A majority of courts have held that a third-party defendant may not remove a case to federal court under § 1441(a). See Galen-Med, Inc. v. Owens, 41 F. Supp. 2d 611, 614 (W.D. Va. 1999) (“The majority view [is] that third-party defendants are not ‘defendants’ for purposes of removal under 28 U.S.C.A. § 1441(a).”); see also Lewis v. Windsor Door Co., 926 F.2d 729, 733-34 (8th Cir. 1991) (holding that district court lacked subject matter jurisdiction “because the United States, as third-party defendant, was without

authority to remove the case”); Brashear v. Baligian, No. 03-1796, 2003 WL 22717748, at *2 (D.S.C. Oct. 28, 2003) (“[T]he majority of the rather considerable number of cases decided by the courts of appeal and the district courts have concluded that a third-party defendant . . . is not entitled to remove the case.” (internal quotation marks omitted)). Based on this authority, the United States may not remove the case under § 1441(a).

The minority of courts to allow removal by a third-party defendant rely on 28 U.S.C. § 1441(c)(1), which provides that a civil action may be removed if it “includes a claim arising under the Constitution, laws, or treaties of the United States.” Courts have permitted removal under § 1441(c)(1) “when the third party complaint asserts a separate and independent cause of action.” Greenville Hosp. Sys. v. Betts, No. 10-1986, 2010 WL 3169197, at *2 (D.S.C. Aug. 4, 2010). Courts have further held that a third-party claim for indemnity is *not* “separate and independent” from an original claim of negligence. See id. (holding that “a claim for indemnity is not a ‘separate and independent’ cause of action, [but] rather it is ‘incidental or ancillary to the main claim’”); Poisson v. Maintenance Pace Setters, Inc., 696 F. Supp. 1141, 1143-44 (E.D. Mich. 1988) (holding that a third-party claim for contribution and indemnity was not separate and independent from the primary complaint of negligence).

Here, CasePro’s indemnification claim against the government is “not separate and independent” from plaintiff’s negligence claims, nor does it “arise under” any federal laws. Therefore, the case was improperly removed under § 1441.³

³ At oral argument, the government conceded this point. In addition, plaintiff and the government agreed that at the least, the original complaint should be severed and remanded to state court. See Gov’t’s Resp. Opp’n Pl.’s Mot. Remand 1 (“[W]e . . . believe the underlying state court case should be severed and remanded.”).

Recognizing the flaw in its Notice of Removal, the government attempts to invoke its authority under 28 U.S.C. § 1442 to remove only the third-party complaint brought by CasePro. “Under 28 U.S.C. § 1442(a), the United States may remove to federal court any case to which it is named a party defendant.” Salery v. United States, 373 F. App’x 29, 30 (11th Cir. 2010). This alternative argument was first asserted on March 27, 2013, when the government filed a response in opposition to plaintiff’s motion to remand. See Gov’t’s Resp. Opp’n Pl.’s Mot. Remand 2.

“Prior to the expiration of the 30-day period for removal . . . , the defendants may freely amend the notice of removal required by Section 1446(b).” 14C Wright & Miller et al., Fed. Prac. & Proc. Juris. § 3733 (4th ed. 2013) (footnote omitted). “Thereafter, however, most cases indicate that defendants may amend the notice only to set out more specifically the grounds for removal that *already have been stated*, albeit imperfectly, in the original notice.” Id. (emphasis added). “[D]efendants may not add completely new grounds for removal or furnish missing allegations, even if the court rejects the first-proffered basis of removal.” Id.

To illustrate, in Sullivan v. BNSF Ry. Co., 447 F. Supp. 2d 1092 (D. Ariz. 2006), the plaintiff brought a wrongful death action in state court against the defendant railroad. The defendant removed the case to federal court, asserting federal question jurisdiction. Finding that it lacked federal question jurisdiction, the federal district court found remand necessary. Importantly, the court further refused to consider the defendant’s alternative ground for removal—based on § 1442(a)(1), removal of claims brought against a federal officer—because it was raised for the first time in response to the plaintiff’s motion to remand. Id. at 1099-1100.

In this case, the government did not rely on § 1442 as a basis for removal until over a month after its time for removal had expired. Like in Sullivan, the government is not entitled to a second bite at the apple because it relies on a completely new ground for removal wholly absent from its Notice of Removal. Id. at 1099 (“[a]lleging new grounds for removal constitutes an allegation of substance” that may not be considered); see also Hinojosa v. Perez, 214 F. Supp. 2d 703, 707 (S.D. Tex. 2002) (“It would be a substantial injustice to allow Defendants to remove a case on one ground and then, when faced with a serious challenge to that ground, attempt to justify removal on an entirely different, and untimely, ground.”).⁴

For these reasons, the government lacks authority to remove this case to federal court under 28 U.S.C. § 1441, and the court will not consider its belated attempt to remove the third-party complaint under § 1442. Therefore, the case must be remanded to state court.

⁴ Numerous courts have remanded claims to state court in similar circumstances. See, e.g., Phillips v. BJ’s Wholesale Club, Inc., 591 F. Supp. 2d 822, 825 (E.D. Va. 2008) (holding that “belated allegation” for removal did not provide basis for federal jurisdiction because it was not raised until defendant’s response to plaintiff’s motion to remand, “well beyond the thirty-day time limit for removal”); Lastih v. Elk Corp. of Ala., 140 F. Supp. 2d 166, 168 (D. Conn. 2001) (“A defendant may not amend its notice of removal after the thirty days elapses to remedy a substantive defect in its removal petition.”); Smiley v. Citibank (South Dakota), N.A., 863 F. Supp. 1156, 1161 (C.D. Cal. 1993) (rejecting defendant’s alternative ground for removal where it “discovered that the original ground on which it sought removal was baseless and tried to substitute a completely separate and distinct ground to take its place”); Barnhill v. Ins. Co. of N.A., 130 F.R.D. 46, 51 (D.S.C. 1990) (noting that courts routinely “deny leave to amend to supply missing allegations or to supply new allegations” after the thirty-day statutory period for removal).

IV. CONCLUSION

Resolving all doubts in favor of state court jurisdiction, as it must do, the court finds that remand is required. Marshall, 6 F.3d at 232. Accordingly, the court **GRANTS** plaintiff's motion to remand.⁵

AND IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'D. Norton', is written over a horizontal line.

DAVID C. NORTON
UNITED STATES DISTRICT JUDGE

July 2, 2013
Charleston, South Carolina

⁵ Based on this ruling, all pending motions in this case may be decided by the state court upon remand.

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

13 NOV 12 PM 3:21

THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

REBECCA DELANEY, as the Personal
Representative of the Estate of JUSTIN
NICHOLAS MILLER,

CASE NO. 2012-CP-07-03782

Plaintiff,

ORDER

vs.

CASEPRO, INC. and BEAUFORT COUNTY

Defendants.

This matter comes before the Court on Defendant CasePro, Inc.'s Amended Motion to Dismiss, which was filed in the above captioned case on August 5, 2013. A hearing was held before me in Beaufort County, South Carolina on October 29, 2013.

"A motion to dismiss pursuant to Rule 12(b)(6) must be based solely on the allegations set forth in the complaint and [the court] must presume all well-pled facts to be true." Gressette v. South Carolina Electric & Gas Co., 370 S.C. 377, 378-79, 635 S.E.2d 538 (2006). "[A] judgment on the pleadings is considered to be a drastic procedure by our courts. Therefore, pleadings in a case should be construed liberally and the trial court. . . must presume all well pled facts to be true so that substantial justice is done between the parties." Overcash v. S.C. Elect. & Gas Co., 364 S.C. 569, 572, 614 S.E.2d 619, 620 (2005). "Where allegations of the complaint give rise to competing inferences on a question of material fact, dismissal under Rule 12(b)(6), SCRCp, is not appropriate." Camp v. Springs Mortgage Corp., 310 S.C. 514, 517, 426 S.E.2d 304, 305 (1993).

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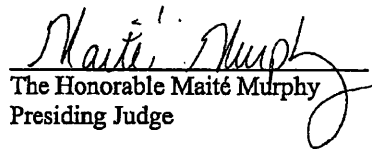
In its Amended Motion to Dismiss, Defendant CasePro, Inc. argues that "Plaintiff has failed to state a cause of action against Defendant CasePro and cannot recover from Defendant CasePro because CasePro cannot be held vicariously liable for the actions of the healthcare workers at Beaufort Naval Hospital." Specifically, Defendant argues that it should be dismissed because, "pursuant to CasePro's contract with the United States government, CasePro did not have the right to control the activities of the healthcare workers." However, it is undisputed that the workers in question were employees of CasePro, Inc. and the South Carolina Supreme Court has recognized that "an employer may direct his employee to go upon the premises of another and perform work there under the general supervision of the other person without severing the employment relation between the employer and the employee." Parker v. Williams & Madjanik, Inc., 269 S.C. 662, 665-666, 239 S.E.2d 487 (1977).

After considering the submitted memoranda and oral arguments of both parties, the Court finds that the allegations in the Complaint give rise to competing inferences on a question of material fact which precludes dismissal under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

Based on the foregoing, the Court **DENIES** Defendant CasePro Inc.'s Amended Motion to Dismiss.

IT IS SO ORDERED.

November 14, 2013
St. George, South Carolina


The Honorable Maité Murphy
Presiding Judge

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
THE FOURTEENTH JUDICIAL CIRCUIT
CASE NO: 2012-CP-07-03782

REBECCA DELANEY, as Personal
Representative of the Estate of Justin
Nicholas Miller,

Plaintiff,

vs.

CASEPRO, INC. and BEAUFORT
COUNTY

Defendants.

ORDER

CASEPRO, INC,

Third-Party Plaintiff,

vs.

The United States of America,

Third-Party Defendant.

This matter comes before the Court on Third-Party Defendant United States of America's Motion to Dismiss for Lack of Subject Matter Jurisdiction, which was filed in the United States District Court of South Carolina on March 18, 2013, and Remanded to this Honorable Court for disposition on July 2, 2013. The parties were afforded an opportunity to supplement their original briefs, which are now made a part of the record. A hearing was held before me in Beaufort County, South Carolina on October 29, 2013.

Subject matter jurisdiction is "the power of a court to hear and determine cases of the general class to which the proceedings in question belong." *Dove v. Gold Kist, Inc.*, 314 S.C. 235, 238, 442 S.E.2d 598, 600 (1994).

The United States, as sovereign, is immune from suit save as it consents to be sued. *Frahm v. United States*, 492 F.3d 258, 262 (4th Cir. 2007) (quoting *United States v. Sherwood*, 312 U.S. 584, 586 (1941)). Absent a waiver, sovereign immunity shields the Federal Government and its agencies from suit. *FDIC v. Myer*, 510 U.S. 471, 475 (1994). Sovereign immunity is jurisdictional

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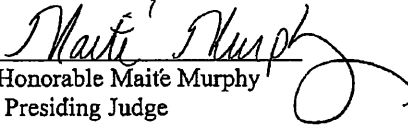
in nature, *id.*, and terms of the United States' consent to be sued in any court define that court's jurisdiction to entertain suit. *Id.* (Quoting *Sherwood* at 586.) See also *Richards v. United States*, 176 F.3d 652, 654 (3rd Cir.) *Rehearing En Banc* denied, 180 F.3d 564 (3rd Cir. 1999). (Sovereign immunity not only protects the United States from liability, it deprives a court of subject matter jurisdiction over claims against the United States.)

A waiver of sovereign immunity must be unequivocally expressed in statutory text and will not be implied. *Lane v. Peña*, 518 U.S. 187, 192 (1996). Waivers of sovereign immunity must be strictly construed in favor of the sovereign. *Welch v. United States*, 409 F.3d 646, 651 (4th Cir. 2005). It is the burden of the plaintiff to show that an unequivocal waiver of sovereign immunity exists, and if that burden is not met, the claim must be dismissed. *Id.* at 651. In its Third-Party Complaint against the government, CasePro, Inc. failed to plead or identify any waiver of sovereign immunity for this Court to want of jurisdiction.

Based on the foregoing, the Court **GRANTS** Third-Party Defendant United States of America's Motion to Dismiss for Lack of Subject Matter Jurisdiction pursuant to South Carolina Rule of Civil Procedure 12(b)(1).

IT IS SO ORDERED.

November 15, 2013
Beaufort, South Carolina


Honorable Maite Murphy
Presiding Judge



U.S. Department of Justice

United States Attorney

District of South Carolina

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Reply to: Charleston

November 20, 2013

Clerk of Court
102 Ribaut Road
Room 208
Beaufort, SC 29902

Dear Clerk:

Enclosed please find the a signed Order in **Estate of Justin N. Miller v. Casepro, Inc., Beaufort County and United States of America**, Case No.: 2012-CP-07-03782 for filing. Please file stamp the attached copies and return in the enclosed envelope.

Thank you for your attention to this matter.

WILLIAM N. NETTLES
UNITED STATES ATTORNEY

BY:


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0013

Appendix 0016

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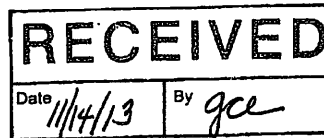
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Reply to: Charleston

November 12, 2013

The Honorable Maité D. Murphy
5200 E Jim Bilton Blvd.
St. George, SC 29477-8020



RE: Estate of Justin N. Miller v. Casepro, Inc., Beaufort County and United States of America, Case No.: 2012-CP-07-03782

Dear Judge Murphy:

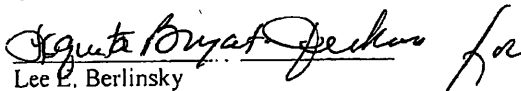
As requested, enclosed please find a proposed Order reflecting your ruling on Third Party Defendant United States of America's Motion to Dismiss in the above-captioned matter.

If you would prefer this order in electronic format, please let us know. Thank you for your attention to this matter and your courtesy.

Sincerely,

WILLIAM N. NETTLES
UNITED STATES ATTORNEY

By:


Lee E. Berlinsky
Assistant United States Attorney

LEB/lbj

Enclosures

cc: T. David Hoyle
Michael D. Freeman, Esquire
Doug MacKelcan, Esquire

0014

Appendix 0017

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Rebecca Delaney, as the Personal
Representative of the Estate of Justin
Nicholas Miller,

PLAINTIFF,

v.

CasePro, Inc. and South Carolina State
Office of Veterans' Affairs,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2012-CP-07-03782

ORDER

2014 APR 14 PM 2:53
CLERK OF COURT
S.C.

This case comes before me on Defendant South Carolina Division of Veterans Affairs (SCDVA)'s motion for summary judgment against the Plaintiff, Rebecca Delaney as the personal representative of the estate of Justin Miller (hereinafter "Plaintiff"). Oral arguments were held by the Court on October 6, 2014 in Beaufort County. Counsel for all parties were present at the hearing.

Findings of Fact

This case arises out of an incident involving the death of Justin Miller on February 24, 2012. A U.S Marine Corp corporal Calvin Hunt ("Hunt") had been subject to a recent court-martial and had been reassigned to appellate leave pending his military appeal. The record reflects that, on February 23, 2012, Hunt's grandmother, Claretha Hunt, contacted Edward Ray ("Ray"), the Beaufort County Veterans Affairs Officer ("CVAO"), whom she knew as a friend of the family. She asked Ray to meet with Hunt to counsel him on available veterans' assistance. Ray agreed to meet with Hunt on February 24, 2012 at 10:00am. Ray

conducted a standard counseling VA benefits session and determined that Hunt was still considered to be on active duty pending his court-martial appeal, which therefore made him ineligible for veterans' services. However, Hunt also asked Ray for help obtaining a new Armed Forces Identification Card and for assistance in filling his prescriptions. Ray contacted the Beaufort Naval Hospital and made an appointment for Hunt at the Managed Care Unit in order for Hunt to get his medications. At around 2:00pm, Ray met Hunt at the Naval Hospital and sat with him during the initial screening. During the initial screening, when asked if he was a danger to himself or others, Hunt answered in the affirmative. At that time, Hunt and Ray were escorted to the emergency room where Hunt was seen by employees of CasePro, Inc., including Dr. Christian Jansen, and to whom Hunt again indicated that he wanted to hurt himself and others. Dr. Jansen and nurses Joe McDonald and Janice McDonald then had the opportunity to review Hunt's medical records which indicated that Hunt had a history of significant mental health issues. While waiting in the emergency room, Hunt asked Ray, who in turn asked CasePro, Inc. nurse Joe McDonald if he could step outside to get some fresh air. Nurse McDonald answered in the affirmative. With this permission, Hunt and Ray went outside to the loading dock of the emergency room where Hunt began running towards the main gate of the hospital. Ray initially attempted to follow him, but due to his age and physical condition he could not keep up. Ray discovered a pile of clothes on the main road leading to the gate, which he determined to be Hunt's. Ray proceeded on to the main gate and informed the gate personnel that Hunt had fled the hospital. While at the gate, he was told that Hunt had stolen a fire truck.

After Hunt absconded with the fire truck, he began driving down Ribaut Road in Beaufort. It was during that time that he struck a number of vehicles, injuring several people and ultimately striking pedestrian Justin Miller, killing him. Hunt was arrested on the scene and his criminal charges are still pending. Since the incident, Ray has passed away. The Plaintiff brought this claim against the South Carolina State Office of Veterans' Affairs (properly identified as the South Carolina Division of Veterans Affairs and hereinafter referred to as "SCDVA"), alleging that SCDVA is vicariously liable for the negligence, gross negligence, disregard of policies and procedures by CVAO Edward Ray, who allowed Hunt to escape from the Naval Hospital. Specifically, Plaintiff alleges that Ray voluntarily undertook a duty with respect to Ray. However, because Ray died prior to the commencement of discovery in this case, there is no admissible evidence in the record – nor does Plaintiff have any way to obtain admissible evidence – as to what Ray actually undertook to do.

Conclusions of Law

The Defendant presents a four pronged compounding argument supporting its motion for summary judgment. First, the Defendant asserts that it cannot be liable for the actions of Ray, as Ray was not employed by the Defendant. Second, regardless of who employed Ray, the acts undertaken by Ray subsequent to the determination of Hunt's active duty service status were outside the scope and course of Ray's employment as a CVAO. Third, Defendant argues that even if the acts were taken within the scope and course of Ray's employment, there exists no evidence regarding what duty was owed to the Plaintiff in this situation, nor how such a duty may have been breached by the conduct or omissions of

Ray. Finally, the Defendant asserts that even in the event a duty is demonstrated and a breach of that duty is proven as alleged in the Plaintiff's complaint, such liability is precluded by the South Carolina Tort Claims Act. Because I find the latter three arguments of the Defendant merit a grant of summary judgment in this case as explained further herein, I find it unnecessary to rule on the Defendant's first argument regarding the existence of an employment relationship between the SCDVA and Ray.

I. Hunt was not eligible for VA benefits and therefore any actions taken by the CVAO after determination of Hunt's service status were outside the scope and course of his duties.

The provision of assistance to qualified veterans in the state of South Carolina through the South Carolina Division of Veterans Affairs is governed by and through S.C. Code 25-11-10 *et. seq.* In particular, S.C. Code 25-11-40 defines a "veteran" as "a person who served on active duty for a period of more than one hundred eighty days and was discharged or released from such service active duty with an honorable discharge or, if one hundred eighty days or less, was discharged or released from service active duty because of service-connected disability." S.C. Code 25-11-40(A).¹ This incident took place on February 24, 2012. At the time of this incident, Hunt was subject to a court-martial for misconduct during his service, related to various charges for which he had been prosecuted by the Department of the Navy for violations under the Uniform Code of Military Justice. While he had been convicted, he had been placed on Involuntary Appellate Leave awaiting review of his court-

¹ The Plaintiff in opposition to this motion cites several other definitions of "veteran" that exist in various sections of the South Carolina Code of Laws. However, I note that none of the cited sections would expand upon this definition of "veteran" such to include Hunt's service status as such. In addition, Plaintiff's Counsel conceded at the Hearing that Hunt was not a veteran if he was still an active duty member of the United States Marine Corps.

martial starting August 19, 2011. According to his orders, “[u]pon completion of the appellate review, copies of the decision of the appellate courts, and all other action taken thereon will be forwarded to your current leave address. In the event a punitive discharge is affirmed and clemency action, if appropriate, has been completed, separation processing will be completed without your presence. Appropriate discharge documentation and other related documents will be forwarded to your most recent leave address.”

The Plaintiff argues that Ray identified himself, either through indicia or nametags denoting his position, or verbally to various treating individuals at BNH, that he was a VA Officer. The Plaintiff therefore asserts that such is sufficient to create an inference that Ray was acting within the scope and course of his duties. The Plaintiff argues that Ray’s conduct could have expanded his official role beyond the scope of assisting veterans, into the realm of rendering assistance to active duty military personnel, or in the alternative, created a quasi-veteran status for Hunt based upon his continued assistance beyond the determination of Hunt’s active duty status.

Ray’s employer, as a state governmental agency is entitled to the protections afforded by the South Carolina Tort Claims Act, (“SCTCA”) S.C. Code § 15-78-10, *et. seq.* Specifically, the SCTCA contains a provision that enumerates exceptions to the general waiver of state immunity. S.C. Code 15,78-60(17) provides that governmental entity is not liable for a loss resulting from “employee conduct outside the scope of his official duties or which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.” “For a government employee to be acting within the scope of his official duty or

employment, the employee must be (1) acting in and about the official business of the government entity, and (2) performing official duties." Wade v. Berkeley County, 330 S.C. 311, 319, 498 S.E.2d 684, 688 (Ct.App. 1998)(internal citations omitted). Under the SCTCA, liability of this Defendant can only be established by a threshold determination that Ray's employer owed some sort of duty to Hunt and failed to meet that duty in its dealings with him, which proximately led to the Plaintiff's injuries and damage. Therefore, the Plaintiff must show that the actions of the CVAO were in accordance with the performance of some duty or responsibility the CVAO had under his authority in assisting veterans with disability claims. The issue of whether Hunt fit the definition of a veteran is determinative. The Defendant offers with its motion the affidavit of Carl Wedler, the current CVAO for Beaufort County, who was appointed to replace Ray after he passed away. According to Wedler's testimony, "[t]he job of the [CVAO] is to process veterans claims for disability benefits." The CVAO is "not charged or authorized, nor is it the job of [the CVAO] office to assist or otherwise provide services for active duty military personnel." Plaintiff has not come forward with affidavits in opposition to these facts. Nor has Plaintiff offered any evidence that at the time of the Hunt's elopement from the Naval Hospital that Ray was performing any "official duties." In fact, based on the Court's review of the record, Ray was merely a bystander during the entire time Hunt was in the emergency department.

Based on the foregoing, it is clear that Ray's duties to Hunt ended as soon as he established that Hunt was active duty military personnel and therefore not eligible for veterans benefits. Nothing Ray did with respect to Hunt after he determined that Hunt was ineligible for veterans benefits was in furtherance of his business as a veterans affairs officer.

(See Hamilton v. Miller, 301 S.C. 45, 389 S.E.2d 652 (S.C. 1990); “One factor [in determining the scope of employment] is whether the employee was acting in furtherance of the employer’s business when the accident happened.) Because the acts of Ray with respect to Hunt while at the Naval Hospital were outside the scope and course of his duties as CVAO, his employer is entitled to immunity for those acts under the provisions of the South Carolina Tort Claims Act.

II. Summary Judgment is proper under the South Carolina Tort Claims Act S.C. Code § 15-78-60(25).

The liability of the Defendant based upon the Plaintiff’s Amended Complaint is premised upon the Plaintiff’s allegation that Ray had the ability to “monitor, supervise and/or control” Hunt. The Plaintiff claims that Ray negligently allowed Hunt to elope from the Naval Hospital resulting in the Plaintiff’s injuries. The Court notes that Hunt left the emergency room with Ray with the express permission of CasePro, Inc. nurse Joe McDonald. This is after Hunt had been seen by the doctor in charge of the emergency room during that shift, Dr. Jansen. In contrast, it is unclear what additional steps Ray could have taken in this incident to prevent Hunt from leaving the Naval Hospital. Plaintiff’s Counsel was unable at the hearing to identify any such steps and the Court again notes that even if Ray undertook a duty, there is no admissible evidence as to what that duty was because of Ray’s untimely death.

Furthermore, S.C. Code § 15-78-60(25) provides governmental immunity from suit for any “responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of any student, patient, prisoner, inmate or client of any

governmental entity, except when the responsibility or duty is exercised in a grossly negligent manner.” Thus, the Plaintiff must offer evidence, not only of simple negligence, but of gross negligence to survive summary judgment. In the Amended Complaint, the Plaintiff alleges that the CVAO had the ability and duty to “monitor, supervise and/or control” Hunt, and failed to do so which led to the decedent’s death. Furthermore the Plaintiff alleges that such duty was undertaken and performed in a grossly negligent manner. The Plaintiff’s assertion of liability upon the CVAO inherently fails as a matter of pleading. The Plaintiff asserts that Hunt was being serviced by Ray within the scope and course of his duties as CVAO, and that Ray had the duty to “monitor, supervise and/or control” Hunt. Even if the Court were inclined to expand the CVAO responsibility in this case beyond the solely the service of qualified veterans claims, based upon the Plaintiff’s pleadings, an absence of evidence – because there is no testimony from Ray – regarding the duty owed or the grossly negligent breach thereof compels summary judgment based upon the governmental immunities provided under S.C. Code § 15-78-60(25).

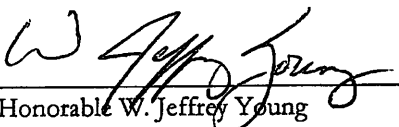
III. Summary Judgment is appropriate under the South Carolina Tort Claims Act S.C. Code § 15-78-60(20).

Finally, the Defendant asserts that it is entitled to summary judgment based upon S.C. Code § 15-78-60(20), which provides governmental immunity for any acts or omissions of a person “other than an employee, including but not limited to the criminal actions of third persons.” Defendant argues that the decedent’s death is a direct and proximate result of the criminal acts of Hunt in stealing the fire truck and using it in the commission of

further crimes beyond the foreseeability and control of the CVAO.² The Plaintiff makes no allegation that Ray was in any way involved with the theft of the fire truck or the usage of the vehicle in the commission of the subsequent criminal acts. Based on this, summary judgment is appropriate under this section of the SCTCA.

Based on the foregoing, summary judgment on behalf of the South Carolina Division of Veterans Affairs is GRANTED.

IT IS SO ORDERED.


The Honorable W. Jeffrey Young
Circuit Court Judge
Fourteenth Judicial Circuit

Nov 6
October 6, 2014
Beaufort, South Carolina
Sumter

² The Court does not necessarily find that Hunt's actions were the sole cause of the Plaintiff's injuries. Instead, for purposes of the SCTCA, all that is necessary for governmental immunity is that a criminal act of a third person is a proximate cause. Whether the actions or inactions of persons other than Hunt are also a proximate cause is not currently before this Court. See, e.g., Player v. Thompson, 259 S.C. 600, 606, 193 S.E.2d 531, 533 - 534 (1972) (holding that "[p]roximate cause is normally a question of fact for determination by the jury, and may be proved by direct or circumstantial evidence").

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION**

REBECCA DELANEY, *as personal
representative of the Estate of Justin
Nicholas Miller,*

Plaintiff,

v.

CASEPRO, INC.,

Defendant.

No. 9:14-cv-4355-DCN

ORDER

This matter is before the court on a motion to remand filed by plaintiff Rebecca Delaney, as personal representative of the Estate of Justin Nicholas Miller ("Delaney"). For the reasons set forth below, the court grants Delaney's motion and remands the case to state court.

I. BACKGROUND

This case arises out of a February 24, 2012 incident in which Calvin Hunt ("Hunt"), who was being treated by an employee of defendant CasePro, Inc. ("CasePro") at the Beaufort Naval Hospital, walked out of the hospital, stole a fire truck, and proceeded to run over pedestrian Justin Miller ("Miller") as Miller was crossing the road on foot. On November 1, 2012, Delaney brought suit in state court against CasePro and Beaufort County.¹ On February 21, 2014, Delaney amended her complaint, replacing Beaufort County with the South Carolina State Office of Veterans Affairs ("SCDVA"). On August 26, 2014, SCDVA filed a motion for summary judgment, to which Delaney

¹ Delaney also has a separate action on behalf of Miller's estate pending in this court against the United States and the United States Naval Hospital.

responded. The state court heard oral argument on October 6, 2014 and granted the motion on November 6, 2014.

On November 10, 2014, CasePro filed a notice of removal pursuant to 28 U.S.C. §§ 1441 and 1446. On December 10, 2014, Delaney filed a motion to remand. CasePro responded on January 27, 2015 and Delaney filed a reply on February 6, 2015. This matter has been fully briefed and is ripe for the court's review.

II. DISCUSSION

A defendant has a statutory right to remove to federal court any civil action brought in state court over which “the district courts of the United States have original jurisdiction” 28 U.S.C. § 1441(a); Davis v. N.C. Dep’t of Corr., 48 F.3d 134, 138 (4th Cir. 1995). Generally, a notice of removal must be filed within 30 days after the defendant receives the initial pleading setting forth the claim for relief. 28 U.S.C. § 1446(b)(1). If the case stated by the initial pleading is not removable, “a notice of removal may be filed within 30 days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.” 28 U.S.C. § 1446(b)(3). However, if federal jurisdiction is based on diversity pursuant to 28 U.S.C § 1332, as is the case here, removal is subject to a statutory limitation: a defendant may not remove a case “more than 1 year after commencement of the action, unless the district court finds that the plaintiff has acted in bad faith in order to prevent a defendant from removing the action.” 28 U.S.C § 1446(c).

If it appears that removal was improper, a party can move to remand the case to state court “within 30 days after the filing of the notice of removal” 28 U.S.C.

§ 1447(c). When removal is challenged, the defendant has the burden of establishing federal jurisdiction. Mulcahey v. Columbia Organic Chem. Co., Inc., 29 F.3d 148, 151 (4th Cir. 1994). Because federal courts are courts of limited jurisdiction, removal raises federalism concerns and must be strictly construed in favor of state court jurisdiction. Id. “If federal jurisdiction is doubtful, a remand is necessary.” Id.

The parties do not dispute that they are diverse, that this case could not have been brought in state court as originally filed, or that CasePro filed its removal notice more than one year after the commencement of this action in state court. Rather, the sole issue before the court is whether Delaney, by alleging causes of action against SCDVA, acted in bad faith to prevent removal.

As recently noted by another court in this district, the Fourth Circuit has not addressed this issue, and only a handful of district courts in the circuit have weighed the bad faith exception in section 1446. Mansilla-Gomez v. Mid-S. Erectors, Inc., No. 0:14-cv-00308, 2014 WL 1347485, at *2 (D.S.C. Apr. 3, 2014); see also McDonald-Lerner v. Neurocare Associates, P.A., 2014 WL 1356602 (D. Md. Apr. 4, 2014) (finding that the defendants failed to make a sufficient showing that the plaintiffs acted in bad faith when they voluntarily dismissed certain parties more than a year after commencement of the action); Brown v. Wal-Mart Stores, Inc., 2014 WL 60044 (W.D. Va. Jan. 7, 2014) (finding bad faith where the plaintiff deliberately delayed providing a defendant with notice that the claim exceeded \$75,000); Watts v. RMO Holdings, Ltd., 2012 WL 3860738 (S.D. W. Va. Sept. 5, 2012) (finding no evidence or indication of bad faith on the part of the plaintiffs). In a different context, another court in this district noted that “[a]lthough the term ‘bad faith’ is not defined in the Federal Rules of Civil Procedure,

courts have held that the term ‘bad faith’ connotes an action taken without any colorable legal or factual basis.” Rutherford v. Cannon, No. 8:09-cv-2137, 2010 WL 3475283, at *1 (D.S.C. Sept. 2, 2010) .

