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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Benjamin H. Culbertson, Circuit Court Judge

CASE NO. 2016-CP-26-798

South Carolina Farm Bureau Mutual Insurance Company Respondent

vs.

Michael David Harrelson, Devora Harrelson, Kevin Duke
and Government Employees Insurance Company Defendants

OF WHOM:

Michael David Harrelson and Devora Harrelson are Appellants
and

Government Employees Insurance Company is..... Respondent

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NUMBER 2016-CP-26-798
South Carolina Farm Bureau	)	
Mutual Insurance Company,	)	
	)	
Plaintiff,	)	ORDER DENYING MOTIONS
	)	FOR RECONSIDERATION ¹
vs.	)	
	)	
Michael David Harrelson, <i>et al.</i> ,	)	
	)	
Defendants.	)	
_____	)	

Before the court are the following motions brought by the defendants Michael

David Harrelson and Devora Harrelson:

1. Motion for Reconsideration dated 3/24/2017 and filed 3/27/2017 seeking reconsideration of this court's order filed 3/17/2017 granting summary judgment to the defendant Government Employees Insurance Company;
2. Motion for Reconsideration dated 4/4/2017 and filed 4/5/2017 seeking reconsideration of this court's order filed 3/28/2017 granting summary judgment to the plaintiff.

Governmental Employees Insurance Company is the automobile liability carrier for the defendant Kevin Duke. South Carolina Farm Bureau Mutual Insurance Company is the underinsured carrier for the defendants Michael David Harrelson and Devora Harrelson.

¹ These motions are decided without oral arguments.

Although the defendants argue that the court failed to address a number of issues, all relate to whether or not *South Carolina Farm Bureau Mutual Insurance Company v. Mumford*, 299 S.C. 14, 382 S.E.2d 11 (1989) is controlling in this case. In *South Carolina Farm Bureau v. Mumford*, the South Carolina Court of Appeals reversed the lower court's ruling that South Carolina Farm Bureau Mutual Insurance Company did not provide coverage for its insured's intentional acts in causing a vehicular accident when the insured intentionally crashed her car into another vehicle in an attempt to commit suicide. The insured's policy contained an exclusion for intentional acts. In reversing the lower court's decision, the Court of Appeals ruled that the mandate of the *South Carolina Financial Responsibility Act* requiring coverage of all liability arising from the ownership, maintenance or use of the insured vehicle covered intentional acts and, therefore, supersedes the terms of the insurance contract excluding such coverage.

The undisputed facts in this case are that the defendant Kevin Duke parked his vehicle, exited his vehicle and got into a physical altercation with the defendant Michael David Harrelson. None of the alleged damages arose out of the ownership, maintenance or use of Kevin Duke's vehicle. Therefore, neither the liability coverage nor underinsured coverage apply. Both carriers are entitled to summary judgment.

NOW, THEREFORE, it is hereby

ORDERED that the Motion for Reconsideration dated 3/24/2017 and filed 3/27/2017 seeking reconsideration of this court's order filed 3/17/2017 granting summary judgment to the defendant Government Employees Insurance Company is **DENIED**; it is further

ORDERED that the Motion for Reconsideration dated 4/4/2017 and filed 4/5/2017 seeking reconsideration of this court's order filed 3/28/2017 granting summary judgment to the plaintiff is **DENIED**.

AND IT IS SO ORDERED.

May 3, 2017
Georgetown, SC

Benjamin H. Culbertson
Presiding Judge



Horry Common Pleas

Case Caption: South Carolina Farm Bureau Mutual Insurance Company VS Michael David Harrelson , defendant, et al
Case Number: 2016CP2600798
Type: Order/Other

Presiding Judge

s/Benjamin H. Culbertson, Judge Code 2148

Electronically signed on 2017-05-03 14:32:26 page 4 of 4

ELECTRONICALLY FILED - 2017 May 03 4:17 PM - HORRY - COMMON PLEAS - CASE#2016CP2600798

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	
	)	
South Carolina Farm Bureau Mutual	)	
Insurance Company,	)	ORDER GRANTING DEFENDANT
	)	GOVERNMENT EMPLOYEES INSURANCE
Plaintiff,	)	COMPANY'S MOTION FOR
	)	SUMMARY JUDGMENT
v.	)	
	)	
Michael David Harrelson, Devora	)	
Harrelson, Kevin Duke, and Government	)	C.A. NO.: 2016-CP-26-798
Employees Insurance Company,	)	
	)	
Defendants.	)	
	)	

This matter came before me on February 27, 2017 for argument on Defendant Government Employees Insurance Company's ("GEICO") Motion for Summary Judgment.¹ Counsel for all parties was present, and submitted memoranda of law, exhibits, and oral argument. GEICO seeks an Order granting Summary Judgment on its declaratory judgment claim against Michael David Harrelson and Devora Harrelson ("Harrelsons"), and Kevin Duke ("Duke").

STANDARD OF REVIEW

Summary judgment is proper when no genuine issue exists as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP. In determining whether any triable issue of fact exists, the evidence and all reasonable inferences must be viewed in the light most favorable to the nonmoving party. Quality Towing, Inc. v. City of Myrtle Beach, 340 S.C. 29, 530 S.E.2d 369 (2000).

FINDINGS OF FACT

¹ GEICO's declaratory judgment action, C.A. No.: 2016-CP-26-424, was consolidated with this matter by Consent Order filed on May 5, 2016.

On December 21, 2012, the Harrelsons and Duke were involved in an altercation in a Wal-Mart parking lot in Myrtle Beach, South Carolina. The Harrelsons filed a negligence action styled Michael David Harrelson and Devora Harrelson v. Kevin Duke, C.A. No.: 2015-CP-26-6601. GEICO, Duke's liability carrier, brought this action seeking a declaration that it owed no duty to defend or indemnify or otherwise provide any coverage under Duke's policy to either the Harrelsons or Duke because, in pertinent part, the facts giving rise to the allegations did not arise out of the ownership, maintenance, or use of an automobile.

Taken in the light most favorable to the nonmoving parties, the facts are as follows for purposes of this summary judgment motion:

Michael Harrelson was waiting in an aisle of the Wal-Mart parking lot for another car to vacate a parking space close to the store. Devora Harrelson exited her vehicle, retrieved a cart, and moved to the end of the parking aisle to wait on her husband. Duke pulled up behind Michael Harrelson, who was stopped. Duke blinked his lights, blew his horn, slammed on his brakes, and revved his engine. Michael Harrelson then pulled into the parking space he was waiting for.

According to Devora Harrelson, Duke then pulled up behind the Harrelson car. Duke cursed at her. Michael Harrelson walked around the back of Duke's car. The Harrelsons responded to Duke. Duke then exited his vehicle and engaged in an altercation with Michael Harrelson. At one point, Duke pinned Harrelson against the back of his car.

The altercation took place outside of Duke's vehicle. Duke's car was stationary during the altercation and was not being used for transportation. Duke left in his vehicle after the altercation.

FINDINGS OF LAW

Under South Carolina law, an automobile insurance policy must provide coverage for the insured against “loss from liability imposed by law for damages arising out of the ownership, maintenance, or use of” the insured motor vehicle subject to applicable coverage limits. S.C. Code Ann. § 38-77-140. GEICO’s policy contains a provision for the required statutory coverage.

An injury arises out of the ownership, maintenance, or use of a motor vehicle, for purposes of automobile insurance, if (1) a causal connection exists between the vehicle and the injury, (2) no act of independent significance breaks the causal link between the vehicle and the injury, and (3) the vehicle was being used for transportation at the time of the injury. Peagler v. USAA Ins. Co., 368 S.C. 153, 159, 628 S.E.2d 475, 478 (2006).

The causal connection test is satisfied if (1) the vehicle was an active accessory to the assault, (2) the vehicle was something less than the proximate cause and something more than the mere site of the injury, and (3) the injury must be foreseeably identifiable with the normal use of the vehicle. State Farm Mut. Auto. Ins. Co. v. Bookert, 337 S.C. 291, 293, 523 S.E.2d 181, 182 (1999).

In State Farm Fire & Cas. Ins. Co. v. Aytes, 332 S.C. 30, 503 S.E.2d 744 (1998), the South Carolina Supreme Court held that there was no causal connection between a vehicle and the injuries sustained by the insured where the assailant drove the victim in the insured vehicle to another location, exited the vehicle, and shot her. The court held that the victim’s mere presence in the insured vehicle when she was shot did not make the required causal connection, the vehicle was not an active accessory to the attack, the use of a vehicle to transport an assailant to the scene of an assault was merely incidental, and the assailant’s conduct was remote from the type of conduct that is reasonably

foreseeable with the normal use of a vehicle. Id. at 33-34, 503 S.E.2d at 745-746; see also Doe v. South Carolina State Budget and Control Bd., 329 S.C. 214, 494 S.E.2d 469 (Ct. App. 1997)(holding that the situs of an injury is not necessarily a causal link even though it is connected spatially to the harm).

Under these standards, the injuries alleged by the Harrelsons did not arise out of the ownership, maintenance, or use of Duke's vehicle.

First, there was no causal connection between the alleged injuries and Duke's vehicle. None of the alleged injuries occurred while any of the parties were travelling in the GEICO-insured vehicle. Duke parked and exited the vehicle prior to the altercation. Even assuming as true Plaintiffs' testimony that at one point Duke blocked the Harrelson vehicle in its space and pinned Michael Harrelson against his vehicle during the fight, a vehicle is not causally connected to an injury by being the mere site of an injury.

Second, even if Duke's vehicle had been causally connected to the assault, any causal connection with the vehicle was broken when Duke exited the vehicle and had an altercation with the Harrelsons.

Third, even if there was a causal connection that was not broken, Duke's vehicle was not being used for transportation at the time of the altercation. The record plainly reflects that the physical altercation took place outside of Duke's parked vehicle.

I therefore find that:

- (1) no genuine issue of material fact exists regarding the facts relevant to GEICO's coverage question;

- (2) neither Michael and Devora Harrelson nor Kevin Duke are entitled to recover under the GEICO policy that insured Duke's vehicle at the time of the December 21, 2012 Wal-Mart parking lot altercation; and
- (3) GEICO is entitled to summary judgment as to its declaratory judgment action as a matter of law.

IT IS SO ORDERED.

The Honorable Benjamin H. Culbertson
Judge, Fifteenth Judicial Circuit

Dated: March 17, 2017



Horry Common Pleas

Case Caption: South Carolina Farm Bureau Mutual Insurance Company VS Michael David Harrelson , defendant, et al
Case Number: 2016CP2600798
Type: Order/Summary Judgment

Presiding Judge

s/Benjamin H. Culbertson, Judge Code 2148

Electronically signed on 2017-03-17 13:59:21 page 6 of 6

ELECTRONICALLY FILED - 2017 Mar 17 3:10 PM - HORRY - COMMON PLEAS - CASE#2016CP2600798

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	Case No: 2016-CP-26-798
South Carolina Farm Bureau Mutual	)	
Insurance Company,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Order Granting Plaintiff's Motion
	)	For Summary Judgment
Michael David Harrelson, Devora	)	
Harrelson, Kevin Duke, and	)	
Government Employees Insurance	)	
Company,	)	
	)	
Defendants.	)	
_____	)	

This matter came before the Court pursuant to a properly noticed and scheduled hearing of a Motion for Summary Judgment made by the Plaintiff, South Carolina Farm Bureau Mutual Insurance Company. The parties submitted memoranda and a properly noticed and scheduled hearing took place on February 27, 2017 during which counsel offered oral argument. After reviewing the record, the memoranda, the exhibits and evidence and after considering the argument(s) of counsel and South Carolina law, I find that this motion should be granted.

Based upon all the evidence, including the memoranda and the arguments of counsel, on December 21, 2012 Defendants Harrelson and Defendant Duke separately traveled to a Wal-Mart where Duke operated his vehicle in an aggressive manner before both parties stopped and exited their vehicles. Subsequently, a physical altercation occurred during which, for some amount of time, Mr. Harrelson was pinned against Duke's car by Duke.

Defendants Harrelson filed suit, seeking recovery from Defendant Duke for various alleged injuries via claims against the involved automobile insurance carriers: (1) The liability carrier for named insured, Defendant Duke, Government Employees Insurance Company (GEICO); and (2) The underinsured carrier for named insureds, Defendants Harrelson, South Carolina Farm Bureau Mutual Insurance Company (SCFB). That lawsuit is captioned as follows: "Michael David Harrelson and Devora Harrelson vs. Kevin Duke." It is presently pending in the Horry County Court of Common Pleas and is or was assigned civil action number 2015-CP-26-6601.

Both carriers filed separate actions pursuant to the Uniform Declaratory Judgment Act as set forth in S.C. Code Ann. Section 15-53-10 et seq. In its action, SCFB seeks an Order declaring that: (A) It has no duty or obligation to defend any civil action arising out of or on in any way related to the underlying physical altercation, including the presently pending lawsuit and therefore, counsel retained by SCFB in that action be relieved; (B) Its policies do not provide coverage for any claims arising out of or in any way related to the underlying physical altercation; (C) It has no obligation to pay any claims related to or arising out of the underlying physical altercation and (D) That no person or entity has any rights, now or in the future, in any capacity, either as insured, claimant, or judgment creditor, under the subject SCFB insurance policies as a result of the underlying physical altercation.

After discovery and depositions, SCFB moved for Summary Judgment.

Summary Judgment Standard

The circuit court should grant summary judgment when the evidence shows "there is no genuine issue as to any material fact and that the moving party is entitled to [*8] a judgment as a matter of law." Rule 56(c), SCRCP. An appellate court "reviews the grant of a summary judgment motion under the same standard as the [circuit] court." Montgomery v. CSX Transp., Inc., 376 S.C. 37, 47, 656 S.E.2d 20, 25 (2008). "When determining if any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light

most favorable to the non-moving party." *Id.* To defeat a motion for summary judgment, a plaintiff must show "a genuine issue of material fact exists for each essential element of the plaintiff's claim." Hansson v. Scalise Builders of S.C., 374 S.C. 352, 358, 650 S.E.2d 68, 71 (2007). Fay v. Total Quality Logistics, 2017 S.C. App. LEXIS 25, Opinion 5471 (Ct App, March 1, 2017)

Findings of Fact and Conclusions of Law

To establish an injury out of the "ownership, maintenance, or use" of a motor vehicle, the party seeking coverage must show "(1) a causal connection exists between the vehicle and the injury, (2) no act of independent significance breaks the causal link between the vehicle and the injury, and (3) the vehicle was being used for transportation purposes at the time of the injury. Peagler v. USAA Ins. Co., 368, SC 153, 628 SE2d 475.). "The key focus is on the extent of the role, if any, the vehicle played in causing the injuries or damage, or whether a particular activity is a covered use as required by statute or a policy provision." Peaglar at 160, 628 SE2d at 479 (2006). Use of a motor vehicle is defined as and limited to transportation uses. Canal Ins. Co. v. Ins. Co. of N. America, 315 SC 1, 4, 431 SE2d 577, 579 (1993).

There is a separate three-part test for the determination whether a causal connection exists to satisfy the first element. A causal connection exists when:

- (a) The vehicle was an "active accessory" to the injury;
- (b) The vehicle was something less than the proximate cause but more than the mere site of the injury; and
- (c) The injury was foreseeably identifiable with the normal use of the vehicle.

Id. at 479.

Based upon the deposition testimony, the memoranda and the argument of counsel, viewing the facts in the light most favorable to the individual parties opposing this motion, the Court finds that the injuries alleged by Harrelson flowed from and were caused by a physical dispute that

occurred after the Duke vehicle ceased being used for transportation. It is undisputed that Mr. Duke exited his vehicle and then became involved in a physical conflict with Mr. Harrelson that caused the injuries. For the sake of this motion, the court considers that, as the Harrelsons contend, Duke blocked in their vehicle, revved his engine, flashed his lights, and generally drove in an aggressive manner. Regardless, none of that caused the subject injuries. The injuries were caused from a fight or physical altercation that occurred after Duke exited his vehicle. Even given that for part of the altercation Duke pinned Harrelson against Duke's car, this made the car part of the scene or site of the incident and not the cause of the injuries. The injuries were caused by the physical altercation. Given these facts, and considering the evidence and all reasonable inferences to be drawn therefrom, the subject injuries did not arise out of the ownership, maintenance or use of a motor vehicle within the meaning of South Carolina statutory and common law, including that cited above.

Summary Judgment is proper when it is clear that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Brandt v. Gooding, 368 S.C. 618, 630 S.E.2d 259 (2006). To defeat a motion for summary judgment, a plaintiff must show "a genuine issue of material fact exists for each essential element of the plaintiff's claim." Hansson v. Scalise Builders of S.C., 374 S.C. 352, 358, 650 S.E.2d 68, 71 (2007). Fay v. Total Quality Logistics, 2017 S.C. App LEXIS 25, Opinion 5471 (Ct. App, March 1, 2017) In this case, I find that there are no genuine issues of material fact not before the Court concerning the circumstances of this accident and that the moving party is entitled to judgment as a matter of law within the meaning of Rule 56, SCRPC.