CasePro’s argument that Delaney acted in bad faith is based entirely on the fact that the state court granted summary judgment on Delaney’s claims against SCDVA. In doing so, the state court apparently held that Delaney did not have even a mere scintilla of evidence against SCDVA.² CasePro argues, therefore, that Delaney’s actions in bringing the suit against SCDVA “suggest a deliberate attempt to include an in-state defendant in the case for the sole purpose of defeating complete diversity and preventing removal” Def.’s Resp. 4 (emphasis added).

Additionally, in their removal notice, CasePro cites Nele v. TJX Companies, Inc., for the proposition that “‘bad faith’ can take the form of fraudulent joinder of a defendant to defeat diversity.” 2013 WL 3305269, at *3 (E.D. Penn. July 1, 2013). The doctrine of fraudulent joinder allows a federal court to “disregard, for jurisdiction purposes, the citizenship of certain [in-state] defendants, assume jurisdiction over a case, dismiss th[ose] defendants, and thereby retain jurisdiction.”³ Mayes v. Rapoport, 198 F.3d 457, 461 (4th Cir. 1999). The party asserting fraudulent joinder has the “heavy burden” to “demonstrate either outright fraud in the plaintiff’s pleading or that there is no possibility

² Neither party attaches the state court order granting summary judgment, but the South Carolina Supreme Court has held that “in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.” Hancock v. Mid-S. Mgmt. Co., 673 S.E.2d 801, 803 (S.C. 2009).

³ “The term ‘fraudulent joinder’ is a bit misleading, inasmuch as the doctrine requires neither a showing of fraud . . . nor joinder.” Mayes, 198 F.3d at 466 n.8. “In fact, it is irrelevant whether the defendants were ‘joined’ to the case or originally included as defendants; rather, the doctrine is potentially applicable to each defendant named by the plaintiff either in the original complaint or anytime prior to removal.” Id.

that the plaintiff would be able to establish a cause of action against the in-state defendant in state court, . . . even after resolving all issues of law and fact in the plaintiff's favor." Hartley v. CSX Transp., Inc., 187 F.3d 422, 424 (4th Cir. 1999) (internal quotation marks and citation omitted) (emphasis in original). This standard is even more favorable to the plaintiff than the motion to dismiss standard under Rule 12(b)(6). Id. As always, the court must "resolve all doubts about the propriety of removal in favor of retained state court jurisdiction." Id. at 425 (internal quotation marks omitted).

While the state court judge ruled against Delaney on SCDVA's motion for summary judgment, "[a] claim need not ultimately succeed to defeat removal; only a possibility of a right to relief need be asserted." Marshall v. Manville Sales Corp., 6 F.3d 229, 233 (4th Cir. 1993). In other words, "a defendant is not fraudulently joined simply because the claims against him did not 'ultimately succeed.'" Day v. Liberty Mut. Fire Ins. Co., 2013 WL 1890725, at *4 (N.D. W. Va. May 6, 2013). As a result, a defendant "cannot satisfy its burden of demonstrating fraudulent joinder merely by pointing to the fact that the state court has ruled against [the plaintiff] on the merits of his claim." Id. (citation omitted).

CasePro has not met their burden of showing bad faith, whether by fraudulent joinder or otherwise. Delaney vigorously, albeit unsuccessfully, contested SCDVA's motion for summary judgment in the state court. Notably, Edward Ray, the veterans' affairs officer who accompanied Hunt to the Naval Hospital on the day of the incident, passed away before he could be deposed. In fact, he was the only person employed at the Beaufort County Veterans' Affairs Office on the day in question. Therefore, it is entirely plausible that evidence related to Delaney's claims against SCDVA, if any, died with

Ray. Additionally, four related cases filed by different plaintiffs all named SCDVA as a defendant in their initial federal complaints.⁴ These plaintiffs had no incentive to add SCDVA in order to prevent removal since they brought their claims in federal court in the first instance. Rather, these plaintiffs apparently also believed there was at least a potentially viable theory of liability against SCDVA.

Quite simply, “no evidence of bad faith has been presented, and this court will not presume such bad faith on the part of Plaintiff’s counsel.” Lever v. Jackson Nat. Life Ins. Co., No. 3:12-cv-03108, 2013 WL 436210, at *4 (D.S.C. Feb. 5, 2013). Therefore, the court grants Delaney’s motion and remands this case to state court.

III. CONCLUSION

For the foregoing reasons, the court **GRANTS** Delaney’s motion and **REMANDS** this case to state court.

AND IT IS SO ORDERED.



DAVID C. NORTON
UNITED STATES DISTRICT JUDGE

April 23, 2015
Charleston, South Carolina

⁴ In three of the cases—Miller v. CasePro, No. 9:13-cv-3395; Roberts v. CasePro, No. 9:13-cv-3394; and Franklin v. CasePro, No. 9:14-cv-289—the plaintiff did not object to SCDVA’s motion for summary judgment, and therefore SCDVA is no longer a defendant. In Armstrong v. CasePro, No. 9:13-cv-2026, the plaintiff contested the motion but the case settled before the court issued an order.

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2012CP0703782

Rebecca Delaney

CasePro, Inc

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

CasePro, Inc.'s Motion for Summary Judgment is respectfully denied. The court finds a scintilla of evidence that CasePro had some control over its employees. Additionally, this case will be scheduled for a date certain trial on October 5, 2015.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: Schedule case on 10/5/2015 roster as a Date Certain.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

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

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

Circuit Court Judge Carmen T. Mullen

2142
Judge Code

7/31/15
Date

For Clerk of Court Office Use Only

This judgment was entered on the 31st day of July, 2015 and a copy mailed first class or placed in the appropriate attorney's box on this 10 day of Aug, 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Thomas David Hoyle 28 Bridgeside Blvd. Mt. Pleasant, SC 29464

William Christopher Swett 28 Bridgeside Blvd. Mt. Pleasant, SC 29464

ATTORNEY(S) FOR THE PLAINTIFF(S)

Court Reporter: N/A

Lee Ellis Berlinsky 151 Meeting Street, Ste. 200 Charleston, SC 29401

Dennis Gary Lovell, Jr. 40 Calhoun Street, Suite 400 Charleston, SC 29401

Douglas Walker MacKelcan, III 40 Calhoun Street, Suite 400 Charleston, SC 29401

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Maureen Kingard
Judicial Clerk

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

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

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 CP-07-03782

Rebecca Delaney, as the PR of the Estate of Justin Nicholas
Miller

CasePro, Inc.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Leigh Ellen Gray

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

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Defendant's Motion for Reconsideration is hereby denied. This case remains on the trial roster for October 5, 2015.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

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

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

Circuit Court Judge

2142

Judge Code

9/23/15
Date

For Clerk of Court Office Use Only

This judgment was entered on the 24 day of Aug, 2015 and a copy mailed first class or placed in the appropriate attorney's box on this 25 day of Aug, 2015 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)
M-M Nelson
CLERK OF COURT

Court Reporter:

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

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

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORTJUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP0703782

IN THE COURT OF COMMON PLEAS

2015 OCT 16 PM 4:08

Rebecca Delaney

Justin Nicholas Miller

Casepro Inc

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

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

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

Circuit Court Judge

Judge Code

Date

10-16-15
For Clerk of Court Office Use Only
10-16-15

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

Thomas David Hoyle 28 Bridgeside Blvd. Mt. Pleasant, SC
29464
William Christopher Swett 28 Bridgeside Blvd. Mt.
Pleasant, SC 29464

Dennis Gary Lovell Jr. 40 Calhoun Street Suite 400
Charleston, SC 29401
Douglas Walker MacKeehan III 40 Calhoun St., Ste. 400
Charleston, SC 29401
Holly Palmer Beeson PO Box 11329 Columbia, SC 29211-
1329

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Maylene Kynard
Judicial Clerk
Jerri Ann Roseneau - Clerk of Court

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

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

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
Rebecca Delaney, as the Personal)
Representative of the Estate of Justin)
Nicholas Miller,)
Plaintiff,)
vs.)
CasePro, Inc.)
Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT

Case Number: 2012-CP-07-03782

VERDICT FORM

2015 OCT 16 PM 4:08

We, the Jury, unanimously find for the Plaintiff in the amount of
_____ dollars actual damages.

We, the Jury, unanimously find for the Defendant.

Dan Lawrence
PRESIDING JUROR

213

October 16th, 2015
Beaufort, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

REBECCA DELANEY, as the Personal
Representative of the Estate of Justin Nicholas
Miller

Plaintiff(s)

vs.

CASEPRO, INC. AND BEAUFORT COUNTY

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2012-CP - 07-

2012 NOV -1 PM 1:35

(Please Print)

Submitted By: T. David Hoyle, Esquire

Address: Motley Rice LLC

28 Bridgeside Boulevard

Mount Pleasant, SC 29464

SC Bar #: 074055

Telephone #: 843-216-9000

Fax #: 843-216-9655

Other:

E-mail: dhoyle@motleyrice.com

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

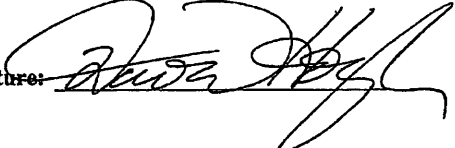
DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

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

NATURE OF ACTION (Check One Box Below)

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

Submitting Party Signature: 

Date: October 31, 2012

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

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville,
Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), and Richland

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

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

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

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

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

REBECCA DELANEY, as the Personal
Representative of the Estate of JUSTIN
NICHOLAS MILLER,

Plaintiff,

vs.

CASEPRO, INC. and BEAUFORT COUNTY

Defendants.

THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CASE NO. 12-CP-07-

SUMMONS

2012 NOV -1 PM 1:35
CLERK OF COURT
S.C.

TO: THE ABOVE NAMED DEFENDANTS

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action,
a copy of which is herewith served upon you, and to serve a copy of your Answer to the said
Complaint on the Plaintiffs or their attorney, Anne McGinness Kearse, with the Motley Rice
Law Firm, LLC, 28 Bridgeside Boulevard, Mt. Pleasant, South Carolina 29464 within thirty (30)
days from the date of such service, and if you fail to answer the Complaint within the time
aforesaid, the Plaintiffs in this action will apply to the Court for judgment by default for the relief
demanded in the Complaint.

Respectfully submitted this 31 day of October, 2012,

MOTLEY RICE LLC

By:

Anne McGinness Kearse (SC 15642)
T. David Hoyle (SC 074055)
W. Christopher Swett (SC 078661)
28 Bridgeside Boulevard
Mount Pleasant, South Carolina 29464
(843) 216-9000 (Phone)
(843) 216-9450 (Facsimile)

0040

Appendix 0043

Crystal Lynn Castleberry (SC 078661)
CASTLEBERRY LAW OFFICES
3712 Swallowtail Dr.
Morgantown, WV 26508
(304) 594-2828 (Phone)
(304) 594-2899 (Facsimile)

ATTORNEYS FOR PLAINTIFFS

THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO. 12-CP-07-_____

2011

WRONGFUL DEATH
AND SURVIVAL ACTION

JURY TRIAL DEMANDED

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2012 NOV -1 PM 1:35
EATH
ACTION
MANDED

Plaintiff, REBECCA DELANEY, as the Personal Representative of the Estate of JUSTIN NICHOLAS MILLER (hereinafter referred to as "Plaintiff"), by and through undersigned counsel and pursuant to the South Carolina Rules of Civil Procedure, hereby sues CASEPRO, INC. ("CasePro") and BEAUFORT COUNTY, and alleges as follows:

1. This is a wrongful death and survival action brought by the mother and personal representative of Justin Nicholas Miller who lost his life after being run over by a fire truck stolen by Calvin Hunt who walked out the front gate of the Beaufort Naval Hospital despite the knowledge of an employee of CasePro, Inc and the Beaufort County Veterans Affairs Officer that Mr. Hunt intended to hurt others. These events form the basis of Plaintiff's negligence; negligent undertaking of duty; and wrongful death. Plaintiff seeks actual and consequential damages as well as punitive damages to halt and deter such conduct from taking place in the future.

THE PARTIES, JURISDICTION, AND VENUE

2. At all relevant times, Plaintiff was and is a resident of Parkersburg, West Virginia.

3. Defendant CasePro is a Texas corporation with its corporate headquarters and principal place of business in San Antonio, Texas. CasePro is authorized to transact business in South Carolina, and this action arises out of a tort committed in South Carolina; therefore, CasePro is subject to the jurisdiction of this Court. CasePro can be served via its registered agent for service of process: C T Corporation System, 2 Office Park Court, Suite 103, Columbia, SC 29223.

4. Defendant Beaufort County is a political subdivision organized and existing under the laws of the State of South Carolina, as defined in the South Carolina Tort Claims Act. The Beaufort County Office of Veterans Affairs maintains its principal place of business at Government Center South, 539 William Hilton Parkway, Hilton Head Island, SC 29928. As a political subdivision of the State, Beaufort County is subject to the jurisdiction of this Court.

5. This Honorable Court has jurisdiction of the claims and parties under South Carolina Code §§ 36-2-802 & 803, and 15-5-150. Venue is appropriate in Beaufort County, South Carolina, pursuant to §§ 15-7-30 and 15-78-100(b) because the most substantial part of the acts giving rise to this action occurred in Beaufort County.

FACTS COMMON TO ALL COUNTS

6. Calvin Hunt is a former United States Marine Corps corporal who was found guilty of assault, communicating a threat, resisting arrest, and other charges during an April 2011 court-martial. Mr. Hunt was subsequently discharged from the Marine Corps.

7. Upon information and belief, Mr. Hunt suffers from Post Traumatic Stress Disorder as a result of his military service.

8. On or about February 24, 2012, Beaufort County employee and Veterans Affairs Officer Edward Ray received a telephone call from Calvin Hunt's grandmother, Claretha Hunt, regarding Calvin Hunt's erratic behavior.

9. As a result, Edward Ray met Calvin Hunt at 1030 hours.

10. Upon information and belief, Calvin Hunt disclosed to Edward Ray that he wanted to hurt himself and others.

11. Beginning at 1030 hours, Edward Ray and his employer Defendant Beaufort County had knowledge that Calvin Hunt posed a specific threat of harm to others.

12. Beginning at 1030 hours, Edward Ray and his employer Defendant Beaufort County had a special relationship with Calvin Hunt.

13. Beginning at 1030 hours, Edward Ray and his employer Defendant Beaufort County had the ability to monitor, supervise, and control Calvin Hunt's conduct.

14. Beginning at 1030 hours, Edward Ray and his employer Defendant Beaufort County voluntarily undertook a duty to monitor, supervise, and control Calvin Hunt's conduct.

15. As a result, Edward Ray arranged for Calvin Hunt to be seen at Naval Hospital Beaufort (NHB) at 1330 hours.

16. At 1330 hours, Edward Ray escorted Calvin Hunt through the front gate of NHB and took Hunt to Manage Care Intake.

17. Defendant CasePro provided personnel to staff Manage Care Intake at NHB pursuant to contracts with the Naval Medical Logistics Command.

18. Upon information and belief, Calvin Hunt was interviewed by agents and/or employees of Defendant CasePro while in the presence of Edward Ray.

19. During this interview, Calvin Hunt was asked, in the presence of Edward Ray, if he wanted to hurt himself and others.

20. During this interview, Calvin Hunt stated, in the presence of Edward Ray, that he did want to hurt himself or others.

21. As a result, personnel employed by Defendant CasePro were aware that Calvin Hunt presented a serious danger of violence to others.

22. Beginning at approximately 1330 hours, personnel employed by Defendant CasePro had knowledge that Calvin Hunt posed a specific threat of harm to others.

23. Beginning at approximately 1330 hours, personnel employed by Defendant CasePro had a special relationship with Calvin Hunt.

24. Beginning at approximately 1330 hours, personnel employed by Defendant CasePro had the ability to monitor, supervise, and control Calvin Hunt's conduct.

25. Personnel employed by Defendant CasePro undertook a duty to ensure that Calvin Hunt was admitted to NHB and kept under close watch.

26. Personnel employed by Defendant CasePro undertook a duty to take Calvin Hunt to the Emergency Room of NHB for medical treatment.

27. Personnel employed by Defendant CasePro did not, however, notify law enforcement, the Department of Mental Health, or take any affirmative action reasonably necessary under the circumstances to ensure that Calvin Hunt did not hurt others.

28. Similarly, Edward Ray, upon learning a second time that Calvin Hunt intended to hurt himself or others, did not notify law enforcement, the Department of Mental Health, or take any affirmative action reasonably necessary under the circumstances to ensure that Calvin Hunt did not hurt others.

29. Instead, personnel employed by Defendant CasePro and Edward Ray escorted Mr. Hunt to the Emergency Department at NHB.

30. Inexplicably, at this point, personnel employed by Defendant CasePro and Edward Ray allowed Mr. Hunt to leave from the facility.

31. Specifically, Calvin Hunt asked to get a quick breath of fresh air and with the consent, acquiescence, and/or permission of personnel employed by Defendant CasePro as well as Edward Ray exited the facility.

32. After exiting the facility, Calvin Hunt removed all of his clothing and left the NHB property on foot.

33. At about the same time, the Town of Port Royal Fire Department was responding to a non-fire emergency call at the Laurel Hill Apartment Complex located near the NHB.

34. A naked Calvin Hunt jumped into the unoccupied fire truck and entered the highway from the apartment complex parking lot.

35. Subsequently, Calvin Hunt struck Plaintiff's decedent, JUSTIN NICHOLAS MILLER, with the fire truck as he was crossing the road on foot.

36. Plaintiff's decedent, JUSTIN NICHOLAS MILLER, experienced conscious pain and suffering from this impact and subsequently died from his injuries.

FIRST CAUSE OF ACTION
(Negligence/ Survival Action: S.C. Code Ann. § 15-5-90)
As to Defendant CasePro

37. Plaintiff incorporates by reference all allegations contained in the Paragraphs above, as if set forth verbatim herein.

38. Defendant contracted with Naval Medical Logistics Command to supply various personnel and services over an extended period of time, including the date of this incident, to NHB.

39. Defendant had a contractual duty to provide personnel at the Managed Care Intake, the Emergency Department/Room, and the Urgent Care Clinic at NHB.

40. This claim is not brought pursuant to 10 USC § 1089 and does not allege acts of medical negligence.

41. Specifically, this claim is brought for the negligent acts/omissions of this Defendant's employees/agents who:

- (i) had specific knowledge that Calvin Hunt posed a specific threat of harm to others;
- (ii) had a special relationship with Calvin Hunt;
- (iii) had the ability to monitor, supervise, and control Calvin Hunt's conduct;
- (iv) undertook a duty to ensure that Calvin Hunt was delivered to the NHB Emergency Room for medical treatment and kept under close watch.

42. As such, Defendant's duties-undertaken voluntarily and/or pursuant to contract-included, but were not limited to:

- (i) Assisting with screening potential patients at Managed Care Intake check-in;
- (ii) Recognizing signs that an individual may hurt others and ensuring appropriate action was taken;
- (iii) Screening potential patients to determine whether treatment should be provided;

- (iv) Utilizing sound judgment and crisis intervention skills, including physical restraint, to prevent situations that may become harmful to the patient and others;
- (v) Instituting precautionary measures to prevent injuries to patients or others due to suicide, homicide, or elopement;
- (vi) Intervening as crisis counselors in situations requiring immediate psychological treatment such as substance abuse, suicide attempts, psychotic episodes, and other instances;
- (vii) Ensuring that individuals in crisis are delivered to qualified medical personnel when they indicate that they intend to hurt themselves or others; and
- (viii) Such other and further particulars as the evidence may show.

43. Defendant owed Plaintiff's decedent, JUSTIN NICHOLAS MILLER, a duty to exercise reasonable care in performing its duties so as to prevent injury or death to Plaintiff's decedent and others similarly situated.

44. Defendant breached its duty and was negligent, grossly negligent, careless, reckless, willful, wanton and malicious in one or more of the following ways:

- (i) Failing to adopt and implement adequate safety procedures and policies;
- (ii) Failing to follow policies and procedures that were in place;
- (iii) Failing to ensure employees/agents had or received adequate experience, training, and supervision;
- (iv) Failing to exercise even the slightest degree of care in performing the duties owed to Plaintiff's decedent and/or those duties voluntarily undertaken;
- (v) Failing to properly screen Mr. Hunt and appreciate the urgency of the

situation and the danger presented by the particular circumstances given Mr.

Hunt's statement that he wanted to hurt others;

(vi) Failing to recognize the danger that Mr. Hunt posed to Plaintiff's decedent and others similarly situated if not closely supervised;

(vii) Failing to utilize sound judgment and crisis intervention skills, including physical restraint, to prevent Mr. Hunt's elopement, which proximately caused Plaintiff's decedent's injuries and death;

(viii) Failing to institute precautionary measures to prevent injuries and death to Plaintiff's decedent and others similarly situated proximately caused by Mr. Hunt's elopement;

(ix) Failing to exercise reasonable care and take necessary precautions in the transport/escort of Mr. Hunt to the Emergency Department at NHB; and

(x) Such other and further particulars as the evidence may show.

45. As a direct and proximate result of the negligent, grossly negligent, willful, wanton and careless acts and/or omissions of Defendant, as set forth above, Plaintiff's decedent, JUSTIN NICHOLAS MILLER, suffered injuries, including excruciating pain and suffering, mental anguish, terror, knowledge of bodily injury and impending death, loss of income, funeral expenses, and such other damages as the Court or jury deems just and proper.

46. Plaintiff's decedent, JUSTIN NICHOLAS MILLER, has lost his life as set forth herein, and Plaintiff is informed and believes she is entitled to a judgment against Defendant CasePro for actual and punitive damages in an amount to be determined by the trier of fact.

SECOND CAUSE OF ACTION
(Wrongful Death: S.C. Code Ann. § 15-51-10)
As to Defendant CasePro

47. Plaintiff incorporates by reference all allegations contained in the Paragraphs above, as if set forth verbatim herein.

48. Defendant contracted with Naval Medical Logistics Command to supply various personnel and services over an extended period of time, including the date of this incident, to NHB.

49. Defendant had a contractual duty to provide personnel at the Managed Care Intake, the Emergency Department/Room, and the Urgent Care Clinic at NHB.

50. This claim is not brought pursuant to 10 USC § 1089 and does not allege acts of medical negligence.

51. Specifically, this claim is brought for the negligent acts/omissions of this Defendant's employees/agents who:

- (i) had specific knowledge that Calvin Hunt posed a specific threat of harm to others;
- (ii) had a special relationship with Calvin Hunt;
- (iii) had the ability to monitor, supervise, and control Calvin Hunt's conduct;
- (iv) undertook a duty to ensure that Calvin Hunt was delivered to the NHB Emergency Room for medical treatment and kept under close watch.

52. As such, Defendant's duties-undertaken voluntarily and/or pursuant to contract-included, but were not limited to:

- (i) Assisting with screening potential patients at Manage Care Intake check-in;

- (ii) Recognizing signs that an individual may hurt others and ensuring appropriate action was taken;
- (iii) Screening potential patients to determine whether treatment should be provided;
- (iv) Utilizing sound judgment and crisis intervention skills, including physical restraint, to prevent situations that may become harmful to the patient and others;
- (v) Instituting precautionary measures to prevent injuries to patients or others due to suicide, homicide, or elopement;
- (vi) Intervening as crisis counselors in situations requiring immediate psychological treatment such as substance abuse, suicide attempts, psychotic episodes, and other instances;
- (vii) Ensuring that individuals in crisis are delivered to qualified medical personnel when they indicate that they intend to hurt themselves or others; and
- (viii) Such other and further particulars as the evidence may show.

53. Defendant owed Plaintiff's decedent, JUSTIN NICHOLAS MILLER, a duty to exercise reasonable care in performing its duties so as to prevent injury or death to Plaintiff's decedent and others similarly situated.

54. Defendant breached its duty and was negligent, grossly negligent, careless, reckless, willful, wanton and malicious in one or more of the following ways:

- (i) Failing to adopt and implement adequate safety procedures and policies;
- (ii) Failing to follow policies and procedures that were in place;
- (iii) Failing to ensure employees/agents had or received adequate experience, training, and supervision;

- (iv) Failing to exercise even the slightest degree of care in performing the duties owed to Plaintiff's decedent and/or those duties voluntarily undertaken;
- (v) Failing to properly screen Mr. Hunt and appreciate the urgency of the situation and the danger presented by the particular circumstances given Mr. Hunt's statement that he wanted to hurt others;
- (vi) Failing to recognize the danger that Mr. Hunt posed to Plaintiff's decedent and others similarly situated if not closely supervised;
- (vii) Failing to utilize sound judgment and crisis intervention skills, including physical restraint, to prevent Mr. Hunt's elopement, which proximately caused Plaintiff's decedent's injuries and death;
- (viii) Failing to institute precautionary measures to prevent injuries and death to Plaintiff's decedent and others similarly situated proximately caused by Mr. Hunt's elopement;
- (ix) Failing to exercise reasonable care and take necessary precautions in the transport/escort of Mr. Hunt to the Emergency Department at NHB; and
- (x) Such other and further particulars as the evidence may show.

55. As a direct and proximate result of the negligent, grossly negligent, willful, wanton and careless acts and/or omissions of Defendant, as set forth above, Plaintiff and Plaintiff's decedent's beneficiaries have suffered damages, present and prospective, which are naturally the proximate consequence of the Defendant's wrongful acts, including pecuniary loss, mental shock and suffering, wounded feelings, grief and sorrow, loss of companionship, funeral expenses, and such other damages as the Court or jury deems just and proper.

56. Plaintiff's decedent, JUSTIN NICHOLAS MILLER, has lost his life as set forth herein, and Plaintiff is informed and believes she is entitled to a judgment against Defendant CasePro for actual and punitive damages in an amount to be determined by the Trier of fact.

THIRD CAUSE OF ACTION
(Punitive and Exemplary Damages)
As to Defendant CasePro

57. Plaintiff incorporates by reference all allegations contained in the Paragraphs above, as if set forth verbatim herein.

58. The actions and inactions of Defendant were of such a character as to constitute a pattern or practice of willful, wanton and reckless misconduct causing substantial harm and resulting in damages to the Plaintiff and injuries and death to the Plaintiff's decedent.

59. More specifically, Defendant acted with a conscious and flagrant disregard for the rights and safety of Plaintiff's decedent and/or deliberately engaged in willful, wanton and reckless disregard for the life and safety of JUSTIN NICHOLAS MILLER, by failing to anticipate the reasonably foreseeable risks that Calvin Hunt posed to him and others similarly situated, and failing to exercise even the slightest degree of care to prevent Mr. Hunt from eloping and injuring Plaintiff's decedent and others similarly situated.

60. Accordingly, Defendant is liable for punitive and exemplary damages awardable to Plaintiff.

61. WHEREFORE, Plaintiff demands judgment against Defendant CasePro for punitive and exemplary damages, plus interest, costs and attorneys' fees for having to bring this action, and such other and further relief as the Court or jury may deem just and proper.

FOURTH CAUSE OF ACTION
(Negligence: S.C. Code Ann. § 15-78-40/ Survival Action: S.C. Code Ann. § 15-5-90)
As to Defendant Beaufort County

62. Plaintiff incorporates by reference all allegations contained in the Paragraphs above, as if set forth verbatim herein.

63. This action is brought pursuant to the South Carolina Tort Claims Act.

64. At all times relevant, Beaufort County was and is a political subdivision of the State of South Carolina, and Beaufort County Office of Veterans Affairs was and is an extension of Beaufort County.

65. At all times relevant, Edward Ray was and is the Veterans Affairs Officer and an employee of Beaufort County.

66. Beaufort County is liable for the negligent acts and omissions of Edward Ray, who was acting within the scope of his official duty at all relevant times.

67. Defendant owed Plaintiff's decedent, JUSTIN NICHOLAS MILLER, a duty to exercise reasonable care in performing its duties so as to prevent injury or death to Plaintiff's decedent and others similarly situated.

68. Moreover, Beaufort County employee Edward Ray undertook a duty to monitor, supervise and/or control Calvin Hunt and ensure that he obtained medical care so as to prevent Calvin Hunt from harming himself, Plaintiff's decedent, or others similarly situated.

69. Defendant breached its duties and was grossly negligent, careless, reckless, willful, wanton and malicious in one or more of the following ways:

- (i) Failing to follow policies and procedures that were in place;
- (ii) Failing to ensure employees/agents had or received adequate experience, training, and supervision;

- (iii) Failing to exercise even the slightest degree of care in performing the duties owed to Plaintiff's decedent and/or those duties voluntarily undertaken;
- (iv) Failing to exercise even the slightest degree of care in escorting Calvin Hunt to the Emergency Department at NHB despite knowing that Mr. Hunt intended to injure himself and others; and
- (v) Such other and further particulars as the evidence may show.

70. Defendant Beaufort County's acts and/or omissions are independent and separate acts of negligence.

71. As a direct and proximate result of the grossly negligent, willful, wanton and careless acts and/or omissions of Defendant, as set forth above, Plaintiff's decedent, JUSTIN NICHOLAS MILLER, suffered injuries, including excruciating pain and suffering, mental anguish, terror, knowledge of bodily injury and impending death, loss of income, funeral expenses, and such other damages as the Court or jury deems just and proper.

72. Plaintiff's decedent, JUSTIN NICHOLAS MILLER, has lost his life as set forth herein, and Plaintiff is informed and believes she is entitled to a judgment against Defendant for actual damages in an amount to be determined by the Trier of fact.

FIFTH CAUSE OF ACTION
(Wrongful Death: S.C. Code Ann. § 15-78-170)
As to Defendant Beaufort County

73. Plaintiff incorporates by reference all allegations contained in the Paragraphs above, as if set forth verbatim herein.

74. This action is brought pursuant to the South Carolina Tort Claims Act.

75. At all times relevant, Beaufort County was and is a political subdivision of the State of South Carolina, and Beaufort County Office of Veterans Affairs was and is an extension of Beaufort County.

76. At all times relevant Edward Ray was and is the Veterans Affairs Officer and an employee of Beaufort County.

77. Beaufort County is liable for the negligent acts and omissions of Edward Ray, who was acting within the scope of his official duty at all relevant times.

78. Defendant owed Plaintiff's decedent, JUSTIN NICHOLAS MILLER, a duty to exercise reasonable care in performing its duties so as to prevent injury or death to Plaintiff's decedent and others similarly situated.

79. Moreover, Beaufort County employee Edward Ray undertook a duty to monitor, supervise, and/or control Calvin Hunt so as to prevent Calvin Hunt from harming himself, Plaintiff's decedent, or others similarly situated.

80. Defendant breached its duties and was grossly negligent, careless, reckless, willful, wanton and malicious in one or more of the following ways:

- (i) Failing to follow policies and procedures that were in place;
- (ii) Failing to ensure employees/agents had or received adequate experience, training, and supervision;
- (iii) Failing to exercise even the slightest degree of care in performing the duties owed to Plaintiff's decedent and/or those duties voluntarily undertaken;
- (iv) Failing to exercise even the slightest care in escorting Calvin Hunt to the Emergency Department at NHB despite knowing that Mr. Hunt intended to injure himself and others; and

(v) Such other and further particulars as the evidence may show.

81. Defendant Beaufort County's acts and/or omissions are independent and separate acts of negligence.

82. As a direct and proximate result of the grossly negligent, willful, wanton and careless acts and/or omissions of Defendant, as set forth above, Plaintiff and Plaintiff's decedent's beneficiaries have suffered damages, present and prospective, which are naturally the proximate consequence of the Defendant's wrongful acts, including pecuniary loss, mental shock and suffering, wounded feelings, grief and sorrow, loss of companionship, funeral expenses, and such other damages as the Court or jury deems just and proper.

83. Plaintiff's decedent, JUSTIN NICHOLAS MILLER, has lost his life as set forth herein, and Plaintiff is informed and believes she is entitled to a judgment against Defendant for actual damages in an amount to be determined by the Trier of fact.

SIXTH CAUSE OF ACTION
(Negligent Undertaking of Duty)
As to All Defendants

84. Plaintiff incorporates by reference all allegations contained in the Paragraphs above, as if set forth verbatim herein.

85. Defendants CasePro and Beaufort County voluntarily undertook a duty to keep Calvin Hunt under supervision upon learning that he intended to hurt himself or others.

86. This duty was undertaken for the benefit of those whom it was reasonably foreseeable that Calvin Hunt would come into contact with and could subject to harm on February 25, 2012 including, but not limited to, Plaintiff's decedent JUSTIN NICHOLAS MILLER.

87. Defendants CasePro and Beaufort County took actions they should have recognized as necessary for the protection of *inter alia* Plaintiff's decedent, JUSTIN NICHOLAS MILLER, and failed to exercise reasonable care in performing this undertaking by:

- (i) Failing to follow policies and procedures that were in place;
- (ii) Failing to ensure employees/agents had or received adequate experience, training, and supervision;
- (iii) Failing to exercise even the slightest degree of care in performing the duties owed to Plaintiff's decedent and/or those duties voluntarily undertaken;
- (iv) Failing to exercise even the slightest care in escorting Calvin Hunt to the Emergency Department at NHB despite knowing that Mr. Hunt intended to injure himself and others; and
- (v) Such other and further particulars as the evidence may show.

88. The breach of this Duty by Defendants CasePro and Beaufort County increased the risk of harm to Plaintiff's decedent, JUSTIN NICHOLAS MILLER; were of duties owed to Plaintiff's decedent, JUSTIN NICHOLAS MILLER, as an intended third party; and the harm Plaintiff's decedent, JUSTIN NICHOLAS MILLER, suffered was proximately caused by the breach of these voluntarily undertaken duties.

89. The breach of this Duty by Defendants CasePro and Beaufort County was a proximate cause of the injury sustained by Plaintiff's decedent JUSTIN NICHOLAS MILLER.

90. As a direct and proximate result of this breach of Duty, Plaintiff and Plaintiff's decedent's beneficiaries have suffered damages, present and prospective, which are naturally the proximate consequence of the Defendants' wrongful acts, including pecuniary loss, mental shock

and suffering, wounded feelings, grief and sorrow, loss of companionship, funeral expenses, and such other damages as the Court or jury deems just and proper.

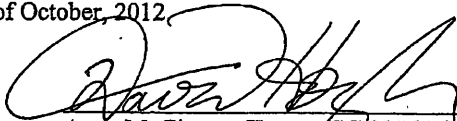
91. Plaintiff's decedent, JUSTIN NICHOLAS MILLER, has lost his life as set forth herein, and Plaintiff is informed and believes she is entitled to a judgment against Defendants.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays as follows:

1. For a trial by jury and judgment against the Defendants CasePro and Beaufort County for actual and other compensatory damages as a jury may determine.
2. For exemplary and punitive damages against Defendant CasePro as a jury may determine to halt such conduct.
3. For the costs of this suit.
4. For such other and further relief to which she may be entitled and as this Honorable Court may deem just and proper.

Respectfully submitted this 31 day of October, 2012.



Anne McGinness Kearse (SC 015642)
T. David Hoyle (SC 074055)
W. Christopher Swett (SC 078251)
MOTLEY RICE LLC
28 Bridgeside Blvd.
Mount Pleasant, SC 29464
(843) 216-9000 | (843) 216-9440 (Facsimile)

Crystal Lynn Castleberry (SC 078661)
CASTLEBERRY LAW OFFICES
3712 Swallowtail Dr.
Morgantown, WV 26508
(304) 594-2828 | (304) 594-2899 (Facsimile)

Attorneys for Plaintiff

Beaufort County Common Pleas

Clerk : Jerri Ann Roseneau

PO Box 1128

Beaufort, SC 299011128

(843) 256-5060

Received From: Hoyle, Thomas David
28 Bridgeside Blvd.
Mt. Pleasant, SC 29464
Paying for: Delaney, Rebecca
Transaction Type: Payment
Payment Type: Check
Total Paid:

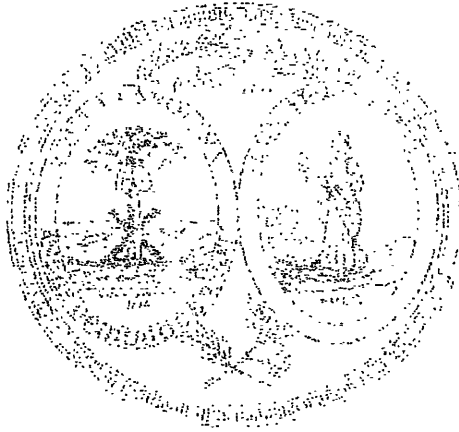
Date: 11/ 1/2012
Receipt #: 83335
Clerk: c07tpatter

Reference #: 079544
Comment:
Non-Refundable

\$150.00
\$150.00

Total Received: \$150.00
Change Due: \$0.00

Case #	Caption	Previous Balance	Amount Paid	Balance Due
2012CP0703782	Rebecca Delaney VS Casepro Inc	\$150.00	\$150.00	\$0.00



Total Cases: 1	\$150.00	\$150.00	\$0.00
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LAW OFFICES

CARLOCK, COPELAND & STAIR, LLP

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

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REPLY TO SC OFFICE

FACSIMILE

843.727.2995

January 7, 2013



Jerri Ann Roseneau, Clerk
Circuit Court of Beaufort County
Post Office Box 1128
Beaufort, SC 29901-1128

Re: Rebecca Delaney, as Personal Representative of the Estate of Justin Nicholas
Miller v. CasePro, Inc. and Beaufort County
C/A No.: 2012-CP-07-03782
CCS File No.: 549-46690

Dear Ms. Roseneau:

Enclosed please find the Summons, Answer and Third-Party Complaint of Defendant CasePro, Inc., as well as CasePro, Inc.'s Motion to Dismiss regarding the above-referenced matter. I have also enclosed the corresponding motion cover sheet and \$25 filing fee. Please file the originals and return the file-stamped copies to our office in the enclosed self-addressed, stamped envelopes.

By copy of this correspondence, I have served the same upon all counsel of record. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Douglas W. Mackelcan".

DOUGLAS W. MACKELCAN

DWM:amc

Enclosures

cc: T. David Hoyle, Esq.
Marshall H. Waldron, Jr., Esq.

0061

Appendix 0064

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) THE FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2012-CP-07-03782

REBECCA DELANEY, AS THE
PERSONAL REPRESENTATIVE OF
THE ESTATE OF JUSTIN NICHOLAS
MILLER,

Plaintiff,

vs.

CASEPRO, INC. AND BEAUFORT
COUNTY

Defendants.

CASEPRO, INC.

Third-Party Plaintiff,

vs.

THE UNITED STATES OF AMERICA

Third-Party Defendant.

SUMMONS

TO THE THIRD-PARTY DEFENDANT ABOVE-NAMED:

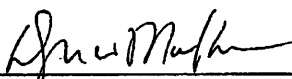
YOU ARE HEREBY SUMMONED and required to answer the Third-Party Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this Third-Party Complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Third-Party Complaint, judgment by default will be rendered against you for the relief demanded in the Third-Party Complaint.

This 7th day of January, 2013.

0062

Respectfully submitted,

CARLOCK, COPELAND & STAIR, LLP

By: 
D. GARY LOVELL, JR.
State Bar No.: 69293
DOUGLAS W. MACKELCAN
State Bar No.: 76332

Attorneys for Defendant/Third-Party Plaintiff
CasePro, Inc.

40 Calhoun Street, Suite 400
Charleston, South Carolina 29401-3531
843-727-0307

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) THE FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2012-CP-07-03782

REBECCA DELANEY, AS THE PERSONAL
REPRESENTATIVE OF THE ESTATE OF
JUSTIN NICHOLAS MILLER,

Plaintiff,

vs.

CASEPRO, INC. AND BEAUFORT
COUNTY

Defendants.

CERTIFICATE OF SERVICE

CASEPRO, INC.

Third-Party Plaintiff,

vs.

THE UNITED STATES OF AMERICA

Third-Party Defendant.

I hereby certify that I have this day served a copy of the within and foregoing pleading upon all parties to this matter by depositing a true copy of same in the U.S. Mail, proper postage prepaid, addressed to counsel of record as follows:

Anne McGinness Kears, Esq.
T. David Hoyle, Esq.
W. Christopher Swett, Esq.
Motley Rice, LLC
28 Bridgeside Boulevard
Mount Pleasant, SC 29464

Marshall H. Waldron, Jr., Esq.
Griffith, Sadler & Sharp, P.A.
Post Office Drawer 570
Beaufort, SC 29901

This 7th day of January, 2013.

Ann H. Crowder
Assistant to D. Gary Lovell, Jr.

SECOND DEFENSE

The Complaint fails to state facts sufficient to constitute a cause of action against Defendant CasePro and the Complaint against it should be dismissed pursuant to the provisions of SCRCP 12(b)(6).

THIRD DEFENSE

The Plaintiff's damages, if any, were caused by and were the direct and proximate result of the negligence, recklessness, willfulness and wantonness of the Plaintiff, and recovery should be barred or reduced in proportion to the Plaintiff's negligence as provided by law.

FOURTH DEFENSE

That the Plaintiff has failed to comply with the mandatory provisions of South Carolina Code Section 15-79-10 relating to actions for medical malpractice, and therefore, the Complaint should be dismissed with prejudice. Furthermore, to the extent the Complaint states claims for non-economic damages arising from the rendition of professional medical services by agents or employees of this Defendant, then those claims are limited in amount under the applicable law.

FIFTH DEFENSE

Some or all of Plaintiff's claims may fail for failure to join a necessary party under SCRCP Rule 12(b)(7) and/or SCRCP Rule 19.

SIXTH DEFENSE

The claims for punitive damages, and the statutes of the State of South Carolina purporting to authorize those claims, violate this Defendant's rights as guaranteed under the Constitutions of the State of South Carolina and the United States of America. Furthermore, to

the extent that the Defendants, or its agents or employees, are deemed to be employees of a governmental entity, then those claims for punitive damages fail as a matter of law.

SEVENTH DEFENSE

The injuries and damages sustained by the Plaintiff, if any, were due to, caused by and were the direct and proximate result of the intervening and superseding negligence, carelessness, recklessness, willfulness and wantonness of persons or entities other than Defendant or its agents and employees.

EIGHTH DEFENSE

Defendant CasePro had no right to, and did not exercise, control over the acts and/or omissions of the people alleged in the Complaint to have acted on its behalf; therefore, Defendant CasePro cannot be held liable to the Plaintiff.

NINTH DEFENSE

In the event that the personnel at question in this suit are found not to be agents or employees of this Defendant at the time of the alleged tort, or are found not to have been acting within the course and scope of any agency with this Defendant, then this Court lacks jurisdiction over this Defendant. This Defendant makes this special appearance, contesting jurisdiction under said circumstances and specifically reserving all defenses as to personal jurisdiction.

TENTH DEFENSE

Defendant CasePro reserves any additional and further defenses as may be revealed by additional information during the course of discovery and investigation, and as are consistent with the South Carolina Rules of Civil Procedure.

ELEVENTH DEFENSE

Defendant CasePro responds to the numbered Paragraphs and allegations of the Complaint and shows the Court as follows:

1. Defendant denies the allegations of Paragraph 1.
2. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations of Paragraph 2. Therefore, those allegations can neither be admitted nor denied at this time.
3. In response to Paragraph 3, Defendant CasePro admits only that it is a Texas corporation with its corporate headquarters and principal place of business in San Antonio, Texas, that it is authorized to transact business in South Carolina, and that it can be served via its registered agent for service of process: CT Corporation System, 2 Office Park Court, Suite 103, Columbia, SC 29223. Defendant CasePro denies the remaining allegations of Paragraph 3 of the Complaint.
4. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 4. Therefore, those allegations can neither be admitted nor denied at this time.
5. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 5. Therefore, those allegations can neither be admitted nor denied at this time.

6. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 6. Therefore, those allegations can neither be admitted nor denied at this time.

7. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 7. Therefore, those allegations can neither be admitted nor denied at this time.

8. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 8. Therefore, those allegations can neither be admitted nor denied at this time.

9. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 9. Therefore, those allegations can neither be admitted nor denied at this time.

10. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 10. Therefore, those allegations can neither be admitted nor denied at this time.

11. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 11. Therefore, those allegations can neither be admitted nor denied at this time.

12. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 12. Therefore, those allegations can neither be admitted nor denied at this time.

13. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 13. Therefore, those allegations can neither be admitted nor denied at this time.

14. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 14. Therefore, those allegations can neither be admitted nor denied at this time.

15. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 15. Therefore, those allegations can neither be admitted nor denied at this time.

16. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 16. Therefore, those allegations can neither be admitted nor denied at this time.

17. In response to Paragraph 17, Defendant CasePro admits that it provided a placement service for healthcare workers ("HCW") to Naval Hospital Beaufort ("NHB") pursuant to a contract with the Naval Medical Logistics Command, a division of the United States government. Defendant CasePro denies any remaining allegations contained in Paragraph 17.

18. Defendant CasePro denies the allegations contained in Paragraph 18 as stated. CasePro shows that it had no right or authority to control the actions or activities of the HCW in question all alleged, and thus those HCW were not acting within any employment or agency relationship with CasePro at the times and in the circumstances as alleged in the Complaint.

19. Defendants deny the allegations of Paragraph 19, as stated.
20. Defendant CasePro denies the allegations contained in Paragraph 20.
21. Defendant CasePro denies the allegations contained in Paragraph 21.
22. Defendant CasePro denies the allegations contained in Paragraph 22.
23. Defendant CasePro denies the allegations contained in Paragraph 23.
24. Defendant CasePro denies the allegations contained in Paragraph 24.
25. Defendant CasePro denies the allegations contained in Paragraph 25.
26. Defendant CasePro denies the allegations contained in Paragraph 26.
27. Defendant CasePro denies the allegations contained in Paragraph 27.
28. Defendant CasePro denies the allegations contained in Paragraph 28.
29. Defendant CasePro denies the allegations contained in Paragraph.
30. Defendant CasePro denies the allegations of Paragraph 30.
31. Defendant CasePro denies the allegations of Paragraph 31.
32. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 32. Therefore, those allegations can neither be admitted nor denied at this time.

33. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 33. Therefore, those allegations can neither be admitted nor denied at this time.

34. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 34. Therefore, those allegations can neither be admitted nor denied at this time.

35. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 35. Therefore, those allegations can neither be admitted nor denied at this time.

36. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 36. Therefore, those allegations can neither be admitted nor denied at this time.

37. In response to Paragraph 37, Defendant CasePro incorporates as if fully set forth herein its responses to Paragraphs 1 through 36.

38. In response to the allegations of Paragraphs 38 and 39, Defendant CasePro shows that it contracted with the Naval Medical Logistics Command to provide placement services for certain personnel needs of the Navy. Defendant denies the remaining allegations contained in Paragraphs 38 and 39.

39. Defendant CasePro denies the allegations contained in Paragraph 40 and shows This complaint does allege a claim under the cited code section and does allege facts involving failure of persons to exercise professional medical judgment and skill.

40. Defendant CasePro denies the allegations contained in Paragraph 41, including all subparts.

41. Defendant CasePro denies the allegations contained in Paragraph 42, including all subparts

42. Defendant CasePro denies the allegations contained in Paragraph 43.

43. Defendant CasePro denies the allegations contained in Paragraph 44, including all subparts.

44. Defendant CasePro denies the allegations contained in Paragraph 45.

45. Defendant CasePro denies the allegations contained in Paragraph 46.

46. In response to Paragraph 47 of the Complaint, Defendant CasePro incorporates as if fully set forth herein its responses to Paragraphs 1 through 46.

47. In response to the allegations of Paragraphs 48 and 49, Defendant CasePro shows that it contracted with the Naval Medical Logistics Command to provide placement services for certain personnel needs of the Navy. Defendant denies the remaining allegations contained in Paragraphs 48 and 49.

48. Defendant CasePro denies the allegations contained in Paragraph 50 and shows that this Complaint does allege a claim under the cited code section and does allege facts involving failure of persons to exercise professional medical judgment and skill.

49. Defendant CasePro denies the allegations contained in Paragraph 51, including all subparts.

50. Defendant CasePro denies the allegations contained in Paragraph 52, including all subparts.

51. Defendant CasePro denies the allegations contained in Paragraph 53.

52. Defendant CasePro denies the allegations contained in Paragraph 54, including all subparts.

53. Defendant CasePro denies the allegations contained in Paragraph 55.

54. Defendant CasePro denies the allegations contained in Paragraph 56.

55. In response to Paragraph 57 of the Complaint, Defendant incorporates as if fully set forth herein its responses to Paragraphs 1 through 56.

56. Defendant CasePro denies the allegations contained in Paragraph 58.

57. Defendant CasePro denies the allegations contained in Paragraph 59.

58. Defendant CasePro denies the allegations contained in Paragraph 60.

59. Defendant CasePro denies the allegations contained in Paragraph 61.

60. In response to Paragraphs 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, and 83 of the Complaint, Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations of these Paragraphs of the Complaint as they are directed to Defendant Beaufort County. Therefore, those allegations can neither be admitted nor denied at this time.

61. In response to Paragraph 84 of the Complaint, Defendant CasePro incorporates as if fully set forth herein its responses to Paragraphs 1 through 83 herein.

62. Defendant CasePro denies the allegations contained in Paragraph 85 as they relate to it, and lacks sufficient information to form a belief as to the truthfulness of the allegations of Paragraph 85 of the Complaint as they relate to Defendant Beaufort County. Therefore, those allegations can neither be admitted nor denied at this time.

63. Defendant CasePro denies the allegations contained in Paragraph 86 as they relate to it and lacks sufficient information to form a belief as to the truthfulness of the allegations of Paragraph 86 as they relate to Defendant Beaufort County. Therefore, those allegations can neither be admitted nor denied at this time.

64. Defendant CasePro denies the allegations contained in Paragraph 87 as they relate to it and lacks sufficient information to form a belief as to the truthfulness of the allegations of Paragraph 87 as they relate to Defendant Beaufort County. Therefore, those allegations can neither be admitted nor denied at this time.

65. Defendant CasePro denies the allegations contained in Paragraph 88 as they relate to it and lacks sufficient information to form a belief as to the truthfulness of the allegations of Paragraph 88 as they relate to Defendant Beaufort County. Therefore, those allegations can neither be admitted nor denied at this time.

66. Defendant CasePro denies the allegations contained in Paragraph 89 as they relate to it and lacks sufficient information to form a belief as to the truthfulness of the allegations of

Paragraph 89 as they relate to Defendant Beaufort County. Therefore, those allegations can neither be admitted nor denied at this time.

67. Defendant CasePro denies the allegations contained in Paragraph 90.

68. Defendant CasePro denies the allegations contained in Paragraph 91.

THIRD PARTY COMPLAINT

First Cause of Action **(Equitable and Contractual Indemnification)**

69. The Third-Party Defendant, the United States of America, is a proper party in this case as a result of its operation of the Naval Hospital Beaufort. Defendant/Third-Party Plaintiff CasePro, Inc. contracted with the Department of the Navy, an agency of the United States of America, to provide placement services for certain personnel needs of the Navy including for various healthcare facilities in North Carolina and South Carolina, one of which was the Naval Hospital Beaufort.

70. Third-Party Plaintiff CasePro, Inc.'s contract with the United States of America was issued by the Naval Medical Logistics Command, 1681 Nelson Street, Fort Detrick, Maryland 21702-9203 and is identified as Contract Number N62645-07-D-5005 ("the Contract").

71. The Contract states that the personnel providing services under the Contract are subject to day-to-day supervision and control by and of Government personnel.

72. The personnel in question were not subject to day-to-day supervision and/or control by CasePro.

73. The Contract between CasePro and The United States of America has created a special relationship between the parties because it governs the way in which the personnel are given instruction, guidance, direction, and approval with regards to the tasks they are assigned and perform at the naval healthcare facilities.

74. In the Complaint, Plaintiff alleges that certain acts and omissions of personnel provided by CasePro caused the death of Justin Nicholas Miller.

75. On or about February 24, 2012, the day of the incidents described in the Complaint, the personnel placed by CasePro were acting entirely and solely within the course and scope of tasks assigned by and under the exclusive control and supervision of the United States of America, pursuant to the Contract.

76. Because the United States of America was guiding, directing instructing, and in exclusive control of, the personnel in question placed by CasePro, to the extent that CasePro is found to be liable for the acts and omissions of those personnel as alleged in the Complaint, then the United States of America must fully indemnify CasePro for any such liability, including any attorney's fees, costs and expenses incurred for having to defend this lawsuit.

WHEREFORE, having fully responded to the Complaint and asserted the Third-Party Complaint herein, Defendant/Third-Party Plaintiff prays that a Summons be issued to the United States of America, for a judgment dismissing Plaintiff's claims against it and, in the alternative, a judgment against Third-Party Defendant United States of America for any amount CasePro is found liable to the Plaintiff, including any costs, fees, interest, attorney's fees, expenses and other costs, and for any other relief the Court deems just and proper. Defendant/Third-Party Plaintiff further demands a trial by jury of twelve persons.

Respectfully submitted,

CARLOCK, COPELAND & STAIR, LLP

By: 
D. GARY LOVELL, JR.
State Bar No.: 69293
DOUGLAS W. MACKELCAN
State Bar No.: 76332

Attorneys for Defendant CasePro, Inc.

40 Calhoun Street, Suite 400
Charleston, South Carolina 29401-3531
843-727-0307

) IN THE COURT OF COMMON PLEAS
) THE FOURTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2012-CP-07-03782

) CASE NO.: 2012-CP-07-03782

)))))

**ANSWER AND THIRD-PARTY
COMPLAINT OF CASEPRO, INC.**

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3

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)

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)

)

Anne McGinness Kears, Esq.
T. David Hoyle, Esq.
W. Christopher Swett, Esq.
Motley Rice, LLC
28 Bridgeside Boulevard
Mount Pleasant, SC 29464

Marshall H. Waldron, Jr., Esq.
Griffith, Sadler & Sharp, P.A.
Post Office Drawer 570
Beaufort, SC 29901

Osamu H. Crowder
Assistant to D. Gary Lovell, Jr.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

REBECCA DELANEY, AS PERSONAL)
REPRESENTATIVE OF THE ESTATE)
OF JUSTIN NICHOLAS MILLER)
☐ Plaintiff,)
v.)

CASEPRO, INC. AND BEAUFORT)
COUNTY)
☒ Defendant)

CASEPRO, INC.)
☒ Defendant/Third-Party Plaintiff)
v.)

THE UNITED STATES OF AMERICA)
☐ Third Party Defendant)

check box above indicating submitting party)

IN THE ☒ COURT OF COMMON PLEAS
☐ FAMILY COURT

CASE NO. 2012-CP-07-03782

**MOTION INFORMATION FORM
AND COVER SHEET**

Name, S.C. Bar No. and Address of Plaintiff's Attorney T. David Hoyle, Esq. Motley Rice LLC 28 Bridgeside Blvd Mount Pleasant, SC 29464 T: (843) 216-9000		Name, S.C. Bar No. and Address of Defendant's Attorney D. Gary Lovell, Jr. (69293) Douglas W. MacKelcan (76332) Carlock, Copeland & Stair, LLP 40 Calhoun Street, Suite 400 Charleston, SC 29401 Telephone: 843-727-0307 Fax: 843-727-2995	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: Motion to Dismiss		Court Reporter Needed: Yes	
Estimated Time Needed : 30 minutes			
SECTION II: Motion Type			
☒ Written motion attached ☐ Form Motion -- I hereby move for relief or action by the court as set forth in the attached proposed order.			
Signature of Attorney for Defendant/Third-Party Plaintiff		January 7, 2013 Date submitted	
SECTION III: Motion Fee			
☒ PAID - AMOUNT: \$25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE _____ CODE: _____ Date: _____	
CLERK'S VERIFICATION			
DATE FILED			
Collected by: _____ (print name) ☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____			

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THE FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CASE NO.: 2012-CP-07-03782
	)	
REBECCA DELANEY, AS THE	)	
PERSONAL REPRESENTATIVE OF	)	
THE ESTATE OF JUSTIN NICHOLAS	)	DEFENDANT CASEPRO, INC.'S MOTION
MILLER,	)	TO DISMISS
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
CASEPRO, INC. AND BEAUFORT	)	
COUNTY	)	
	)	
Defendants.	)	

COMES NOW Defendant CasePro, Inc., Defendant in the above-styled civil action, and presents this its Motion to Dismiss the Complaint pursuant to South Carolina Rules of Civil Procedure, Rule 12, and shows the Court as follows:

On November 1, 2012, Plaintiff filed with this Court the Summons and Complaint against Defendants CasePro, Inc. and Beaufort County. However, Plaintiff has not filed a Notice of Intent to File Suit against Defendant CasePro, Inc., and the parties have not conducted pre-suit mediation, required under South Carolina Code 15-79-10 for medical malpractice actions. Therefore, Defendant CasePro, Inc. is entitled to a dismissal of the Complaint with prejudice.

Despite Plaintiff's statement in the Complaint that this case is one that does not involve medical malpractice, the facts alleged describe acts and/or omissions arising out of the activities of healthcare providers under South Carolina law, who are acting within the scope of their duties providing healthcare. Specifically, Paragraph 17 alleges, "CasePro provided personnel to staff Manage Care Intake at NHB." Paragraph 18 alleges, "Kalvin Hunt was interviewed by agents and/or employees of Defendant CasePro." Paragraphs 19-22 involve allegations that personnel

employed by CasePro questioned Mr. Hunt if he wanted to hurt himself or others. Paragraph 25 alleges that personnel employed by CasePro were responsible for ensuring "that Calvin Hunt was admitted to NHB and kept under close watch." Similarly, Paragraph 26 alleges, "Personnel employed by CasePro undertook a duty to take Calvin Hunt to the Emergency Room of NHB for medical treatment." Paragraphs 42 and 44 list specific activities requiring personnel employed by CasePro to exercise professional medical judgment. Because the Complaint clearly describes activities of medical personnel in the scope of their duties providing healthcare services, South Carolina Code Section 15-79-125 requires that Plaintiff file a Notice of Intent to File Suit and participate in pre-suit mediation, neither of which was done. As such, the Complaint was filed prematurely and must be dismissed as a matter of law.

In addition to Plaintiff's failure to comply with South Carolina Code Sections 15-79-10 and 15-36-100, Plaintiff cannot recover in this case from Defendant CasePro because CasePro cannot be vicariously liable for the actions of the healthcare workers at the Beaufort Naval Hospital on the day of the incident pursuant to CasePro's contract with the United States government. CasePro did not have the right to control the activities of the healthcare workers, and therefore, it should be dismissed from this case with prejudice.

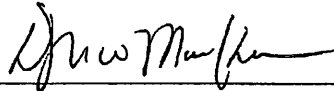
This Motion is supported by the South Carolina Rules of Civil Procedure, applicable case and statutory law, and any memorandum in support of Defendant CasePro's Motion to Dismiss to be submitted to the Court under separate filing prior to a hearing on this Motion.

SIGNATURE PAGE TO FOLLOW

Respectfully submitted,

CARLOCK, COPELAND & STAIR, LLP

By:



D. GARY LOVELL, JR.

State Bar No.: 69293

DOUGLAS W. MACKELCAN

State Bar No.: 76332

Attorneys for Defendant CasePro, Inc.

40 Calhoun Street, Suite 400
Charleston, South Carolina 29401-3531
843-727-0307

THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

) CASE NO. 2012-CP-07-03782

WRONGFUL DEATH AND SURVIVAL ACTION

JURY TRIAL DEMANDED

Defendants.

2014 FEB 21 PM 4:30
CLERK OF COURT
STATE OF TEXAS

2014 FEB 21 PM 4:30

JUSTICE

JUSTICE

consequential damages as well as punitive damages to halt and deter such conduct from taking place in the future.

THE PARTIES, JURISDICTION, AND VENUE

2. At all relevant times, Plaintiff was and is a resident of Parkersburg, West Virginia.

3. Defendant CasePro is a Texas corporation with its corporate headquarters and principal place of business in San Antonio, Texas. CasePro is authorized to transact business in South Carolina, and this action arises out of a tort committed in South Carolina; therefore, CasePro is subject to the jurisdiction of this Court. CasePro can be served via its registered agent for service of process: C T Corporation System, 2 Office Park Court, Suite 103, Columbia, SC 29223.

4. Defendant SCOVA is an agency organized and existing under the laws of the State of South Carolina, as defined in the South Carolina Tort Claims Act. SCOVA maintains its principal place of business at 1205 Pendleton Street, Suite 463, Columbia, SC 29201. As an agency of the State, SCOVA is subject to the jurisdiction of this Court.

5. This Honorable Court has jurisdiction of the claims and parties under South Carolina Code §§ 36-2-802 & 803, and 15-5-150. Venue is appropriate in Beaufort County, South Carolina, pursuant to §§ 15-7-30 and 15-78-100(b) because the most substantial part of the acts giving rise to this action occurred in Beaufort County.

FACTS COMMON TO ALL COUNTS

6. Kalvin Hunt is a former United States Marine Corps corporal who was found guilty of assault, communicating a threat, resisting arrest, and other charges during an April 2011 court-martial. Mr. Hunt was subsequently discharged from the Marine Corps.

7. Upon information and belief, Mr. Hunt suffers from Post Traumatic Stress Disorder as a result of his military service.

8. On or about February 24, 2012, SCOVA employee and Beaufort County Veterans Affairs Officer Edward Ray received a telephone call from Calvin Hunt's grandmother, Claretha Hunt, regarding Calvin Hunt's erratic behavior.

9. As a result, Edward Ray met Calvin Hunt at 1030 hours.

10. Upon information and belief, Calvin Hunt disclosed to Edward Ray that he wanted to hurt himself and others.

11. Beginning at 1030 hours, Edward Ray and his employer Defendant SCOVA had knowledge that Calvin Hunt posed a specific threat of harm to others.

12. Beginning at 1030 hours, Edward Ray and his employer Defendant SCOVA had a special relationship with Calvin Hunt.

13. Beginning at 1030 hours, Edward Ray and his employer Defendant SCOVA had the ability to monitor, supervise, and control Calvin Hunt's conduct.

14. Beginning at 1030 hours, Edward Ray and his employer Defendant SCOVA voluntarily undertook a duty within the ordinary scope of their duties to monitor, supervise, and control Calvin Hunt's conduct.

15. As a result, Edward Ray arranged for Calvin Hunt to be seen at Naval Hospital Beaufort (NHB) at 1330 hours.

16. At 1330 hours, Edward Ray escorted Calvin Hunt through the front gate of NHB and took Hunt to Manage Care Intake.

17. Defendant CasePro provided personnel to staff Manage Care Intake at NHB pursuant to contracts with the Naval Medical Logistics Command.

18. Upon information and belief, Kalvin Hunt was interviewed by agents and/or employees of Defendant CasePro while in the presence of Edward Ray.

19. During this interview, Kalvin Hunt was asked, in the presence of Edward Ray, if he wanted to hurt himself and others.

20. During this interview, Kalvin Hunt stated, in the presence of Edward Ray, that he did want to hurt himself or others.

21. As a result, personnel employed by Defendant CasePro were aware that Kalvin Hunt presented a serious danger of violence to others.

22. Beginning at approximately 1330 hours, personnel employed by Defendant CasePro had knowledge that Kalvin Hunt posed a specific threat of harm to others.

23. Beginning at approximately 1330 hours, personnel employed by Defendant CasePro had a special relationship with Kalvin Hunt.

24. Beginning at approximately 1330 hours, personnel employed by Defendant CasePro had the ability to monitor, supervise, and control Kalvin Hunt's conduct.

25. Personnel employed by Defendant CasePro undertook a duty to ensure that Kalvin Hunt was admitted to NHB and kept under close watch.

26. Personnel employed by Defendant CasePro undertook a duty to take Kalvin Hunt to the Emergency Room of NHB for medical treatment.

27. Personnel employed by Defendant CasePro did not, however, notify law enforcement, the Department of Mental Health, or take any affirmative action reasonably necessary under the circumstances to ensure that Kalvin Hunt did not hurt others.

28. Similarly, Edward Ray, upon learning a second time that Kalvin Hunt intended to hurt himself or others, did not notify law enforcement, the Department of Mental Health, or take

any affirmative action reasonably necessary under the circumstances to ensure that Kalvin Hunt did not hurt others.