NOW THEREFORE, IT IS ORDERED THAT the Motion for Summary Judgment filed by the plaintiff, South Carolina Farm Bureau Mutual Insurance Company is granted and:

(A) SCFB has no duty or obligation to defend any civil action arising out of or on in any way related to the underlying physical altercation, including the presently pending lawsuit and therefore, this Court ORDERS that counsel retained by SCFB in that action is HEREBY RELIEVED;

(B) SCFB's insurance policies do not provide coverage for any claims arising out of or in any way related to the underlying physical altercation, including the presently pending lawsuit ,

(C) SCFB has no obligation to pay any claims related to or arising out of the underlying physical altercation, including the presently pending lawsuit, and

(D) No person or entity has any rights, now or in the future, in any capacity, either as insured, claimant, or judgment creditor, under the subject SCFB insurance policies as a result of the underlying physical altercation, including the presently pending lawsuit.

AND IT IS SO ORDERED.

The Honorable Benjamin H. Culbertson
PRESIDING JUDGE, 15th Judicial Circuit

Dated: _____



Horry Common Pleas

Case Caption: South Carolina Farm Bureau Mutual Insurance Company VS Michael David Harrelson , defendant, et al
Case Number: 2016CP2600798
Type: Order/Summary Judgment

Presiding Judge

s/Benjamin H. Culbertson, Judge Code 2148

Electronically signed on 2017-03-27 14:51.31 page 6 of 6

ELECTRONICALLY FILED - 2017 Mar 28 3:21 PM - HORRY - COMMON PLEAS - CASE#2016CP2600798

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2016CP2600798

South Carolina Farm Bureau Mutual Insurance Company	Government Employees Insurance Company	Michael David Harrelson Kevin Duke	Devora Harrelson Government Employees Insurance Company

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Clerk of Court

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.
- ☒ 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.

ORDER INFORMATION

Government Employees Insurance company

Defendant's Motion for Summary Judgment is Granted.

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)
N/A	N/A	N/A

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.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.



RECEIVED
3-13-17

Benjamin H. Culbertson

Circuit Court Judge - Hon. Benjamin H. Culbertson

2148

Judge Code

2/27/2017

Date

For Clerk of Court Office Use Only

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:

John Dwight Hudson PO Box 70218 2513 North Oak St, Ste
210 Myrtle Beach, SC 29572

Gene McCain Connell Jr. PO Drawer 14547 Surfside Beach,
SC 29587

John Elliott Rogers II The Ward Law Firm, P.A. PO Box
5663 Spartanburg, SC 29304

William Henry Monckton VI 1300 Professional Dr., Ste.102
Myrtle Beach, SC 29577

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Renee N. Elvis - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRCF.

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.

Copy of Order/_____
filed 3/2/17 mailed to all
parties not in default on 3/2/17
initials JS

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2016CP2600798

South Carolina Farm Bureau Mutual Insurance Company	Government Employees Insurance Company	Michael David Harrelson Kevin Duke	Devora Harrelson Government Employees Insurance Company

PLAINTIFF(S)	DEFENDANT(S)
Submitted by: Clerk of Court	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.
- ☒ 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; ☐ Other: _____
- ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
- ☐ 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

Plaintiff's Motion for Summary Judgment is Granted.

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

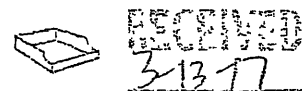
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

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

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.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.



Benjamin H. Culbertson

Circuit Court Judge - Hon. Benjamin H. Culbertson

2148

Judge Code

2/27/2017

Date

For Clerk of Court Office Use Only

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:

John Dwight Hudson PO Box 70218 2513 North Oak St, Ste
210 Myrtle Beach, SC 29572

Gene McCain Connell Jr. PO Drawer 14547 Surfside Beach,
SC 29587

John Elliott Rogers II The Ward Law Firm, P.A. PO Box
5663 Spartanburg, SC 29304

William Henry Monckton VI 1300 Professional Dr., Ste.102
Myrtle Beach, SC 29577

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter - Natalie Dahl

Renee N. Elvis - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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.

Copy of Order/_____
filed 3/2/17 mailed to all
parties not in default on 3/2/17
Initials JS

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

Government Employees Insurance)
Company,)
Plaintiff,)

v.)

Kevin Duke, Michael David Harrelson)
and Devora Harrelson,)

Defendants.)

South Carolina Farm Bureau Mutual)
Insurance Company)

Plaintiff,)

v.)

Michael David Harrelson, Devora)
Harrelson, Kevin Duke and)
Government Employees Insurance)
Company)

Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

C.A. NO.: 2016-CP-26-424

Consent Motion for Order
Consolidating Cases

CA No.: 2016-CP-26-798

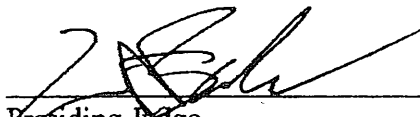
FILED
RECEIVED
16 MAY -5 PM 2:26
CLERK OF COURT
J. S. WARD

As evidenced by the signatures below, this matter comes before the Court by Consent of all parties requesting an Order to Consolidate cases 2016-CP-26-424 and 2016-CP-26-798.

Consolidation under Rule 42(a) of the South Carolina Rules of Civil Procedure may be ordered whenever actions involving a common question of law or fact are pending before the Court. These two actions are pending in Horry County and arise from the same coverage issues, and the same underlying lawsuit is at issue in both of these insurance coverage declaratory judgment actions. Consolidation of these pending actions would tend to avoid unnecessary costs and delay, the possibility of inconsistent decision, and will promote the efficient use of judicial

time by requiring the issues to be tried only once to the jury. Consolidation best serves the interests of all parties and the Court in this action.

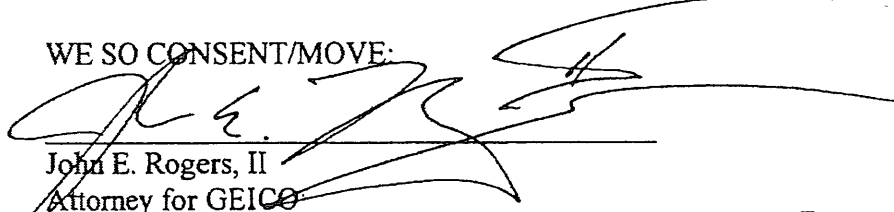
IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to Rule 42 of the South Carolina Rules of Civil Procedure, these matters be consolidated for discovery and trial purposes.



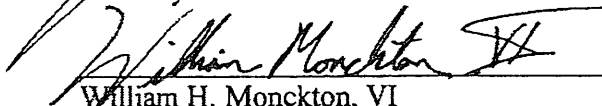
Presiding Judge
Fifteenth Judicial Circuit

Dated: 4/25, 2016

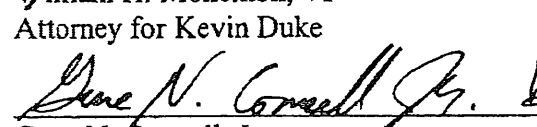
WE SO CONSENT/MOVE:



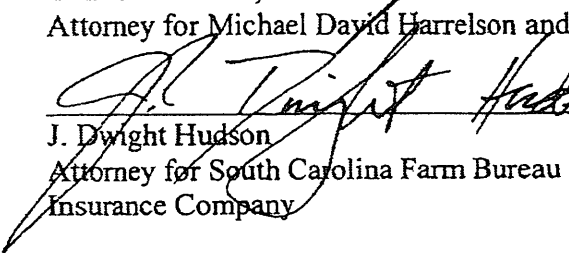
John E. Rogers, II
Attorney for GEICO



William H. Monckton, VI
Attorney for Kevin Duke



Gene N. Connell, Jr.
Attorney for Michael David Harrelson and Devora Harrelson



J. Dwight Hudson
Attorney for South Carolina Farm Bureau Mutual
Insurance Company

Exhibit

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2015-CP- 26 - 6601

Michael David Harrelson and
Devora Harrelson,

Plaintiffs,

vs.

Kevin Duke,

Defendant.

COMPLAINT
(Negligence)

JURY TRIAL

The Plaintiffs, complaining of the Defendants, respectfully allege unto this Court as follows:

1. The Plaintiffs are citizens and residents of Horry County, South Carolina.
2. The Defendant is a citizen and resident of Horry County, South Carolina.
3. That on or about December 22, 2012, the Plaintiffs were at the Wal-Mart Store located in North Myrtle Beach, South Carolina waiting for a car to pull out of a parking area so that they could put their car into the parking area when the Defendant Duke drove up behind them in a BMW automobile and started honking his horn, yelling and screaming at Plaintiff Michael Harrelson.
4. That meanwhile, the Plaintiff Devora Harrelson had gotten a grocery cart and was walking towards the entrance of Wal-Mart while the Defendant continued to blow his horn at Plaintiff Michael Harrelson.
5. That the Defendant was enraged as the Plaintiff waited for the parking spot in Row 8 of the Wal-Mart in North Myrtle Beach including revving his vehicle, slamming on his brakes and yelling and screaming at the Plaintiff to move.

6. The Defendant continued to pull his car up and back up and gun his engine and slam on his brakes. He also blew his horn continuously and flashed his high beam lights at the Plaintiff. When the parking space finally became free Mr. Harrelson pulled into the space and at that time Defendant yelled to Mrs. Harrelson: "Is that your husband?" To which she stated: "Yes". Thereafter, Defendant Duke used his BMW to block in the Plaintiff's vehicle, jumped out and trapped Plaintiff Harrelson against his vehicle and began to pummel Plaintiff Harrelson with a closed right fist causing Plaintiff Harrelson's glasses to break and severely lacerate his eye. Plaintiff Harrelson tried to get away but Defendant Duke had him pinned against his vehicle. Mrs. Harrelson yelled "Stop" and was trying to pull Mr. Harrelson away from the Defendant who then began to strike Mrs. Harrelson. Defendant Duke continued to use his vehicle to pin the Plaintiffs up against it and to assault them continuously.

7. Thereafter, Plaintiffs saw Defendant Duke get back into the silver BMW and escape the parking lot.

8. A video surveillance tape from Wal-Mart showed Duke as the aggressor and acting unprovoked and using his vehicle to initiate the assault and block the Plaintiffs from leaving the parking space.

9. That the aforementioned injuries to the Plaintiffs arose out of the ownership, maintenance and use of a vehicle.

10. That a causal connection was established between the Defendant's conduct and the use of his vehicle and the injuries.

11. That there was no independent act of significance that broke the causal link between the assault and the use of Defendant's vehicle to carry out the assault.

12. That Defendant was using his vehicle for transportation at the time of the assault and was upset about Plaintiff's driving of his motor vehicle in the parking lot of Wal-Mart at Christmas time.

13. That Defendant Duke was negligent, reckless, willful and wanton in one or more the following particulars:

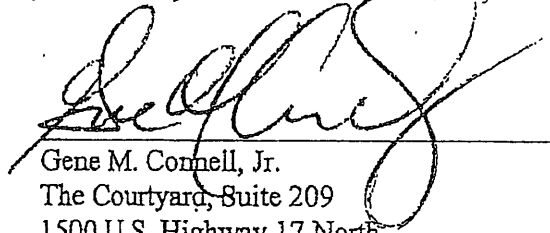
- a. in using his vehicle as a weapon;
- b. in pinning the Plaintiff by use of his vehicle;
- c. in using his vehicle in a threatening manner including revving his engine, hitting the high beam lights and blocking Plaintiff in;
- d. in yelling about Plaintiff's driving;
- e. in hitting Plaintiffs and in using his vehicle to trap Plaintiffs in the parking lot;
- f. in using his vehicle to escape; and
- g. in pushing Plaintiff against his vehicle and then assaulting him repeatedly.

14. That as a direct and proximate result, Plaintiffs suffered severe and disabling injuries, received medical care, psychological care and psychiatric care, had post-traumatic stress syndrome, had a concussion, required surgical treatment, which caused Plaintiffs, and will cause Plaintiffs in the future, to incur numerous medical expenses, pain and suffering, permanent injury and psychological damage.

15. That Plaintiffs ask for judgment against Defendant for actual damages, for punitive damages and for the costs of this action.

WHEREFORE, Plaintiffs pray for judgment against Defendant for actual damages, for punitive damages and for the costs of this action

KELAHER, CONNELL & CONNOR, P.C.



Gene M. Connell, Jr.
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(843) 238-5648 (phone)
(843) 238-5050 (facsimile)
gconnell@classactlaw.net
Attorney for Plaintiff

August 19, 2015
Surfside Beach, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
Government Employees Insurance)
Company,)
Plaintiff,)
v.)
Kevin Duke, Michael David Harrelson)
and Devora Harrelson,)
Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

20 16 CP26 424

COMPLAINT

C.A. NO.: 2016-CP-26

(JURY TRIAL DEMANDED)

FILED
HORRY COUNTY
2016 JAN 21 AM 10:48
MELANIE HUGGINS-WARD
CLERK OF COURT

Plaintiff, Government Employees Insurance Company (hereinafter "GEICO"), institutes this Declaratory Judgment action pursuant to the South Carolina Declaratory Judgment Act, asking that this Court declare and determine that Defendants, Kevin Duke, Michael David Harrelson and Devora Harrelson, do not have any valid claims for coverage from GEICO in the form of a legal defense, indemnity, or insured damages under an insurance policy issued to Defendant Kevin Duke by GEICO related to an underlying lawsuit filed in the Horry County Court of Common Pleas in the State of South Carolina under the following case caption and case number: *Michael David Harrelson and Devora Harrelson v. Kevin Duke*, C.A. No.: 2015-CP-26-6601 (a copy of the Complaint in the underlying lawsuit is attached hereto as an exhibit and is incorporated herein by reference as fully as if restated herein verbatim, the underlying lawsuit is hereinafter referred to as "lawsuit" or "underlying lawsuit"). GEICO requests an adjudication as to coverage (or lack thereof) that GEICO provides to Defendants pertaining to the underlying lawsuit. GEICO will further respectfully allege and show unto this Court as follows:

1. GEICO is an insurance company existing pursuant to the laws of a state of the United States of America other than the State of South Carolina. GEICO is licensed to do

business in South Carolina and is actively engaged in the automobile insurance business in the County of Horry, South Carolina.

2. Defendants Michael David Harrelson and Devora Harrelson (hereinafter "Harrelson Defendants") are citizens and residents of Horry County, South Carolina.

3. Defendant Kevin Duke (hereinafter "Duke") is a citizen and resident of Horry County, South Carolina.

4. This Court has subject matter jurisdiction pertaining to this lawsuit and venue is proper in Horry County, South Carolina.

5. The underlying lawsuit was filed and is pending in the Horry County, South Carolina Court of Common Pleas.

6. The underlying lawsuit alleges the following cause of action against Defendant Duke: negligence.

7. The underlying lawsuit relates to claims of the Harrelson Defendants against Defendant Duke regarding events that occurred on or about December 22, 2012 in the parking of a Wal-Mart store located in North Myrtle Beach, South Carolina (Horry County) regarding a physical altercation that occurred between the Harrelson Defendants and Defendant Duke. Defendant Duke allegedly physically assaulted the Harrelson Defendants outside of his vehicle in the Wal-Mart parking lot.

8. There is a video surveillance tape from Wal-Mart which shows the physical altercation between the Defendants.

9. The factual allegations of the underlying lawsuit and/or the actual factual events giving rise to the underlying lawsuit do not constitute claims or damages arising out of the ownership, maintenance, or use of a vehicle.

10. There is no causal connection between Duke's vehicle and the injuries that Harrelson Defendants incurred in the Wal-Mart parking lot.

11. Duke's vehicle was not being used for transportation at the time of the alleged physical assault of the Harrelson Defendants in the Wal-Mart parking lot.

12. The act of Defendant Duke leaving his vehicle before the altercation occurred in the Wal-Mart parking lot is an independent act of significance that broke the causal link between the alleged assault and the alleged use of Defendant Duke's vehicle and the assault.

13. GEICO issued an automobile insurance policy to Defendant Duke designated as policy number: 4148-10-37-42 issued in the insured names of Kevin Duke and Sandra Duke which was in effect as of the date of the altercation in the Wal-Mart parking lot, December 22, 2012 (hereinafter "subject policy").

14. GEICO has instituted this action pursuant to the Uniform Declaratory Judgment Act set forth in §15-53-10 through §15-53-140 of the South Carolina Code of Laws seeking to have the Court to declare and determine what rights the Defendants have (if any) under subject policy related to the underlying lawsuit.

15. Subject policy contains the following provisions:

LOSSES WE WILL PAY FOR *YOU* UNDER SECTION I

Under Section I, we will pay damages which an *insured* becomes legally obligated to pay because of:

1. *bodily injury*, sustained by a person; and
2. damage to or destruction of property;

arising out of the ownership, maintenance or use of the *owned auto* or a *non-owned auto*.

We will defend any suit for damages payable under the terms of this policy. We may investigate and settle any claim or suit. Our duty to settle or defend ends when our limit of liability for this coverage has been exhausted.

EXCLUSIONS

When Section I Does Not Apply

3. ***Bodily injury*** or property damage caused intentionally by or at the direction of an ***insured*** is not covered.

16. All of the damages and allegations made by the Harrelson Defendants in the underlying lawsuit relate to bodily injury or property damage caused by intentional conduct of Defendant Duke. Therefore, there is no coverage for any of the damages or claims alleged in the underlying lawsuit.

17. GEICO asserts that an actual justiciable controversy exists with regard to the availability of insurance coverage (or lack thereof) for Defendants in the underlying lawsuit in the following respects:

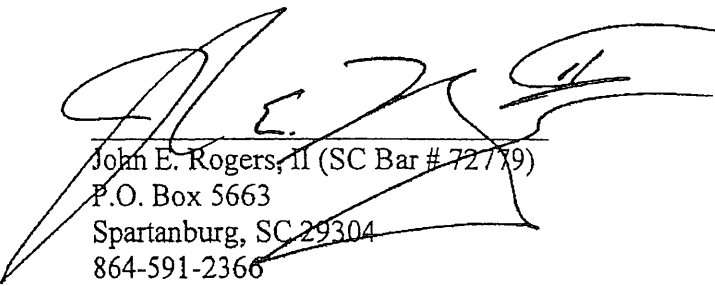
- a. The facts giving rise to the allegations of the underlying lawsuit did not arise out of the ownership, maintenance or use of an owned auto or a non-owned auto; and, therefore, there is no coverage for any of the damages or claims at issue in the underlying lawsuit; and
- b. The following exclusion in subject policy bars coverage for any and all damages and claims related to the underlying lawsuit: "bodily injury or property damage caused intentionally by or at the direction of an insured is not covered."

17. Harrelson Defendants are necessary parties to this lawsuit because they filed the underlying lawsuit and are seeking damages which they desire to be paid in whole or in part by subject policy.

18. Based upon the above allegations, GEICO asserts that coverage is unavailable under subject policy which it issued to Defendant Duke for any and all of the Defendants in this action with regard to the allegations set forth in the underlying lawsuit. GEICO seeks the Court's declaration to the effect that coverage is unavailable to any and all Defendants related to the underlying lawsuit, thereby relieving GEICO of any further obligation(s) to defend or indemnify or pay damages with regard to any and all Defendants for any and all alleged claims, damages, costs, expenses, attorney fees or judgement(s) associated with the underlying lawsuit.

WHEREFORE, GEICO prays that the Court declare and determine that its duties and obligations under subject policy issued to Defendant Duke do not provide coverage in any manner or in any form to any and all of the Defendants with regard to the claims and damages at issue in the underlying lawsuit.

THE WARD LAW FIRM, P.A.
Attorneys for Plaintiff Government
Employees Insurance Company



John E. Rogers, II (SC Bar # 72779)
P.O. Box 5663
Spartanburg, SC 29304
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864-585-3090 Fax
Email: jrogers@wardfirm.com

January 14, 2016

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2016-CP-26-424

Government Employees Insurance)
Company,)
)
Plaintiffs,)
)
vs.)
)
Kevin Duke, Michael David Harrelson)
and Devora Harrelson,)
)
Defendants.)

ANSWER AND COUNTERCLAIM

JURY TRIAL DEMANDED

FILED
HORRY COUNTY
2016 FEB 11 PM 1:13
MICHAEL D. HARRISON
CLERK OF COURT

The Defendants, **Michael David Harrelson and Devora Harrelson**, answering the Complaint of the Plaintiff, would respectfully show unto this honorable court as follows:

1. The Defendants deny each and every allegation not hereinafter specifically admitted and demands strict proof thereof.

FOR A FIRST DEFENSE

2. The Defendants admit the allegations of Paragraphs 1, 2, 3, 4, 5 and 6 of the Plaintiff's Complaint.

3. The Defendants admit so much of Paragraph 7 which states an altercation occurred. The remaining allegations of Paragraph 7 of Plaintiff's Complaint are denied.

4. The Defendants admit so much of Paragraph 8 which states that a video surveillance tape from Wal-Mart is available. The remaining allegations of Paragraph 8 of Plaintiff's Complaint are denied.

5. The Defendants deny the allegations of Paragraphs 9, 10, 11 and 12 of the Plaintiff's Complaint.

6. The Defendants do not have sufficient information and belief to answer the allegations of Paragraph 13 of the Plaintiff's complaint.

7. The Defendants admit so much of Paragraph 14 which states that a Uniform Declaratory Judgment action has been filed. The remaining allegations of Paragraph 14 are denied.

8. The Defendants deny the allegations of Paragraph 15 of the Plaintiff's Complaint since they have not seen a certified copy of the policy.

9. The Defendants deny the allegations of Paragraph 16 of the Plaintiff's Complaint.

10. The Defendants deny the allegations of the first Paragraph 17, including subparagraphs 17(a) and 17(b) of Plaintiff's Complaint.

11. The Defendants deny the allegations of the second Paragraph 17 of Plaintiff's Complaint.

12. The Defendants deny the allegations of Paragraph 18 of Plaintiff's Complaint.

FOR A SECOND DEFENSE AND COUNTERCLAIM
(Declaratory Judgment)

13. These Defendants reallege and reiterate each and every allegation as if fully repeated verbatim herein.

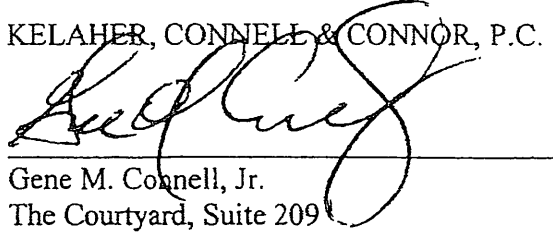
14. These Defendants bring this cause of action under the South Carolina Uniform Declaratory Judgment Act as stated in the Complaint.

15. These Defendants request this Court issue its Order finding that if this matter is an intentional act then there is liability coverage available under the South Carolina Financial Responsibility Act in the amount of \$25,000/50,000 and that such coverage is well settled under South Carolina law.

16. These Defendants request the Court issue its Order finding that there is coverage applicable to this matter and that such coverage is consistent with South Carolina law.

WHEREFORE, having answered the Complaint, these Defendants ask that they have judgment on their Declaratory Judgment Cause of Action and for attorney's fees and costs.

KELAHER, CONNELL & CONNOR, P.C.



Gene M. Connell, Jr.
The Courtyard, Suite 209
1500 U. S. Highway 17 North
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(843) 238-5648 (phone)
(843) 238-5050 (facsimile)
gconnell@classactlaw.net
**Attorney for Defendants Michael David
Harrelson and Devora Harrelson**

February 3, 2016
Surfside Beach, South Carolina.

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)
)
Government Employees Insurance)
Company,)
)
Plaintiff,)
)
v.)
)
Kevin Duke, Michael David Harrelson)
and Devora Harrelson,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

REPLY TO COUNTERCLAIM

C.A. NO.: 2016-CP-26-424

(JURY TRIAL DEMANDED)

2016 FEB 19 PM 1:34

Plaintiff, Government Employees Insurance Company (hereinafter quote "GEICO"),
answering the Counterclaim of Defendants Michael David Harrelson and of Devora Harrelson
(hereinafter "Harrelson Defendants"), will respectfully show unto this court as follows:

FOR A FIRST DEFENSE

1. Paragraphs 1 through 13 of the Harrelson Defendants' Answer and Counterclaim are not part of the Counterclaim and therefore require no response from GEICO. Responding to the allegations of Paragraphs 1-13, GEICO reiterates and re-alleges the allegations of its Complaint filed in this lawsuit. All allegations of Paragraphs 1 through 13 inconsistent with the allegations of GEICO's Complaint are denied and strict proof demanded thereof.

2. Paragraph 14 sets forth a legal conclusion and therefore, no response is required from GEICO. To the extent that Paragraph 14 requires a response from GEICO, the allegations of Paragraph 14 are denied and strict proof demanded thereof.

3. Responding to the allegations of Paragraph 15, GEICO asserts that if the alleged bodily injury did not arise out of the ownership, maintenance or use of an owned auto or a non-owned auto pursuant to the terms and provisions of the GEICO policy, then there is no coverage

available for the Harrelson Defendants or any other Defendants related to this lawsuit whatsoever as alleged in GEICO's Complaint. Therefore, the allegations of Paragraph 15 are denied and strict proof demanded thereof.

4. Paragraph 16 is denied.

5. Further responding to the allegations of the Counterclaim, GEICO reiterates and re-alleges the allegations of its Complaint as though restated herein verbatim.

FOR A SECOND DEFENSE
(FAILURE TO STATE A CLAIM)

6. Plaintiff re-alleges and incorporates by reference all allegations, denials and defenses asserted previously in its Complaint and hereinabove.

7. Harrelson Defendants' Counterclaim fails to set forth sufficient allegations to state a cause of action and therefore should be dismissed pursuant to Rule 12(b)(6), South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE
(DAMAGES NOT COVERED OR EXCLUDED BY THE POLICY)

8. GEICO reiterates and re-alleges the above paragraphs as though set forth herein verbatim.

9. Harrelson Defendants do not allege damages and/or claim(s) that are covered or are excluded by the GEICO Policy, and therefore cannot recover against GEICO.

FOR A FOURTH DEFENSE
(WAIVER, RELEASE, AND/OR ESTOPPEL)

10. GEICO reiterates and re-alleges the above paragraphs as though set forth herein verbatim.

11. Harrelson Defendants' claims against GEICO are or may be barred by the doctrines of waiver, release, and/or estoppel.

FOR A FIFTH DEFENSE
(FAILURE TO MITIGATE DAMAGES)

12. GEICO reiterates and re-alleges the above paragraphs as though set forth herein verbatim.

13. Without admitting liability or that the Harrelson Defendants have suffered damages, to the extent that the Harrelson Defendants have suffered damages, the Harrelson Defendants have failed to timely and properly mitigate their damages. GEICO pleads the failure of the Harrelson Defendants to mitigate damages as a complete bar to the claims, or in the alternative, a reduction in recovery to the claims of the Harrelson Defendants.

FOR A SIXTH DEFENSE
(UNCLEAN HANDS)

14. The allegations of the preceding defenses are re-alleged and incorporated by reference insofar as they are consistent.

15. Harrelson Defendants do not have clean hands with regard to the allegations in their Counterclaim. GEICO pleads the doctrine of unclean hands as a complete bar to the Harrelson Defendants' claims.

FOR A SEVENTH DEFENSE
(NO ATTORNEY'S FEES)

16. GEICO reiterates and re-alleges the above paragraphs insofar as they are consistent.

17. The only basis upon which the Harrelson Defendants can recover attorney's fees in this matter is if the Harrelson Defendants prove that GEICO breached an insurance contract with Harrelson Defendants, and that GEICO acted unreasonably and in bad faith under §38-59-40 of the South Carolina Code of Laws, which is an issue of law for the Court. Otherwise, there

is no statutory or contractual basis for the Harrelson Defendants' claim to recover attorney's fees in this litigation.

FOR AN EIGHTH DEFENSE
(GOOD FAITH)

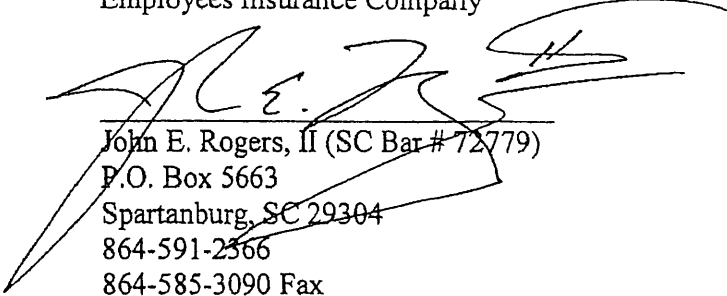
18. GEICO reiterates and re-alleges the above paragraphs as though set forth herein verbatim.

19. GEICO asserts that it acted in good faith at all times relevant to this lawsuit. GEICO further asserts that it did not act in bad faith, neither did it breach an implied covenant of good faith and fair dealing.

Wherefore, GEICO having fully answered the Counterclaim of the Harrelson Defendants, prays that this Court:

1. Dismiss Harrelson Defendants' Counterclaim with prejudice;
2. Award GEICO the relief sought in GEICO's Complaint;
3. Award GEICO the costs of defending the Counterclaim;
4. Issue a Declaratory Judgment to the effect that GEICO has no coverage available to Defendants with regard to the underlying lawsuit and to the effect that Defendants have no valid claim(s) for coverage under the GEICO policy; and
5. Award GEICO such other and further relief as the court finds just and proper.

THE WARD LAW FIRM, P.A.
Attorneys for Plaintiff Government
Employees Insurance Company



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February 17, 2016

STATE OF SOUTH CAROLINA

FILED
COUNTY

IN COURT OF COMMON PLEAS

COUNTY OF HORRY

2016 FEB 18 PM 2:59

CIVIL ACTION NO. 2016-CP-26-424

Government Employees Insurance Corporation
MELANIE HUGGINS-WARD
CLERK OF COURT

Plaintiff,

vs.

Kevin Duke, Michael David Harrelson and
Devora Harrelson,

Defendant.

)
)
)
)
) **ANSWER TO PLAINTIFF'S COMPLAINT**
) **ON BEHALF OF DEFENDANT DUKE**
)
)
)

Defendant, Kevin Duke, makes Answer to the Complaint and would show unto this
Honorable Court as follows:

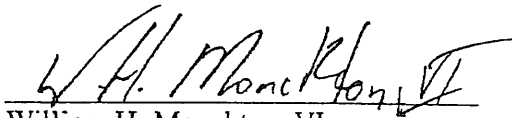
FOR A FIRST DEFENSE

1. This Defendant admits, upon information and belief, the allegations of Paragraphs 1 and 2 of the Complaint.
2. This Defendant admits the allegations of Paragraph 3 of the Complaint.
3. This Defendant admits the allegations of Paragraph 4 of the Complaint.
4. This Defendant admits the allegations of Paragraph 5 of the Complaint.
5. This Defendant admits the allegations of Paragraph 6 of the Complaint.
6. Answering the allegations of Paragraph 7, this Defendant would crave reference to the Plaintiff's Complaint for its contents.
7. Answering the allegations of Paragraph 8, this Defendant admits that there is a video surveillance tape from Wal-Mart.
8. This Defendant denies the allegations of Paragraphs 9, 10, 11 and 12 of the Complaint.

9. Answering the allegations of Paragraph 13, this Defendant admits that GEICO issued an automobile insurance policy to him and that it was in full force and effect on December 22, 2012.
10. This Defendant admits so much of Paragraph 14 as alleges that this action was filed under the Uniform Declaratory Judgment Act.
11. Answering the allegations of Paragraph 15, this Defendant craves reference to the policy for this specific terms and conditions.
12. This Defendant denies the allegations of Paragraph 16 of the Complaint.
13. This Defendant denies the allegations of Paragraph 17 of the Complaint.
14. Answering the allegations of second Paragraph 17, this Defendant admits that the Harrelson's filed the underlying lawsuit against this answering Defendant.
15. This Defendant denies the allegations of Paragraph 18 of the Complaint.
16. This Defendant denies each and every allegation of the Complaint not hereinabove specifically admitted, qualified or denied and would demand strict proof thereof.
17. Wherefore, this Defendant prays that the court declare and determine that GEICO's duties and obligations under the subject policy issued to this Defendant provide coverage for the Defendant in regard to the claims and damages at issue in the underlying lawsuit.

Monckton, Hembree & Humphries, P.A.

February 15, 2016



William H. Monckton, VI
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STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
Case No: 2016-CP-26-_____798

South Carolina Farm Bureau Mutual)
Insurance Company,)
)
Plaintiff,)

vs.)

Michael David Harrelson, Devora)
Harrelson, Kevin Duke, and)
Government Employees Insurance)
Company,)
)
Defendants.)

COMPLAINT
(Declaratory Judgment Action)

2016 FEB -4 PM 1:15
CLERK OF COURT

The Plaintiff, South Carolina Farm Bureau Mutual Insurance Company, complaining of the Defendants herein would respectfully show unto this Honorable Court as follows:

1. The Plaintiff is a corporation organized and existing pursuant to the laws of some State of the United States of America, and is engaged in the insurance business and conducts business in the County of Horry, State of South Carolina.
2. Upon information and belief, the individual Defendants are citizens and residents of the County of Horry, State of South Carolina.
3. Upon information and belief Defendant Government Employees Insurance Company is an insurance company organized and existing under and by virtue of the laws of one of the states of the United States and is organized to do business and is doing business in the County of Horry, State of South Carolina.
4. Upon information and belief, Defendants Harrelson are husband and wife.