29. Instead, personnel employed by Defendant CasePro and Edward Ray began to escort Mr. Hunt to the Emergency Department at NHB.

30. Inexplicably, at this point, personnel employed by Defendant CasePro and Edward Ray allowed Mr. Hunt to leave from the facility.

31. Specifically, Kalvin Hunt asked to get a quick breath of fresh air and with the consent, acquiescence, and/or permission of personnel employed by Defendant CasePro as well as Edward Ray, exited the facility.

32. Kalvin Hunt removed all of his clothing and left the NHB property on foot.

33. At about the same time, the Town of Port Royal Fire Department was responding to a non-fire emergency call at the Laurel Hill Apartment Complex located near the NHB.

34. A naked Kalvin Hunt jumped into the unoccupied fire truck and entered the highway from the apartment complex parking lot.

35. Subsequently, Kalvin Hunt struck Plaintiff's decedent, JUSTIN NICHOLAS MILLER, with the fire truck as he was crossing the road on foot.

36. Plaintiff's decedent, JUSTIN NICHOLAS MILLER, experienced conscious pain and suffering from this impact and subsequently died from his injuries.

FIRST CAUSE OF ACTION
(Negligence/ Survival Action: S.C. Code Ann. § 15-5-90)
As to Defendant CasePro

37. Plaintiff incorporates by reference all allegations contained in the Paragraphs above, as if set forth verbatim herein.

38. Defendant contracted with Naval Medical Logistics Command to supply various personnel and services over an extended period of time, including the date of this incident, to NHB.

39. Defendant had a contractual duty to provide personnel at the Managed Care Intake, the Emergency Department/Room, and the Urgent Care Clinic at NHB.

40. This claim is not brought pursuant to 10 USC § 1089 and does not allege acts of medical negligence:

41. Specifically, this claim is brought for the negligent acts/omissions of this Defendant's employees/agents who:

- (i) had specific knowledge that Calvin Hunt posed a specific threat of harm to others;
- (ii) had a special relationship with Calvin Hunt;
- (iii) had the ability to monitor, supervise, and control Calvin Hunt's conduct;
- (iv) undertook a duty to ensure that Calvin Hunt was delivered to the NHB Emergency Room for medical treatment and kept under close watch.

42. As such, Defendant's duties-undertaken voluntarily and/or pursuant to contract-included, but were not limited to:

- (i) Assisting with screening potential patients at Managed Care Intake check-in;
- (ii) Recognizing signs that an individual may hurt others and ensuring appropriate action was taken;
- (iii) Screening potential patients to determine whether treatment should be provided;

- (iv) Utilizing sound judgment and crisis intervention skills, including physical restraint, to prevent situations that may become harmful to the patient and others;
- (v) Instituting precautionary measures to prevent injuries to patients or others due to suicide, homicide, or elopement;
- (vi) Intervening as crisis counselors in situations requiring immediate psychological treatment such as substance abuse, suicide attempts, psychotic episodes, and other instances;
- (vii) Ensuring that individuals in crisis are delivered to qualified medical personnel when they indicate that they intend to hurt themselves or others; and
- (viii) Such other and further particulars as the evidence may show.

43. Defendant owed Plaintiff's decedent, JUSTIN NICHOLAS MILLER, a duty to exercise reasonable care in performing its duties so as to prevent injury or death to Plaintiff's decedent and others similarly situated.

44. Defendant breached its duty and was negligent, grossly negligent, careless, reckless, willful, wanton and malicious in one or more of the following ways:

- (i) Failing to adopt and implement adequate safety procedures and policies;
- (ii) Failing to follow policies and procedures that were in place;
- (iii) Failing to ensure employees/agents had or received adequate experience, training, and supervision;
- (iv) Failing to exercise even the slightest degree of care in performing the duties owed to Plaintiff's decedent and/or those duties voluntarily undertaken;
- (v) Failing to properly screen Mr. Hunt and appreciate the urgency of the

situation and the danger presented by the particular circumstances given Mr. Hunt's statement that he wanted to hurt others;

(vi) Failing to recognize the danger that Mr. Hunt posed to Plaintiff's decedent and others similarly situated if not closely supervised;

(vii) Failing to utilize sound judgment and crisis intervention skills, including physical restraint, to prevent Mr. Hunt's elopement, which proximately caused Plaintiff's decedent's injuries and death;

(viii) Failing to institute precautionary measures to prevent injuries and death to Plaintiff's decedent and others similarly situated proximately caused by Mr. Hunt's elopement;

(ix) Failing to exercise reasonable care and take necessary precautions in the transport/escort of Mr. Hunt to the Emergency Department at NHB; and

(x) Such other and further particulars as the evidence may show.

45. As a direct and proximate result of the negligent, grossly negligent, willful, wanton and careless acts and/or omissions of Defendant, as set forth above, Plaintiff's decedent, JUSTIN NICHOLAS MILLER, suffered injuries, including excruciating pain and suffering, mental anguish, terror, knowledge of bodily injury and impending death, loss of income, funeral expenses, and such other damages as the Court or jury deems just and proper.

46. Plaintiff's decedent, JUSTIN NICHOLAS MILLER, has lost his life as set forth herein, and Plaintiff is informed and believes she is entitled to a judgment against Defendant CasePro for actual and punitive damages in an amount to be determined by the trier of fact.

SECOND CAUSE OF ACTION
(Wrongful Death: S.C. Code Ann. § 15-51-10)
As to Defendant CasePro

47. Plaintiff incorporates by reference all allegations contained in the Paragraphs above, as if set forth verbatim herein.

48. Defendant contracted with Naval Medical Logistics Command to supply various personnel and services over an extended period of time, including the date of this incident, to NHB.

49. Defendant had a contractual duty to provide personnel at the Managed Care Intake, the Emergency Department/Room, and the Urgent Care Clinic at NHB.

50. This claim is not brought pursuant to 10 USC § 1089 and does not allege acts of medical negligence.

51. Specifically, this claim is brought for the negligent acts/omissions of this Defendant's employees/agents who:

(i) had specific knowledge that Calvin Hunt posed a specific threat of harm to others;

(ii) had a special relationship with Calvin Hunt;

(iii) had the ability to monitor, supervise, and control Calvin Hunt's conduct;

(iv) undertook a duty to ensure that Calvin Hunt was delivered to the NHB Emergency Room for medical treatment and kept under close watch.

52. As such, Defendant's duties undertaken voluntarily and/or pursuant to contract included, but were not limited to:

(i) Assisting with screening potential patients at Managed Care Intake check-in;

- (ii) Recognizing signs that an individual may hurt others and ensuring appropriate action was taken;
- (iii) Screening potential patients to determine whether treatment should be provided;
- (iv) Utilizing sound judgment and crisis intervention skills, including physical restraint, to prevent situations that may become harmful to the patient and others;
- (v) Instituting precautionary measures to prevent injuries to patients or others due to suicide, homicide, or elopement;
- (vi) Intervening as crisis counselors in situations requiring immediate psychological treatment such as substance abuse, suicide attempts, psychotic episodes, and other instances;
- (vii) Ensuring that individuals in crisis are delivered to qualified medical personnel when they indicate that they intend to hurt themselves or others; and
- (viii) Such other and further particulars as the evidence may show.

53. Defendant owed Plaintiff's decedent, JUSTIN NICHOLAS MILLER, a duty to exercise reasonable care in performing its duties so as to prevent injury or death to Plaintiff's decedent and others similarly situated.

54. Defendant breached its duty and was negligent, grossly negligent, careless, reckless, willful, wanton and malicious in one or more of the following ways:

- (i) Failing to adopt and implement adequate safety procedures and policies;
- (ii) Failing to follow policies and procedures that were in place;
- (iii) Failing to ensure employees/agents had or received adequate experience, training, and supervision;

- (iv) Failing to exercise even the slightest degree of care in performing the duties owed to Plaintiff's decedent and/or those duties voluntarily undertaken;
- (v) Failing to properly screen Mr. Hunt and appreciate the urgency of the situation and the danger presented by the particular circumstances given Mr. Hunt's statement that he wanted to hurt others;
- (vi) Failing to recognize the danger that Mr. Hunt posed to Plaintiff's decedent and others similarly situated if not closely supervised;
- (vii) Failing to utilize sound judgment and crisis intervention skills, including physical restraint, to prevent Mr. Hunt's elopement, which proximately caused Plaintiff's decedent's injuries and death;
- (viii) Failing to institute precautionary measures to prevent injuries and death to Plaintiff's decedent and others similarly situated proximately caused by Mr. Hunt's elopement;
- (ix) Failing to exercise reasonable care and take necessary precautions in the transport/escort of Mr. Hunt to the Emergency Department at NHB; and
- (x) Such other and further particulars as the evidence may show.

55. As a direct and proximate result of the negligent, grossly negligent, willful, wanton and careless acts and/or omissions of Defendant, as set forth above, Plaintiff and Plaintiff's decedent's beneficiaries have suffered damages, present and prospective, which are naturally the proximate consequence of the Defendant's wrongful acts, including pecuniary loss, mental shock and suffering, wounded feelings, grief and sorrow, loss of companionship, funeral expenses, and such other damages as the Court or jury deems just and proper.

56. Plaintiff's decedent, JUSTIN NICHOLAS MILLER, has lost his life as set forth herein, and Plaintiff is informed and believes she is entitled to a judgment against Defendant CasePro for actual and punitive damages in an amount to be determined by the Trier of fact.

THIRD CAUSE OF ACTION
(Punitive and Exemplary Damages)
As to Defendant CasePro

57. Plaintiff incorporates by reference all allegations contained in the Paragraphs above, as if set forth verbatim herein.

58. The actions and inactions of Defendant were of such a character as to constitute a pattern or practice of willful, wanton and reckless misconduct causing substantial harm and resulting in damages to the Plaintiff and injuries and death to the Plaintiff's decedent.

59. More specifically, Defendant acted with a conscious and flagrant disregard for the rights and safety of Plaintiff's decedent and/or deliberately engaged in willful, wanton and reckless disregard for the life and safety of JUSTIN NICHOLAS MILLER, by failing to anticipate the reasonably foreseeable risks that Kalvin Hunt posed to him and others similarly situated, and failing to exercise even the slightest degree of care to prevent Mr. Hunt from eloping and injuring Plaintiff's decedent and others similarly situated.

60. Accordingly, Defendant is liable for punitive and exemplary damages awardable to Plaintiff.

61. WHEREFORE, Plaintiff demands judgment against Defendant CasePro for punitive and exemplary damages, plus interest, costs and attorneys' fees for having to bring this action, and such other and further relief as the Court or jury may deem just and proper.

FOURTH CAUSE OF ACTION

(Negligence: S.C. Code Ann. § 15-78-40/ Survival Action: S.C. Code Ann. § 15-5-90)

As to Defendant SCOVA

62. Plaintiff incorporates by reference all allegations contained in the Paragraphs above, as if set forth verbatim herein.

63. This action is brought pursuant to the South Carolina Tort Claims Act.

64. At all times relevant, SCOVA was and is an agency of the State of South Carolina, and Beaufort County Office of Veterans Affairs was and is an extension of SCOVA.

65. At all times relevant, Edward Ray was and is the Beaufort County Veterans Affairs Officer and an employee of SCOVA.

66. SCOVA is liable for the negligent acts and omissions of Edward Ray, who was acting within the scope of his official duty at all relevant times.

67. Defendant owed Plaintiff's decedent, JUSTIN NICHOLAS MILLER, a duty to exercise reasonable care in performing its duties so as to prevent injury or death to Plaintiff's decedent and others similarly situated.

68. Moreover, SCOVA employee Edward Ray undertook a duty to monitor, supervise and/or control Kalvin Hunt and ensure that he obtained care so as to prevent Kalvin Hunt from harming himself, Plaintiff's decedent, or others similarly situated.

69. Defendant breached its duties and was grossly negligent, careless, reckless, willful, wanton and malicious in one or more of the following ways:

- (i) Failing to follow policies and procedures that were in place;
- (ii) Failing to ensure employees/agents had or received adequate experience, training, and supervision;

- (iii) Failing to exercise even the slightest degree of care in performing the duties owed to Plaintiff's decedent and/or those duties voluntarily undertaken;
- (iv) Failing to exercise even the slightest degree of care in escorting Calvin Hunt to the Emergency Department at NHB despite knowing that Mr. Hunt intended to injure himself and others; and
- (v) Such other and further particulars as the evidence may show.

70. Defendant SCOVA's acts and/or omissions are independent and separate acts of negligence.

71. As a direct and proximate result of the grossly negligent, willful, wanton and careless acts and/or omissions of Defendant, as set forth above, Plaintiff's decedent, JUSTIN NICHOLAS MILLER, suffered injuries, including excruciating pain and suffering, mental anguish, terror, knowledge of bodily injury and impending death, loss of income, funeral expenses, and such other damages as the Court or jury deems just and proper.

72. Plaintiff's decedent, JUSTIN NICHOLAS MILLER, has lost his life as set forth herein, and Plaintiff is informed and believes she is entitled to a judgment against Defendant for actual damages in an amount to be determined by the Trier of fact.

FIFTH CAUSE OF ACTION
(Wrongful Death: S.C. Code Ann. § 15-78-170)
As to Defendant SCOVA

73. Plaintiff incorporates by reference all allegations contained in the Paragraphs above, as if set forth verbatim herein.

74. This action is brought pursuant to the South Carolina Tort Claims Act.

75. At all times relevant, SCOVA was and is an agency of the State of South Carolina, and Beaufort County Office of Veterans Affairs was and is an extension of SCOVA.

76. At all times relevant, Edward Ray was and is the Beaufort County Veterans Affairs Officer and an employee of SCOVA.

77. SCOVA is liable for the negligent acts and omissions of Edward Ray, who was acting within the scope of his official duty at all relevant times.

78. Defendant owed Plaintiff's decedent, JUSTIN NICHOLAS MILLER, a duty to exercise reasonable care in performing its duties so as to prevent injury or death to Plaintiff's decedent and others similarly situated.

79. Moreover, SCOVA employee Edward Ray undertook a duty to monitor, supervise, and/or control Kalvin Hunt so as to prevent Kalvin Hunt from harming himself, Plaintiff's decedent, or others similarly situated.

80. Defendant breached its duties and was grossly negligent, careless, reckless, willful, wanton and malicious in one or more of the following ways:

- (i) Failing to follow policies and procedures that were in place;
- (ii) Failing to ensure employees/agents had or received adequate experience, training, and supervision;
- (iii) Failing to exercise even the slightest degree of care in performing the duties owed to Plaintiff's decedent and/or those duties voluntarily undertaken;
- (iv) Failing to exercise even the slightest care in escorting Kalvin Hunt to the Emergency Department at NHB despite knowing that Mr. Hunt intended to injure himself and others; and
- (v) Such other and further particulars as the evidence may show.

81. Defendant SCOVA's acts and/or omissions are independent and separate acts of negligence.

82. As a direct and proximate result of the grossly negligent, willful, wanton and careless acts and/or omissions of Defendant, as set forth above, Plaintiff and Plaintiff's decedent's beneficiaries have suffered damages, present and prospective, which are naturally the proximate consequence of the Defendant's wrongful acts, including pecuniary loss, mental shock and suffering, wounded feelings, grief and sorrow, loss of companionship, funeral expenses, and such other damages as the Court or jury deems just and proper.

83. Plaintiff's decedent, JUSTIN NICHOLAS MILLER, has lost his life as set forth herein, and Plaintiff is informed and believes she is entitled to a judgment against Defendant for actual damages in an amount to be determined by the Trier of fact.

SIXTH CAUSE OF ACTION
(Negligent Undertaking of Duty)
As to All Defendants

84. Plaintiff incorporates by reference all allegations contained in the Paragraphs above, as if set forth verbatim herein.

85. Defendants CasePro and SCOVA voluntarily undertook a duty to keep Calvin Hunt under supervision upon learning that he intended to hurt himself and others.

86. This duty was undertaken for the benefit of those whom it was reasonably foreseeable that Calvin Hunt would come into contact with and could subject to harm on February 25, 2012 including, but not limited to, Plaintiff's decedent JUSTIN NICHOLAS MILLER.

87. Defendants CasePro and SCOVA took actions they should have recognized as necessary for the protection of *inter alia* Plaintiff's decedent, JUSTIN NICHOLAS MILLER, and failed to exercise reasonable care in performing this undertaking by:

- (i) Failing to follow policies and procedures that were in place;

- (ii) Failing to ensure employees/agents had or received adequate experience, training, and supervision;
- (iii) Failing to exercise even the slightest degree of care in performing the duties owed to Plaintiff's decedent and/or those duties voluntarily undertaken;
- (iv) Failing to exercise even the slightest care in escorting Kalvin Hunt to the Emergency Department at NHB despite knowing that Mr. Hunt intended to injure himself and others; and
- (v) Such other and further particulars as the evidence may show.

88. The breach of this Duty by Defendants CasePro and SCOVA increased the risk of harm to Plaintiff's decedent, JUSTIN NICHOLAS MILLER; were of duties owed to Plaintiff's decedent, JUSTIN NICHOLAS MILLER, as an intended third party; and the harm Plaintiff's decedent, JUSTIN NICHOLAS MILLER, suffered was proximately caused by the breach of these voluntarily undertaken duties.

89. The breach of this Duty by Defendants CasePro and SCOVA was a proximate cause of the injury sustained by Plaintiff's decedent JUSTIN NICHOLAS MILLER.

90. As a direct and proximate result of this breach of Duty, Plaintiff and Plaintiff's decedent's beneficiaries have suffered damages, present and prospective, which are naturally the proximate consequence of the Defendants' wrongful acts, including pecuniary loss, mental shock and suffering, wounded feelings, grief and sorrow, loss of companionship, funeral expenses, and such other damages as the Court or jury deems just and proper.

91. Plaintiff's decedent, JUSTIN NICHOLAS MILLER, has lost his life as set forth herein, and Plaintiff is informed and believes she is entitled to a judgment against Defendants.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays as follows:

1. For a trial by jury and judgment against the Defendants CasePro and SCOVA for actual and other compensatory damages as a jury may determine.
2. For exemplary and punitive damages against Defendant CasePro as a jury may determine to halt such conduct.
3. For the costs of this suit.
4. For such other and further relief to which she may be entitled and as this Honorable Court may deem just and proper.

Respectfully submitted this 21st day of February, 2014.



Anne McGinness Kears (SC 015642)
T. David Hoyle (SC 074055)
W. Christopher Swett (SC 078251)
MOTLEY RICE LLC
28 Bridgeside Blvd.
Mount Pleasant, SC 29464
(843) 216-9000 | (843) 216-9440 (Facsimile)

Crystal Lynn Castleberry (SC 078661)
CASTLEBERRY LAW OFFICES
3712 Swallowtail Dr.
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(304) 594-2828 | (304) 594-2899 (Facsimile)

Attorneys for Plaintiff

LAW OFFICES
CARLOCK, COPELAND & STAIR, LLP

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

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ATLANTA OFFICE
191 Peachtree St., N.E.
Suite 3600
Atlanta, Georgia 30303
404.522.8220

REPLY TO SC OFFICE

March 3, 2014

Jerri Ann Roseneau, Clerk
Circuit Court of Beaufort County
Post Office Box 1128
Beaufort, SC 29901-1128

Re: Rebecca Delaney, as Personal Representative of the Estate of Justin Nicholas
Miller v. CasePro, Inc. and Beaufort County
C/A No.: 2012-CP-07-03782
CCS File No.: 549-46690

Dear Ms. Roseneau:

Enclosed please find Defendant CasePro, Inc.'s Answer to Plaintiff's Amended Complaint regarding the above-referenced matter. Please file the original and return the file-stamped copy to our office in the enclosed self-addressed, stamped envelope.

By copy of this correspondence, I have served the same upon all counsel of record. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,



DOUGLAS W. MACKELCAN

DWM:amc

Enclosures

cc: T. David Hoyle, Esq.
Marshall H. Waldron, Jr., Esq.
Crystal Lynn Castleberry, Esq.

0103

Appendix 0106

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THE FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CASE NO.: 2012-CP-07-03782
	)	
REBECCA DELANEY, AS THE	)	
PERSONAL REPRESENTATIVE OF	)	
THE ESTATE OF JUSTIN NICHOLAS	)	
MILLER,	)	ANSWER OF CASEPRO, INC. TO
	)	PLAINTIFF'S AMENDED COMPLAINT
	)	(JURY TRIAL REQUESTED)
Plaintiff,	)	
	)	
vs.	)	
	)	
CASEPRO, INC. AND BEAUFORT	)	
COUNTY	)	
	)	
Defendants.	)	

COMES NOW CasePro, Inc, ("Defendant CasePro") Defendant in the above-styled civil action and presents this its Answer to the Amended Complaint and shows the Court as follows:

FIRST DEFENSE

At all times relevant to the matters complained of in the Amended Complaint, Defendant CasePro exercised that degree of skill and care required of it by law and did not act in a negligent, reckless, bad faith, malicious, or grossly negligent manner.

SECOND DEFENSE

The Amended Complaint fails to state facts sufficient to constitute a cause of action against Defendant CasePro and the Complaint against it should be dismissed pursuant to the provisions of SCRCP 12(b)(6).

THIRD DEFENSE

The Plaintiff's damages, if any, may have been caused by the direct and proximate result of the negligence, recklessness, willfulness and wantonness of the decedent, and recovery should be barred or reduced in proportion to the decedent's negligence as provided by law.

FOURTH DEFENSE

Some or all of Plaintiff's claims may fail for failure to join a necessary party under SCRCR Rule 12(b)(7) and/or SCRCR Rule 19.

FIFTH DEFENSE

The claims for punitive damages, and the statutes of the State of South Carolina purporting to authorize those claims, violate this Defendant's rights as guaranteed under the Constitutions of the State of South Carolina and the United States of America. Furthermore, to the extent that the Defendants, or its agents or employees, are deemed to be employees of a governmental entity, then those claims for punitive damages fail as a matter of law.

SIXTH DEFENSE

The injuries and damages sustained by the Plaintiff, if any, were due to, caused by and were the direct and proximate result of the intervening and superseding negligence, carelessness, recklessness, willfulness and wantonness of persons or entities other than Defendant or its agents and employees.

SEVENTH DEFENSE

Defendant CasePro had no right to, and did not exercise, control over the acts and/or omissions of the people alleged in the Amended Complaint to have acted on its behalf; therefore, Defendant CasePro cannot be held liable to the Plaintiff.

EIGHTH DEFENSE

In the event that the personnel at question in this suit are found not to be agents or employees of this Defendant at the time of the alleged tort, or are found not to have been acting within the course and scope of any agency with this Defendant, then this Court lacks jurisdiction over this Defendant. This Defendant makes this special appearance, contesting jurisdiction under said circumstances and specifically reserving all defenses as to personal jurisdiction.

NINTH DEFENSE

Defendant CasePro reserves any additional and further defenses as may be revealed by additional information during the course of discovery and investigation, and as are consistent with the South Carolina Rules of Civil Procedure.

TENTH DEFENSE

Defendant CasePro responds to the numbered Paragraphs and allegations of the Amended Complaint and shows the Court as follows:

1. Defendant Casepro denies each and every allegation in the Amended Complaint not specifically admitted herein.
2. Defendant CasePro denies the allegations of Paragraph 1.
3. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations of Paragraph 2. Therefore, those allegations can neither be admitted nor denied at this time.

4. In response to Paragraph 3, Defendant CasePro admits only that it is a Texas corporation with its corporate headquarters and principal place of business in San Antonio, Texas, that it is authorized to transact business in South Carolina, and that it can be served via its registered agent for service of process: CT Corporation System, 2 Office Park Court, Suite 103, Columbia, SC 29223. Defendant CasePro denies the remaining allegations of Paragraph 3 of the Complaint.

5. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 4. Therefore, those allegations can neither be admitted nor denied at this time.

6. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 5. Therefore, those allegations can neither be admitted nor denied at this time.

7. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 6. Therefore, those allegations can neither be admitted nor denied at this time.

8. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 7. Therefore, those allegations can neither be admitted nor denied at this time.

9. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 8. Therefore, those allegations can neither be admitted nor denied at this time.

10. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 9. Therefore, those allegations can neither be admitted nor denied at this time.

11. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 10. Therefore, those allegations can neither be admitted nor denied at this time.

12. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 11. Therefore, those allegations can neither be admitted nor denied at this time.

13. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 12. Therefore, those allegations can neither be admitted nor denied at this time.

14. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 13. Therefore, those allegations can neither be admitted nor denied at this time.

15. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 14. Therefore, those allegations can neither be admitted nor denied at this time.

16. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 15. Therefore, those allegations can neither be admitted nor denied at this time.

17. Responding to Paragraph 16, Defendant CasePro admits only that Edward Ray escorted Calvin Hunt to the NHB. Defendant CasePro lacks sufficient information to form a belief as to the remaining allegations of Paragraph 16. Therefore, those allegations can neither be admitted nor denied at this time.

18. Defendant CasePro denies the allegations of Paragraph 17.

19. Defendant CasePro admits the allegations contained in Paragraph 18.

20. Defendant CasePro admits the allegations of Paragraph 19.

21. Defendant CasePro denies the allegations contained in Paragraph 20.

22. Defendant CasePro denies the allegations contained in Paragraph 21.

23. Defendant CasePro denies the allegations contained in Paragraph 22.

24. Defendant CasePro denies the allegations contained in Paragraph 23.

25. Defendant CasePro denies the allegations contained in Paragraph 24.

26. Defendant CasePro denies the allegations contained in Paragraph 25.

27. Defendant CasePro denies the allegations contained in Paragraph 26.

28. Defendant CasePro denies the allegations contained in Paragraph 27.

29. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 28. Therefore, those allegations can neither be admitted nor denied at this time.

30. Defendant CasePro denies the allegations of Paragraph 29.

31. Defendant CasePro denies the allegations of Paragraph 30.

32. Defendant CasePro denies the allegations of Paragraph 31.

33. Responding to Paragraph 32, Defendant CasePro admits only that Calvin Hunt left the NHB property on foot. Defendant CasePro denies any remaining allegations in Paragraph 32.

34. Upon information and belief, Defendant CasePro admits Paragraph 33.

35. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 34. Therefore, those allegations can neither be admitted nor denied at this time.

36. Upon information and belief, Defendant CasePro admits Paragraph 35.

37. Responding to Paragraph 36, Defendant CasePro admits only that Mr. Miller died at or following the impact. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of any remaining allegations contained in Paragraph 36. Therefore, those allegations can neither be admitted nor denied at this time.

38. In response to Paragraph 37, Defendant CasePro incorporates as if fully set forth herein its responses to Paragraphs 1 through 36.

39. In response to the allegations of Paragraphs 38 and 39, Defendant CasePro shows that it contracted with the Naval Medical Logistics Command to provide placement services for

certain personnel needs of the Navy, including the emergency department. Defendant denies the remaining allegations contained in Paragraphs 38 and 39.

40. Defendant CasePro denies the allegations contained in Paragraph 40 and shows this Amended Complaint does allege facts involving failure of persons to exercise professional medical judgment and skill.

41. Defendant CasePro denies the allegations contained in Paragraph 41, including all subparts.

42. Defendant CasePro denies the allegations contained in Paragraph 42, including all subparts

43. Defendant CasePro denies the allegations contained in Paragraph 43.

44. Defendant CasePro denies the allegations contained in Paragraph 44, including all subparts.

45. Defendant CasePro denies the allegations contained in Paragraph 45.

46. Defendant CasePro denies the allegations contained in Paragraph 46.

47. In response to Paragraph 47 of the Complaint, Defendant CasePro incorporates as if fully set forth herein its responses to Paragraphs 1 through 46.

48. In response to the allegations of Paragraphs 48 and 49, Defendant CasePro shows that it contracted with the Naval Medical Logistics Command to provide placement services for certain personnel needs of the Navy. Defendant denies the remaining allegations contained in Paragraphs 48 and 49.

49. Defendant CasePro denies the allegations contained in Paragraph 50 and shows that this Amended Complaint does allege facts involving failure of persons to exercise professional medical judgment and skill.

50. Defendant CasePro denies the allegations contained in Paragraph 51, including all subparts.

51. Defendant CasePro denies the allegations contained in Paragraph 52, including all subparts.

52. Defendant CasePro denies the allegations contained in Paragraph 53.

53. Defendant CasePro denies the allegations contained in Paragraph 54, including all subparts.

54. Defendant CasePro denies the allegations contained in Paragraph 55.

55. Defendant CasePro denies the allegations contained in Paragraph 56.

56. In response to Paragraph 57 of the Amended Complaint, Defendant incorporates as if fully set forth herein its responses to Paragraphs 1 through 56.

57. Defendant CasePro denies the allegations contained in Paragraph 58.

58. Defendant CasePro denies the allegations contained in Paragraph 59.

59. Defendant CasePro denies the allegations contained in Paragraph 60.

60. Defendant CasePro denies the allegations contained in Paragraph 61.

61. In response to Paragraphs 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, and 83 of the Amended Complaint, Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations of these Paragraphs of the Complaint as they are directed to Defendant SCOVA. Therefore, those allegations can neither be admitted nor denied at this time.

62. In response to Paragraph 84 of the Amended Complaint, Defendant CasePro incorporates as if fully set forth herein its responses to Paragraphs 1 through 83 herein.

63. Defendant CasePro denies the allegations contained in Paragraph 85 as they relate to it, and lacks sufficient information to form a belief as to the truthfulness of the allegations of Paragraph 85 of the Complaint as they relate to Defendant SCOVA. Therefore, those allegations can neither be admitted nor denied at this time.

64. Defendant CasePro denies the allegations contained in Paragraph 86 as they relate to it and lacks sufficient information to form a belief as to the truthfulness of the allegations of Paragraph 86 as they relate to Defendant SCOVA. Therefore, those allegations can neither be admitted nor denied at this time.

65. Defendant CasePro denies the allegations contained in Paragraph 87 as they relate to it and lacks sufficient information to form a belief as to the truthfulness of the allegations of Paragraph 87 as they relate to Defendant SCOVA. Therefore, those allegations can neither be admitted nor denied at this time.

66. Defendant CasePro denies the allegations contained in Paragraph 88 as they relate to it and lacks sufficient information to form a belief as to the truthfulness of the allegations of

Paragraph 88 as they relate to Defendant SCOVA. Therefore, those allegations can neither be admitted nor denied at this time.

67. Defendant CasePro denies the allegations contained in Paragraph 89 as they relate to it and lacks sufficient information to form a belief as to the truthfulness of the allegations of Paragraph 89 as they relate to Defendant SCOVA. Therefore, those allegations can neither be admitted nor denied at this time.

68. Defendant CasePro denies the allegations contained in Paragraph 90.

69. Defendant CasePro denies the allegations contained in Paragraph 91.

WHEREFORE, having fully responded to the Amended Complaint, Defendant CasePro prays that the Court dismiss Plaintiff's claims against it and award it any other costs or other relief the Court deems just and proper. Defendant CasePro further demands a trial by jury.

Respectfully submitted,

CARLOCK, COPELAND & STAIR, LLP

By:


D. GARY LOVELL, JR.
State Bar No.: 69293
DOUGLAS W. MACKELCAN
State Bar No.: 76332

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40 Calhoun Street, Suite 400
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843-727-0307

) IN THE COURT OF COMMON PLEAS
) THE FOURTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2012-CP-07-03782

) CASE NO.: 2012-CP-07-03782

)

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Appendix 0118

1 IN THE COURT OF COMMON PLEAS IN THE
2 FOURTEENTH JUDICIAL CIRCUIT, IN
3 AND FOR BEAUFORT COUNTY, SOUTH CAROLINA

4 Rebecca Delaney, as Personal Representative of the Estate of
5 Justin Miller,

6 Plaintiff,

7 vs.