5. The Plaintiff issued a policy of automobile insurance to the Defendant, Devora Harrelson, being policy number 805996, with underinsured motorist coverage limits of 25/50/25 on a 2005 Ford Mustang. The Plaintiff also issued a policy of automobile insurance to the Defendant, Devora Harrelson, being policy number 804304, with underinsured motorist coverage limits of 25/50/25 on two vehicles - a 1996 GMC Sierra K 1500 and a 2003 BMW 325i.

6. The aforesaid insurance policies provide automobile liability, underinsured and uninsured insurance coverage to Devora Harrelson pursuant to the terms and provisions of the applicable insurance policies, which are incorporated by reference herein.

7. On or about December 21, 2012, Mr. H drove a vehicle occupied by D. Harrelson, but not insured by the Plaintiff, to Walmart in North Myrtle Beach, SC. They waited some time for another vehicle to exit a parking spot, leaving room to the side for other vehicles to pass. Despite their leaving room, Defendant Duke pulled up behind Harrelson. Instead of passing, Duke commenced blowing his horn, gesturing, revving his engine and backing up to pull forward very fast, slamming on his brakes to stop at the last minute.

8. Mrs. H. left the vehicle to take the shopping cart of the driver they awaited after she put away her purchases, and that driver left, pulling forward through an unoccupied space in front of and adjacent to the space she exited, driving out through the next row. Mr. H. pulled his vehicle into the space vacated by the other driver.

9. Mrs. H. had pushed the shopping cart towards the store, behind the other parked cars in the row, and in that position she stood facing Duke's vehicle. Duke rolled down his window and called Mrs. H over so that she stood by his open window as Duke shouted, indicating Mr. H. and asking if that was her husband. Before she could answer, Mr. H. approached on foot, having parked the car and left it in the parking space. Mr. H advised Duke that he was Mrs. H's husband. Words were

exchanged and Duke got out of his car, approached Mr. H. as he stood near Duke's car, and began punching him, at one point, pinning Mr. H. against Duke's car as Duke assaulted Mr. H.

10. Subsequently, Mr. and Mrs. H. filed a lawsuit against Mr. Duke, seeking damages for the assault and the attendant circumstances. That lawsuit is captioned as follows: "Michael David Harrelson and Devora Harrelson vs. Kevin Duke." It is presently pending in the Horry County Court of Common Pleas under civil action number 2015-CP-26-6601.

11. Mr. Duke had liability insurance coverage through GEICO.

12. SCFB's insurance policies covering the Harrelson vehicles provides, in pertinent part, as follows:

Definitions

18. **Occupying** means having actual physical contact with an **auto** while in, upon, entering, or alighting from it.

19. **Pedestrian** means a person on foot or while using a wheelchair or a non-motorized bicycle.

(SCFB Policy, p. 3)

Part II- Uninsured/Underinsured Motorist Coverage

Underinsured Motorist Coverage

We will pay damages for **bodily injury** or **property damage** a **covered person** is legally entitled to collect from the owner or operator of an **underinsured motor vehicle**. The **bodily injury** or **property damage** must be caused by accident arising out of the operation or ownership of the **underinsured motor vehicle**.

(SCFB Policy, p. 10)

If you or any **family member**, while not **occupying a motor vehicle**, sustains **bodily injury** or **property damage**, and uninsured or underinsured motorist coverage from more than one policy issued by us to **you**, or any **family member** applies to the accident, any amount payable under such policies shall be limited to the coverage on the one motor vehicle with the highest limits.

(SCFB Policy, p. 13)

If **you** or any **family member** sustains **bodily injury** or **property damage** while **occupying your covered auto** and **you** or any **family member** has uninsured or underinsured motorist coverage on another **motor vehicle** under the policy or under another policy issued by **us** that applies to the accident, **you**, or any **family member** may recover the uninsured or underinsured motorist coverage on all other **motor vehicles** insured under the policy and under all other automobile policies issued by **us** to **you** or any **family member**, but neither **you** or nor any **family member** may recover any amount under such coverages that is greater than the amount of uninsured or underinsured motorist coverage on the **motor vehicle** involved in the accident.

(SCFB Policy, p. 13-14)

13. Further, South Carolina has interpreted applicable statutes to require that policies provide uninsured and underinsured coverage for injuries arising out of the "ownership, maintenance, or use" of a motor vehicle.

14. At the time of this accident, the Harrelsons were not occupying a motor vehicle, covered or otherwise, within the meaning of the applicable SCFB policies. In addition, underinsured motorist coverage from the Harrelsons' policies with SCFB does not apply to this incident because:

- (a) The attack was not an accident and it did not arise out of the occupation or ownership of the underinsured motor vehicle (Duke's) within the meaning of the SCFB policies;
- (b) The attack was not an accident and it did not arise out of the ownership, maintenance or use of the underinsured motor vehicle;
- (c) There is no causal connection between the underinsured motor vehicle and the injuries alleged;
- (d) Even if a causal connection existed between the underinsured motor vehicle and the injuries, which is denied, an act of independent significance broke that connection; to wit, Duke exited his vehicle;
- (e) The underinsured motor vehicle was not being used for transportation at the time of the injuries;
- (f) Duke's vehicle did not block in the Harrelsons or their vehicle which could have exited the parking spot without obstruction or interference;; and

- (g) The Harrelsons' injuries were caused by Duke's fists and were not caused by Duke's underinsured motor vehicle.

15. The Plaintiff, after having conducted a careful investigation of the facts and circumstances surrounding the attack, has determined that its policy does not provide coverage for the attack of accident of December 20, 2012 and the Plaintiff believes that it is not obligated to defend the presently pending lawsuit filed by its insureds, referenced above, nor to defend any other lawsuit filed as a result of this accident nor to pay any judgments resulting from any such lawsuits because the policy does not provide coverage for this attack for the reasons stated in Paragraph 14, which is incorporated herein by reference.

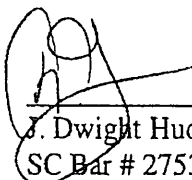
16. The Plaintiff is informed and believes that it is entitled to an Order of this Court pursuant to the Uniform Declaratory Judgment Act as set forth in S.C. Code Ann. Section 15-53-10 et seq., declaring that the subject SCFB policies do not provide coverage for the described attack of December 20, 2012; that it has no duty to defend any litigation brought arising out of or as a result of this attack; and that it has no duty to pay by any judgment resulting from a lawsuit arising out of or related to this accident.

WHEREFORE, the Plaintiff respectfully requests an Order of this Court as follows:

- a. For an Order declaring that the Plaintiff has no duty or obligation to defend any civil action arising out of the attack that occurred on or about December 20, 2012;
- b. For an Order declaring that the subject SCFB policies do not provide coverage for any claims arising out of or in any way related to the attack of December 20, 2012 for the reasons stated herein;
- c. For an Order declaring that the Plaintiff has no obligation to pay any claims related to or arising out of the attack of December 20, 2012;

- d. For an Order declaring that no person has any rights, now or in the future, in any capacity, either as insured, claimant, or judgment creditor, under the subject SCFB insurance policies as a result of the attack of December 20, 2012;
- e. For such other and further relief as this Court may deem just and proper.

/s/ J. Dwight Hudson



J. Dwight Hudson, Esquire
SC Bar # 2753

Hudson Law Offices
PO Box 70218
Myrtle Beach, SC 29572
(843) 692-9889

Attorney For: Plaintiff

Dated: *2/22/14*

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2016-CP-26-798

South Carolina Farm Bureau Mutual)
Insurance Company,)
)
Plaintiffs,)
)
vs.)
)
Michael David Harrelson, Devora)
Harrelson, Kevin Duke and Government)
Employees Insurance Company,)
)
Defendants.)
)

ANSWER
JURY TRIAL DEMANDED

HORRY COUNTY
2016 MAR 23 PM 4:24
MELAH, CLERK OF COURT

The Defendants, **Michael David Harrelson and Devora Harrelson**, answering the Complaint of the Plaintiff, would respectfully show unto this honorable court as follows:

1. The Defendants deny each and every allegation not hereinafter specifically admitted and demands strict proof thereof.

FOR A FIRST DEFENSE

2. The Defendants admit the allegations of Paragraphs 1, 2, 3 and 4 of the Plaintiff's Complaint.

3. The Defendants admit so much of Paragraph 5 which states that an underinsured motorist policy exists on a 2005 Ford Mustang, a 1996 GMC Sierra K1500 and a 2003 BMW 325. The remaining allegations of Paragraph 5 of Plaintiff's Complaint as to the coverage amount are denied at this time.

4. The Defendants admit the allegation of Paragraph 6 in regard to there being automobile liability, underinsured and uninsured insurance coverage.

5. The Defendants admit the allegations of Paragraph 7 which state that an incident occurred on December 21, 2012 between these Defendants and Defendant Duke. The remaining allegations of Paragraph 7 of the Plaintiff's Complaint are denied.

6. The Defendants admit only so much of Paragraph 8 which states that this Defendant pulled his vehicle into the space vacated by the other driver. The remaining allegations of Paragraph 8 of the Plaintiff's Complaint are denied.

7. The Defendants deny the allegations of Paragraph 9 other than to state that the Defendant Duke used his vehicle as a weapon, blocked these Defendants in and assaulted them through the use of Defendant Duke's vehicle.

8. The Defendants admit so much of Paragraph 10 which states that an action is presently pending in the Horry County Court of Common Pleas under C/A No. 2015-CP-26-6601.

9. The Defendants admit the allegations of Paragraph 11 of the Plaintiff's Complaint.

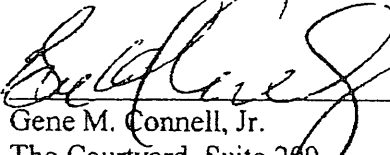
10. The Defendants do not have sufficient information and belief to answer the allegations of Paragraph 12 of Plaintiff's Complaint.

11. The Defendants do not have sufficient information and belief to answer the allegations of Paragraph 13 of Plaintiff's Complaint.

12. The Defendants deny the allegations of Paragraphs 14, 15 and 16 of Plaintiff's Complaint.

WHEREFORE, having answered the Complaint, these Defendants request that a jury trial be held and that the Court find coverage under the applicable policies.

KELAHER, CONNELL & CONNOR, P.C.



Gene M. Connell, Jr.

The Courtyard, Suite 209

1500 U. S. Highway 17 North

Post Office Drawer 14547

Surfside Beach, South Carolina 29587-4547

(843) 238-5648 (phone)

(843) 238-5050 (facsimile)

gconnell@classactlaw.net

**Attorney for Defendants Michael David
Harrelson and Devora Harrelson**

March 18, 2016

Surfside Beach, South Carolina.

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
South Carolina Farm Bureau Mutual)
Insurance Company,)
Plaintiff,)
v.)
Michael David Harrelson, Devora)
Harrelson, Kevin Duke, and Government)
Employees Insurance Company,)
Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

ANSWER OF DEFENDANT
GOVERNMENT EMPLOYEES
INSURANCE COMPANY

C.A. NO.: 2016-CP-26-798

(JURY TRIAL DEMANDED)

Defendant, Government Employees Insurance Company (hereinafter "GEICO")
answering the Complaint of Plaintiff, South Carolina Farm Bureau Mutual Insurance Company
(hereinafter "Farm Bureau"), will respectfully show unto this Court as follows:

FOR A FIRST DEFENSE

1. Paragraph 1 is admitted upon information and belief.
2. Paragraph 2 is admitted upon information and belief.
3. Paragraph 3 is admitted.
4. Paragraph 4 is admitted upon information and belief.

5. Responding to the allegations of Paragraph 5, GEICO is without sufficient
information to form a belief as to the truth of the allegations of Paragraph 5. Therefore, the
allegations of Paragraph 5 are denied and strict proof demanded thereof.

6. Responding to the allegations of Paragraph 6, GEICO is without sufficient
information to form a belief as to the truth of the allegations of Paragraph 6. Therefore, the
allegations of Paragraph 6 are denied and strict proof demanded thereof.

2016 APR -4 PM 2:02
CLERK OF COURT

7. Responding to the allegations of Paragraph 7, GEICO is without sufficient information to form a belief as to the truth of the allegations of Paragraph 7. Therefore, the allegations of Paragraph 7 are denied and strict proof demanded thereof.

8. Responding to the allegations of Paragraph 8, GEICO is without sufficient information to form a belief as to the truth of the allegations of Paragraph 8. Therefore, the allegations of Paragraph 8 are denied and strict proof demanded thereof.

9. Responding to the allegations of Paragraph 9, GEICO is without sufficient information to form a belief as to the truth of the allegations of Paragraph 9. Therefore, the allegations of Paragraph 9 are denied and strict proof demanded thereof.

10. Paragraph 10 is admitted upon information and belief.

11. Responding to the allegations of Paragraph 11, GEICO admits that it issued an automobile insurance policy that insured Kevin Duke which was in effect at the time of the physical altercation giving rise to the allegations of the underlying Complaint. All further allegations of Paragraph 11 are denied and strict proof demanded thereof.

12. Responding to the allegations of Paragraph 12, GEICO is without sufficient information to form a belief as to the truth of the allegations of Paragraph 12. Therefore, the allegations of Paragraph 12 are denied and strict proof demanded thereof.

13. Paragraph 13 is admitted.

14. Responding the allegations of Paragraph 14, GEICO admits to the factual allegations of the underlying events as outlined in Paragraph 14 upon information and belief. However, GEICO does not have sufficient information to form a belief as to the allegations pertaining to potential coverage under the SCFB policies. Therefore, the allegations of Paragraph 14 concerning potential coverage under the SCFB policies are denied and strict proof demanded

thereof.

15. Responding to the allegations of Paragraph 15, GEICO is without sufficient information to form a belief as to the truth of the allegations of Paragraph 15. Therefore, the allegations of Paragraph 15 are denied and strict proof demanded thereof.

16. Responding to the allegations of Paragraph 16, GEICO is without sufficient information to form a belief as to the truth of the allegations of Paragraph 16. Therefore, the allegations of Paragraph 16 are denied and strict proof demanded thereof.

17. GEICO has filed a companion Declaratory Judgment lawsuit in the Horry County Court of Common Pleas with case number: 2016-CP-26-424. GEICO incorporates all allegations of its Declaratory Judgment Complaint herein as if the Complaint were restated verbatim herein (a copy of the filed Complaint in said companion Declaratory Judgment action is attached hereto as Exhibit "1").

FOR A SECOND DEFENSE
(FAILURE TO STATE A CLAIM)

18. GEICO reiterates and re-alleges the above paragraphs as though set forth herein verbatim.

19. One or more of Plaintiff's claims against GEICO fails to state a claim upon which relief can be granted.

FOR A THIRD DEFENSE
(DAMAGES NOT COVERED OR EXCLUDED BY THE POLICY)

20. GEICO reiterates and re-alleges the above paragraphs as though set forth herein verbatim.

21. Plaintiff does not allege damages and/or claim(s) that are covered or are excluded by the GEICO Policy, and therefore cannot recover against GEICO.

FOR A FOURTH DEFENSE
(GOOD FAITH)

22. GEICO reiterates and re-alleges the above paragraphs as though set forth herein

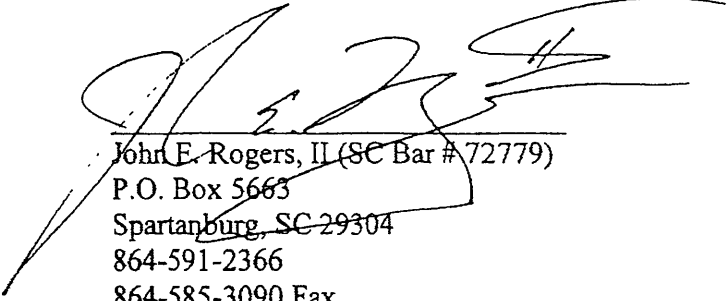
verbatim.

23. GEICO asserts that it acted in good faith at all times relevant to this lawsuit. GEICO further asserts that it did not act in bad faith, neither did it breach an implied covenant of good faith and fair dealing.

WHEREFORE, GEICO having fully answered the Complaint of Plaintiff, prays that this Court:

1. Dismiss Plaintiff's Complaint with prejudice as to GEICO;
2. Award GEICO the costs of defending this action;
3. If this Complaint is not dismissed as to GEICO, then GEICO requests that the Court declare and determine the parties' rights and obligations under the policy of insurance issued by GEICO relevant to this litigation as alleged in the companion Declaratory Judgment lawsuit filed by GEICO: *GEICO v. Kevin Duke, Michael David Harrelson and Devora Harrelson*, C.A. No.: 2016-CP-26-424; and
4. Award GEICO such other and further relief as the Court finds just and proper.