CASE NO. 2012-CP-07-03782

8 CasePro, Inc,

9 Defendants.

-----/

10 JURY QUALIFICATION

11 VOLUME 1

12
13 * * *

14 TRIAL BEFORE: Honorable Diane Goodstein

15 DATE: October 6, 2015

16 TIME: Commenced at 9:30 a.m.
17 Concluded at 5:30 p.m.

18 PLACE: Beaufort County Courthouse
19 Beaufort, South Carolina

20 REPORTED BY: MONA WHIDDON, Stenographer

1 APPEARANCES:

2 REPRESENTING THE DEFENDANT, CasePro:

3 Doug MacKelcan, III, Esquire
4 Dennis Gary Lovell, Jr, Esquire
5 Alendra Marie Saber, Esquire
6 Carlock Copeland & Stair, LLP
7 40 Calhoun St, Suite 400
8 Charleston, SC 29401

7 REPRESENTING THE PLAINTIFF(S):

8 Thomas David Hoyle, Esquire
9 Temitope Olamide Leyimu, Esquire
10 William Christopher Swett, Esquire
11 Motley Rice LLC
12 20 Bridgeside Blvd.
13 Mt. Pelasant, SC 29464

14 and

15 Crystal Lynn Castleberry, Esquire
16 Castleberry Law Offices
17 3712 Swallowtail Drive
18 Morgantown, WV 26508

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JUROR QUALIFICATION

1 PROCEEDINGS

2 THE CLERK: Ladies and gentlemen, momentarily
3 the Honorable Diane Goodstein will be entering the
4 courtroom and going through the process of
5 qualifying you as jurors. She will be asking you
6 questions. Listen carefully. If any of it
7 applies to you, please let us know.

8 THE COURT: Is everybody happy? You came for
9 jury service, yay. Let me introduce myself. I'm
10 Diane Goodstein. I'm one of two resident judges
11 from the First Judicial Circuit which is under
12 water today. You are in the 14th judicial
13 circuit, not under water today. The 1st is
14 Dorchester, Georgetown and Calhoun Counties. The
15 14th is Colleton, Beaufort, Allendale, Hampton and
16 Jasper. How did I do?

17 THE CLERK: Very well.

18 THE COURT: Thank you. And I understand that
19 a number of you came yesterday, and for those of
20 you that came yesterday for your jury service, I
21 want to thank each and every one of you for coming
22 yesterday. There was an order that went out
23 Sunday evening, late Sunday evening, that actually
24 canceled court for yesterday, for Monday. And you
25 didn't get word of that. Well, there were lots of

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JUROR QUALIFICATION

1 people that didn't actually get word of it around
2 the State, so for those of you that did arrive, I
3 want to thank you for coming yesterday. And I
4 doubly want to thank you for returning today,
5 because you probably thought, I'll use my excuse
6 for yesterday and today. So, I want to thank you
7 all for being here.

8 You know, in the United States we are a
9 citizen-based judicial system, and because of that
10 if you were not here there would be no reason for
11 any of us to be here. Because we need you to help
12 your fellow citizens to resolve disputes.

13 That is what we are about in our entire
14 system, is the resolution of disputes. Whether it
15 is on the criminal side or civil side, we are a
16 citizen-based judicial system. When it is a
17 criminal matter, we know that one side of the
18 equation will be the State, always. And then
19 there will be someone on the other side that the
20 State alleges has violated one or more of the
21 criminal laws of the State of South Carolina. And
22 the jury needs to make the finding of fact to make
23 a determination whether that person is guilty or
24 not guilty.

25 On the civil side we have individuals on both

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JUROR QUALIFICATION

1 sides of the equation and there's a dispute that
2 has arisen and we call on citizens to come into
3 court and help those fellow citizens resolve
4 disputes. That is what we are about this week.
5 This is a term of civil court or common pleas. We
6 are going to ask your assistance to help fellow
7 citizens do just that, resolve disputes. So, that
8 is our goal this week.

9 I will tell you, ladies and gentlemen, that
10 while I'm certainly cognizant as to all of these
11 folks, each and every tick of the clock you are
12 present in court. I want you to know that we will
13 keep your time to a minimum, but some times this
14 week you may feel time clicking away while you are
15 cooling your heels. But I'll assure you that
16 while you are here we are working to assure that
17 your time is as limited as it can be.

18 Now, you have been through the role call
19 process, as it's known. And in just a moment I
20 have statutorily-mandated questions that I must
21 ask of you. And I know that you have met the
22 folks who are here in the courtroom, right? Yes.
23 Wonderful. Because we have this incredible Clerk
24 of Court who you all have met, who I know
25 introduced herself. I will tell you that working

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JUROR QUALIFICATION

1 with her is one of the treats of my professional
2 life. She is competent. She is efficient. She
3 is a joy to be around, as is her staff. So, I'm
4 delighted that she has taken care of all of that
5 this morning.

6 Now, ladies and gentlemen, I'm -- the next
7 portion of your qualification is that there's
8 certain statutory questions that I have to ask of
9 you. And once we have done that we will take a
10 break, you will be ready at that point, and then
11 I'll come back after our break and I'll read you a
12 short, non-argumentative statement of the facts of
13 the first case for trial. I'll introduce you to
14 some folks. And I'm going to ask you some
15 additional questions and then we are going to
16 actually get our jury for our first case for
17 trial.

18 Those of you who will then be known as our
19 "remaining jurors," I'll give you instructions of
20 how we will stay in contact with you over the
21 week.

22 THE CLERK: Your Honor, this is the case that
23 we have this week, so she will be excused.

24 THE COURT: Great. Got it. So, very well.
25 And you have asked them about their driver's

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JUROR QUALIFICATION

1 license? Have you done that?

2 THE CLERK: No, I have not. I didn't address
3 any of that. You get to do that.

4 THE COURT: Great, great, great. Ladies and
5 gentlemen, I'm going to begin by establishing that
6 you are all here appropriately. We receive our
7 names of jurors from three sources: From the
8 voter registration roles of Beaufort County and
9 from the South Carolina Department of Public
10 Safety, it used to be known as the Highway
11 Department, it's now known as the Department of
12 Public Safety in the form of driver's licenses and
13 identification cards. If you do not have at least
14 one of those three indicia of identification, you
15 don't have to have it with you, although if you
16 drove and don't have your driver's license that
17 could be a problem. But you do not have to have
18 one of these with you, you just have to have one
19 in your world.

20 Either you are a registered voter or
21 identification card or issued driver's license
22 from the Department of Public Safety. Again, you
23 don't have to have it with you, you just have to
24 have one. If you don't have one of those three
25 indicia of identification, I don't know how you

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JUROR QUALIFICATION

1 were so lucky to be with us this morning. Maybe
2 you followed everybody off of the sidewalk to see
3 what was going on.

4 But if you don't have at least one of those
5 in your world, I would ask you to stand at this
6 time.

7 (No response.)

8 I find no one standing.

9 Now, ladies and gentlemen, let's talk about
10 these questions that I'm about to ask of you. The
11 first thing that I want to tell you is that they
12 are statutorily mandated, which means that I have
13 to ask them of you. And some of them are not
14 personal at all, some of them are a little more
15 personal, and I have to have accurate information
16 commensurate with the oath that you have taken.
17 And if you do not give me accurate information,
18 then you will have violated your oath and that
19 would also be contempt of court. So I know that
20 I'm going to get accurate information from each
21 and every one of you.

22 But to facilitate that, I want to tell you
23 this: If I ask a question and you think that you
24 might be embarrassed if you had to stand and
25 disclose that information in the presence of your

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JUROR QUALIFICATION

1 fellow jurors, at the end of this part of the
2 process I'm going to issue an opportunity, an
3 invitation, for you to come forward and disclose
4 that information a little bit more privately with
5 our court reporter, of course, and our clerk.

6 If, however, you choose not to stand and
7 disclose that information in the presence of your
8 fellow jurors and you choose not to come forward,
9 again, that would be a violation of your oath. So
10 if you would prefer to come forward and disclose
11 that information, just remember to come forward
12 when I ask you to do so.

13 Now, here are the questions which determine
14 your general eligibility to serve. Is any member
15 of our jury panel not a citizen of the United
16 States? If you are not a citizen of the United
17 States, please stand.

18 (No response.)

19 I don't find no one standing.

20 Is any member of our jury panel not now a
21 citizen and resident of Beaufort County? If you
22 are not now a citizen and resident of Beaufort
23 County, please stand.

24 (No response.)

25 I find no one standing.

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JUROR QUALIFICATION

1 Do we have any member of our jury panel who
2 is unable to read, write, speak or understand the
3 English language? If you cannot read, write,
4 speak or understand the English language, please
5 stand. Now, I know somebody out there is
6 thinking, If you don't understand the English
7 language how are you supposed to understand that
8 you are being asked if you understand the English
9 language. I don't know the answer to that, that's
10 why I tell folks these are statutorily mandated.
11 So if you see someone who is sitting near you and
12 you think that don't they speak the English
13 language, maybe they're speaking Klingon, just let
14 me know. Clue me in later. Wonderful. Yes?

15 UNIDENTIFIED JUROR: My name is (inaudible).
16 I don't know how well my English language -- it is
17 for me okay. But English is my third language
18 and --

19 THE COURT: Third language. And I have
20 enough trouble with it as my first. I'm so
21 impressed. That's wonderful. Let me ask you
22 this: Do you read?

23 JUROR: Yes, I read.

24 THE COURT: You like to read?

25 JUROR: Yes. I write also, but --

JUROR QUALIFICATION

1 THE COURT: And your spoken --

2 JUROR: My dialect is not good.

3 THE COURT: Your spoken English is beautiful.

4 JUROR: Okay.

5 THE COURT: That's amazing. I'm so
6 impressed. Do you mind if I ask what your other
7 two are? That's so impressive.

8 JUROR: I speak in Spanish and Italian also.

9 THE COURT: I'm so impressed. That's --
10 you're obviously brilliant. I'm so honored to
11 have you stay with us. Thank you so much. Yes.

12 I'm from Dillon and English is a bit of a
13 struggle. Just teasing. Anyone here from Dillon,
14 I'm just teasing.

15 All right. Now, ladies and gentlemen, do we
16 have any member of our jury panel who has less
17 than a sixth-grade education or its equivalent?
18 Let me tell you what we mean by equivalent. I
19 think if you're working, paying your bills, doing
20 all of that stuff that you have to do every single
21 day just to get by, you have a lot more than a
22 sixth-grade education or equivalent. But that's
23 the question: Do you have a sixth-grade
24 education -- less than a sixth-grade education or
25 its equivalent, if so you can certainly stand and

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JUROR QUALIFICATION

1 disclose that information or come up at the end.

2 (No response.)

3 And I find no one standing.

4 Do we have any member of our jury panel who
5 is unable, who is not able, by reason of a
6 physical or mental infirmity, a physical or mental
7 problem, and as a result you believe that you are
8 unable, you would not be able to render efficient
9 jury service?

10 Now, ladies and gentlemen, for example, if
11 you have a medical condition that you are
12 concerned might keep you from being able to serve
13 on the jury this week. Let me tell you a little
14 bit about how we are going to be proceeding, so
15 you will know a little bit.

16 Ladies and gentlemen, we're going to begin in
17 the morning between 9 and 9:30 and we're going to
18 work for about an hour and a half. Then we'll
19 take our morning break. We'll come back from our
20 morning break and then we'll work until our lunch
21 break, which is around 1:00. We'll take between
22 an hour, hour and a half for lunch. We'll come
23 back after lunch and we'll work again for about an
24 hour and a half. And then we'll take our
25 afternoon break. And then we're going to conclude

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JUROR QUALIFICATION

1 in the afternoon between 5 and 5:30, typically.

2 Now, here is the thing. I want you to be
3 able to serve on the jury this week. So if we can
4 accommodate you, we will absolutely be excited to
5 accommodate you. In other words, if you need to
6 take a little more frequent break, not a problem.
7 If you need -- some people say, I have a hearing
8 issue. I think that's my issue and not your
9 issue. I can accommodate that. Some folks need
10 to sometimes stop and have a little snack, because
11 maybe you're on medicine or whatever, that's not
12 going to be a problem. In other words, if I can
13 accommodate you so that you're able to serve, I'll
14 be so excited to do that, because I want you to be
15 able to serve with us this week. So I want you to
16 keep that in mind as well, as well as our
17 schedule.

18 So you can stand now and disclose any
19 information in response to this question, or you
20 can certainly come up at the end.

21 (No response.)

22 And I find no one standing.

23 Do we have any member of our jury panel who
24 has been convicted, that's either by a guilty plea
25 or by a trial of a crime punishable by

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JUROR QUALIFICATION

1 imprisonment more than a year and your civil
2 rights have not been restored by pardon or
3 amnesty? Now, punishable by imprisonment for more
4 than a year means that you could have received
5 punishment of more than a year in prison, maybe
6 you received a probation sentence or a fine. But
7 what's relevant is that you could have received
8 punishment of more than a year in prison and your
9 civil rights have not been restored by pardon or
10 amnesty. Now, you can stand and disclose the
11 information or certainly come up at the end.

12 (No response.)

13 Good, I find no one standing.

14 Do we have any member of our jury panel who
15 has served as a member of the grand jury here in
16 Beaufort County in the last five years? If so,
17 please stand.

18 JUROR: I don't know when the last time I
19 served was.

20 THE COURT: Were you on regular jury or the
21 grand jury?

22 JUROR: Grand jury.

23 THE COURT: The grand jury?

24 JUROR: Yes.

25 THE COURT: Okay. And your juror number is?

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JUROR QUALIFICATION

1 JUROR: 362.

2 THE COURT: We will take a look. All right.
3 The grand jury is one of those things, if you
4 served on it you would know it. There won't be
5 any question in your mind. It's different than a
6 trial jury or petit jury. All right. Very well.

7 Now, do we have any member of our jury panel
8 who is a clerk or a deputy clerk of court,
9 constable, sheriff, or other commission --
10 commissioned law enforcement officer, county
11 officer, county commissioner, probate judge, or
12 any person employed within the walls of any
13 courthouse? If so, please stand at this time.

14 (No response.)

15 And I find no one standing.

16 And do we have any member of our jury panel
17 who has previously served on jury duty in a court
18 of record, that's not magistrates court or
19 municipal court, but common pleas or general
20 sessions during calendar year 2015? If so, please
21 stand.

22 (No response.)

23 I find no one standing.

24 Now, ladies and gentlemen, we are now going
25 to move to juror exemption. An exemption doesn't

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JUROR QUALIFICATION

1 mean that you are not qualified to serve, it
2 simply means that you have the option -- you have
3 the right to say, Thank you, but I don't want to
4 serve, I choose not to serve. And our first
5 exemption is a great example, so I'm going to use
6 it as an example of what I mean by an exemption
7 and it's this: Ladies and gentlemen, people who
8 are 65 years old or older are entitled by state
9 law to an exemption. The reason for that is by
10 the time that you have reached the young age of
11 65 -- the closer I get, the younger it gets -- the
12 young age of 65 years old, you have perhaps
13 volunteered, perhaps you have served in the
14 military, no doubt that you have paid taxes for a
15 long time and our Legislature has deemed that you
16 deserve an exemption.

17 In other words, you can choose to serve or
18 not serve, it's up to you. Now, I want you to
19 know that you are more than welcome, more than
20 wanted, to serve. Because jurors who are 65 years
21 old or older obviously represent a pool of
22 fabulous talent for juries because of your life
23 experiences. So, folks who are 65 years old or
24 older represent a pool of terrific talent for
25 juries, but state law says that you are entitled

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JUROR QUALIFICATION

1 to an exemption should you choose to exercise it.

2 So I ask, do we have any jurors who are 65
3 years old or older and you wish to be exempted
4 from your jury selection? If so, please stand at
5 this time.

6 (No response.)

7 And I find no one standing.

8 Now, our next exemption concerns those of you
9 who have served on jury duty in prior years.
10 Ladies and gentlemen, a moment ago I asked if
11 there was anyone that served in 2015. That
12 disqualifies jurors from further service in the
13 same year. But prior jury service also gives rise
14 to an exemption, because no juror is required to
15 serve more than once in three years in a court of
16 record. Not magistrate or municipal court.

17 So, I ask, Do we have any members of the jury
18 panel who served as a juror during calendar year
19 2013 or 2014 and who wish to be exempted from your
20 jury selection. If so, please stand.

21 JUROR: I have -- I was on a criminal jury, I
22 think, about three years ago, but I don't need to
23 be excused. Seventy.

24 THE COURT: Yay, celebrating 70, wonderful,
25 wonderful. Thank you.

0132

JUROR QUALIFICATION

1 JUROR: Number 160. And I served July of
2 last year.

3 THE COURT: All right. And do you wish to be
4 excused?

5 JUROR: Yes, ma'am.

6 THE COURT: You are free to go then, sir.

7 THE BAILIFF: One more standing also, Judge.

8 THE COURT: Yes, ma'am, your number?

9 JUROR: 151. I was over at that other one
10 across the way here, but they canceled it when I
11 went in.

12 THE COURT: You were in the jury assembly
13 room.

14 JUROR: No, in the other building.

15 THE COURT: That is magistrate court. We get
16 to keep you.

17 JUROR: Okay.

18 THE COURT: She is not smiling with me. Oh
19 yes, she is. Yes, she is.

20 THE COURT: Mr. 382, you don't have to stand,
21 you are fine. I'm so glad to tell you that you
22 served on the regular jury panel but it was
23 September 2012. How time flies. September, 2012.
24 So I'm doing a happy dance up here.

25 JUROR: Oh, I couldn't remember.

0133

JUROR QUALIFICATION

1 THE COURT: It is amazing how time -- think
2 about that.

3 JUROR: I don't have a problem.

4 THE COURT: And you would have thought that
5 it was like a couple of months ago. All right
6 now. I have already asked the one about the grand
7 jury. Our next exemption deals with those of you
8 who have small children. I need you to listen
9 very carefully. This particular exemption has
10 several parts and each and every part has to apply
11 for to you be exempted on this basis. You may be
12 exempted from the jury selection if you have a
13 small child or children under the age of seven,
14 six years or younger, and you are the legal
15 custodian of one under the age of seven, and you
16 are the principal caregiver for that child under
17 the age of seven. And quite frankly, you don't
18 have anyone to care for your child or children
19 while you perform your jury duty. Now, if this
20 exemption applies to you and you need to exercise
21 this exemption, please stand at this time.

22 (Juror stands.)

23 THE COURT: Your number?

24 JUROR: I'm 329.

25 THE COURT: Yes, ma'am, you have a little

0134

JUROR QUALIFICATION

1 one?

2 JUROR: Six and 11.

3 THE COURT: You have no one to leave your
4 little ones with?

5 JUROR: The person who cares for them is out
6 sick.

7 THE COURT: Out sick. Got you. Got you.
8 Very well. Can I transfer your service? Under
9 normal circumstances would you be able to serve?

10 JUROR: If the caregiver wasn't sick. She
11 has cancer right now.

12 THE COURT: So, that is a long-term
13 situation.

14 Very well. I am excusing you on that basis,
15 because you have changed your lifestyle to
16 accommodate. And your number?

17 JUROR: 329.

18 THE COURT: We will miss you. Very well.
19 Unfortunately, this is the bad news. Your six
20 year old will be 27 when you blink your eyes. My
21 27 year old last week was six.

22 All right. Our next exemption deals with
23 those of you who may be attending school at this
24 time or working in some capacity with the school.
25 If this exemption applies to you and you need to

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JUROR QUALIFICATION

1 exercise it, which is fine, we will transfer your
2 service to another term of court when your school
3 responsibilities and juror responsibilities will
4 not conflict. Do we have any members of the jury
5 employed, full-time student, teacher, school
6 crossing guard, school bus driver, or works in any
7 other school-related function and cannot serve
8 this week as a result of that school
9 responsibility? If this exemption applies to you,
10 please stand at this time.

11 (Juror stands.)

12 THE COURT: Yes, ma'am. Your number?

13 JUROR: 69.

14 THE COURT: 69, yes, ma'am. You are a?

15 JUROR: I am a special needs monitor.

16 THE COURT: Bus driver?

17 JUROR: Monitor.

18 THE COURT: Monitor, got you. Come on up and
19 pick your week and we will transfer your service.

20 THE COURT: You want to transfer?

21 JUROR: If I let my manager know.

22 THE COURT: If you let your manager know.

23 Okay. You can stay. If you are selected to serve
24 you can let your manager know. Okay. Thank you.

25 Reverse those steps. Thank you.

0136

JUROR QUALIFICATION

1 (Juror stands.)

2 THE COURT: Oh, yes. Hi.

3 JUROR: (Juror 151) I work for McDonald's. I
4 work today.

5 THE COURT: You work for McDonald's, like the
6 restaurant?

7 JUROR: Yes.

8 THE COURT: Okay. You work for McDonald's
9 and Carolina Cleaning?

10 THE COURT: Okay. And is either one of those
11 school related?

12 JUROR: I work Monday, Wednesday, Friday at
13 school, district 3, and then at McDonald's the
14 other days.

15 THE COURT: Got you. In other words, Monday
16 Wednesday and Friday you work for the school
17 district?

18 JUROR: Yes, three.

19 THE COURT: School district three.

20 JUROR: Uh-huh. (Indicating affirmatively.)

21 THE COURT: Got you. I'm getting there. I
22 can be taught.

23 JUROR: I work at McDonald's from 2 to 9
24 today.

25 THE COURT: Okay. But Monday, Wednesday and

0137

JUROR QUALIFICATION

1 is Friday you work at the school district?

2 JUROR: Uh-huh. (Indicating affirmatively.)

3 THE COURT: What do you do for the school
4 district?

5 JUROR: Clean.

6 THE COURT: You are a cleaner for the school?

7 JUROR: Yes.

8 THE COURT: You need to transfer your service
9 because of your school-related function?

10 JUROR: I don't understand none of this stuff
11 here at all. If I was selected I wouldn't
12 understand.

13 THE COURT: Got you. I'm with you. I'm with
14 you. Why don't you do this, why don't you come up
15 at the end and let us chat for a moment.

16 JUROR: Okay.

17 THE COURT: Does that work?

18 JUROR: Yes.

19 THE COURT: Wonderful. Thank you now. Now,
20 do we have any members of the jury panel who is
21 employed as a guard with the Department of
22 Corrections penitentiary? If so, please stand
23 because State law says that you are going to be
24 exempt. Anybody a guard?

25 (No response.)

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JUROR QUALIFICATION

1 THE COURT: Very well. Do we have any
2 members of the jury panel who are primary
3 caregiver for someone who is 65 years old or older
4 or somebody who is severely disabled and as a
5 result the person for whom you care simply cannot
6 be left alone and would be obviously at risk if
7 you were required to perform your jury duty? If
8 this exemption applies to you and you need to
9 exercise this exemption, please stand at this
10 time. Sixty-five years or older or someone
11 severely disabled that you care for.

12 (No response.)

13 THE COURT: Very well. I find no one
14 standing.

15 Now, ladies and gentlemen, do we have a
16 member of our jury panel who performs services for
17 a business, commercial or agriculture
18 enterprise --

19 THE COURT: -- which must close if you were
20 required to perform your jury duty? If so, please
21 stand at this time. I didn't know that I have
22 jurors over there.

23 (Juror stands.)

24 JUROR: I have a furniture store and it's
25 just me. So I had to close today.

0139

JUROR QUALIFICATION

1 THE COURT: A furniture store and you are the
2 only person in the furniture store? So, when
3 someone comes in and buys the 8,000-pound
4 armoire --

5 JUROR: It's not happening today.

6 THE COURT: Tomorrow there will be more
7 people there?

8 JUROR: No, it's just me. I do the design,
9 the painting, and it's just me.

10 THE COURT: That is great. Okay. very well.
11 This applies to you.

12 JUROR: Okay.

13 THE COURT: Very well. Thank you for being
14 here.

15 JUROR: I can do it at another time if I have
16 an employee.

17 THE COURT: Well, do you think that you are
18 going to do that? You can transfer.

19 JUROR: Would I have to have time like down
20 the road?

21 THE COURT: You can pick it. It's out of my
22 control.

23 JUROR: It can it be like a year later?

24 THE COURT: Whenever you want it. Come and
25 pick a week then. That is wonderful, we should

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JUROR QUALIFICATION

1 all go shopping with you.

2 THE COURT: All right. Now, ladies and
3 gentlemen, that concludes our list of
4 qualifications and exemptions for jury service.
5 It may be that you are qualified and no exemption
6 applies to you, but jury service this week would
7 constitute an extreme hardship on you for a
8 particular reason. I cannot excuse a qualified
9 juror from jury service. But under extreme and
10 compelling circumstances I can transfer a juror
11 from this term of court to another term of court
12 at which time your extreme and compelling
13 circumstances will not exist.

14 Let me give you some examples. Ladies and
15 gentlemen, you may have a doctor's appointment
16 later this week. I don't want anybody missing a
17 doctor's appointment. I'm going to transfer your
18 service. You may have a loved one who has a
19 doctor's appointment later this week and they are
20 counting on you being with them. Maybe they're
21 having treatment of some sort later this week and
22 they're counting on you being with them. I'm
23 going to transfer your service for that reason.

24 It may be that you have inventory at your
25 place of employment and this -- this is the day of

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JUROR QUALIFICATION

1 the inventory that happens once a year and you're
2 in charge of that inventory. I'm going to
3 transfer your service. It may be that you floated
4 here this morning in your duck vehicle or your
5 kayak. I'm going to transfer your service if you
6 are suffering in some form or fashion as a result
7 of all of the water that has inundated our state
8 over the last several days.

9 So if anyone needs to transfer, I'll need to
10 speak to you about that in just a moment. And in
11 just a moment those of you who did not disclose
12 that more personal information that I asked you
13 about, I'm going to ask you to approach as well.

14 But before we do that, I'm very briefly going
15 to go over your qualifications for your jury
16 service. You must be a citizen of the United
17 States. You must be a citizen and resident of
18 Beaufort County. You must have a sixth grade
19 education or its equivalent. You must be able to
20 read, write, speak and understand the English
21 language. You must be able physically and
22 mentally to render efficient jury service. You
23 must not have served on jury duty in a court of
24 record during calendar year 2015. You must not be
25 a clerk, deputy clerk of court, constable, sheriff

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JUROR QUALIFICATION

1 or other commissioned law enforcement or employed
2 within the walls of the courthouse. And you must
3 not have been convicted of a crime punishable by
4 imprisonment for more than a year and your civil
5 rights not restored by pardon or amnesty.

6 Now, if any of these qualifications concerns
7 you or if you have a question about any of these
8 qualifications as they may apply to you in your
9 particular circumstance, or if you have a question
10 or a concern about any of the exemptions and how
11 the exemption may apply to your particular
12 circumstance, or if you need to seek a transfer to
13 another term of court because of severe and
14 compelling circumstances, or if you need to
15 disclose information more privately with me and
16 our court reporter and our clerk, please come
17 forward at this time.

18 All right. Yes?

19 THE BAILIFF: Juror 69, Your Honor.

20 JUROR: I have been charged, but it wasn't
21 here.

22 THE COURT: Yeah, did you go to the
23 Magistrates Court?

24 JUROR: It wasn't here. It was in Savannah.

25 THE COURT: It was in Savannah. What was the

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JUROR QUALIFICATION

1 charge?

2 JUROR: Shoplifting.

3 THE COURT: First?

4 JUROR: Yes.

5 THE COURT: Okay, you're fine. You're good
6 to go.

7 JUROR: Thank you. Yes?

8 THE BAILIFF: Juror 151, Your Honor.

9 THE COURT: She's staying.

10 JUROR: This is the first time I've ever been
11 in, doing any of this kind of stuff.

12 THE COURT: Got it.

13 JUROR: I don't want -- I would not
14 understand none of this stuff.

15 THE COURT: How far did you go to the school?

16 JUROR: I graduated, but I was in the special
17 education. So I don't understand big words and
18 stuff.

19 THE COURT: And you're concerned about your
20 ability to understand what's going on.

21 JUROR: Uh-huh, and I'm 51.

22 THE COURT: You're 51?

23 JUROR: Uh-huh, years old.

24 THE COURT: Well, you don't look it. You
25 look 31. Keep it up.

0144

JUROR QUALIFICATION

1 JUROR: I've got a twin too, so.

2 THE COURT: Oh, you do. That's so cool. All

3 right. And you work all the time too?

4 JUROR: Yeah, I work at McDonald's and

5 Carolina Cleaning at the Holy Trinity.

6 THE COURT: Yeah. And you work at the school

7 district?

8 JUROR: No, it's for Carolina Cleaning.

9 THE COURT: I'm with you.

10 JUROR: I'm just cleaning that one, Monday,

11 Wednesday and Friday, and the rest is McDonald's.

12 THE COURT: Gotcha. Y'all serving breakfast

13 like all day long now, right?

14 JUROR: Oh, yeah.

15 THE COURT: Are you ready for that?

16 JUROR: Yes.

17 THE COURT: I will excuse you on that basis.

18 JUROR: All right. Thank you.

19 THE COURT: Thanks for coming in here today.

20 JUROR: I wish I would understand a lot of

21 this stuff, but I don't at all.

22 THE COURT: Well, that's okay. I'm glad

23 McDonald's is serving breakfast all day. Just

24 take care of that and we'll all be good.

25 THE BAILIFF: Yes, ma'am?

0145

JUROR QUALIFICATION

1 JUROR: Will they call me back on a jury
2 again?

3 THE BAILIFF: No, all you got to do is give
4 them that badge and you're free to go.

5 JUROR: No, I have another one in Charleston
6 in November too.

7 THE COURT: You do. They're lucky to have
8 you down there.

9 So I -- just for the record, I observed that
10 while she's very articulate her mental challenges
11 are pretty evident, and I think she's correct in
12 that she would have difficulty understanding and
13 following the simplest of issues, just given her
14 responses during the qualification. And on that
15 basis I have excused her, and wanted to make a
16 record of my observations during this process.

17 Okay.

18 THE BAILIFF: Juror 71, Your Honor.

19 THE COURT: Hello. Let me guard people from
20 the wires.

21 JUROR: I have no problem serving or
22 anything, but I have tickets to Ireland next
23 Wednesday. Will we be done?

24 THE COURT: We may not be. I'm not certain
25 of it, and I think it's probably better that we

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JUROR QUALIFICATION

1 transfer you to another term of court.

2 JUROR: Okay.

3 THE COURT: And can I go with you?

4 JUROR: We've been planning this trip for two
5 years, and it's next week.

6 THE COURT: That's fine. Just pick a week.
7 That was 71.

8 THE BAILIFF: Juror 356, Your Honor.

9 JUROR: I have a previously arranged business
10 trip. Invested about \$700 in the air fare. I
11 leave Thursday morning.

12 THE COURT: Where are you going?

13 JUROR: Going first to Springfield then to
14 Pittsburgh then back to Springfield, Mass up to
15 Bangor, Maine and then by Amtrac back here.

16 THE COURT: Okay.

17 JUROR: Well, I'm sure that's -- just looking
18 at these people will tell you that it would be a
19 fun case. And they look serious too, it's sort of
20 scary.

21 THE COURT: They're very serious. I will
22 transfer your service, if you will just go pick
23 your week.

24 JUROR: Thank you.

25 THE BAILIFF: Juror 243, Your Honor.

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JUROR QUALIFICATION

1 JUROR: (Inaudible).

2 THE COURT: Gotcha. And that's this week?

3 JUROR: Yes.

4 THE COURT: Okay. Just pick a week.

5 JUROR: My daughter didn't make it yet.

6 THE COURT: And he's supposed to?

7 JUROR: Yes.

8 THE COURT: Very well. If you'll just pick a
9 week, and we'll see you soon.

10 THE BAILIFF: Juror 85, Your Honor.

11 JUROR: I'm a sole caregiver of my other half
12 who's 75. He has Alzheimer's. He's with my
13 neighbor today.

14 THE COURT: I understand.

15 JUROR: I work part-time at the hospital,
16 which is five minutes from home. Being an hour
17 from home is too much. It's out of my comfort
18 zone.

19 THE COURT: I understand. I'm with you.
20 I'll excuse you on that basis. Thank you so much
21 for being here today, and I hope that he's well.

22 She's excused.

23 THE BAILIFF: Juror 216, Your Honor.

24 JUROR: I have a dental conference (phonetic)
25 if we are finished by that time.

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JUROR QUALIFICATION

1 THE COURT: I will be finished before 3:30.

2 JUROR: All right, then I'm fine.

3 THE COURT: Thank you so much.

4 THE BAILIFF: Juror 268, Your Honor.

5 JUROR: I want to transfer if I can. See I
6 transferred before, but I have a friend here from
7 Canada and their conference was canceled in
8 Charleston because of the weather. They're stuck
9 there. I need to go fetch them tomorrow from
10 Charleston. I know it's not a --

11 THE COURT: Have you transferred before?

12 JUROR: I just postponed my date once to this
13 date.

14 THE COURT: Okay. All right. Given the fact
15 that you're fetching people because of what's
16 going on in Charleston, normally we don't transfer
17 but once but this is exigent and unusual.

18 JUROR: Thank you.

19 THE COURT: Very well. If you'll pick a
20 week.

21 THE CLERK: Transfer then?

22 THE COURT: All right. I find the panel is
23 now qualified. Ladies and gentlemen, we're going
24 to take a break. This is our official time
25 keeper, and I'm going to meet with the lawyers

JUROR QUALIFICATION

1 just a moment. When we return I'm going to read
2 you a short, nonargumentative statement of the
3 facts. I'm going to read to you -- introduce you
4 to some folks, ask you some additional questions,
5 and then we're going to select our jury for our
6 first case for trial.

7 This part of the process is going to take me
8 about 15 minutes. So I'm going to ask you to be
9 at ease and be back here in the courtroom at
10 20 till 12. Very well. Enjoy your break. I'll
11 see you in just a little bit.

12 And counsel, join me in chambers, bring your
13 voir dire and short, nonargumentative statement of
14 facts.

15 (Whereupon, a brief recess was taken.).

16 THE COURT: Ladies and gentlemen, we are
17 about to qualify our jury panel for our first case
18 for trial this week. And in just a moment I'm
19 going to read to you the title or the caption of
20 the case. I'm then going to read to you a
21 nonargumentative statement of the facts of the
22 case. And then I have a number of questions that
23 I'm going to be asking of you.

24 Now, ladies and gentlemen, there are a couple
25 of sort of ground rules that I'm going to go over

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JUROR QUALIFICATION

1 with you even before I begin. The first ground
2 rule, if you think that you should respond, you
3 should respond. You're better to respond than not
4 to respond. In other words, if I ask, do you
5 know, are you related by blood or marriage or
6 acquainted with so-and-so and you think that maybe
7 you are, it's just better to say I think that
8 maybe I went to school with that person 20 years
9 ago.

10 You're just better off erring on the side of
11 I think that I know something or maybe I know
12 somebody, you will feel better about it. And
13 trust me to follow-up to determine whether or not
14 you should serve or not serve. But you will feel
15 better at the end of this process. When in doubt,
16 speak up. So that would be a ground rule.

17 Now, there's another ground rule and that has
18 to do with the definition and it's my definition,
19 and it's really really general. And because it's
20 so general it wouldn't be fair for me to do
21 otherwise than to tell you what I mean when I use
22 the phrase, "acquainted with." Are you acquainted
23 with so-and-so.

24 So you're going to hear me ask that a lot, so
25 I want to define that for you. And the best way

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JUROR QUALIFICATION

1 to define it for you is to tell you what I mean by
2 it, what am I trying to accomplish. What I'm
3 trying to accomplish is to find out whether or not
4 you have any connection with the person that I'm
5 asking you about. That is what I'm trying to find
6 out.

7 Now, there will be follow-up questions, and
8 from those I'll learn a little bit more and then
9 determine whether or not this is a matter in which
10 you should serve or not serve.

11 So I want to give you a couple of examples
12 because when I use that phrase -- and this is how
13 it'll sound, Are you related by blood or marriage
14 or acquainted with so-and-so. Now, it may be that
15 you went to school with so and so 20 years ago,
16 you haven't anticipated seeing so and so. Haven't
17 thought about it in 20 years. But when you hear
18 so and so because that's such an odd name and
19 there is -- that's the only person that you have
20 known in your life as so-and-so, you know that you
21 went to school with so and so 20 years ago.
22 Believe it or not, my definition of acquaintance
23 is broad enough to envelop that old of a
24 relationship. If this applies to you, you should
25 stand and say, I went to school with so and so

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JUROR QUALIFICATION

1 20 years ago. And I'll say, Do you visit in each
2 other's houses. And there may or may not be a
3 follow-up question after that.

4 So when I ask a question, Are you related by
5 blood or marriage or acquainted with, remember, I
6 mean a general definition.

7 And another thing that I may bring up, Do you
8 work with someone. Maybe you work with someone,
9 maybe you see them across the parking lot, that is
10 the extent of your relationship. Believe it or
11 not, that definition will be encompassed in my
12 definition of acquainted with. There will be
13 follow-up and a little more than that. And you
14 may say, yeah, we work at the same location with
15 1200 other people and we wave at each other.
16 Maybe I will let him in in traffic, I'll let him
17 in in traffic or whatever and maybe there will be
18 follow-up questions.

19 But err on the side of being inclusive,
20 because my intention of using that phrase,
21 acquainted with, is to find out whether or not you
22 have acquaintances with these folksfolks that I'll
23 be asking you about. So, please, keep this in
24 mind.

25 Now, ladies and gentlemen, the caption or the

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JUROR QUALIFICATION

1 title of this case is Rebecca Delaney as the
2 Personal Representative of the Estate of Justin
3 Nicholas Miller, who is the Plaintiff. Ladies and
4 gentlemen, Justin Nicholas Miller is deceased and
5 Rebecca Delaney is the personal representative of
6 the estate of Justin Nicholas Miller. The
7 personal representative is the individual who has
8 brought this action on behalf of the estate of
9 Justin Miller who is the Plaintiff versus CasePro
10 Inc. who is the Defendant, the entity against whom
11 this case has been brought. In our concluding
12 instruction in this case, I'll give you this
13 instruction, but I'm going to even tell you now.

14 Ladies and gentlemen, CasePro Inc. obviously
15 is a corporation. And I'll tell you now that
16 under our law a corporation is entitled to the
17 same measure of justice as is a natural
18 individual. So I mention that to you now at this
19 time as well. And CasePro Inc. is the Defendant
20 in this case.

21 Now, ladies and gentlemen, I'm now going to
22 read to you a short, relatively short,
23 nonargumentative facts of this case. My question,
24 ladies and gentlemen, on the other side of this is
25 going to be, Have you heard or think you may have

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JUROR QUALIFICATION

1 heard or do you know or think you may know
2 anything about these allegations. That will be on
3 the other side of my reading to you this brief
4 statement of facts.

5 Ladies and gentlemen, this case arises out of
6 a series of events that occurred on February the
7 24th, 2012 at the Naval Hospital in Beaufort. On
8 that day Calvin Hunt and his escort VA
9 Representative Edward Ray presented at the Naval
10 Hospital General Medicine Clinic for a refill of
11 Hunt's medications. During an interview with a
12 nurse in that clinic Mr. Hunt indicated that he
13 had thoughts of hurting himself. He along with
14 Mr. Ray was taken to the emergency department at
15 the Naval Hospital for further evaluation.

16 Over a period of approximately two hours
17 Mr. Hunt was evaluated and/or observed in the
18 emergency department by triage nurse Janice
19 McDonald, emergency room doctor Christian Jansen,
20 treatment nurse Joe McDonald. Additionally,
21 Calvin Hunt was observed and/or evaluated by
22 psychiatric technician Manning. Psychiatrist
23 Dr. Handelman was also consulted about Mr. Hunt.
24 It was decided that Mr. Hunt needed to be admitted
25 to the mental health ward of Beaufort Memorial

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JUROR QUALIFICATION

1 Hospital for additional evaluation, and steps were
2 being taken to arrange for that transfer.

3 During that time Mr. Hunt and Mr. Ray
4 approached Nurse Joe McDonald, and Mr. Ray
5 inquired about stepping outside to get some air to
6 which Mr. McDonald assented. While outside with
7 Mr. Ray, Mr. Hunt suddenly ran away from Mr. Ray,
8 removed some items of clothing and ran out of the
9 Navy base past the front security gate. Mr. Hunt
10 then stole a fire engine that was parked at a
11 nearby apartment complex, drove down Ribaut Road
12 causing multiple motor vehicle accidents and
13 eventually struck and killed pedestrian Justin
14 Nicholas Miller.

15 Rebecca Delaney as the personal
16 representative of the estate of Justin Nicholas
17 Miller, Plaintiff, brought this Wrongful Death and
18 Survival Act lawsuit against CasePro Inc. seeking
19 to recover monetary damages for her son Justin
20 Miller's injuries and death. Plaintiff alleges
21 that emergency room doctor, Dr. Christian Jansen,
22 Registered Nurse Janice McDonald and Registered
23 Nurse Joseph McDonald were negligent in their
24 involvement and interactions with Mr. Hunt.
25 Plaintiff contends that those individuals were

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JUROR QUALIFICATION

1 employees of Defendant, CasePro Inc., and that
2 Defendant CasePro Inc. is negligent for their
3 actions in a number of ways.

4 Defendant CasePro Inc. denies all allegations
5 of negligence and contends that the Department of
6 Navy was the true employer of the doctor and
7 nurses by having sole control over the manner and
8 method of activity of the ER or emergency room
9 doctors and nurses in the emergency department,
10 and that Defendant CasePro Inc. only served as a
11 staffing agency of and for the Department of the
12 Navy.

13 Ladies and gentlemen, do any of you know or
14 think you may know or have you heard or think you
15 may have heard, to include today, anything about
16 these allegations? If so, please stand.

17 THE BAILIFF: Juror 232, Your Honor.

18 THE COURT: Good morning.

19 JUROR: Good morning. When did this happen,
20 two years ago?

21 THE COURT: February the 24th, 2012.

22 JUROR: I lived in the Arden, North Carolina
23 then.

24 THE COURT: All right.

25 JUROR: And my brother, he lives out here on

0157

JUROR QUALIFICATION

1 Saint Helena, and I think it came over the news or
2 something.

3 THE COURT: Yes.

4 JUROR: And I just called him. I says, do
5 you know these people and he says, no. We kind
6 of, okay, and that was about it.

7 THE COURT: All right. Have you heard
8 anything about -- anything else about it since
9 that time?

10 JUROR: No. We hadn't even discussed it
11 or -- no. In fact, until it was brought up here
12 today I thought I vaguely remember something about
13 that.

14 THE COURT: Well, that's the reason that I do
15 it is to see if it rings any bells. And have you
16 had any additional conversations with your
17 brother?

18 JUROR: No.

19 THE COURT: No?

20 JUROR: No.

21 THE COURT: So you heard something about it.
22 Called your brother. Do you know anyone --

23 JUROR: Yeah, because he's -- he lives here.

24 THE COURT: Because he lives here, very well.

25 JUROR: And he used to be chief security out

0158

JUROR QUALIFICATION

1 on Fripp and a retired Marine and, you know, just
2 curiosity.

3 THE COURT: Sure.

4 JUROR: When he ran out of -- when y'all
5 turned off the water, I asked him, do you want me
6 to send you some water.

7 THE COURT: And as a result of that
8 knowledge, have you formed any opinions regarding
9 this case?

10 JUROR: No.

11 THE COURT: And do you believe if you were
12 selected to serve as a juror that you could be
13 completely fair and impartial both to the estate
14 as well as to CasePro?

15 JUROR: Definitely, yes.

16 THE COURT: And can you set that news article
17 or news story that you heard, can you set that
18 aside and make up your mind based solely on what
19 you hear in court while court is in session?

20 JUROR: Sure.

21 THE COURT: Very well. You can stay with us.

22 JUROR: Okay.

23 THE COURT: And I'll ask you this, not to
24 discuss having heard that earlier story with your
25 fellow jurors. Thank you.

0159

JUROR QUALIFICATION

1 THE BAILIFF: Juror 216, Your Honor.

2 THE COURT: Hello. Yes?

3 JUROR: I remember reading the story,
4 following the story. My three children are in the
5 military, two are Marines, and I thought he might
6 have been deployed with one of my sons in Iraq.

7 THE COURT: Okay. All right. That who was
8 deployed with your son in Iraq?

9 JUROR: The gentleman that drove that truck.
10 He may have been deployed with my son in Iraq. My
11 son did two tours in Iraq.

12 THE COURT: Gotcha. Gotcha. Very well. And
13 have you had conversations with your family or
14 your sons about this particular --

15 JUROR: Back in 2012?

16 THE COURT: Yeah. Yes, back when it
17 occurred.

18 JUROR: Yeah.

19 THE COURT: Okay. And did your son think
20 that he had served with this particular gentleman?

21 JUROR: He said that the name sounded
22 familiar, but it -- he wasn't, probably, in his
23 immediate unit.

24 THE COURT: Okay.

25 JUROR: Because he did two tours.

0160

JUROR QUALIFICATION

1 THE COURT: Gotcha. Gotcha. And I'm
2 noticing a little bit of an emotional reaction.
3 Tell me about that.

4 JUROR: My son suffers from PTSD from his
5 deployments. So it's really hard when you see
6 former Marines that have actions that aren't
7 fairly normal.

8 THE COURT: I gotcha.

9 JUROR: And it's very emotional for me,
10 because my son struggles with that everyday.

11 THE COURT: Gotcha. Gotcha. And so would
12 this be a case for you that would be very
13 difficult for you to --

14 JUROR: Yes.

15 THE COURT: Very well. Thank you for your
16 candor. Now --

17 JUROR: I'm sorry, I'm just being honest.

18 THE COURT: That's perfect. That's
19 absolutely perfect. I apologize too, for causing
20 you to get upset for anything in this world. And
21 I'm so grateful -- I'm so humbled and grateful for
22 your candor. And I am sorry to take you to a
23 place that I wouldn't ever intentionally do for
24 anything.

25 JUROR: That's okay.

0161

JUROR QUALIFICATION

1 THE COURT: Thank you so --

2 JUROR: I'm just very proud of my children
3 and their military service.

4 THE COURT: Well, you should be. You
5 absolutely should be. And we are all grateful for
6 all that they have given. What -- you know what,
7 we wouldn't be in this courtroom. We wouldn't
8 have the opportunity to have a trial even but for
9 your children. So I thank you for their service,
10 and I wish -- wish them well.

11 JUROR: Thank you.

12 THE COURT: Now, what I need you to do for
13 me. And it's -- I need you to go and take your
14 seat and then when you are ready, you can ease
15 out, if you wish. Because this is going to take a
16 little while as you can imagine. And I'll just
17 give you --

18 JUROR: Take a seat and then just wait for a
19 little bit?

20 THE COURT: I think so. Unless you want to
21 escape sooner, it's up to you.

22 JUROR: No, I'll wait.

23 THE COURT: Thank you so much. She's
24 excused.

25 THE BAILIFF: Juror 60, Your Honor.

JUROR QUALIFICATION

1 THE COURT: Hello. Yes, sir.

2 JUROR: So I saw the case on the court
3 roster, just the -- on the Beaufort County court
4 web site. And then yesterday I saw the headlines
5 about jury selection for the case.

6 THE COURT: Right.

7 JUROR: I didn't click into the article. But
8 I didn't know if that was -- if I needed to
9 approach.

10 THE COURT: Perfect, that was perfect. And
11 so you clicked on the roster. Did you look at
12 anything beyond the roster about the case?

13 JUROR: No, nothing that I would have
14 understood.

15 THE COURT: Well, let me ask this because I
16 don't know whether Beaufort has access to
17 documents, some do.

18 JUROR: No, no documents were accessible.

19 THE COURT: All right. So all you could see
20 was the heading of the case?

21 JUROR: Correct.

22 THE COURT: Okay. And then you saw the
23 newspaper article?

24 JUROR: Only the -- it was online, only the
25 title. Although, I didn't click into it.

0163

JUROR QUALIFICATION

1 THE COURT: You didn't read the article?

2 JUROR: No.

3 THE COURT: Had you seen any articles prior
4 to yesterday?

5 JUROR: Maybe when the incident happened in
6 2012, but -- although it's hard to say, it was
7 three and a half years ago.

8 THE COURT: Exactly. Or the television, I
9 gather it was probably online and on the
10 television as well?

11 JUROR: Yes.

12 THE COURT: Did you -- is it fair to assume
13 that you probably heard something about it in
14 2012?

15 JUROR: Yes.

16 THE COURT: Okay. And other than being
17 around it and having heard it, having it -- did
18 you have any other involvement with it? Did you
19 discuss it with anyone that knew anything about
20 it? Did anyone know anyone that was associated
21 with these events?

22 JUROR: No, Your Honor.

23 THE COURT: Okay. And given what you know,
24 have you at this moment formed any opinions about
25 this particular matter?

0164

JUROR QUALIFICATION

1 JUROR: No, Your Honor.

2 THE COURT: Okay. And do you believe that
3 you can set aside having seen the roster, having
4 seen the headline, and what, if any, articles or
5 news or what you may have seen on the computer,
6 can you set all of that information aside and make
7 up your mind based solely on what you hear in
8 court while court is in session?

9 JUROR: Yes, Your Honor.

10 THE COURT: Okay. And from what I understand
11 is when you clicked on -- did you click on the
12 case?

13 JUROR: Yes.

14 THE COURT: It's a public document. It is
15 perfectly fine to do that. There's nothing wrong
16 with that at all. And so you clicked on the
17 document --

18 JUROR: Yeah.

19 THE COURT: -- and do you remember the
20 heading of any of the documents that you saw?

21 JUROR: No. I mean, the only thing I saw --
22 I can recall at all clearly is the -- it's a
23 wrongful death suit and it's a -- and the
24 Plaintiff and Defendant's names.

25 THE COURT: Okay. Any other documents that

0165

JUROR QUALIFICATION

1 you -- because I don't know, because I haven't
2 clicked on anything. But do you remember the name
3 of any other documents?

4 JUROR: No, they're -- I didn't -- I don't
5 think that there were any documents that are
6 clickable.

7 THE COURT: Right. Gotcha. Gotcha
8 completely. Very well. All right. Now, let me
9 ask you this question. Tell me -- I was not
10 present for role call, How are you employed?

11 JUROR: I am employed at -- in Bluffton in a
12 health care company called eviCore Healthcare.

13 THE COURT: And what do you do for them?

14 JUROR: Claims system and configuration. I
15 set up a claims system so I --

16 THE COURT: IT -- you're an IT person?
17 You're a wonk?

18 JUROR: Basically, yeah.

19 THE COURT: Now, let me ask a question. If
20 you were to be selected to serve on a jury in this
21 case, could you keep your fingers away from the
22 computer and your iPhone and any other technology
23 in doing any kind of research about this
24 particular matter?

25 JUROR: Yes, I can.

0166

JUROR QUALIFICATION

1 THE COURT: Okay. That would be an
2 instruction. And I worry about my wonks a little
3 bit. Okay. You could follow that instruction, no
4 wonking?

5 JUROR: Right.

6 THE COURT: Wonderful. Okay. Please stay
7 with us and thank you so much.

8 THE BAILIFF: Juror 139, Your Honor.

9 JUROR: Good afternoon, Your Honor, John
10 Giljam.

11 THE COURT: How are you?

12 JUROR: Good.

13 THE COURT: Okay. I need enough volume for
14 the court reporter and everyone else can gather
15 around, because I want to keep your responses
16 right up here rather than with the jury panel.

17 JUROR: I understand.

18 THE COURT: Tell me what you know.

19 JUROR: Basically all I remember is back when
20 the incident happened, it was in the news and
21 things like that. I don't have any other
22 knowledge of the people or things like that. But
23 back in my history, I have built/manufactured fire
24 trucks and things like that, so I paid attention
25 as far as to that point of the story. Factually I

0167

JUROR QUALIFICATION

1 know nothing else about it.

2 THE COURT: Gotcha. Gotcha. When did you
3 build fire trucks?

4 JUROR: I've been in fire trucks, fire
5 apparatus and custom manufacturing of vehicles all
6 my life. So I grew up in doing that in a welding
7 fabrication shop with my father.

8 THE COURT: How interesting. Where?

9 JUROR: So I've been in heavy equipment --
10 Upstate New York.

11 THE COURT: Oh, how interesting.

12 JUROR: And now I manufacture amphibious
13 vehicles, you know, here in Ridgeland.

14 THE COURT: Well, oh, boy, are you needed
15 right now.

16 JUROR: I wish that I had some of our
17 equipment. I have none of our -- everything is in
18 customers' possession, so very frustrating for us.

19 THE COURT: I can only imagine.

20 JUROR: Yes.

21 THE COURT: Just so I am clear. You remember
22 hearing about it when it occurred in 2012?

23 JUROR: Back -- that is correct. Back at the
24 time I remember hearing about it. And then I saw
25 on The Island Packet it came up as -- or that it

0168

JUROR QUALIFICATION

1 was going -- this headline was coming up for
2 trial, but I did not click on it. Because I
3 already had a jury summons, and it's like I'm
4 coming, I didn't even open the story.

5 THE COURT: Thank you for that. And do you
6 believe -- well, let me ask this preliminary
7 question. Have you formed any opinions regarding
8 this matter, at all?

9 JUROR: None, whatsoever.

10 THE COURT: Okay. And if you were selected
11 to serve on the jury, do you believe that the
12 information that you have received would in any
13 way impact your ability to be completely fair and
14 impartial both to the Plaintiff as well as to the
15 Defense?

16 JUROR: No, that would not impact. I don't
17 have the facts.

18 THE COURT: And can you set that information
19 that you have aside and make up your mind based
20 solely only on what you hear in court while court
21 is in session?

22 JUROR: Yes, ma'am.

23 THE COURT: Thank you so much. Please stay
24 with us.

25 THE BAILIFF: Juror 66.

JUROR QUALIFICATION

1 THE COURT: Yes, sir?

2 JUROR: I'm employed by the fire department
3 involved, so.

4 THE COURT: Okay. Tell me what you know.
5 Was this your fire department that had the truck?

6 JUROR: Yes, ma'am.

7 THE COURT: Okay. And were you employed by
8 the fire department in 2012?

9 JUROR: No, I've been employed since
10 July 2013.

11 THE COURT: Okay. So, roughly, a year after
12 these events occurred?

13 JUROR: Yes.

14 THE COURT: That's okay. All right. And?

15 JUROR: And I've heard all of the firsthand
16 accounts and like stories of people that were
17 there and whatnot so --

18 THE COURT: I'm going to ask you to sit this
19 one out.

20 JUROR: Okay.

21 THE COURT: And have you had -- as you have
22 been here this morning, have you discussed what
23 you know with anyone on the jury panel?

24 JUROR: No.

25 THE COURT: Okay. You haven't?

0170

JUROR QUALIFICATION

1 JUROR: No, ma'am.

2 THE COURT: Okay. You haven't discussed it
3 with anyone?

4 JUROR: I didn't talk to nobody.

5 THE COURT: Gotcha. Gotcha. Okay, very
6 well. Well, I'm going to ask you to continue in
7 that mode as you leave us today. And I want to
8 thank you for being here today. All right?

9 JUROR: Yes, ma'am.

10 THE COURT: Excused.

11 THE BAILIFF: Juror 208, Your Honor.

12 THE COURT: Okay. Good morning. I need
13 enough volume for my court reporter to hear you,
14 but I would like the jury panel not to hear you.

15 JUROR: Okay.

16 THE COURT: Tell me what you know.

17 JUROR: Basically I don't know that much. I
18 remember it being in the newspaper and on the news
19 and people talking about how tragic it was and
20 that's about it.

21 THE COURT: All right. And are you talking
22 about when the -- back at the time?

23 JUROR: Yes.

24 THE COURT: 2012?

25 JUROR: Right.

0171

JUROR QUALIFICATION

1 THE COURT: Okay. And did you form any
2 opinions back in 2012 about these events?

3 JUROR: About who was responsible and all of
4 that sort of -- not really.

5 THE COURT: Okay. And have you over time
6 formed any opinions about this matter?

7 JUROR: Really have not discussed it.

8 THE COURT: Okay. All right. And did you
9 discuss it a little bit? A lot?

10 JUROR: I think at the time it was big news
11 and it was discussed quite a bit.

12 THE COURT: Quite a bit. Okay. All right.
13 And as -- because, obviously, I'm not from here.
14 I know nothing. And so when -- were people
15 inclined to have a position? Was there like this
16 camp that thought this and then this camp that
17 thought that?

18 JUROR: In general, I think that what I
19 remember, okay, is that everybody just thought it
20 was a very tragic thing and how could that
21 possibly happen and that sort of thing going on.

22 THE COURT: Gotcha. Gotcha. And so at that
23 time what, if any, opinions did you form at
24 that -- in 2012 about these events?

25 JUROR: I don't know as I formed any

JUROR QUALIFICATION

1 opinions.

2 THE COURT: Okay. Other than it was a tragic
3 thing?

4 JUROR: It was a tragic thing and how could
5 that happen.

6 THE COURT: And how could that happen. Okay.
7 I understand.

8 Now, let me ask this question of you. Have
9 you heard anything about it over the last several
10 days?

11 JUROR: (Nods in the negative.)

12 THE COURT: No? Have you read anything about
13 this matter over the last several days?

14 JUROR: No. Has it been in the paper? I
15 missed it.

16 THE COURT: Again, I don't know, I simply
17 ask.

18 JUROR: Okay.

19 THE COURT: Now, if you were to be a juror in
20 this case --

21 JUROR: Yes.

22 THE COURT: -- it would be absolutely
23 essential that you make up your mind based solely,
24 based only on what you were to hear in court while
25 court is in session.

0173

JUROR QUALIFICATION

1 JUROR: Right.

2 THE COURT: And it would be important that
3 you forego those conversations, what you knew,
4 what you heard at the time of these events, 2012,
5 and that you would base your deliberation or
6 decision based only, solely, on what you hear in
7 court while court is in session. Do you
8 understand that?

9 JUROR: Yes.

10 THE COURT: Do you think that would present a
11 problem for you?

12 JUROR: No.

13 THE COURT: Do you believe that you could
14 make up your mind based solely on what you hear in
15 court while court is in session?

16 JUROR: Yes.

17 THE COURT: Do you think that you would have
18 any difficulty in following my instruction not to
19 do any Columbo, no research on this matter?

20 JUROR: True. No, I wouldn't.

21 THE COURT: Very well. Thank you. Please
22 stay with us.

23 Next?

24 THE BAILIFF: Juror 300, Your Honor.

25 JUROR: Hello.

0174

JUROR QUALIFICATION

1 THE COURT: Hello, hello. Yes, ma'am?

2 JUROR: Okay. I just know, briefly, about
3 the case. My husband is a Port Royal police
4 officer, and the fire truck was stolen in that
5 jurisdiction. So I do know that. I do know the
6 little boy was killed. I do not personally know
7 Calvin whatever his name is.

8 THE COURT: Okay. All right.

9 JUROR: So I do know police officers were
10 injured so -- yeah.

11 THE COURT: Okay. And was your husband
12 involved with any of the investigation or --

13 JUROR: I can't remember that far back. I
14 don't know if he was on duty that day. But I do
15 know -- and I just recently read about it online,
16 but I didn't know that it was today.

17 THE COURT: Gotcha. Gotcha. Gotcha. And
18 was your husband employed by Port Royal at the
19 time?

20 JUROR: Yes, he's still employed there, yeah.

21 THE COURT: And do you know if he had any
22 conversations -- if he wasn't involved, did he
23 have conversations with people who were involved?

24 JUROR: He -- yes.

25 THE COURT: And would he have come home and

0175

JUROR QUALIFICATION

1 say, Honey, let me tell you what happened today?

2 JUROR: Yes, we do talk.

3 THE COURT: Yeah. You do have a
4 relationship. You do speak with one another.

5 JUROR: Yes.

6 THE COURT: Very well. I think what I'm
7 going to do --

8 JUROR: But this will be the second time that
9 you've moved me, and it's so hard to keep moving
10 me because I know the child's age is 7 --

11 THE COURT: I'm not moving you.

12 JUROR: Oh, okay.

13 THE COURT: You're not getting moved. You've
14 been here, right.

15 JUROR: Okay.

16 THE COURT: Yeah, you're here, right?

17 JUROR: Because my daughter is --

18 THE COURT: You're here.

19 JUROR: Okay. So am I staying?

20 THE COURT: Nobody's getting transferred.

21 JUROR: Okay. Good.

22 THE COURT: But I am going to excuse you.
23 But you're here, you've done your service.

24 JUROR: Oh, okay. So I'm good for three
25 years, I guess?

0176

JUROR QUALIFICATION

1. THE COURT: I don't know. Because if I'm
2 back, I might be able to persuade you to serve,
3 you never know.

4 JUROR: Bring my child with me?

5 THE COURT: Sure. We'll have a good time.
6 I'll babysit. And I'll ask you, you'll be so kind
7 not to discuss this matter with anyone as you exit
8 and leave us?

9 JUROR: Yes. Thank you.

10 THE COURT: Y'all get a number?

11 THE CLERK: 300.

12 THE BAILIFF: Juror 213, Your Honor.

13 JUROR: Good morning.

14 THE COURT: Hello, good morning. I need just
15 enough volume for my court reporter to hear you.

16 JUROR: Okay.

17 THE COURT: And I'm not interested in the
18 jury panel hearing what you have to tell me.

19 JUROR: Okay. Fair enough. I hope I didn't
20 misunderstand you, but --

21 THE COURT: You didn't.

22 JUROR: -- only knowledge I know about this
23 is from The Island Packet article a couple days
24 ago, and that's it. I don't know anything else
25 about it.

0177

JUROR QUALIFICATION

1 THE COURT: Did you read the article?

2 JUROR: I did.

3 THE COURT: Tell me what you remember from
4 having read the article.

5 JUROR: I just remember --

6 THE COURT: This is like a test from school.
7 What do you remember from reading it?

8 JUROR: I remember the -- about the person
9 escaping in the fire truck and that there was a
10 death involved.

11 THE COURT: I gotcha. When you read the
12 article, did you form any opinion?

13 JUROR: I did not.

14 THE COURT: Okay. And as you're here today,
15 do you have any preconceived -- do you have an
16 opinion?

17 JUROR: I do not.

18 THE COURT: Okay. And do you believe that
19 you could set what you have read completely
20 aside --

21 JUROR: Yes, ma'am.

22 THE COURT: -- and you could, if you would be
23 a juror in this case, make up your mind based
24 solely, I mean based only, on what you hear in
25 court while court is in session?

0178

JUROR QUALIFICATION

1 JUROR: Yes, ma'am.

2 THE COURT: Unaffected by what you have read?

3 JUROR: Correct.

4 THE COURT: Very well, stay with us sir.

5 THE BAILIFF: Juror 50, Your Honor.

6 THE COURT: Hi. Yes, tell me what you know.

7 JUROR: I own a fairly large flower shop in

8 town, and we're -- often we are privy to what

9 friends and families' opinions are. Now, I

10 don't -- it's been so long ago and we deal with

11 the funeral homes everyday, so I don't really

12 remember anything. But I wanted to put it out

13 there that they often tell us stuff.

14 THE COURT: Exactly. And do you remember any

15 stuff --

16 JUROR: No.

17 THE COURT: -- that you were told?

18 JUROR: I don't. I just remember it being

19 that the community, the outpouring of support.

20 THE COURT: Gotcha.

21 JUROR: I mean, we deal with it everyday, but

22 it needed to be out there.

23 THE COURT: That's right. Exactly. I need

24 to know that, and so I'm grateful that you're

25 honoring my request. You own a flower shop and

0179

JUROR QUALIFICATION

1 it's part of your business -- you know that as
2 being part of your business. All right. You
3 remember it because of that. And that back during
4 the time of these events, did you form any
5 opinions about these matters?

6 JUROR: No.

7 THE COURT: Okay.

8 JUROR: I just sold flowers. I mean,
9 honestly, that's what I do.

10 THE COURT: I understand. I absolutely
11 understand. And if you were to be selected to
12 serve on this jury, do you believe that you could
13 make up your mind based solely on what you hear in
14 court while court is in session?