THE WARD LAW FIRM, P.A.
Attorneys for Defendant Government
Employees Insurance Company



John E. Rogers, II (SC Bar # 72779)
P.O. Box 5663
Spartanburg, SC 29304
864-591-2366
864-585-3090 Fax
Email: jrogers@wardfirm.com

March 29, 2016

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

IN COURT OF COMMON PLEAS

CIVIL ACTION NO. 2016-CP-26-424

S.C. Farm Bureau Mutual Ins. Co.

Plaintiff,

vs.

Michael David Harrelson, Devora Harrelson,
Kevin Duke and Government Employees Ins.
Co.

Defendants.

ANSWER TO PLAINTIFF'S COMPLAINT
ON BEHALF OF DEFENDANT KEVIN DUKE

HORRY COUNTY
MAR 11 PM 1:10
CLERK OF COURT

Defendant, Kevin Duke, makes Answer to the Complaint and would show unto this

Honorable Court as follows:

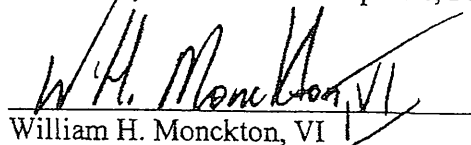
FOR A FIRST DEFENSE

1. This Defendant admits, upon information and belief, the allegations of Paragraphs 1 and 2 of the Complaint.
2. This Defendant admits the allegations of Paragraph 3 of the Complaint.
3. This Defendant admits the allegations of Paragraph 4 of the Complaint.
4. This Defendant admits the allegations of Paragraph 5 of the Complaint.
5. This Defendant admits the allegations of Paragraph 6 of the Complaint.
6. Answering the allegations of Paragraph 7, this Defendant would crave reference to the Plaintiff's Complaint for its contents.
7. This Defendant denies the allegations of Paragraphs 8 and 9 of the Complaint.
8. The Defendants admits that Paragraph 10 is correct in noting the filing of the case and that it is still pending in the Horry County Court of Common Pleas.

9. Answering the allegations of Paragraph 11, this Defendant admits that GEICO issued an automobile insurance policy to him and that it was in full force and effect on December 22, 2012.
10. This Defendant does not have any information on a S.C. Farm Bureau Mutual Ins. Co. policy that Mr. or Mrs. Harrelson would have purchased and therefore denies the coverage as stated in Paragraphs 12, 13, and 14.
11. This Defendant denies the allegations of Paragraph 15 of the Complaint.
12. This Defendant denies the allegations of Paragraph 16 of the Complaint.

WHEREFORE this Defendant prays that the court declare and determine that S.C. Farm Bureau's duties and obligations under the subject policy issued to the Defendant Devora Harrelson provide coverage for the Defendants Harrelson in regard to the claims and damages at issue in the underlying lawsuit.

Monckton, Hembree & Humphries, P.A.



William H. Monckton, VI
1300 Professional Drive Suite 102
Myrtle Beach, SC 29577
Office: (843) 946-6556 Cell: (843) 222-6556
Fax: (843) 946-6996
wmonckton@myrtlebeachlawfirm.net

March 8, 2016

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
Case No: 2016-CP-26-798

South Carolina Farm Bureau Mutual)
Insurance Company,)
Plaintiff,)

vs.)

MOTION FOR SUMMARY JUDGMENT

Michael David Harrelson, Devora)
Harrelson, Kevin Duke, and)
Government Employees Insurance)
Company,)
Defendants.)

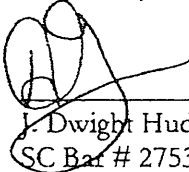
2016 DEC -5 PM 3:14

To: The Parties and Their Attorney(s) of Record:

YOU WILL PLEASE TAKE NOTICE that the undersigned counsel for the Plaintiff, South Carolina Farm Bureau Mutual Insurance Company (hereinafter, SCFB) will ten (10) days from the service of this Motion, or as soon thereafter as counsel may be heard, move before the Presiding Judge, Fifteenth Judicial Circuit for an Order granting the Plaintiff Summary Judgment as to all issues and claims pending in this case. The grounds for this Motion are the interests of justice and that there are no genuine issues as to any material fact and the moving party is entitled to judgment as a matter of law.

This Motion will be based upon the laws of the State of South Carolina and upon the record in this cause, as well as upon such other and additional evidence, Affidavits or Memoranda as may be hereafter submitted.

/s/ J. Dwight Hudson



J. Dwight Hudson, Esquire
SC Bar # 2753

Hudson Law Offices
PO Box 70218
Myrtle Beach, SC 29572
(843) 692-9889

Attorney For: Plaintiff

Dated: December 2, 2016

CERTIFICATION OF SERVICE

This is to certify that the foregoing was served by HUDSON LAW OFFICES by and through its agents, servants and employees on December 2, 2016 by

- (X) Placing the same in the United States mail, postage prepaid to the addresses noted below;
- () Transmitting the same by facsimile to the numbers noted below;
- (X) Forwarding the same by e-mail to the addresses noted below:

Gene M. Connell Jr. Esq.
Kelaher Connell & Connor
PO Box 14547
Surfside, SC 29587
Email: gconnell@classactlaw.net

William Monckton
Monckton, Hembree, Mureddu & Humphries
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John E. Rogers II
The Ward Law Firm, P.A.
233 South Pine Street
Spartanburg, SC 29302
Email: JRogers@wardfirm.com

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	
	)	
South Carolina Farm Bureau Mutual	)	
Insurance Company,	)	DEFENDANT GOVERNMENT EMPLOYEES
	)	INSURANCE COMPANY'S MOTION FOR
Plaintiff,	)	SUMMARY JUDGMENT
	)	
v.	)	
	)	
Michael David Harrelson, Devora	)	
Harrelson, Kevin Duke, and Government	)	C.A. NO.: 2016-CP-26-798
Employees Insurance Company,	)	
	)	
Defendants.	)	(JURY TRIAL DEMANDED)

2016 DEC -9 PM 4:05

To: The Parties and Their Attorney(s) of Record:

YOU WILL PLEASE TAKE NOTICE that the undersigned counsel for Defendant Government Employees Insurance Company (hereinafter "GEICO") will ten (10) days from the service of this Motion, or as soon thereafter as counsel may be heard, move before the Presiding Judge, Fifteenth Judicial Circuit for an Order granting the GEICO's Summary Judgment as to all issues and claims pending in this case. The grounds for this Motion are the interest of justice and that there are no genuine issues as to any material fact and the moving party is entitled to judgment as a matter of law.

This Motion will be based upon the laws of the State of South Carolina and upon the record in this cause, as well as upon such other and additional evidence, Affidavits or Memoranda as may be hereafter submitted.

SIGNATURE PAGE TO FOLLOW

THE WARD LAW FIRM, P.A.
Attorneys for Defendant Government
Employees Insurance Company



John E. Rogers, II (SC Bar # 72779)
Chad M. Graham (SC Bar # 79859)
P.O. Box 5663
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864-585-3090 Fax
Email: jrogers@wardfirm.com

December 7, 2016

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	
	)	
South Carolina Farm Bureau Mutual	)	
Insurance Company,	)	DEFENDANT GOVERNMENT EMPLOYEES
	)	INSURANCE COMPANY'S MEMORANDUM
Plaintiff,	)	IN SUPPORT OF MOTION FOR
	)	SUMMARY JUDGMENT
v.	)	
	)	
Michael David Harrelson, Devora	)	
Harrelson, Kevin Duke, and Government	)	C.A. NO.: 2016-CP-26-798
Employees Insurance Company,	)	
	)	
Defendants.	)	
	)	

FACTS

Plaintiff South Carolina Farm Bureau Mutual Insurance Company ("SCFB") brought this action against Defendants Michael David Harrelson, Devora Harrelson, Kevin Duke, and Government Employees Insurance Company ("GEICO") seeking a declaration that SCFB has no liability to pay any claims arising from a December 21, 2012 altercation between Defendants Harrelson and Defendant Duke. GEICO is seeking a similar coverage declaration in its companion case, GEICO v. Harrelson, et al., C.A. No.: 2016-CP-26-424; to wit, that neither Kevin Duke, Michael David Harrelson, nor Devora Harrelson have any valid claims for coverage from GEICO in the form of a legal defense, indemnity, or insured damages under the insurance policy issued to Kevin Duke by GEICO related to an underlying tort action styled Harrelson v. Duke, C.A. No.: 2015-CP-26-6601. The SCFB and GEICO actions were consolidated for discovery and trial by consent order dated May 5, 2016. GEICO has moved for summary judgment in these consolidated matters.

On December 21, 2012, Kevin Duke, Michael Harrelson, and Devora Harrelson were involved in an altercation in a Wal-Mart parking lot in Myrtle Beach, South Carolina.

The parties testified to notably different versions of the encounter. However, as the testimony shows, they agree on several key points that patently work to exclude coverage under the GEICO policy.

Harrelson Testimony (Exhibits A and B)

According to Devora Harrelson, on Friday, December 21, 2012, just before 6 p.m., she and her husband Michael went to Wal-Mart to purchase washing powder. (Devora Harrelson Dep. pp. 11-13). Very few parking spots were available because it was the Friday before Christmas. She and her husband decided to wait for a spot close to the door. Mrs. Harrelson got out of the car to retrieve a customer's shopping cart while her husband waited on the customer to vacate the spot. (Devora Harrelson Dep. p. 13). She took the shopping cart and rolled it to the front of the parking row when she heard a car horn. (Devora Harrelson Dep. p. 14). She turned and observed a car behind her husband's car, beeping its horn and flashing its lights. (Devora Harrelson Dep. p. 15). Michael Harrelson testified that once his wife got out of the car, Duke drove up behind him, flashed his lights, revved his engine, and slammed on the brakes close to the rear of his car. (Michael Harrelson Dep. pp. 14-15). At that point, the customer occupying the space Mr. Harrelson was waiting for pulled forward, and Michael Harrelson pulled into that spot. (Devora Harrelson Dep. p. 15)(Michael Harrelson Dep. p. 15).

According to Mrs. Harrelson, the driver of the other vehicle, Kevin Duke, pulled up behind Mr. Harrelson's car after Mr. Harrelson pulled into the parking spot. (Devora

Harrelson Dep. p. 17).¹ She testified that she was standing at the end of the aisle on the driver's side of Mr. Duke's car, and Mr. Harrelson was parked on the opposite side. (Devora Harrelson Dep. p. 18). She testified that Mr. Duke asked "is that your husband?" and she replied "yes," at which point Michael Harrelson exited his car and walked to where she was standing. (Devora Harrelson Dep. p. 18). Michael Harrelson also responded "yes, I am." (Michael Harrelson Dep. p. 16).

According to Mrs. Harrelson, Mr. Duke then proceeded as follows: "He said, oh, you want some of this you mf'ing S.O.B. and opened his car door and took about three steps towards Michael and coldcocked him in the face, breaking his glasses with the first punch." (Devora Harrelson Dep. p. 19) (Michael Harrelson Dep. p. 16). She confirmed that Mr. Duke's vehicle was in park, and that he took several steps outside his vehicle to reach and strike Michael Harrelson. (Devora Harrelson Dep. p. 19). She claimed that there had been no argument and no warning prior to this attack. (Devora Harrelson Dep. pp. 19-20). Mr. Harrelson confirmed that Mr. Duke had parked his vehicle and was completely out of his vehicle when he struck him. He also confirmed that Mr. Duke was not using his vehicle for transportation during the altercation, and he did not use the car to hit Mr. Harrelson. (Michael Harrelson Dep. p. 17).

Mrs. Harrelson testified that Michael Harrelson did not hit back, but walked toward Mr. Duke, pushing him away. She stated that Michael Harrelson "did not get anywhere near Mr. Duke's car," but stood beside her. (Devora Harrelson Dep. p. 20).

¹ Mrs. Harrelson insisted that Mr. Duke's car was blocking their car, even though the undisputed video evidence clearly reflects otherwise. (Devora Harrelson Dep. p. 41).

According to Mrs. Harrelson, "Michael was pushing back at him. And they ended up walking with the force back over towards his [Duke's] car." (Devora Harrelson Dep. p. 21). She stated that Mr. Duke then pinned Mr. Harrelson against the back of his car and continued to try to hit his face from behind. (Devora Harrelson Dep. p. 21). She put her hands around Mr. Harrelson's waist and pulled him away from Mr. Duke. (Devora Harrelson Dep. p. 23). She testified that Mr. Duke then hit her as well. (Devora Harrelson Dep. p. 24). Then Mr. Harrelson "pulled me back and stepped back in front of Duke," at which point Mr. Duke hit Michael Harrelson again. (Devora Harrelson Dep. p. 25). At that point, Mrs. Harrelson called 911. (Devora Harrelson Dep. p. 25). Mr. Duke got back into his car and drove away. (Devora Harrelson Dep. p. 26).

Mrs. Harrelson admitted the following facts in her deposition: (1) all of the altercation took place outside of Kevin Duke's vehicle; (2) Mr. Duke's car was stationary during the altercation; (3) Mr. Duke's actions were intentional; and (4) Mr. Duke's car was not being used for transportation when the altercation occurred. (Devora Harrelson Dep. pp. 26-28). Specifically, she testified that "it would be almost impossible for him to be driving a vehicle and beating somebody on the outside of it all at the same time. So it couldn't have been transporting him at the time." (Devora Harrelson Dep. p. 43).

Mr. Harrelson agreed that Mr. Duke's action were not foreseeable in the normal use of a vehicle. (Michael Harrelson Dep. p. 22). He claimed that Mr. Duke used his vehicle as a "weapon" because he allegedly pinned him against it and hit him, but he agreed that he was not using it for transportation. (Michael Harrelson Dep. p. 22). He also agreed that Mr. Duke's actions were intentional. (Michael Harrelson Dep. p. 49).

Duke Testimony (Exhibit C)

Kevin Duke testified that he and his wife had been shopping for about an hour in Wal-Mart on December 21, 2012. (Kevin Duke Dep. p. 12). He had left the store to retrieve his car from the parking lot and pick up his wife in front of the store. (Kevin Duke Dep. p. 13). The incident occurred near the entrance. (Kevin Duke Dep. p. 15). He testified that he came upon the Harrelson vehicle sitting in the aisle between the parking spaces with no signal on. He tapped his horn, pulled up behind the car, and blew his horn again. He did not see anyone backing out of any spots. He then saw the car pull into a space because the car that was in it had pulled forward through another empty space. (Kevin Duke Dep. p. 15).

Mr. Duke admitted that he blew his horn and probably flashed his lights. He did not drive around the car because he thought it might cause an accident. (Kevin Duke Dep. pp. 16-17). He did not rev his engine, and testified that his car was a 3 series BMW that was very quiet. (Kevin Duke Dep. p. 17).

After the car pulled into the space, Mr. Duke drove past it to the end of the aisle, where he encountered a woman with a shopping cart who was yelling at him and raising her hand at him to stop. (Kevin Duke Dep. pp. 16, 18). This turned out to be Devora Harrelson. He did not know her, or know that she had been in the stopped vehicle before he pulled up. (Kevin Duke Dep. p. 16). Mr. Duke rolled his window down to see what she was saying, and she screamed and cussed at him, calling him an impatient son of a bitch. (Kevin Duke Dep. pp. 16, 18-19). He asked her what her problem was, because he had no idea who she was. (Kevin Duke Dep. p. 19).

Mr. Harrelson then rounded the corner from behind Mr. Duke's car and came to his driver's side window. Mr. Duke put the car in park. (Kevin Duke Dep. p. 20). Mrs.

Harrelson replied "I don't have a problem, you do. Here's your problem." Mr. Duke testified that Mr. Harrelson was a very large man, weighing over 300 pounds. (Kevin Duke Dep. p. 20).

Mr. Duke admitted that he asked Mr. Harrelson to "call his dog off" because Mrs. Harrelson was "barking" and screaming and yelling like a little Chihuahua. (Kevin Duke Dep. p. 21). Mr. Harrelson then reportedly said that he would yank Mr. Duke out the window and "break his go****n" neck." (Kevin Duke Dep. p. 21). Mr. Duke testified that he did not give Mr. Harrelson the opportunity to do this, because he parked his car and got out to defend himself. (Kevin Duke Dep. p. 22). When Mr. Duke exited the car, Mr. Harrelson did not move away, so Mr. Duke pushed him backwards underneath his chin. (Kevin Duke Dep. p. 23). The men then briefly fought; the fight lasted no more than ten seconds in Mr. Duke's estimation. (Kevin Duke Dep. p. 23). He used his right hand because he was recovering from surgery on his left shoulder. (Kevin Duke Dep. p. 24).

Mr. Duke testified that he did not block the Harrelsons' car, but that they came to his window and threatened him. (Kevin Duke Dep. p. 24). The video evidence supports this statement. According to Mr. Duke, the Harrelsons were free to move away from his vehicle, but instead came toward it. (Kevin Duke Dep. p. 25). When Kevin Duke pushed Mr. Harrelson, he was completely outside of his vehicle. He testified that he did not strike Mrs. Harrelson. (Kevin Duke Dep. p. 25). The altercation was over within a few seconds, and Mr. Duke did not continue to strike Mr. Harrelson when he turned away. Mr. Duke got back in his car and left because he did not want the situation to escalate. (Kevin Duke Dep. p. 26). Mr. Duke, a former police officer, reported the incident to police himself once he arrived home. (Kevin Duke Dep. p. 26).

Mr. Duke denied that the incident was spurred by the either his or Mr. Harrelson's use of either vehicle. He testified that he was not upset until Mrs. Harrelson waved him down and cussed him out, and Mr. Harrelson approached him and threatened him. (Kevin Duke Dep. pp. 36-38). He had no idea that she was associated with Mr. Harrelson, because he had not seen her alight from the car. "What started this whole thing was him threatening me and his wife cussing me. That's what started this. It had nothing to with a car." (Kevin Duke Dep. pp. 40, 43).

Video Evidence (Exhibit D)

Three videos of the incident were played for each of the three witnesses at their depositions, identified as Exhibits 1, 2, and 3. The witnesses agreed that Exhibits 1 and 2 accurately represented the incident. (Devora Harrelson Dep. pp. 29-30, 33-34) (Michael Harrelson Dep. pp. 20-21) (Kevin Duke Dep. pp. 30, 32, 35). Mr. Harrelson testified that he thought Mr. Duke's car was closer to his car, but testified that he did not disagree with what the videos depict. (Michael Harrelson Dep. p. 21). All parties agreed that Exhibit 3 did not actually capture any footage of the incident.

Exhibit 1, entitled "Rooftop cam 12 122112," and Exhibit 2, entitled "PL GM door 122112," depict the same events from different angles. The videos plainly reflect as follows:

- (1) 6:14:35 - the Harrelsons stop in the parking lot to await a spot;
- (2) Mrs. Harrelson exits the vehicle, retrieves a shopping cart, and proceeds to push it towards the store;
- (3) 6:15:00 - Mr. Duke pulls up behind the Harrelson vehicle;

- (4) Mr. Duke flashes his lights during the approximately 30 second period between pulling up behind Mr. Harrelson and Mr. Harrelson pulling into the parking spot – he admits he honked his horn as well;
- (5) 6:15:32 – Mr. Harrelson pulls his vehicle into the parking spot he was waiting on after the former occupant pulls through;
- (6) Mr. Duke pulls forward to the end of the parking lot row – his vehicle does not block the Harrelson vehicle;
- (7) 6:15:43 – both Harrelsons approach the driver's side of Mr. Duke's vehicle and appear to speak to him through the window – Mrs. Harrelson was already standing at the end of the aisle, and Mr. Harrelson walked from his car, crossed behind Mr. Duke's car, to the end of the aisle to stand beside Mr. Duke's driver's side window;
- (8) 6:15:58 – Mr. Duke exits his vehicle and the altercation ensues – Kevin Duke and Michael Harrelson tussle and walk backward from Mr. Duke's vehicle, then Mr. Duke turns around and walks back toward his vehicle;
- (9) 6:16:25 – Mr. Duke reenters his vehicle and drives away.

The videos establish the following: (1) Mr. Duke never used his vehicle to touch or block the Harrelsons' vehicle, (2) the Harrelsons approached the driver's side of Mr. Duke's vehicle – the side opposite their car - while Mr. Duke was still inside; (3) after they approached, Mr. Duke parked, exited his vehicle, and an altercation ensued, completely outside Mr. Duke's vehicle, and not involving Mr. Duke's vehicle; and (4) the entire incident from Mr. Duke exiting his car to alighting and closing the door to his car again lasted approximately 30 seconds.

Because no genuine issue of material fact exists regarding facts relevant to the coverage issue, GEICO is entitled to summary judgment as a matter of law.

ARGUMENT

Neither Michael and Devora Harrelson nor Kevin Duke are entitled to recover under the GEICO policy that insured Mr. Duke's vehicle at the time of the December 21, 2012 Wal-Mart parking lot altercation.

Under South Carolina law, an automobile insurance policy must provide coverage for the insured against "loss from liability imposed by law for damages arising out of the ownership, maintenance, or use of" the insured motor vehicle subject to applicable coverage limits. S.C. Code Ann. § 38-77-140.

An injury arises out of the ownership, maintenance, or use of a motor vehicle, for purposes of automobile insurance, if (1) a causal connection exists between the vehicle and the injury, (2) no act of independent significance breaks the causal link between the vehicle and the injury, and (3) the vehicle was being used for transportation at the time of the injury. Peagler v. USAA Ins. Co., 368 S.C. 153, 159, 628 S.E.2d 475, 478 (2006).

The causal connection test is satisfied if (1) the vehicle was an active accessory to the assault, (2) the vehicle was something less than the proximate cause and something more than the mere site of the injury, and (3) the injury must be foreseeably identifiable with the normal use of the vehicle. State Farm Mut. Auto. Ins. Co. v. Bookert, 337 S.C. 291, 293, 523 S.E.2d 181, 182 (1999).

In Wausau Underwriters v. Howser, 309 S.C. 269, 422 S.E.2d 106 (1992) - which the Harrelsons tout in support of their coverage claim - the court held that the vehicle in question was an active accessory to a gunshot injury that occurred when a person fired the shot from one moving vehicle into another. The court emphasized that this was not a

case where the assailant merely used the vehicle to travel to the site of the assault, or where the assault happened to be in a stationary vehicle while committing the assault. Rather, the gunshot was the culmination of an ongoing assault in which the vehicle played an essential role in chasing down the victim. Compare, Bookert, 337 S.C. at 293, 523 S.E.2d at 182 (1999)(holding that pedestrian's injuries from gunshots fired from inside a vehicle were not causally connected to the vehicle, and therefore did not arise from the ownership, maintenance, or use of a vehicle).

Here, the parties have all admitted that none of the injuries occurred while any of the parties were travelling in the GEICO-insured vehicle. The record is clear that Mr. Duke parked and exited the vehicle prior to the altercation. There was no car chase. The facts are clearly distinguishable from Howser. Even assuming as true Plaintiffs' testimony that at one point Mr. Duke pinned Mr. Harrelson against his vehicle during the fight, the law is clear that a vehicle is not causally connected to an injury by being "the mere site" of an injury. Wausau, 309 S.C. at 273, 422 S.E.2d at 108 ("The causation required is . . . something more than the vehicle being the mere site of the injury."); see also Doe v. South Carolina State Budget and Control Bd., 329 S.C. 214, 494 S.E.2d 469 (Ct. App. 1997)(holding that the situs of an injury is not necessarily a causal link even though it is connected spatially to the harm).

Even if Mr. Duke's vehicle had somehow been causally related to the assault, there is no question in the record that it was not being used for transportation at the time of the altercation. First, Mr. Duke testified that he parked the car and got out to confront Mr. Harrelson in the parking lot after being threatened. (Kevin Duke Dep. p. 22). Second, the Harrelsons both confirmed that all of the altercation took place outside of Kevin Duke's vehicle, and that his vehicle was parked during the altercation and not being used for

transportation when the altercation occurred. (Devora Harrelson Dep. pp. 26-28, 43) (Michael Harrelson Dep. p. 22). Further, Mr. Harrelson further agreed that he did not believe Mr. Duke's actions were foreseeable in the normal use of a vehicle. (Michael Harrelson Dep. p. 22). Finally, the video evidence submitted herewith bears out the facts of this matter, and the parties agree that it is an accurate representation of the events of the evening of December 21, 2012. (Devora Harrelson Dep. pp. 29-30, 33-34) (Michael Harrelson Dep. pp. 20-21) (Kevin Duke Dep. pp. 30, 32, 35).

CONCLUSION

The facts of record, viewed in the light most favorable to the nonmoving parties, contain no genuine issue of material fact. There is no evidence of the legally-required causal connection between Mr. Duke's vehicle and the Harrelsons' alleged injuries. Mr. Duke's vehicle was parked and the entire altercation took place outside of the vehicle. GEICO submits that it is therefore entitled to judgment as a matter of law.

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February 6, 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	Case No: 2016-CP-26-798

South Carolina Farm Bureau Mutual)
Insurance Company,)

Plaintiff,)

vs.)

Michael David Harrelson, Devora)
Harrelson, Kevin Duke, and)
Government Employees Insurance)
Company,)

Defendants.)

**Plaintiff's Memorandum Supporting
Motion for Summary Judgment**

FACTS

This action arises from a fist fight/assault at a Wal-Mart parking lot in the Myrtle Beach area that occurred on December 21, 2012. Defendant Kevin Duke used his hands, his fists, and his body to assault Defendant Michael David Harrelson. Duke did not use his vehicle to assault Mr. Harrelson and Mr. and Mrs. Harrelson did not use their vehicle to defend the assault. Mr. and Mrs. Harrelson filed a liability action seeking damages for various physical and emotional injuries. Despite the involvement of either vehicle in the assault, Mr. and Mrs. Harrelson seek coverage from the motor vehicle insurance carrier for Duke (GEICO) and from the motor vehicle insurance carrier for the Harrelsons (South Carolina Farm Bureau).

Both carriers filed separate Declaratory Judgment actions, which have been consolidated in this action. After the depositions of the parties, both carriers filed motions for summary judgment. Those motions are presently before the Court for hearing, and the Plaintiff submits this Memorandum in support of its motion.

Because the facts and testimony are identical as to both motions, in lieu of repeating the same detailed facts and in lieu of submitting the same Exhibits by way of Deposition Testimony, the Plaintiff will also rely upon Defendant GEICO's previously filed "Memorandum In Support Of Motion For Summary Judgment" and the same is incorporated herein by reference as fully as though repeated verbatim, and is also forwarded with this Memorandum by way of email, so that both are available for immediate review.

The Plaintiff also relies upon the Wal-Mart video and the associated timeline of the event. That video and timeline are available for the Court to view at the following web address:

<https://drive.google.com/drive/folders/0BwFCWhJxtjVCVHhQOS04TUFLTDQ?usp=sharing>

(This web address will be included as a LINK in the forwarding email; It can also be typed into your web browser).

POLICY PROVISIONS, RELEVANT STATUTES, AND ADDITIONAL GROUNDS ASSERTED:

SCFB's insurance policies covering the Harrelson vehicles (ATTACHED AS EXHIBIT A) provide, in pertinent part, as follows:

Definitions

18. **Occupying** means having actual physical contact with an auto while in, upon, entering, or alighting from it.

19. **Pedestrian** means a person on foot or while using a wheelchair or a non-motorized bicycle.

(SCFB Policy, p. 3)

Part II- Uninsured/Underinsured Motorist Coverage

Underinsured Motorist Coverage

We will pay damages for **bodily injury** or **property damage** a covered person is legally entitled to collect from the owner or operator of an **underinsured motor vehicle**. The **bodily injury** or **property damage** must be caused by accident arising out of the operation or ownership of the **underinsured motor vehicle**.

(SCFB Policy, p. 10)

If you or any **family member**, while not occupying a **motor vehicle**, sustains **bodily injury** or **property damage**, and uninsured or underinsured motorist coverage from more than one policy issued by us to you, or any **family member** applies to the accident, any amount payable under such policies shall be limited to the coverage on the one motor vehicle with the highest limits.

(SCFB Policy, p. 13)

If you or any **family member** sustains **bodily injury** or **property damage** while occupying your covered auto and you or any **family member** has uninsured or underinsured motorist coverage on another **motor vehicle** under the policy or under another policy issued by us that applies to the accident, you, or any **family member** may recover the uninsured or underinsured motorist coverage on all other **motor vehicles** insured under the policy and under all other automobile policies issued by us to you or any **family member**, but neither you or nor any **family member** may recover any amount under such coverages that is greater than the amount of uninsured or underinsured motorist coverage on the **motor vehicle** involved in the accident.

(SCFB Policy, p. 13-14)

Further, South Carolina has interpreted applicable statutes to require that policies provide uninsured and underinsured coverage for injuries arising out of the "ownership, maintenance, or use" of a motor vehicle. At the time of this accident, the Harrelsons were not occupying a motor vehicle, covered or otherwise, within the meaning of the applicable SCFB policies.

In addition, underinsured motorist coverage from the Harrelsons' policies with SCFB does not apply to this incident because:

- (a) The attack was not an accident and it did not arise out of the occupation or ownership of the underinsured motor vehicle (Duke's) within the meaning of the SCFB policies;
- (b) The attack was not an accident and it did not arise out of the ownership, maintenance or use of the underinsured motor vehicle;

- (c) There is no causal connection between the underinsured motor vehicle and the injuries alleged;
- (d) Even if a causal connection existed between the underinsured motor vehicle and the injuries, which is denied, an act of independent significance broke that connection; to wit, Duke exited his vehicle;
- (e) The underinsured motor vehicle was not being used for transportation at the time of the injuries;
- (f) Duke's vehicle did not block in the Harrelsons or their vehicle which could have exited the parking spot without obstruction or interference;; and
- (g) The Harrelsons' injuries were caused by Duke's fists and were not caused by Duke's underinsured motor vehicle.

ARGUMENT:

First, it is critical to emphasize that under the facts of this case, it is not necessary to even reach the statutory construction mandating coverage for injuries arising out of the "ownership, maintenance or use of a motor vehicle." Farm Bureau's underinsured coverage is not triggered unless there is an accident. Duke's assault of Harrelson was not accidental. The beating by Duke was deliberate and resulted in criminal charges. That should end the inquiry with a finding of no coverage. (SCFB Policy, p. 10)

However, even under applicable statutory and case law, the inquiry ends with a finding of no coverage. S.C. Code Ann. § 38-77-140(A) (Supp. 2012) mandates providing insurance coverage for injuries arising out of the "ownership, maintenance, or use" of a vehicle). To establish an injury out of the "ownership, maintenance, or use" [*2] of a motor vehicle, the party seeking coverage must show "(1) a causal connection exists between the vehicle and the injury, (2) no act of independent significance breaks the causal link between the vehicle and the injury, and (3) the vehicle was being used for transportation purposes at the time of the injury. Peagler v. USA Ins. Co., 368, SC 153, 628 SE2d 475.) "The key focus is on the extent of the role, if any, the vehicle played in causing the

injuries or damage, or whether a particular activity is a covered use as required by statute or a policy provision." *Peaglar at 160, 628 SE2d at 479 (2006)*. Use of a motor vehicle is defined as and limited to transportation uses. *Canal Ins. Co. v. Ins. Co. of N. America, 315 SC 1, 4, 431 SE2d 577, 579 (1993)*.

There is a separate three-part test for the determination whether a causal connection exists to satisfy the first element. A causal connection exists when:

- (a) The vehicle was an "active accessory" to the injury;
- (b) The vehicle was something less than the proximate cause but more than the mere site of the injury; and
- (c) The injury was foreseeably identifiable with the normal use of the vehicle.

Id. at 479.

As the video and the deposition testimony establish, there is no causal connection between the vehicles, the beating, and Harrelson's injuries. The vehicles were not an active accessory. At most, during one part of the fight, Duke held Harrelson against his car. Duke could as easily have held Harrelson against a light pole or the wall of the store building. Duke using a car, in this instance, does not trigger auto insurance coverage any more than his use of a light pole or the wall of the store would have triggered coverage from Wal Mart or the electric company. At most, one of the vehicles was the site of part of the injuries.

Despite the Harrelsons' claim otherwise, the vehicles were not an "active accessory" to the fist fight in the way that the vehicle in *Wausau Underwriters v. Howser, 309 SC 269, 422 SE2d 106 (1992)* was when a vehicle occupant fired a gun from one moving vehicle into another. In this case, the assault happened to occur in a parking lot, but neither of the vehicles was being used for transportation at the time of the fight. SC law limits "use of a vehicle" within the meaning of the coverage statute to use for transportation. *Peaglar, Canal Ins. Co. v. Ins. Co. of N. America, supra*. *Wausau* held that a vehicle being the site of an injury does not provide the requisite causal connection.

Here, Duke and Mr. and Mrs. Harrelson all testified that the Duke vehicle was parked and was not being used for transportation at the time of the assault. (Kevin Duke Dep. p. 22; Devora Harrelson Dep. p. 26-28; 43; and Michael Harrelson Dep. p. 22).

For coverage to attach, the injuries in question must be foreseeably identifiable with the normal use of a vehicle. Being beaten or assaulted is clearly not something that one operating a vehicle would normally foresee, which Mr. Harrelson admitted. (Michael Harrelson Dep. p. 22).