15 JUROR: I could, but I do have an opinion
16 that I need to put out there. I do not have a
17 high opinion of Dr. Jansen. I've been going to
18 the Naval Hospital for many years, and I do not
19 have a high opinion of him.

20 THE COURT: Okay. All right. And is that
21 the doctor that I mentioned?

22 JUROR: Yes.

23 THE COURT: Very well. Thank you for sharing
24 that with me. Given that, given that opinion,
25 what I'm going to do, I'm going to excuse you now.

0180

JUROR QUALIFICATION

1 I want you to hear how grateful I am for your
2 candor. I mean, I don't know anybody. I just got
3 here. So I really do rely and I've also been so
4 grateful for juror's representations, so I
5 appreciate that. I would ask you to do this for
6 me, though, is not to mention your opinion of him
7 to anyone as you exit..

8 JUROR: Thank you, I will not.

9 THE COURT: And have a wonderful day.

10 JUROR: Thank you.

11 THE BAILIFF: Juror 367, Your Honor.

12 THE COURT: Okay. Hi. And I wasn't paying
13 attention to --

14 THE CLERK: 367.

15 THE COURT: 367, yes, ma'am.

16 I just need enough volume for my court
17 reporter, and I would like for the jury panel not
18 to be able to hear you.

19 JUROR: Okay. I did follow the story from
20 the beginning, and yesterday I opened up the paper
21 and there it was. So I'm like, yep, yes, that's
22 where I'm going to.

23 THE COURT: Okay, gotcha. And have you
24 formed any opinions? Did you form any opinions?

25 JUROR: Yes, I actually have.

0181

JUROR QUALIFICATION

1 THE COURT: Okay. Very well. And do you
2 believe that you could completely do away with
3 those opinions?

4 JUROR: No.

5 THE COURT: No?

6 JUROR: Nope.

7 THE COURT: All right. I'm going to ask for
8 you to sit this one out for me. And I'm going
9 to -- have you discussed your opinions with any of
10 your fellow jurors?

11 JUROR: No.

12 THE COURT: Have you discussed with them
13 about this matter at all?

14 JUROR: I just mentioned to one of them that
15 I thought that this was the case.

16 THE COURT: But other than saying, I think
17 this is the case, did you say anything beyond
18 that?

19 JUROR: No.

20 THE COURT: No? Okay. Not -- nothing like,
21 and, boy, I followed that and --

22 JUROR: No.

23 THE COURT: No other comments?

24 JUROR: No, I just said I saw it in the paper
25 yesterday and figured that's what this was about.

0182

JUROR QUALIFICATION

1 THE COURT: Gotcha. And nothing beyond that?

2 JUROR: No.

3 THE COURT: Very well. Thank you so much.

4 THE BAILIFF: Juror 26, Your Honor.

5 THE COURT: All right. Hi. Good morning. I
6 jut need enough volume for my court reporter to
7 hear you and not the jury panel.

8 JUROR: I just wanted to let you know that I
9 did read about it in the paper, but I was not
10 aware of any lawsuit.

11 THE COURT: Okay.

12 JUROR: My husband is a retired firefighter,
13 so it was discussed but more in terms of the fact
14 that the gentleman stole the fire truck, not in
15 any other way.

16 THE COURT: I understand. When you read the
17 article, was it at the time of these events?

18 JUROR: Uh-huh.

19 THE COURT: I gotcha. So back in 2012 you
20 read article or articles?

21 THE WITNESS: Correct.

22 THE COURT: Did you form any opinions about
23 anything back in 2012?

24 JUROR: Well, we discussed the fact that this
25 gentleman stole a fire truck. So, yeah, I had an

0183

JUROR QUALIFICATION

1 opinion about that.

2 THE COURT: Okay. And what was the opinion?

3 JUROR: That he shouldn't have done it.

4 THE COURT: Shouldn't have stole a fire
5 truck?

6 JUROR: Yeah.

7 THE COURT: Gotcha. All right. Anything
8 else?

9 JUROR: No, that's it.

10 THE COURT: Very well. Now, have you read
11 anything about this particular matter since the
12 time of these events?

13 JUROR: I don't think so.

14 THE COURT: Okay.

15 JUROR: But I just -- I did remember it when
16 you brought it up, and felt I needed to let you
17 know.

18 THE COURT: Sure. And do you believe that
19 you can set aside -- well, let me begin by saying
20 this. When I just read you the statement of the
21 case -- and I'm going to refer back to it for my
22 own purposes. If you will recall, in the
23 statement of the facts I said that Mr. Hunt then
24 stole a fire truck. Stole means -- we'll all
25 agree that stealing is not a good thing?

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JUROR QUALIFICATION

1 JUROR: Correct.

2 THE COURT: So the fact that you had an
3 opinion that a person had stolen a fire truck and
4 that was not a good thing to steal a fire truck.
5 That does not -- that in and of itself, that
6 opinion, does not concern me.

7 JUROR: Okay.

8 THE COURT: My question is whether or not you
9 have any opinions beyond that?

10 JUROR: No.

11 THE COURT: Okay. All right. And so do you
12 believe that you could listen to the evidence in
13 this courtroom and make up your mind based solely
14 on what you hear in court while court is in
15 session?

16 JUROR: Yes.

17 THE COURT: Very well. And do you believe
18 that you can -- I don't -- I simply have no
19 information about whether or not there will be any
20 particular unique information about fire trucks as
21 opposed to other kinds of vehicles. But if there
22 was, I will give the jurors an instruction not to
23 discuss this matter with anyone.

24 JUROR: Right.

25 THE COURT: Do you believe if you had a

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JUROR QUALIFICATION

1 question about a fire truck, that you could
2 refrain from asking your firefighting husband that
3 question?

4 JUROR: Yes.

5 THE COURT: Thank you so much. Please stay
6 with us.

7 JUROR: Okay. Thank you.

8 THE COURT: Ladies and gentlemen, can you
9 hear me if I stay here? Even those on the back
10 row? If my voice drops, somebody just raise your
11 hand and let me know. Very well.

12 Ladies and gentlemen, please allow me to
13 introduce you to Rebecca Delaney. If you'd please
14 just stand and face our jury panel. Thank you.
15 This is Rebecca Delaney. And turn -- and
16 Ms. Delaney, the reason that I ask it is so much
17 easier to put a name with a face than just the
18 name. And you may be seated, and thank you.

19 Ladies and gentlemen, are you related by
20 blood or marriage or acquainted with Rebecca
21 Delaney? If so, please stand at this time.

22 (No response.)

23 And I find no one standing.

24 Ladies and gentlemen, please allow me to
25 introduce you to counsel, lawyers, the lawyers who

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JUROR QUALIFICATION

1 are representing Ms. Delaney. I will begin with
2 Mr. David Hoyle and he'll introduce the members of
3 his -- the lawyers who are present with him and
4 their firms. Thank you Mr. Hoyle.

5 MR. HOYLE: Good afternoon. I'm David Hoyle.
6 I'm an attorney with the Motley Rice firm in Mount
7 Pleasant, South Carolina. I'm joined at counsel
8 table by Crystal Castleberry with the Castleberry
9 Law Firm from Morgantown, West Virginia. She
10 referred this case to Motley Rice. She also has
11 an office and residence on Hilton Head and is a
12 licensed member of the South Carolina Bar. I'm
13 joined by my colleague, William Swett and Temitope
14 Leyimu of Motley Rice. And and we're assisted
15 here at the table by my wonderful paralegal,
16 Jeannie Staley (phonetic). And our pathology
17 consultant John Mills.

18 THE COURT: Thank you so very much.

19 MR. HOYLE: Thank you, Your Honor.

20 THE COURT: Ladies and gentlemen, are you
21 related by blood or marriage or acquainted or have
22 you or any member of your immediate family, to
23 your knowledge, ever been represented by these
24 lawyers or their firms? If so, please stand at
25 this time.

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JUROR QUALIFICATION

1 Yes, sir. Tell me your number.

2 JUROR: 178.

3 THE COURT: Tell me who you know.

4 JUROR: Motley Rice.

5 THE COURT: Come on forward. And your number
6 again?

7 JUROR: 178.

8 THE COURT: I just need enough volume for my
9 court reporter, and not the jury panel.

10 JUROR: Oh, I'm sorry.

11 THE COURT: That's not a problem.

12 JUROR: I had an asbestos-related issue from
13 work and Motley Rice is representing me in a case.

14 THE COURT: All right. How long ago?

15 JUROR: They're currently. Still are. This
16 has been going on two or three years.

17 THE COURT: Gotcha. I'm going to ask you to
18 sit this one out. I don't think it's fair to put
19 you in that position, I'm not going to do that.
20 Thank you for all of your patience today. I
21 really do appreciate it.

22 JUROR: All right. No problem.

23 THE COURT: And have a good weekend. Thank
24 you, sir.

25 He is excused.

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JUROR QUALIFICATION

1 Counsel, let me see you just a second?

2 (Off-the-record discussion held.)

3 THE COURT: Now, ladies and gentlemen, please
4 allow me to introduce you to Mr. Mike McCabe. And
5 this is Mr. McCabe, he will stand and face our
6 jury panel. He is here on behalf of CasePro Inc.
7 Thank you, Mr. McCabe, you may be seated.

8 Ladies and gentlemen, first of all,
9 individually, are you related by blood or marriage
10 or acquainted with Mr. McCabe? If so, please
11 stand at this time.

12 (No response.)

13 And I find no one standing.

14 Ladies and gentlemen, have you or any member
15 of your immediate family, to your knowledge, now
16 work for or ever in the past have worked for
17 CasePro Inc.? If so, please stand at this time.

18 (No response.)

19 And I find no one standing.

20 Ladies and gentlemen, have you or any member
21 of your immediate family ever done any kind of
22 business or have any sort of business or other
23 relationship with CasePro Inc.? If so, please
24 stand at this time.

25 (No response.)

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JUROR QUALIFICATION

1 And I find no one standing. Very well.

2 Now, ladies and gentlemen, in just a moment I
3 am going to be reading to you a list of potential
4 witnesses. My question as to each and every one
5 of these witnesses is, are you related by blood or
6 marriage or acquainted with any of these
7 individuals. And I don't want anybody to be shy.
8 If you need me to go back through the list, I'm
9 happy to do that.

10 And if these folks, if you happen to be in
11 the courtroom, I'm going to ask you to please
12 stand when your name is called, because it is so
13 much easier to put a name with the face than just
14 the name alone. So I would like our jurors to
15 have the benefit of having -- being able to see
16 and put the name with the face.

17 All right. Angelina Brannon. Tracie
18 Brasswell. Donovan Delaney. Jennifer Earl.
19 Billy Joe Eckart. Beverly Hendelman. Anthony
20 Lupinetti. Arthur Manning. William Marck. Craig
21 Martin. Deb -- oh, is it Moot? I know that I've
22 done that miserably and I apologize. Meaut. Deb
23 Meaut. Nicholas Merced. Chris Miller. Karen
24 Pope. San.-- or Saundra Smith. Ricardo Williams.
25 Edward Allen. Sammy Negron. Erik Oberg -- oh,

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JUROR QUALIFICATION

1 very well. I'm old, I'm going to go through the
2 whole list. I'm afraid I'll get confused
3 otherwise. J.L. Perry. Perry Woodside.

4 Are you related by blood or marriage or
5 acquainted with any of those individuals?

6 Yes, ma'am, tell me who you know.

7 JUROR: Sammy Negron was with the fire
8 department when this happened.

9 THE COURT: Now, here's what -- here's what I
10 want you to let me do. I want you to keep your
11 answers very short and just answer what I'm
12 asking. I have a reason for doing that.

13 JUROR: Okay.

14 THE COURT: Very well. Now, do you visit in
15 each other's homes?

16 JUROR: No.

17 THE COURT: All right. Would you describe
18 your relationship as one that is personal or
19 professional?

20 JUROR: Professional.

21 THE COURT: All right. And do you believe
22 that your relationship, your professional
23 relationship, with the gentleman might or could in
24 any regard, in any regard, interfere with your
25 ability to be completely fair and impartial both

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JUROR QUALIFICATION

1 to the Plaintiff and to the Defendant? Yes or no?

2 JUROR: No.

3 THE COURT: Do you believe that you can set
4 that relationship completely aside and make up
5 your mind based solely on what you hear in court
6 while court is in session?

7 JUROR: I do.

8 THE COURT: And be unaffected by that
9 relationship?

10 JUROR: Right.

11 THE COURT: Thank you. Please be seated.

12 Did I get your number?

13 JUROR: Number 9.

14 THE COURT: Number 9?

15 THE BAILIFF: One more standing, Your Honor.

16 THE COURT: I knew y'all -- anybody -- I've
17 been so rude to y'all over there. Gosh, I mean,
18 y'all can't nuzzle up over here a little bit?
19 Y'all come over here. My jurors, come on over
20 here. If you're on the jury come nuzzle up a
21 little bit. I feel so rude. Wonderful.

22 Tell me who you know, sir. Your number?

23 JUROR: My number in 336.

24 THE COURT: 336. Tell me who you know.

25 JUROR: I know Deb Mayo. I work for her

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JUROR QUALIFICATION

1 professionally, and also Sandra Smith, related by
2 marriage.

3 THE COURT: All right. That was very good.
4 All right. And come on up here for a minute and
5 let me talk to you.

6 THE BAILIFF: Juror 336, Your Honor.

7 THE COURT: All right. Now --

8 JUROR: Good morning.

9 THE COURT: Good morning. Now, Sandra --

10 JUROR: Sandra Smith.

11 THE COURT: -- is your?

12 JUROR: She's my wife's aunt.

13 THE COURT: She is your wife's aunt?

14 JUROR: Yes.

15 THE COURT: Do y'all visit in each other's
16 homes?

17 JUROR: I have. Not -- I don't think but,
18 probably in the past five years, two or three
19 times.

20 THE COURT: Gotcha. And you said you're
21 employed?

22 JUROR: Yeah, Deb Mayo, I'm a contracting
23 officer at the Facility of Engineering and
24 Acquisition on Parris Island. The hospital is one
25 of my clients. She's one of my contracting

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JUROR QUALIFICATION

1 officer representatives, so she's a core for me.

2 THE COURT: Gotcha. Gotcha. And so you deal
3 with her in your business?

4 JUROR: Yes. She -- she's manager of the
5 janitorial contract with me, so I talk with her,
6 deal with problems and issues.

7 THE COURT: Gotcha.

8 JUROR: And she reports to me for any issues
9 that's going on with the contract.

10 THE COURT: Gotcha. And you're a contractor?

11 JUROR: No, I am a contracting officer.

12 THE COURT: You're a contracting -- tell me
13 what that means. Educate me.

14 JUROR: I work with the federal government.
15 I create requests for proposal. I negotiate. I
16 actually authorize federal government in
17 contractual relationships.

18 THE COURT: Gotcha.

19 JUROR: So I -- and I hire the contractor
20 that performs the service.

21 THE COURT: Gotcha. All right. Now, let me
22 address, first of all, your wife's aunt.

23 JUROR: Uh-huh. (Indicating affirmatively.)

24 THE COURT: Do you believe that you could
25 assess her testimony as you would any other

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JUROR QUALIFICATION

1 witness, or do you think by virtue of the fact she
2 is a family member by marriage that that would
3 have an effect on your ability to assess her
4 testimony?

5 JUROR: I believe that I could assess her
6 testimony. But I believe in all fairness to you,
7 all parties involved, it may be a conflict to --

8 THE COURT: In other words, you might be
9 concerned you might see her at Thanksgiving and
10 she might say --

11 JUROR: I'm not concerned about her. I'm
12 more concerned about a fair trial and the
13 perception of a fair trial.

14 THE COURT: Exactly. And do you think that
15 that also holds true for the person whose name I
16 cannot pronounce?

17 JUROR: Deb Mayo?

18 THE COURT: Yeah.

19 JUROR: Not as much. I think this is a small
20 community, and you tend to bump into people from
21 time to time. But I do have an ongoing and
22 current working relationship with her. And,
23 again, it could be perceived as a conflict.

24 THE COURT: Okay. Very well. And you
25 believe that the someone reasonably, on the

JUROR QUALIFICATION

1 outside looking in, perhaps, could perceive that
2 there would be --

3 JUROR: Right.

4 THE COURT: -- and you have concerns about
5 that?

6 JUROR: I do. I think that anyone would.

7 THE COURT: Okay.

8 JUROR: I don't have any concern about
9 myself, but just perception.

10 THE COURT: Okay. All right. I'm more
11 interested in the reality than I am in perception.
12 How about that?

13 JUROR: The reality is I call it as I see it.
14 I am a fair person, you know, it is what it is.

15 THE COURT: Very well.

16 JUROR: I don't have any concern about my
17 ability.

18 THE COURT: And let me ask this question.
19 Could Officer Mayo have any impact on you
20 financially?

21 JUROR: No.

22 THE COURT: All right. Very well. I'm going
23 to ask you to stay with us.

24 JUROR: Okay.

25 THE COURT: Very well. Thank you, sir.

JUROR QUALIFICATION

1 All right. Anyone else from that list?

2 (No response.)

3 All right. Ladies and gentlemen, my question
4 as to the following individuals is this: Are you
5 related by blood or marriage or acquainted with or
6 have you or any member of your immediate family,
7 to your knowledge, ever been treated by the
8 following individuals. Terrence Baker, MD.
9 Michael Caplan, MD. Nicole Gates, RN. Beverly
10 Hendelman, MD. Christian Jansen, MD. Susan
11 Knight, Ph.D. Royce Malphrus, Ph.D. Janice
12 McDonald, RN. Joseph McDonald, RN. Scott Moore,
13 MD. Chris Murphy, MD. Erik Oberg, MD. Sandra
14 Smith, RN. Dr. Charles Reamy. L. Randolph Waid.
15 Dr. Scott Moore.

16 Related by blood or marriage, acquainted
17 with, or have you or any member of your immediate
18 family, to your knowledge, ever been treated by
19 any of those individuals? If so, please stand.

20 Come on up, please, sir.

21 THE BAILIFF: Juror 398, Your Honor.

22 THE COURT: Thank you. Hello. Which health
23 care professional?

24 JUROR: Royce Malphrus.

25 THE COURT: Okay. You or a member of your

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JUROR QUALIFICATION

1 family?

2 JUROR: All of us, yes.

3 THE COURT: Okay. And now or in the past?

4 JUROR: In the past.

5 THE COURT: How long in the past?

6 JUROR: It's been about four years.

7 THE COURT: As a result of that professional
8 involvement --

9 JUROR: Yes.

10 THE COURT: -- do you believe that that
11 professional involvement might or could in any
12 respect interfere with your ability to be
13 completely fair and impartial both to the
14 Plaintiff and the Defendant? And it has to be yes
15 or no.

16 JUROR: No.

17 THE COURT: Do you believe that you can set
18 that relationship completely aside and make up
19 your mind based solely on what you hear in court
20 while court is in session?

21 JUROR: Yes.

22 THE COURT: Finally, do you believe that that
23 relationship could impact -- would impact your
24 ability to assess the believability of that
25 individual's testimony as you would any other

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JUROR QUALIFICATION

1 persons?

2 JUROR: It would have no effect on me.

3 THE COURT: Thank you so much. Please stay
4 with us.

5 Yes, sir.

6 All right. I think y'all before you leave
7 me --

8 (Off-the-record discussion held.)

9 THE COURT: Okay. Three additional folks,
10 please.

11 Ladies and gentlemen, are you related by
12 blood or marriage or acquainted with Kelly
13 Franklin, Lattaneeshia Roberts, Jonas Armstrong?
14 Related by blood or marriage or acquainted with
15 Kelly Franklin, Lattaneeshia Roberts or Jonas
16 Armstrong? If so, please stand at this time.

17 (No response.)

18 And I find no one standing.

19 Ladies and gentlemen, let me share with you
20 that I would now go into asking questions of you,
21 and this is going to take us another hour.
22 Everybody's going to be famished by then. So it
23 is appropriate that we take a break and let you
24 all get some lunch just because -- well, if I had
25 known we were going to go this long I would have

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JUROR QUALIFICATION

1 just baked something. I would have. I would have
2 bought a chicken box or something. If we'd have
3 had brought lunch right here, plate, ice tea,
4 bread, chicken box, right here. But in that I did
5 not realize that I needed to bring a chicken box,
6 I owe everybody an apology. But you are saved
7 from indigestion because I'm not a good cook. So
8 there you have it.

9 Ladies and gentlemen, we're going to take a
10 little bit of time. We will reconvene -- our
11 esteemed Clerk of Court concurs that you all can
12 get out, get something to eat and come back and be
13 back by 2:15. Now, let me tell you something.
14 You cannot talk about this case. We're in the
15 middle of jury selection, you know barely
16 anything, just what I've read to you and I have
17 introduced you to some folks. But you have a
18 little tiny bit of information, you may not
19 discuss this matter or allow anyone to discuss it
20 with you.

21 Does anyone have any questions about that? I
22 had a little issue when I was here in Beaufort
23 last time. Do not talk about this matter or let
24 anybody talk to you about it, please. In fact, if
25 anyone wants to talk to you about this case, I

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JUROR QUALIFICATION

1 want you to get their name. If you cannot get
2 their name, a description, and report it to me
3 upon return, please. Because that would not be
4 appropriate.

5 The other thing that I need to tell you is if
6 you happen to see these lawyers out and about and
7 they do like this (demonstrating) and they don't
8 even smile or say hello, that is because they're
9 scared of me. Because they know what will happen
10 to them if they did that. And so please
11 understand that they're not being rude, they just
12 know that if they happen to come just within your
13 vicinity, they know that they're to be very
14 obvious that they're not interacting with you.
15 And it makes -- and lawyers are -- I know lawyers
16 are very gregarious by their very nature.

17 Hi. Hold on, it's not audience participation
18 yet, but it will in a minute.

19 But in any event, please be mindful of that.
20 Because I don't need my jury pool tampered with
21 and I don't need -- and so I'm weighing letting
22 you go before the jury's selected as opposed to
23 having people keel over from low blood sugar, and
24 I've decided you all need to get something to eat
25 because we are going to be awhile longer and --

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JUROR QUALIFICATION

1 but you must be mindful.

2 Do not read anything. Don't listen to
3 anything about this matter. Do not look at
4 anything on the Internet. Do not listen to
5 anything on the radio or the television. You
6 must -- those of you that are selected to serve on
7 this jury must receive all of the information from
8 which you will make up your minds here in court
9 while court is in session. If you were to go to
10 your phone looking for information or listen to
11 anything, that would be contempt of court, and I
12 take that very seriously.

13 I had a terrible problem last time I was here
14 in Beaufort. I really have a huge now sore spot
15 in my being about that, and I'm real serious about
16 that. So do not talk to anybody about this
17 matter. Do not listen to anything about this
18 matter.

19 But do have a lovely lunch and I will see you
20 at 2:15. Jury panel dismissed.

21 (Lunch recess.)
22
23
24
25

JUROR QUALIFICATION

1

2 CERTIFICATE

3

4 STATE OF SOUTH CAROLINA:

5 COUNTY OF BEAUFORT:

6 I, MONA L. MANLEY, Court Reporter, certify that I was
7 authorized to and did stenographically report the foregoing
8 proceedings and that the transcript is a true and complete record
9 of my stenographic notes.

10 DATED this 10th day of March, 2016.

11

/s/ Mona L. Manley

12

MONA L. MANLEY
Official 14th Circuit Court Reporter
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1 IN THE COURT OF COMMON PLEAS IN THE
2 FOURTEENTH JUDICIAL CIRCUIT, IN
3 AND FOR BEAUFORT COUNTY, SOUTH CAROLINA
4
5 Rebecca Delaney, as Personal Representative of the Estate of
6 Justin Miller,
7 Plaintiff,
8 vs. CASE NO. 2012-CP-07-03782
9 CasePro, Inc,
10 Defendants.
11 -----/

12 JURY QUALIFICATION

13 VOLUME 2

14 * * *

15 TRIAL BEFORE: Honorable Diane Goodstein
16 DATE: October 6, 2015
17 TIME: Commenced at 9:30 a.m.
18 Concluded at 5:30 p.m.
19 PLACE: Beaufort County Courthouse
20 Beaufort, South Carolina
21 REPORTED BY: Mona Whiddon, Stenographer
22
23
24
25

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1 APPEARANCES:

2 REPRESENTING THE DEFENDANT, CasePro:

3 Doug MacKelcan, III, Esquire
4 Dennis Gary Lovell, Jr, Esquire
5 Alendra Marie Saber, Esquire
6 Carlock Copeland & Stair, LLP
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8 Charleston, SC 29401

9 REPRESENTING THE PLAINTIFF(S):

10 Thomas David Hoyle, Esquire
11 Temitope Olamide Leyimu, Esquire
12 William Christopher Swett, Esquire
13 Motley Rice LLC
14 20 Bridgeside Blvd.
15 Mt. Pelasant, SC 29464

16 and

17 Crystal Lynn Castleberry, Esquire
18 Castleberry Law Offices
19 3712 Swallowtail Drive
20 Morgantown, WV 26508

21

22

23

24

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0206

JURY QUALIFICATION

1 PROCEEDINGS

2

3 THE COURT: Thank you so much, everyone.
4 And please be seated. I hope that everyone had
5 a nice lunch. All right. Now. Juror 68
6 thought -- Juror 68 thought that Juror 68 knew
7 someone. Hi. Tell me who you think that you
8 know.

9 JUROR: Kelly Franklin.

10 THE COURT: Francis?

11 JUROR: Franklin.

12 THE COURT: Is the relationship one that is
13 more personal or professional?

14 JUROR: Personal.

15 THE COURT: Is it an acquaintance-ship, or
16 is it more of a friendship?

17 JUROR: Friendship and acquaintance.

18 THE COURT: Okay. Do you visit in each
19 other's homes?

20 JUROR: Not yet. We have children who are
21 in the same class and then in the Boy Scouts
22 together.

23 THE COURT: Got you. And so, you have
24 become friends by virtue of your children being
25 associated?

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JURY QUALIFICATION

1 JUROR: Yes, that is how.

2 THE COURT: Very well. And as a result of
3 that relationship, do you believe that that
4 relationship might or could in any respect
5 interfere with your ability to be completely
6 fair and impartial both to the Plaintiff and
7 Defendant?

8 JUROR: No, I could be impartial.

9 THE COURT: Do you believe that your
10 relationship with Ms. Franklin could cause you
11 to view the credibility or the believability,
12 should she be a witness, differently because of
13 that relationship? Or do you believe that you
14 could set that relationship aside and analyze
15 and evaluate her testimony as you would any
16 other witness?

17 JUROR: (Nods in the affirmative).

18 THE COURT: That was really a long
19 question, wasn't it? It probably didn't make
20 sense. In other words, can you set your
21 relationship aside as you assess her
22 credibility?

23 JUROR: Yes.

24 THE COURT: Okay. Very well. Please stay
25 with us. Anyone else? Just let me say to

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JURY QUALIFICATION

1 everyone, that is absolutely not unusual as
2 names percolate. You know, maybe, wait a
3 minute, that is -- who that is? That happens
4 quite frequently.

5 All right. Now, I have questions to ask of
6 you.

7 THE COURT: All right. Do you now or have
8 you ever, or do you have a member of your
9 immediate family who has served or now serves as
10 a member of the United States military? If so,
11 please stand. That is a great question to ask
12 in Beaufort.

13 JUROR: Half the house.

14 THE COURT: More than that, for sure. For
15 sure.

16 All right. What I'm going to do is I'm just
17 going to ask for numbers, your juror number, and
18 if you would call that out for me. And remain
19 standing if you would. We are going to start
20 here. Yes, sir.

21 JUROR: 373.

22 JUROR: 275.

23 JUROR: 232.

24 JUROR: 139.

25 JUROR: 382.

JURY QUALIFICATION

1 THE COURT: Now I can't even see.

2 JUROR: Fourteen, 9, 43, 110, 153, 98, 94,
3 208, 65, 363, 31, 55, 298, 34, 398.

4 THE CLERK: Excuse me, y'all are going way
5 too fast. Are you keeping up with this? Let's
6 go back to the 55.

7 JUROR: 298.

8 JUROR: 34.

9 JUROR: 398.

10 JUROR: 24.

11 JUROR: 59.

12 JUROR: 285.

13 JUROR: 228.

14 JUROR: 170.

15 JUROR: 26.

16 JUROR: 30.

17 JUROR: 258.

18 JUROR: 306.

19 JUROR: 317.

20 JUROR: 365.

21 JUROR: 274.

22 JUROR: 30.

23 JUROR: 338.

24 JUROR: 395.

25 JUROR: 17.

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JURY QUALIFICATION

1 JUROR: 363.

2 JUROR: 199.

3 JUROR: 280.

4 JUROR: 68.

5 JUROR: 23.

6 JUROR: 324.

7 JUROR: 141.

8 JUROR: 69.

9 JUROR: 101.

10 JUROR: 348.

11 THE COURT: All right. Now, out of those
12 folks that just gave me your numbers, anyone of
13 you or family members who work or have worked
14 while in the military in a health care and/or
15 medical specialty?

16 JUROR: 275.

17 JUROR: 9.

18 JUROR: 208.

19 THE COURT: Thank you so much.

20 THE COURT: All right. As a part of your
21 military service, did you or any members of your
22 immediate family, if you know, work alongside
23 meaning just what alongside means, along with,
24 any government contractors? If so, please
25 stand.

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JURY QUALIFICATION

1 JUROR: 275.
2 JUROR: 139.
3 JUROR: 285.
4 JUROR: 363.
5 JUROR: 153.
6 JUROR: 330.
7 JUROR: 101.
8 THE COURT: Thank you. Yes, sir. Yes.
9 JUROR: Can you repeat the question?
10 THE COURT: I think that you should give
11 your number. I know so much about you now, I
12 think you should give your number.
13 JUROR: 363.
14 THE COURT: Perfect.
15 THE COURT: I'm going to ask these two
16 questions together. Please don't respond to
17 either until you have heard both. Have you ever
18 received veterans benefits from the United
19 States government? That is the first question.
20 And the second question is: Have you ever
21 participated in the Beaufort County veterans day
22 parade? Those are the two questions.
23 Now, with regards to the first question, I'm
24 going to ask it again. Those that need to
25 respond, I'll ask you to stand. Have you ever

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JURY QUALIFICATION

1 received veterans benefits from a United States
2 government? And your number?

3 JUROR: 275.

4 JUROR: 232.

5 JUROR: 336.

6 JUROR: 34.

7 JUROR: 280.

8 JUROR: 274.

9 JUROR: 232.

10 JUROR: Me personally or a spouse?

11 THE COURT: Yes, you. Okay, your spouse.

12 JUROR: 285.

13 THE COURT: Okay. And have you ever
14 participated in the Beaufort County veterans day
15 parade? If so, please stand.

16 THE COURT: And your number?

17 JUROR: 199.

18 THE COURT: Thank you.

19 JUROR: Does that include clean up
20 afterwards?

21 THE COURT: Yes.

22 JUROR: Okay, all of them.

23 THE COURT: Do you now or have you in the
24 past ever received health care services at the
25 Naval Hospital in Beaufort? You are just so

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JURY QUALIFICATION

1 popular.

2 JUROR: 275.

3 THE COURT: Ever in the ER room, while you

4 are up?

5 JUROR: 275.

6 THE COURT: Thank you so much. Yes, ma'am?

7 JUROR: 9.

8 THE COURT: In the ER room ever?

9 JUROR: Yes.

10 JUROR: 153.

11 THE COURT: And to include the emergency

12 room ever?