This case is analogous to the Court of Appeals decision in Stone v. T aylor Bros, 300 SC 271, 600 SE2d 551 (Cr. App. 2004). In Stone, a Worker's Compensation claimant was injured in an altercation with another employee with whom the claimant had been romantically involved. The same requirements for coverage in this case were considered by the Court of Appeals in Stone, including the requirements of a causal connection and that the injury arises out of and in the course of employment. In denying coverage, the Court of Appeals held that the injury must have had its origin in a risk connected with employment and to have flowed from that source as a natural consequence. The Court concluded that coverage is excluded if an injury flows from a hazard to which a claimant would be equally exposed apart from employment. Stone, id.

As in Stone, the injury here was not a natural consequence of the use of a car. The injuries here flowed from an assault that Mr. Harrelson would have been equally exposed to apart from the use of a vehicle. Therefore, applying the same logic as the Court of Appeals, this Court should conclude that coverage is excluded for this assault.

Other Courts considering similar cases have determined that no coverage exists under automobile policies: In Nevada, a US District Court found no coverage under either automobile or homeowners' policies after a parking lot accident between shoppers led to a physical altercation [Allstate Ins. Co. v. Bruttig, 2006 US Dist. LEXIS 81927]: The Nevada Court noted the following:

While Nevada courts do not seem to have entertained the issue, other jurisdictions uniformly deny automobile coverage when the injuries result from incidents not directly associated with use of the auto. For example, in *State Farm Mut. Auto Ins. Co. v. Fernandez*, 767 F.2d 1299 (9th Cir. 1985), the plaintiff was stabbed during a road rage incident after both he and the defendant exited their vehicles. The defendant was uninsured and the plaintiff sought coverage under the uninsured benefits section of his policy, which promised coverage for all injuries "arising out of the ownership, maintenance or use of [an] uninsured motor vehicle." *Id.* at 1301. The court held that the plaintiff's stabbing injuries were not covered under the policy because they did not arise from the use of an uninsured motor vehicle. *Id.* at 1302.

Similarly, in *Laycock v. American Family Mut. Ins. Co.*, 289 Ill. App. 3d 264, 682 N.E.2d 382, 224 Ill. Dec. 821 (Ill. App. 3d 1997), the court ruled that coverage did [*22] not exist where, following a near collision, the uninsured driver used his vehicle to stop and trap the claimant and then exited his vehicle and assaulted the claimant through an open window of his car. "The act of leaving the vehicle and inflicting a battery is an event of independent significance which is too remote, incidental, or tenuous to support a causal connection with the use of the vehicle." *Id.* at 385.

Other cases follow *Fernandez* and *Laycock* in denying coverage when the injury results from an incident independent from the use of an automobile. See *Stenger v. Lawson*, 146 Ohio App. 3d 550, 2001 Ohio 4271, 767 N.E.2d 304 (Ohio App. 3d 2001) (denying coverage for altercation between drivers after they exited their vehicles); *Farmers Ins. Co. of Arizona v. Sedillo*, 2000 NMCA 94, 129 N.M. 674, 11 P.3d 1236, 1238 (Ct. App. N.M. 2000) (refusing coverage for post road-rage fight between drivers because there was no "sufficient causal nexus between the use of the vehicle and the resulting harm"); and *Race v. Nationwide Mut. Fire Ins. Co.*, 542 So.2d 347 (Fla. 1989) (denying coverage for fight between drivers because auto "must, itself, produce the injury").

While most [*23] of these cases involve the interpretation of an uninsured benefits provision of an auto insurance policy, the underlying policy language and substantive issue is identical: whether injuries stemming from an altercation happening outside of the autos arise out of the use of a motor vehicle. In all cases, the courts hold that such injuries do not arise out of the use of the auto and deny insurance coverage. In this case, the altercation between Bruttig and Widdoes clearly took place after each party had exited their vehicle. Their respective cars had nothing to do with the actual injuries that Widdoes suffered. Therefore, Bruttig's Allstate auto policy should not cover Widdoes' injuries.

Widdoes cites two cases for the proposition that the auto policy covers injuries bearing almost any causal relationship with the use of a motor vehicle. One court stated that the "arising out of the use" language of an auto policy has "broad and comprehensive application, and affords coverage for injuries bearing almost any causal relation with the vehicle." *State Farm Mut. Auto. Ins. Co. v. Partridge*, 10 Cal.3d 94, 109 Cal. Rptr. 811, 514 P.2d 123, 127 (1973). Similarly, in *Interinsurance Exch. v. Flores*, 45 Cal. App. 4th 661, 668, 53 Cal. Rptr. 2d 18 (1996), [*24] the

court held that auto policies afford "coverage for injuries where the insured vehicle bears almost any causal relation to the accident at issue, however minimal." *Id.* (internal quotations omitted). But these cases are factually inapposite to our case. The first case involved an injury to a passenger when a gun discharged as the passengers hunted from their moving vehicle. *Partridge*, 514 P.2d at 123. The second case involved a drive by shooting. *Flores*, 45 Cal. App. 4th at 667. Thus, in each case the injury was sustained while the auto was still being operated. The above cited cases dealing with post-accident altercations are much more factually similar to the case at hand. This case should thus follow their decisions in refusing to extend coverage to the injuries arising out of the Bruttig-Widdoes' altercation.

As with the homeowner's insurance policy, there is no genuine issue of material fact that should be left for the trier of fact. The record shows that Widdoes was injured during a post-accident altercation that occurred after both parties exited their vehicles. The automobile policy plainly excludes injuries not resulting from use of [*25] an auto. Therefore, summary judgment is appropriate.

Allstate Ins. Co. v. Bruttig, 2006 U.S. Dist. LEXIS 81927, *21-25, 2006 WL 3248393 (D. Nev. Nov. 2, 2006)

CONCLUSION:

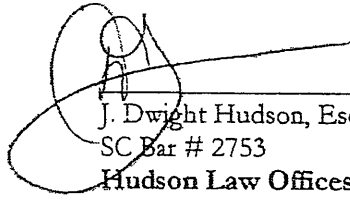
Coverage in this case should be excluded because Duke's assault of Harrelson was not accidental and because it did not arise out of the ownership, maintenance or use of a vehicle. As the Nevada decision noted, citing numerous decisions from jurisdictions across the country, "other jurisdictions uniformly deny automobile coverage when the injuries result from incidents not directly associated with use of the auto." *Allstate Ins. Co. v. Bruttig, supra.* Whether the motorists leave their vehicles to get involved in an altercation at a swap meet, at a bar, on the highway, or in a Wal Mart parking lot, coverage should be, and generally is, denied because the automobiles neither caused nor actively assisted in causing or facilitating the injuries. Following the language and logic of the SC Court of Appeals in Stone, this Court should hold that coverage is excluded for the

Harrelsons injuries because they flow from an assault, which is a hazard to which Mr. Harrelson would be equally exposed apart from the use of an automobile.

The Plaintiff is entitled to judgment as a matter of law, and that judgment should specifically hold that the Plaintiff has no duty to cover or defend the pending lawsuit filed by Mr. and Mrs. Harrelson against Mr. Duke.

Respectfully submitted,

/s/ J. Dwight Hudson



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Attorney For: Plaintiff

Dated: February 21, 2017

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2016-CP-26-798

South Carolina Farm Bureau Mutual)
Insurance Company,)
)
Plaintiffs,)
)
vs.)
)
Michael David Harrelson, Devora)
Harrelson, Kevin Duke and Government)
Employees Insurance Company,)
)
Defendants.)
)

MEMORANDUM OF LAW IN
RESPONSE TO MOTIONS FOR
SUMMARY JUDGMENT OF SOUTH
CAROLINA FARM BUREAU AND
GOVERNMENT EMPLOYEES
INSURANCE COMPANY

I. BACKGROUND FACTS

This matter is before the Court based on summary judgment motions filed by South Carolina Farm Bureau Mutual Insurance Company in the captioned case and by Government Employees Insurance Company in a companion case entitled *Government Employees Insurance Company v. Kevin Duke, Michael David Harrelson and Devora Harrelson*, Civil Action No. 2016-CP-26-424. Both actions were consolidated for discovery and trial by Consent Order dated May 5, 2016.¹

The facts which arise in this case involve a severe beating by Defendant Kevin Duke of Michael David Harrelson and Devora Harrelson at the Wal-Mart Stores in Myrtle Beach before Christmas on December 21, 2012 while the Defendant Duke blocked their car and used his car as a weapon to intentionally injure them. The parties' testimony and versions of the encounter are consistent² and all parties agree that the assault occurred over a dispute over how Michael Harrelson was attempting to park his car in a crowded Wal-Mart parking lot before Christmas while Kevin

¹ The Harrelsons filed their initial lawsuit entitled *Michael David Harrelson and Devora Harrelson v. Kevin Duke* C/A No. 2015-CP-26-6601 prior to these actions filed by Farm Bureau and GEICO.

² This alone precludes summary judgment.

Duke waited behind him to get out of that same crowded parking lot.³ Government Employees Insurance Company (GEICO) is the automobile liability insurance carrier for Kevin Duke. The Plaintiff South Carolina Farm Bureau Mutual Insurance Company is the uninsured/underinsured motorist carrier which had uninsured/underinsured motorist coverage on the car owned by Michael Harrelson and Devora Harrelson. The two motions are vastly different since the GEICO policy must be construed pursuant to the South Carolina Financial Responsibility Act. The Farm Bureau policy is underinsured/uninsured coverage and must be construed pursuant to S.C. Code § 38-77-140 (2013).

The Defendants Michael Harrelson and Devora Harrelson submit summary judgment is not appropriate and that there are genuine issues of material fact which should be resolved at a jury trial and that this court should deny all motions.

II. THE SUMMARY JUDGMENT STANDARD IN SOUTH CAROLINA PROHIBITS THIS COURT FROM GRANTING SUMMARY JUDGMENT TO SOUTH CAROLINA FARM BUREAU MUTUAL INSURANCE COMPANY AND GEICO.

The standard for summary judgment has been set in numerous cases in South Carolina. In fact, the west headnotes for summary judgment have more cases than any other rule in which the appellate court has found that the trial court erred in granting summary judgment. Our appellate courts have stated that summary judgment is not appropriate when further inquiry into the facts of the case is desirable to clarify the application of law. *USAA Property & Casualty Ins. Co. v. Clegg*, (S.C. 2008). Further if the conclusions from the facts or inferences are at issue summary judgment must be denied. *Hoard v. Roper Hospital, Inc.*, 377 S.C. 503, 661 S.E.2d 113 (*rehearing denied* (S.C. App. 2008)).

In particular in regard to insurance disputes this court has said “Conflicting statements by driver, car owner and owner’s employee create a jury issue as to the driver’s permission to use his

³ Duke was convicted of Third Degree Assault.

employer's car and as to liability coverage under the owner's commercial automobile insurance policy." *South Carolina Property & Casualty Guaranty Association v. Yensen*, 345 S.C. 512, 548 S.E.2d 880 (S.C. App. 2001).

Finally, our courts have held summary judgment is a drastic remedy which should be cautiously invoked in the rare case where a verdict is not reasonably possible under the facts presented. *Bloom v. Ravoir*, 339 S.C. 417, 529 S.E.2d 710 (S.C. 2000).

III. TESTIMONY OF MICHAEL HARRELSON.

Michael Harrelson, the victim in this case, offered extensive testimony that the whole dispute in this matter revolved around his driving his car and the heavy traffic in the parking lot at the Wal-Mart where the assault occurred. Harrelson testified that on December 21, 2012, he was in the parking lot at Wal-Mart at the Myrtle Beach store waiting for another individual to pull out of a parking space so he could pull in and all of a sudden he heard somebody blowing the horn behind him and flashing his lights. (Harrelson Depo., p. 14, lines 22-24). He further saw that same person backup and come flying back up towards him and get so close he could see his face in the rearview mirror. (Harrelson Depo., p. 14, lines 24 25; p. 15 lines 1-4). Harrelson stated he had to walk around the back of his car to get by, that he couldn't have backed out of the space if he wanted to as Duke's car was so close to him. (Harrelson Depo., p. 15, lines 12-15). Harrelson got out and walked to the back of his car to see what was going on. Duke got out of his car and struck Harrelson so hard he knocked his glasses off and fractured his eye socket (Harrelson Depo. p., 17, lines 20-25). Harrelson held up his hands trying to block the blows and Duke pushed Harrelson right onto the trunk of the Defendant's BMW (Harrelson Depo. p. 18, lines 1-5); that Duke used his car to pin Harrelson against it so he couldn't get away (Harrelson Depo. p. 18, lines 4-7); and that Duke pushed Harrelson all the way up against the car as he pushed Harrelson onto it (Harrelson Depo. p. 18, lines 8-12). Harrelson also offered testimony that there was blood all over the back of

Duke's car because of the way he was pouring blood and the fact that he had pushed him (Harrelson) onto the car (Harrelson Depo. p. 18, lines 18-21).

Further testimony revealed that Harrelson said Duke had used his car for a weapon. The salient testimony is as follows:

Q: How was his vehicle a weapon?

A: Because of using it to pin me against. Just like if I come at you and held a baseball bat up to you. I mean it was a weapon. Because if I had—If he hadn't thrown me against the car, I could have got away from him and twisted around. But with him having me pinned to the car there was nowhere for me to go or to get away from him.

Q: Would you agree with me that the fight could have just as easily moved the right or to the left and you could have ended up pinned up against a separate vehicle?

A: No, Sir. Because he made sure to put me on his car. That's where he forced me to. (Harrelson Depo. p. 21, lines 18-23).

Q: So that's the only reason that you're saying it's a weapon is because it was there and he pinned you against it?

A: Because of his actions of using it and how he revved the engine and pulled up behind me. The whole—The whole thing. (Harrelson Depo. pp. 22-, line 25-p. 23, lines 1-5).

Q: How would revving the engine have anything to do with it being a weapon?

A: That's like pointing a gun at you. Him revving the engine to threaten you like he's going to run over you. (Harrelson Depo. p. 23, lines 6-9)

Harrelson further described how the car itself caused him injuries:

Q: You would agree that the injuries that you received and which you are complaining about were caused by Mr. Duke's fists?

A: His fists and his car.

Q: And what part of his car caused any injury to you directly?

A: From him pinning me against it where I could not move or get away.

Q: What part of the car caused what injury to you?

A: The car didn't cause the injury, but it helped -- It enabled him to do the injury....If he hadn't been able to force me to his car and use his car, I could have twisted and turned where he couldn't have beat me and caused the brain injury.

(Harrelson Depo. p. 24, line 25; p. 25, lines 1-16.)

IV. TESTIMONY OF DEVORA HARRELSON.

The testimony of Devora Harrelson is that Duke used his vehicle, which was covered by an automobile liability insurance policy, to intentionally damage the Plaintiff. See Deposition of Devora Harrelson: Michael was pinned against the car and Duke was beating him (Depo. p. 26, lines 1-5); Duke jumped into his car and drove off (Depo. p. 26, lines 18-20); Duke left the car door open while the assault occurred (Depo. p. 36, lines 12-24); Duke used his vehicle as a weapon (Depo. p. 36, lines 12-25); Duke revved his engine, flashed his headlights, backed his car up and pulled forward suddenly in a threatening manner (Depo. p. 39, lines 22-25, p. 40, lines 1-25); Duke had parked his car behind ours (Depo. p. 41, lines 1-8); and Duke used his car to escape and to transport him to the scene (Depo. p. 42, lines 23-25, p. 43, lines 104).

V. *SOUTH CAROLINA FARM BUREAU MUTUAL INSURANCE COMPANY V. MUMFORD*, 299 S.C. 14, 382 S.C. 11 (1989) IS APPLICABLE.

Plaintiff believes that *South Carolina Farm Bureau Mutual Insurance Company v. Mumford*, 299 S.C. 14, 382 S.C. 11 (1989) is applicable in this case as to the policy of liability insurance for GEICO. In *Mumford*, the defendant drove her automobile across the center line of a

highway intentionally and struck another vehicle in an attempt to commit suicide. Farm Bureau denied responsibility arguing that it was not legally responsible for an intentional act. The Appellate Court held that this case presented a matter of first impression in South Carolina: Does the Financial Responsibility Act mandate coverage for intentional acts of the insured? If it does, then the Act prevails over the terms of the insurance contract and the collision with McLamb is covered by Mumford's liability insurance policy with South Carolina Farm Bureau. The Court went on to hold:

The statute requires any automobile insurance policy issued in this State to insured against "loss from liability imposed by law" for damages arising out of the use of a covered motor vehicle. Code Section 38-77-140. It draws no distinction between intentional acts and negligent acts of the insured if liability for damages is "imposed by law," coverage must be provided. Without question, the law imposes liability on one who intentionally uses an automobile in a manner that causes damage to another. See *M R & R Trucking Company v. Griffin*, 198 So. (2d) 879 (Fla. Dist. Ct. App. 1967), *cert dismissed*, 206 So. (2d) 210 (1968); *Denton v. Arnstein*, 197 Or. 28, 250 P. (2d) 407 (1952). Therefore, by the plain terms of the statute, the insurance policy must provide coverage for McLamb's damages.