13 JUROR: Yes, I have.

14 THE COURT: Thank you.

15 JUROR: 330.

16 THE COURT: Emergency room?

17 JUROR: No, ma'am.

18 THE COURT: Okay.

19 JUROR: 139.

20 THE COURT: Emergency room?

21 JUROR: No.

22 THE COURT: All right.

23 JUROR: 336.

24 THE COURT: Emergency room?

25 JUROR: No.

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JURY QUALIFICATION

1 JUROR: 34.

2 THE COURT: Emergency room, no?

3 JUROR: 298.

4 THE COURT: Emergency room?

5 JUROR: I don't think so.

6 THE COURT: Okay.

7 JUROR: 268.

8 THE COURT: Emergency room?

9 JUROR: I don't think so. It's possible,
10 but it's been a long time.

11 THE COURT: All right. Any person related
12 to you by blood or marriage ever received health
13 care services at the Naval Hospital Beaufort?

14 JUROR: What was the question again?

15 THE COURT: Same one, someone related to
16 you by blood or marriage.

17 JUROR: 275.

18 THE COURT: And the ER room?

19 JUROR: Yes.

20 THE COURT: Okay.

21 JUROR: 9. Yes, ER.

22 THE COURT: Thank you. Yes, sir? I can't
23 tell the rows, I am sorry.

24 JUROR: 330.

25 THE COURT: And the ER room?

JURY QUALIFICATION

1 JUROR: No, ma'am.

2 THE COURT: Thank you.

3 JUROR: 141.

4 THE COURT: ER room?

5 JUROR: No.

6 THE COURT: Thank you.

7 JUROR: 101. Yes.

8 THE COURT: Thank you.

9 JUROR: 232, no ER.

10 JUROR: 139, no ER.

11 JUROR: 336, no ER.

12 JUROR: 382, no ER.

13 JUROR: 232, no ER.

14 JUROR: 34, no.

15 JUROR: 398, no.

16 JUROR: 368, I don't think so.

17 JUROR: 285, no.

18 THE COURT: Have you ever worked as either

19 a contractor for the United States military or

20 as an employee of a United States military

21 contractor? If so, please stand.

22 JUROR: 343.

23 THE COURT: Okay.

24 JUROR: 330.

25 JUROR: 139.

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JURY QUALIFICATION

1 JUROR: 382.

2 JUROR: 363.

3 JUROR: 280.

4 THE COURT: Thank you. Are you related by
5 blood or marriage to anyone who has ever worked
6 within the four walls of the Naval Hospital
7 Beaufort? Or have you or any -- you or anyone
8 that you are related to by blood or marriage
9 ever worked within the four walls of the Naval
10 Hospital Beaufort?

11 JUROR: 101.

12 THE COURT: Was it you or a member of your
13 family?

14 JUROR: My spouse.

15 THE COURT: Currently or in the past?

16 JUROR: He's deceased so --

17 THE COURT: Sorry. Thank you.

18 JUROR: 141.

19 THE COURT: You or a member of your family?

20 JUROR: Family.

21 THE COURT: Now or in the past?

22 JUROR: Now.

23 THE COURT: Now. And a member of your
24 family who is?

25 JUROR: My uncle.

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JURY QUALIFICATION

1 THE COURT: Your uncle?

2 JUROR: (Nods in the affirmative).

3 THE COURT: Thank you.

4 JUROR: 336.

5 THE COURT: You or a member of your family?

6 JUROR: Member of my family.

7 THE COURT: And that family member is?

8 JUROR: My mother-in-law in the past.

9 THE COURT: In the past. Perfect. Thank
10 you.

11 Yes, ma'am?

12 JUROR: 268. And my ex-husband. We were
13 stationed at the Naval Hospital.

14 THE COURT: Thank you.

15 THE COURT: All right. Now, ladies and
16 gentlemen, I'm going to ask three questions
17 together. And in the event that you need to
18 respond, I'm going to have you come forward, in
19 the event that you need to answer any one of
20 these.

21 Ladies and gentlemen, there may be issues
22 that arise in this case that involve Autism
23 Spectrum Disorder and/or paranoid schizophrenia.
24 If you believe that you have a sensitivity toward
25 either of those issues such that it would impact

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JURY QUALIFICATION

1 in any respect your ability to be a juror in this
2 case I need you to come forward. And that is
3 paranoid schizophrenia and/or Autism Spectrum
4 Disorder. That is the first question.

5 The second question is: Are you yourself
6 divorced or are you related by blood or marriage
7 to someone whose marriage has ended in divorce and
8 that issue, that experience, is such that if the
9 issue of divorce was to come up in this case that
10 your feeling about divorce may have an impact on
11 your ability to be a juror in this case?

12 I think that is a better question than asking
13 in an American society today are you related by
14 blood or marriage or have you every been divorced,
15 it just seems that that makes more sense.

16 And the final question is: Are you now or
17 have you ever been the parent of minor children
18 and not continuously had physical custody of those
19 children, and as a result of your own experience
20 if that issue was to come up in this case -- what
21 is that issue? The issue of there being custody
22 of minor children, but a parent not having
23 continuous presence of those children, physical
24 custody of those children, that that would -- that
25 is such an issue with you that it could impact

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JURY QUALIFICATION

1 upon your ability to be fair and impartial?

2 Those are the three issues. I'm going to go
3 over them very briefly again. The first one is if
4 the issue of Autism Spectrum Disorder or paranoid
5 schizophrenia came up in this case, do you have a
6 sensitivity to either or both of those issues that
7 would -- could impact your ability to be fair and
8 impartial to the Plaintiff and the Defendant in
9 this case? That is the first one.

10 The second one is: Have you experienced or
11 someone with whom you are related by blood or
12 marriage experienced a divorce such that that
13 issue would impact your ability to be fair and
14 impartial in this case where that issue may come
15 up?

16 And finally: Have you or any member of your
17 immediate family been through a situation where
18 they are a parent of minor children and not had
19 physical continual -- not continually had physical
20 custody of those children and that issue is such
21 that it would impact your ability to be completely
22 fair and impartial to the Plaintiff and Defendant
23 if that issue came up in this case? Does anybody
24 need me to ask any of those again? If so, come
25 forward. Or if you need to respond to any of

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JURY QUALIFICATION

1 those, please come forward.

2 THE BAILIFF: 285.

3 THE COURT: I should know that by now. 285

4 JUROR: My son is six and he has Asberger's
5 Syndrome. So, I would be very impathetic to a
6 parent that has a child with Autism because I am
7 a parent.

8 THE COURT: I understand that. You are
9 concerned that that could have an affect on your
10 ability to separate yourself?

11 JUROR: I think that I see Autism from a
12 different light than the general public. I deal
13 with it in my everyday life. So I would be
14 impartial to a child who could not help himself.

15 THE COURT: I understand.. I'll ask you to
16 sit this one out for me.

17 THE BAILIFF: 139, Your Honor.

18 THE COURT: Okay. Hello.

19 JUROR: Hello, Your Honor. I have got,
20 since this has come up, as a contractor
21 government relationship thing, my daughter was
22 the employer of the D.C. killer in Crystal,
23 (phonetic) okay, the contractor and things like
24 that. that really impacts me. She lost her
25 job. He worked underneath her. She had nothing

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JURY QUALIFICATION

1 to do with it. So, if it's the Navy as a
2 contractor or something like that, I don't think
3 that I could be fair with you on that.

4 THE COURT: I understand. I understand. I
5 don't know the answer to that. I don't know
6 anything about this case. I just got here this
7 morning, but if you go back to that gate that
8 you just walked here from I'll ask these lawyers
9 and see if I can find out.

10 (Off-the-record discussion held.)

11 THE COURT: What he said, he was concerned
12 about the contractor relationship. His daughter
13 was a contractor with the Navy and she hired the
14 D.C. killer and she lost her job over it and
15 suffered consequences as a result of this act
16 because he happened to work for her. She had
17 been involved in his hiring, so he said if
18 there's something involved like that where the
19 contractor is hiring -- I think that it's going
20 to be difficult for me because my daughter has
21 such negative experiences by hiring the D.C.
22 killer.

23 (All counsel nod yes.)

24 UNIDENTIFIED SPEAKER: They are absolutely
25 in this case.

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JURY QUALIFICATION

1 THE COURT: Okay.

2 THE COURT: First of all. Thank you so
3 much for your candor. I can't --

4 JUROR: I didn't want to keep quiet.

5 THE COURT: Absolutely. And you did
6 exactly what I implore people to do, ask people
7 to do, beg people to do. And those issues are
8 spot on, so I'm going to excuse you from the
9 service in this case and ask that you not
10 discuss this matter with fellow jurors. Thank
11 you.

12 THE COURT: 317.

13 JUROR: When it comes to the Autism
14 Spectrum Disorder because my son we believe has
15 -- goes through issues.

16 THE COURT: I got you. So, do you believe
17 that if the issue came up, that that could
18 impact your ability to be fair?

19 JUROR: Absolutely.

20 THE COURT: Absolutely. I'll ask you to
21 sit this one out. And I'll thank you so much
22 for your integrity. Thank you so much.

23 THE COURT: She's out. Okay. Next?

24 THE BAILIFF: 208, Your Honor.

25 THE COURT: Hello again.

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JURY QUALIFICATION

1 JUROR: Again, here I am.

2 THE COURT: I am so happy to keep seeing
3 you.

4 JUROR: The only thing is that I, through
5 my practice, education and training, I have
6 dealt with primarily Autism spectrum but a
7 smattering of paranoid schizophrenia, so I
8 didn't know how this would affect anything but I
9 thought that I would let you know.

10 THE COURT: This is a part of your
11 practice?

12 JUROR: Right.

13 THE COURT: I understand. Given the fact
14 that it's a part of your practice, would you
15 have -- I mean, you can't help but know what you
16 know. I mean, you can't help but knowing what
17 you know, just the mere fact that you have that
18 knowledge, would that make it difficult for you
19 to be fair and impartial to the Plaintiff as
20 well as to the Defendant?

21 JUROR: I don't think so unless I heard
22 something that was blatantly --

23 THE COURT: Yes, well, I understand that if
24 you find to be contra to what your own knowledge
25 and education is, well, I think that that's true

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JURY QUALIFICATION

1 to anyone, but I mean, just because that issue
2 is in it, you don't have a sensitivity to that
3 that you feel is -- oh, you know, I only treat
4 one side or the other, therefore, I would
5 identify only with one side or the other?

6 JUROR: No.

7 THE COURT: That is a concern that I would
8 have. Thank you. Thank you for that
9 information. It was appropriate to share that,
10 by the way. Thank you. She is staying.

11 THE BAILIFF: 142, Your Honor.

12 THE COURT: Hi.

13 JUROR: For the Autism, in our whole family
14 we have two members in our extended family that
15 are on the Autism spectrum. And we support the
16 cause and everything.

17 And then for the divorce, my aunt recently
18 went through a divorce about a month ago where her
19 husband was cheating on her with one of her best
20 friends.

21 THE COURT: I understand. I understand.
22 Do you believe that that could, either one of
23 those, or both together, do you think that that
24 would impact?

25 JUROR: Yes.

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JURY QUALIFICATION

1 THE COURT: I'm asking that you sit this
2 one out.

3 JUROR: Thank you.

4 THE COURT: She's out.

5 Yes, next.

6 THE BAILIFF: 199, Your Honor.

7 THE COURT: Yes.

8 JUROR: The issue of Autism, I do have a
9 cousin that is a higher functioning Autism. And
10 I know several people with Autism as well. My
11 father, I have helped him sit with a child with
12 Autism. Now, as far as being biased, I believe
13 that I could be.

14 THE COURT: You don't believe that that
15 involvement would influence one way or another
16 your ability to be fair and impartial to the
17 Plaintiff and Defendant? You could set those
18 aside and make up your mind based on what you
19 hear in this courtroom?

20 JUROR: Yes.

21 THE COURT: All right. You can stay with
22 us. Yes, sir.

23 THE COURT: Ladies and gentlemen, I have --
24 I'm going to ask you if you know some additional
25 folks. Are you related by blood or marriage or

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JURY QUALIFICATION

1 acquainted with Calvin Dante Hunt or anyone in
2 his family? The names of family members that I
3 have. I had that just in general terms. Are
4 you related by blood or marriage or acquainted
5 with Calvin Dante Hunt or anyone in his family?
6 If so, please stand.

7 (No response.)

8 THE COURT: I find no one standing. Ladies
9 and gentlemen, are you related by blood or
10 marriage or acquainted with, or have you or any
11 member of your immediate family to your
12 knowledge ever been represented by Cory Fleming
13 or any of the attorneys at the Moss, Kuhn,
14 Fleming law firm? Cory Fleming or any of the
15 attorneys at Moss, Kuhn, Fleming law firm? All
16 right, your number sir?

17 JUROR: 382, Moss Kuhn.

18 THE COURT: Who do you know?

19 JUROR: Jim Moss.

20 THE COURT: You know Jim Moss. All right.

21 JUROR: I used to -- I used to be the Orkin
22 Pest Control man there.

23 THE COURT: All right. At the firm. As a
24 result of that past relationship, could that
25 interfere in your ability to be fair and

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JURY QUALIFICATION

1 impartial?

2 JUROR: No, sir.

3 THE COURT: Your number?

4 JUROR: 187.

5 THE COURT: Tell me who you know.

6 JUROR: Mr. Moss.

7 THE COURT: Relationship professional or

8 personal?

9 JUROR: Personal.

10 THE COURT: Do you visit in each other's

11 homes?

12 JUROR: Good friends with his son, or I

13 have been.

14 JUROR: Visit in his home by virtue of your

15 relationship? His son is moved out?

16 JUROR: He is a neighbor.

17 THE COURT: A neighbor, okay. As a result

18 of that relationship do you believe that that

19 might interfere with your ability to be fair and

20 impartial both to the Plaintiff as well as the

21 Defendant?

22 JUROR: No, ma'am.

23 THE COURT: Thank you. Yes?

24 JUROR: 363.

25 THE COURT: Yes, sir, tell me who you know.

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JURY QUALIFICATION

1 JUROR: Mr. Moss.

2 THE COURT: He would be so thrilled. All
3 right. And do you know -- is that more of an
4 acquaintance-ship, professional relationship?

5 JUROR: Professional.

6 THE COURT: Professional relationship. Did
7 he represent you in the past?

8 JUROR: No, he represented somebody against
9 me.

10 THE COURT: Oh. As a result of that
11 relationship would that, could that impact on
12 your ability to be fair and impartial to this
13 Plaintiff in this case?

14 JUROR: It could be.

15 THE COURT: It could?

16 JUROR: Yes.

17 THE COURT: Very well. I'll ask you to sit
18 this one out.

19 JUROR: Okay.

20 JUROR: 23. Cory Fleming, he is my
21 neighbor and we are friends.

22 THE COURT: Do you visit in each other's
23 home?

24 JUROR: No.

25 THE COURT: Can you set that aside and be

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JURY QUALIFICATION

1 fair and impartial to both the Plaintiff and the
2 Defendant?

3 JUROR: Yes.

4 THE COURT: And you are number 9?

5 JUROR: Number 9.

6 THE COURT: Who do you know?

7 JUROR: I just served on a jury where Jim
8 Moss was representing the Defendant.

9 THE COURT: I understand. That is the
10 extent. Would that impact your ability to be
11 fair and impartial to these parties?

12 JUROR: No.

13 THE COURT: Thank you. Please be seated.
14 Stay with us.

15 And are you related by blood or marriage or
16 acquainted with Duffy Stone? Do y'all know who
17 Duffy Stone is? He is your Solicitor in the 14th
18 Circuit. If you are acquainted or related with
19 Duffy Stone, please stand at this time.

20 All right. Is your relationship one
21 professional, personal, associated with business?

22 JUROR: Associated with business. I served
23 under his Solicitor mentor program.

24 THE COURT: Got you. Would that impact
25 your ability to be fair and impartial to these

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JURY QUALIFICATION

1 parties?

2 JUROR: No, ma'am.

3 THE COURT: Thank you, sir.

4 Ladies and gentlemen, this is going to be --
5 I am -- this is going to be a general question,
6 but at the end of -- at the end of the day, the
7 question is: Are you related by blood or marriage
8 or acquainted with individuals who may have
9 responded to the events of February the 24th,
10 2012? And that includes law enforcement officers,
11 first responders, fire department personnel,
12 emergency medical technician, 911 dispatch, law
13 enforcement officers? And I think that that
14 covers the gambit. If so, please stand. Oh, the
15 Coroner's Office. All right.

16 THE COURT: Very well. I need you one at a
17 time, please come forward. All right.

18 THE BAILIFF: Juror 398, Your Honor.

19 THE COURT: Hi. Tell me who you know.

20 JUROR: I know many of the responders, 911
21 dispatch. I am in the emergency services
22 business, so I deal with these people ongoing,
23 on an ongoing basis, what have you. Police,
24 fire, EMS, all of those.

25 THE COURT: Have you had any conversations

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JURY QUALIFICATION

1 with those individuals about this particular
2 incident?

3 JUROR: Yes.

4 THE COURT: Tell me about those.

5 JUROR: It was just basically after the
6 event, what happened, you know, rumors or
7 whatever and discussions about the rare events
8 that took place and the fire truck being
9 involved and other responders and what have you.
10 So, there was just a lot of talk and speculation
11 or innuendo about what took place, why it
12 happened, what happened, things of that nature,
13 just a lot of discussion about the case, you
14 know, pending sometime back.

15 THE COURT: Got you. I think that given --
16 would you say that you have had more than three
17 conversations?

18 JUROR: Yes.

19 THE COURT: More than four?

20 JUROR: Yes.

21 THE COURT: More than ten?

22 JUROR: Yes, quite a bit of discussion.

23 THE COURT: I think in all fairness, I'll
24 ask you to sit this one out. Thank you for
25 being here today. I think that I would be most

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JURY QUALIFICATION

1 appreciative if you would not discuss this
2 matter. He's out.

3 THE BAILIFF: Juror 199, Your Honor.

4 THE COURT: Okay. Hi. Yes, sir.

5 JUROR: I do know several officers. As far
6 as anybody being involved in the case, I haven't
7 had any conversations with anyone.

8 THE COURT: In other words, you don't know
9 if they did or not. In other words, you know
10 several officers and you don't know if they
11 happen to --

12 JUROR: Yes.

13 THE COURT: You haven't had conversations
14 with them?

15 JUROR: No, I'm pretty much a hermit.

16 THE COURT: Stop it.

17 Next.

18 THE BAILIFF: Juror 86, Your Honor.

19 THE COURT: Yes, hi.

20 JUROR: My son is a, fire department here
21 in Beaufort, EMT. And we have discussed this.

22 THE COURT: Oh, okay. And how many times
23 have y'all discussed it?

24 JUROR: Probably four, five.

25 THE COURT: Four times, five times?

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JURY QUALIFICATION

1 JUROR: Uh-huh. (Indicating
2 affirmatively.)

3 THE COURT: How recently?

4 JUROR: A few days ago.

5 THE COURT: A few days ago?

6 JUROR: Uh-huh. (Indicating
7 affirmatively.)

8 THE COURT: What prompted the discussion a
9 few days ago?

10 JUROR: Something on the TV.

11 THE COURT: What was on the TV?

12 JUROR: Something about a jury trial coming
13 up.

14 THE COURT: Got you. Did you have your
15 juror summons at the time?

16 JUROR: No.

17 THE COURT: Okay. And I mean, what did
18 y'all talk about that it was coming up?

19 JUROR: He is a member of the fire
20 department and I worked in an ER for ten years
21 before I moved here ten years ago, so there was
22 some big discussion.

23 THE COURT: Big discussion. And do you
24 have any opinions about this matter?

25 JUROR: Yes.

JURY QUALIFICATION

1 THE COURT: Okay. And do you think that
2 you could put those opinions aside and make up
3 your mind based on what you hear in court while
4 court is in session?

5 JUROR: No, ma'am.

6 THE COURT: Thank you for your candor.

7 JUROR: Sorry.

8 THE COURT: No, no sorry. No, no, ma'am.
9 Thank you is appropriate. Did y'all get a
10 number?

11 THE CLERK: 86.

12 THE BAILIFF: Your Honor, 353, Your Honor.

13 THE COURT: Hi.

14 JUROR: I have an uncle who is a Beaufort
15 County Sheriff. I have a cousin, a firefighter
16 and first responder. And I work in the
17 emergency department at Beaufort Memorial. I
18 haven't discussed it with anyone.

19 THE COURT: You don't know if they have any
20 involvement?

21 JUROR: No.

22 THE COURT: If I instruct you not to have
23 discussions with them?

24 JUROR: Okay.

25 THE COURT: You would have no problem with

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JURY QUALIFICATION

1 that?

2 JUROR: No, ma'am.

3 THE COURT: With all of those experiences
4 in your life, do you believe that those
5 realities, you have these relationships with
6 these people and you worked where you worked,
7 that they together, individually, might impact
8 your ability to be fair and impartial to both
9 the Plaintiff and Defendant?

10 JUROR: No, ma'am.

11 THE COURT: You think that you can set all
12 of that aside and base your decision on what you
13 hear in court while court is in session?

14 JUROR: Yes.

15 THE COURT: Thank you.

16 THE BAILIFF: Juror 9, Your Honor.

17 JUROR: I just work with all of the firemen
18 and law enforcement, and of course, the Public
19 Works cleans up after everything.

20 THE COURT: Exactly. Have you had any
21 conversations with the folks about this event?

22 JUROR: No.

23 THE COURT: All right. And have you -- the
24 fact that you work with these people, the fact
25 that you have, on a daily basis, do you believe

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JURY QUALIFICATION

1 that the fact that you work with them has an
2 impact one way or another on your ability to be
3 completely fair and impartial to both the
4 Plaintiff as well as the Defendant?

5 JUROR: No.

6 THE COURT: Can you set those relationships
7 aside and make up your mind based on what you
8 hear in court?

9 JUROR: Yes.

10 THE COURT: In other words, at the end of
11 the day, do you believe that you would be, as
12 you make a judgment, would it enter into your
13 mind what would so and so do? Or can you put
14 all of that out of your mind?

15 JUROR: No, I don't care what anyone else
16 would do.

17 THE COURT: That is clear in your mind.
18 Okay.

19 THE BAILIFF: 373, Your Honor.

20 JUROR: I have a casual acquaintance with
21 one of the police officers in Port Royal who
22 responded to the situation.

23 THE COURT: You know that because you all
24 have had a conversation about that?

25 JUROR: No, not really.

JURY QUALIFICATION

1 THE COURT: How do you know that he
2 responded?

3 JUROR: I guess that we had a -- he, when
4 he was running to respond he fell and broke his
5 arm. Everybody was kind of aware of it. We go
6 to the same church together.

7 THE COURT: I got you. As a result of his
8 involvement and your relationship with him, do
9 you believe that that would impact your ability
10 to be completely fair and impartial to both the
11 Plaintiff as well as the Defendant in this case?

12 JUROR: No, I don't think that it has any
13 impact.

14 THE COURT: Can you set that relationship
15 aside?

16 JUROR: Yes.

17 THE COURT: And make up your mind based on
18 what you hear in court while court is in
19 session?

20 JUROR: Yes, ma'am.

21 THE COURT: Okay. Hold on, we are getting
22 sort of to the end.

23 (Off-the-record discussion held.).

24 THE COURT: Ladies and gentlemen, thank you
25 for your patience, I have just a few more

JURY QUALIFICATION

1 questions. Ladies and gentlemen, if you haven't
2 already told me, are you related by blood or
3 marriage or acquainted with any police, EMS, 911
4 dispatch, law enforcement officers or any other
5 public servant who responded to any of the motor
6 vehicle accidents which were involved in this
7 incident on February the 24th, 2012? If you
8 haven't already told me I'm going to ask you to
9 please stand and come forward with regards to
10 that question.

11 Anyone need me to ask it again? Nope. Very
12 well.

13 My second question is, or my next question
14 rather: Ladies and gentlemen, do any of you know
15 or are you related by blood or marriage or
16 acquainted with Christopher Miller, Jennifer Earl
17 or Sonny Earl? If so, please stand.

18 (No response.)

19 THE COURT: I find no one standing.

20 THE COURT: Okay. Oh, ladies and
21 gentlemen, did you know Edward Ray? If so,
22 please stand. Did you know Edward Ray?

23 (No response.)

24 THE COURT: And I find no one standing.

25 Two questions that I'm going to ask together.

JURY QUALIFICATION

1 First question is this: Do you or any member of
2 your immediate family possess an RN or
3 registered nurse or MD, medical doctor, license
4 or any other medical license?

5 And the second question is: Have you ever
6 been a Plaintiff or a Defendant in a lawsuit such
7 that that experience might or could impact your
8 ability to be fair and impartial to both this
9 Plaintiff and this Defendant? If you need to
10 respond to either one of those questions, please
11 come forward.

12 THE BAILIFF: Juror 382, Your Honor.

13 THE COURT: All right.

14 JUROR: Good afternoon.

15 THE COURT: Hi again.

16 JUROR: My sister-in-law is an RN.

17 THE COURT: Perfect, thank you. That is
18 wonderful. Thank you, sir.

19 THE BAILIFF: Juror 305, Your Honor.

20 JUROR: How are you doing? I'm married to
21 a wife who is a registered nurse. And second, I
22 was deposed in a product liability case.

23 THE COURT: Yes.

24 JUROR: Which did not give me good
25 experience in that area, but it was settled by

JURY QUALIFICATION

1 the insurance company out of court so I never
2 went to court. But I was deposed because the
3 company that I worked for, I signed off on a
4 copy of the product so I was deposed.

5 THE COURT: As a result of that experience,
6 do you think that you can set that aside and
7 make up your mind based on what you hear in
8 court while court is in session?

9 JUROR: Yes, I am hesitant to say yes, but
10 it was a while ago. I just had a bad experience
11 with it, but I don't know that much about this
12 case so.

13 THE COURT: Let me ask you this question:
14 Do you know anything more than what we have
15 talked about, what I have told you today?

16 JUROR: No.

17 THE COURT: Okay. And so then back to your
18 own, how long ago was that experience?

19 JUROR: Twenty years ago.

20 THE COURT: Twenty years ago, okay?

21 JUROR: It was a -- it was a death
22 situation where a person who used our product
23 used it totally wrong and died and I was deposed
24 because I was the project manager for the
25 product and it was a very lengthy and very

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JURY QUALIFICATION

1 detailed deposition that I'll never forget.

2 THE COURT: I hope that it's not as lengthy
3 as voir dire of the jury. And those are very
4 unpleasant and can be very unpleasant
5 situations, they just are by nature of our
6 advocacy system. So the question is whether or
7 not you can put that down and say, okay, I am a
8 juror in this case and I have to look only at
9 this evidence and make up my mind based only on
10 what I hear in court while court is in session.
11 I have to put that aside. Is there any question
12 in your mind that you would be unable to do
13 that? If there is, it is just best to be
14 comfortable with where you are. You have got to
15 be comfortable that you can do that. This is my
16 only chance that I can ask you.

17 JUROR: Yes, I think that it would be best
18 that maybe I shouldn't stay here.

19 THE COURT: It would concern you. Your
20 face is red just talking about it.

21 THE COURT: I'm just being honest.

22 THE COURT: Don't ever worry about this.
23 You are flushed just talking about it.

24 JUROR: It really was not a good
25 experience.

JURY QUALIFICATION

1 THE COURT: I'll ask you to sit this one
2 out. Thank you.
3 THE BAILIFF: Juror 55.
4 THE COURT: Hello.
5 THE COURT: My wife is a licensed RN.
6 THE COURT: Thank you.
7 THE BAILIFF: Juror 34, Your Honor.
8 THE COURT: Hi.
9 JUROR: My wife is a registered nurse.
10 THE COURT: Thank you so much.
11 THE BAILIFF: Juror 208, Your Honor.
12 THE COURT: Here she comes. Yes.
13 JUROR: Registered nurse and licensed
14 professional clinical counselor.
15 THE COURT: Thank you.
16 THE BAILIFF: Juror 342, Your Honor.
17 THE COURT: Hi.
18 THE COURT: My father-in-law is a DO in
19 Okatie pain management clinic. And a question
20 that you asked before that I was thinking about,
21 did you say schizophrenia? Was manic bipolar in
22 there? My husband sometimes they think he is,
23 but he's not been diagnosed but --
24 THE COURT: I'm with you. I get it. But
25 would that have an affect on your ability to be

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JURY QUALIFICATION

1 fair and impartial?

2 JUROR: I don't think so.

3 THE COURT: Very well. It is my
4 understanding that is not to be an issue in this
5 case, correct?

6 JUROR: Yes.

7 THE BAILIFF: Juror 353, Your Honor.

8 JUROR: I am a physician assistant,
9 licensed.

10 THE COURT: You are a physician assistant.
11 I thought that you were an RN, I apologize.
12 Physician assistant, wonderful. Both are
13 wonderful.

14 THE BAILIFF: Juror 8, Your Honor.

15 THE COURT: Hi.

16 JUROR: About 25 years ago my wife was
17 involved in a car accident about 200 miles at
18 home. And she ended up being sued. She got hit
19 but she ended up getting sued. And it was a
20 very bad experience. And I didn't have the
21 money at that time -- we just bought a house --
22 to get a lawyer. And they basically wound up
23 suing somebody to get money so I think that it
24 would skew my opinion.

25 THE COURT: I get it. You are so wonderful

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JURY QUALIFICATION

1 to be so candid. I'll ask you to sit this one
2 out. Thank you so kindly.

3 THE COURT: Let me just say too that his
4 physical -- his lips were trembling. It was a
5 long time ago, he is still very angry about it.
6 I wanted the record to reflect what I saw.

7 THE BAILIFF: Juror 252.

8 JUROR: My mother is an RN. I probably
9 should have come up earlier. My parents are
10 both divorced, three kids, child of a divorced
11 family. And my grandfather also owns a hospital
12 in Japan and patients -- I have been there and
13 seen patients that suffered from schizophrenia.
14 I probably should have come up earlier.

15 THE COURT: That is okay. This is normal,
16 this is absolutely normal. Should I, should I,
17 and then I'm on to the next question.

18 JUROR: Right.

19 THE COURT: Exactly. As a result of those
20 things together or separate, might they or could
21 they interfere in your ability to be completely
22 fair and impartial to the Plaintiff or
23 Defendant?

24 JUROR: I can honestly say yes.

25 THE COURT: Do you know which one?

JURY QUALIFICATION

1 JUROR: I would say both, firsthand, both
2 of them.

3 THE COURT: Exactly. Thank you so much for
4 your candor, I will ask you to sit this one out.

5 THE BAILIFF: Juror 9, Your Honor.

6 THE COURT: Yes.

7 JUROR: Sorry, but just about everybody in
8 my family is either military or medical.

9 THE COURT: That is great, wonderful.

10 JUROR: A daughter, four sisters, four
11 nieces and a nephew that are all nurses.

12 THE COURT: Wonderful, thank you.
13 Wonderful, thank you.

14 THE BAILIFF: Juror 14, Your Honor.

15 THE COURT: Yes.

16 JUROR: Just responding to the second
17 question. I'm general counsel of a company so I
18 spend a lot of time being Plaintiff and
19 Defendant.

20 THE COURT: And the question went on to
21 say, as a result of experiences in that
22 capacity, might they or could they interfere?

23 JUROR: I would like to think not. Those
24 are fairly formal experiences. I guess I am
25 disqualified so . . .

JURY QUALIFICATION

1 THE COURT: Tell me about that. Do you
2 believe that your experience, your livelihood,
3 that those experiences would interfere with your
4 ability to be fair and impartial in this case to
5 this Plaintiff and Defendant?

6 JUROR: I would certainly like to think
7 not.

8 THE COURT: You can stay with us then.

9 THE BAILIFF: Juror 338, Your Honor.

10 JUROR: My aunt is a registered nurse at
11 Beaufort Memorial Hospital.

12 THE COURT: Thank you. We haven't met. So
13 nice to see you up here. Hello. Thank you.
14 Please stay with us.

15 THE BAILIFF: Juror 336, Your Honor.

16 THE COURT: Yes, hi. You just need some
17 exercise.

18 JUROR: Yeah. Two things, my wife, she is
19 an RN. She's not currently practicing.
20 Certified medical coder. And my mother-in-law,
21 she had her RN, worked at the hospital, but
22 she's retired.

23 THE COURT: All right. Thank you very
24 much. My general last one is about to happen.

25 UNIDENTIFIED SPEAKER: One thing, you

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