See *South Carolina Farm Bureau Mutual Insurance Company v. Mumford*, 299 S.C. 14, 382 S.E. 11 (1989).

This decision has been cited in numerous states as the modern rule on insurance company liability under financial responsibility laws; accord *Hudson v. State Farm Mut. Ins. Co.*, 569 A.2d 1168, 1169 (Del. 1990); *Martin v. Chicago Ins. Co.*, 184 Ga. App. 472, 361 S.E.2d 835, 837 (Ga. Ct. App. 1987); *Mosley v. W. Am. Ins. Co.*, 743 S.W.2d 854, 855 (Ky. Ct. App. 1987); *Cannon v. Commerce Ins. Co.*, 18 Mass. App. Ct. 984, 470 N.E.2d 805, 806 (Mass. App. Ct. 1984); *Hartford Accident & Indem. Co. v. Wolbarst*, 95 N.H. 40, 57 A.2d 151, 153-55 (N.H. 1948); *Dotts v. Taressa J.A.*, 182 W.Va. 586, 390 S.E.2d 568, 572-74 (W.Va. 1990); *But see Williams v. Diggs*, 593 So.2d 385, 387 (La. Ct. App. 1991); *Snyder v. Nelson*, 278 Ore. 409, 564 P.2d 681, 684 (Or. 1977); *State Farm Mut. Auto Ins. Co. v. Wertz*, 540 N.W.2d 636, 640-41 (S.D. 1995); *Utica Mut. Ins. Co. v. Travelers Indem. Co.*, 223 Va. 145, 286 S.E.2d 225, 226 (Va. 1982).

Here, use of the vehicle by Duke was the pinning of Harrelson onto Duke's vehicle outside of the Wal-Mart store. Under those circumstances, the blocking of the vehicle and the use of the vehicle to assault the Plaintiff clearly was an intentional act which is a covered event. As the *Mumford* Court said: "The statute does not say insurers must cover 'accidents' arising from the use of the insured vehicle; it says they must cover 'liability imposed by law' on the insured." See *Mumford*, 382 S.E. 2d at 12. The *Mumford* Court noted: "the victim's right to recover from the insurance company does not depend upon whether the conduct of his insured was intentional or negligent." *Mumford*, 382 S.E.2d at 12-13.

Ten years later the Court of Appeals reaffirmed *Mumford* in *State Farm Mutual Automobile Ins. Co. v. Moorer*, 330 S.C. 46, 496 S.E.2d 875 (S.C.App. 1998). In *Moorer* the Court found coverage for an intentional act when a passenger in one car shot and killed a passenger in another car. The Court said: "Insurance against third party loss arising out of the use of a motor vehicle is compulsory under South Carolina law. The primary purpose of compulsory insurance is to compensate injured by at-fault motorists." (496 S.E.2d at 875). Finally, the Court cited a Supreme Court decision, *State Auto Property and Casualty Ins. Co., v. Gibbs*, 314 S.C. 345, 444 S.E.2d 504 (1994) ("The *Mumford* decision recognized the evolving policy of the legislature in its continuing effort to require that all South Carolinians have the ability to pay for injury on our highways." (444 S.E.2d at 507). Accordingly, GEICO's motion should be denied.

VI. SOUTH CAROLINA FARM BUREAU'S MOTION FOR SUMMARY JUDGMENT SHOULD ALSO BE DENIED.

South Carolina Farm Bureau Mutual Insurance Company has also moved for summary judgment as to this case. South Carolina Farm Bureau Mutual Insurance Company is the uninsured/underinsured motorist carrier of Michael David Harrelson. The South Carolina Supreme Court has set forth a test in cases such as these based on S.C. Code Ann. § 38-77-140 (2013) which provides in pertinent part: An insured is legally entitled to recover damages "arising out of the

ownership, maintenance or use of an uninsured vehicle.” This section applies to underinsured motorist coverage and it applies to uninsured motorist coverage.⁴ The three-prong test for determining when an injury arises out of the ownership, maintenance or use of an uninsured vehicle is set out in *Wassau Underwriters Ins. Co. v. Howser*, 309 S.C. 269, 422 S.E.2d 106 (1992). The test provides the parties seeking coverage must establish a causal connection between the injury and the vehicle. There must also exist no act of independent significance breaking the causal link. Finally, it must be shown that the vehicle was being used or had been used for transportation at the time of the assault. The *Wassau* Court held that the causal connection is established when it can be shown the vehicle was an “active accessory” to the assault. The causation required is something less than proximate cause and something more than the vehicle being the mere site of the injury. In this case, the evidence and testimony offered by Devora Harrelson and Michael Harrelson was that a dispute arose regarding a parking space and the driving conduct of the parties. The assailant driver blocked Harrelson in with his vehicle so that he could not leave the scene and then proceeded to use his vehicle as a weapon. (See Deposition of Michael Harrelson, *supra*). Thus the vehicle became an “active accessory” to the assault since the Defendant in this case used the vehicle actively to assault the Harrelsons.

In *Wassau Underwriters v. Howser*, *supra*, the insured sustained gunshot wounds while traveling on a public highway in an insured vehicle and during a vehicular chase by an unknown assailant in an unknown vehicle. The Court found the unknown vehicle was an “active accessory” to the assault. The Court held only through the use of the vehicle was the assailant able to closely pursue Howser thus enabling him to carry out the pistol assault. The gunshot was a culmination of an ongoing assault in which the vehicle played an essential and integral part. Additionally, only a

⁴ A recent case, *South Carolina Farm Bureau Mutual Insurance Co. v. Kennedy*, 398 S.C. 604, 730 S.E.2d 862 (2012) holds that “touching” a vehicle qualifies a injured party for underinsured motorist coverages. In that case the plaintiff had been leaning on a car when another car lost control and came right at the plaintiff. The plaintiff jumped to get away after leaning on the car; however, he was still injured severely.

motor vehicle could have provided the assailant a quick and successful escape. Thus we find a sufficient causal connection exists between the use of the assailant's vehicle and Howser's injuries. *See Wassau Underwriters, supra.*

In this case, the same can be said. A dispute arose between the parties concerning a parking space and the driving conduct of each of the parties in the Wal-Mart parking lot. Kevin Duke, the assailant, used his vehicle to block the vehicle of Harrelson from leaving the scene. Depo. of Michael Harrelson. p. 15, lines 13-16: I couldn't back out if I'd wanted to without backing into his car. Duke then used his vehicle as a weapon to assault Harrelson by pinning him against the car.

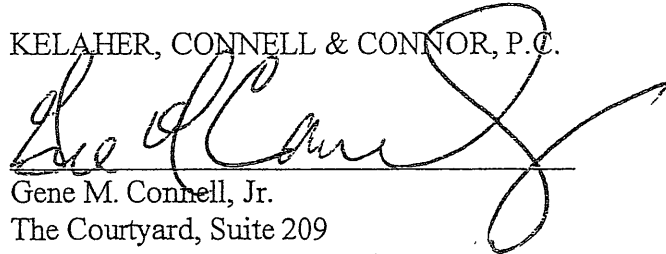
The Court also found insurance coverage in *The Home Insurance Company v. Towe*, 314 S.C. 105, 441 S.E. 2d 825 (S.C. 1994) for injuries that were sustained by a victim when he was struck by a bottle thrown by a passenger in a passing car. The Court stated: "The use of the automobile placed (assailant) in the position to throw the bottle at the sign and the vehicle's speed contributed to the velocity of the bottle increasing the seriousness of (victim's) injuries." As in *Wausau*, the automobile was an "active accessory" that gave rise to the injuries. The Court in *The Home Insurance Company* found that a causal connection existed between the use of Towe's automobile and the victim's injuries. The Court stated further: "The use of the automobile and assailant's throwing of the bottle were 'inextricably linked' as one continuing act." Accordingly, there was no act of independent significance that broke the causal connection between the use of the automobile and the victim's injuries. (*The Home Insurance Company*, 314 S.C. at 108, 448 S.E.2d at 827.)

These cases and the facts clearly show that the Harrelsons have met the test or at the very least that this is a jury issue regarding the facts and circumstances of this case.

VII. CONCLUSION.

Accordingly, the Harrelsons assert that neither GEICO's motion nor South Carolina Farm Bureau Mutual's motion for summary judgment should be granted.

KELAHER, CONNELL & CONNOR, P.C.

A handwritten signature in black ink, appearing to read "Gene M. Connell, Jr.", is written over a horizontal line.

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**Attorney for Defendants Michael David
Harrelson and Devora Harrelson**

February 24, 2017
Surfside Beach, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2016-CP-26-798

South Carolina Farm Bureau Mutual)
Insurance Company,)
)
Plaintiffs,)
)
vs.)
)
Michael David Harrelson, Devora)
Harrelson, Kevin Duke and Government)
Employees Insurance Company,)
)
Defendants.)
)

NOTICE OF MOTION AND
MOTION FOR RECONSIDERATION

TO: JOHN E. ROGERS, II, ATTORNEY FOR DEFENDANT GOVERNMENT EMPLOYEES
INSURANCE COMPANY:

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorney for the Defendants, Michael David Harrelson and Devora Harrelson, will, on the tenth day after service hereof, or as soon thereafter as counsel may be heard, move this Court for an Order reconsidering the Order of the Honorable Benjamin H. Culbertson granting Defendant Government Employees Insurance Company's Motion for Summary Judgment based on the following grounds pursuant to SCRCP 59:

1. The Order does not address in complete detail all the facts in the deposition of the Harrelsons including the following:

- (a) Harrelson testified he was blocked in;
- (b) Harrelson testified his car was used as a weapon;
- (c) Harrelson testified the Defendant Duke used his car to pin him and beat him.

2. The Order does not discuss the South Carolina Financial Responsibility Act or those cases involving intentional acts such as *South Carolina Farm Bureau Mutual Insurance Company v. Mumford*, 299 S.C. 14, 382 S.C. 11 (1989).

3. The Order does not discuss or address Harrelson's legal arguments under the Financial Responsibility Act.

4. The Order does not discuss the intentional acts of the Defendant Duke to use his car to injure the Harrelsons.

5. The Order does not discuss the evidence supports more than a scintilla of evidence.

6. The Order does not address the GEICO policy language in deciding this case which requires that its policy comply with South Carolina Financial Responsibility Act.

WHEREFORE, Plaintiff requests the Court reconsider its Order and for such other and further relief as the Court may deem just, necessary and proper.

KELAHER, CONNELL & CONNOR, P.C.

s/Gene M. Connell, Jr.

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**Attorney for Defendants Michael David
Harrelson and Devora Harrelson**

March 24, 2017
Surfside Beach, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2016-CP-26-798

South Carolina Farm Bureau Mutual
Insurance Company,

Plaintiffs,

vs.

Michael David Harrelson, Devora
Harrelson, Kevin Duke and Government
Employees Insurance Company,

Defendants.

NOTICE OF MOTION AND
MOTION FOR RECONSIDERATION
OF ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT

TO: J. DWIGHT HUDSON, ATTORNEY FOR PLAINTIFF, SOUTH CAROLINA FARM
BUREAU MUTUAL INSURANCE COMPANY:

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorney for the Defendants, Michael David Harrelson and Devora Harrelson, will, on the tenth day after service hereof, or as soon thereafter as counsel may be heard, move this Court for an Order reconsidering the Order of the Honorable Benjamin H. Culbertson granting Plaintiff South Carolina Farm Bureau Mutual Insurance Company's Motion for Summary Judgment based on the following grounds pursuant to SCRCP 59:

1. The Order does not address in complete detail all the facts in the deposition of the Harrelsons including the following:

- (a) Harrelson testified he was blocked in;
- (b) Harrelson testified his car was used as a weapon;
- (c) Harrelson testified the Defendant Duke used his car to pin him and beat him.

2. The Order does not discuss the South Carolina Financial Responsibility Act or those cases involving intentional acts such as *South Carolina Farm Bureau Mutual Insurance Company v. Mumford*, 299 S.C. 14, 382 S.C. 11 (1989).

3. The Order does not discuss or address Harrelson's legal arguments under the Financial Responsibility Act.

4. The Order does not discuss the intentional acts of the Defendant Duke to use his car to injure the Harrelsons.

5. The Order does not discuss the evidence supports more than a scintilla of evidence.

6. The Order does not address the South Carolina Farm Bureau Mutual Insurance Company policy language in deciding this case which requires that its policy comply with South Carolina Financial Responsibility Act.

WHEREFORE, Plaintiff requests the Court reconsider its Order and for such other and further relief as the Court may deem just, necessary and proper.

KELAHER, CONNELL & CONNOR, P.C.

s/Gene M. Connell, Jr.

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**Attorney for Defendants Michael David
Harrelson and Devora Harrelson**

April 4, 2017
Surfside Beach, South Carolina.

1 STATE OF SOUTH CAROLINA) TRANSCRIPT OF RECORD
2 COUNTY OF HORRY) CASE NO: 2016-CP-26-00798

3 MOTIONS

4
5 B E F O R E: The Honorable Benjamin Culbertson
February 27, 2017

6
7 SOUTH CAROLINA FARM BUREAU MUTUAL INSURANCE COMPANY,
8 et al.,
9 Plaintiffs,
10 vs.
11 MICHAEL and DEVORA HARRELSON, KEVIN DUKE, et al.,
12 Defendants.
13 -----

14 APPEARANCES:

15
16 Dwight Hudson, Esq.
Appearing for South Carolina Farm Bureau
17
18 Ginger Goforth, Esq.
Appearing for Geico
19
20 Gene Connell, Esq.,
Appearing for the Harrelsons
21
22 William "Billy" Monckton, Esq.
Appearing for Kevin Duke

23 Court Reporter:
24 Natalie N. Dahl, RPR
25

1 P-R-O-C-E-E-D-I-N-G-S

2 THE COURT: South Carolina Farm Bureau Mutual
3 Insurance Company versus Michael David Harrelson and
4 others. According to my roster, it is a motion for
5 summary judgment. Give the court reporter your name
6 and who you represent.

7 MR. HUDSON: Dwight Hudson representing South
8 Carolina Farm Bureau Mutual Insurance Company.

9 MS. GOFORTH: With Counsel's permission, I'm
10 Ginger Goforth. I represent Geico. We essentially
11 have the same motion, so I'm going to move up here, if
12 that is okay?

13 THE COURT: Is that on this roster?

14 MS. GOFORTH: The very next one.

15 MR. HUDSON: It was --

16 THE COURT: Oh, same case.

17 MR. HUDSON: Yes, same events and everything,
18 just plaintiff, Farm Bureau is the UI carrier
19 involved, and Geico is the liability carrier.

20 THE COURT: I see. And your name again, I'm
21 sorry?

22 MS. GOFORTH: Ginger Goforth, G-O-F-O-R-T-H.

23 MR. CONNELL: I represent the Harrelsons, the
24 defendants.

25 MR. MONCKTON: Billy Monckton, I represent Kevin

1 Duke.

2 THE COURT: Mr. Hudson.

3 MR. HUDSON: Thank you, Your Honor. As I
4 indicated, this is basically two summary judgment
5 motions. We filed the summary motion pursuant and a
6 part of a declaratory judgment action that we brought,
7 "we" being South Carolina Farm Bureau. The plaintiff,
8 Mr. Harrelson, previously brought his personal injury
9 action against Mr. Duke, who is the insured of Geico.
10 So we're here today over the facts of a situation, and
11 Your Honor should have briefs from all of the parties
12 that have been filed. They are fairly extensive with
13 testimony. We even have the Walmart video, which
14 probably the Court would want to see after hearing the
15 arguments and reading the briefs, because it is
16 obviously worth a thousand words as to people's
17 different positions and as to what happened. There is
18 some inconsistency as to what you are seeing there, at
19 least interpretations of it between the plaintiff --
20 the plaintiff -- we're the plaintiff, but between Mr.
21 Harrelson and the insurance companies pursuant to the
22 summary judgment motions.

23 Farm Bureau is the underinsured motorist carrier,
24 and of course it's not mandatory -- insurance where
25 underinsured Geico is liability -- mandatory coverage

1 involved in this situation. We have arguments that
2 are mentioned in the brief, but primarily the brief
3 covers operation use or maintenance of a vehicle. Our
4 policy provisions, as far as the underinsured motorist
5 coverage is concerned, is that this was not an
6 accident. This was an intentional act, which is
7 excluded under the policy. It takes an accident to be
8 covered by the policy, but we also have the statute
9 involved that requires -- 38-77-140(a) -- insurance
10 coverage for injuries arising out of the ownership,
11 maintenance or use of a vehicle. Basically, that is
12 what is involved here.

13 If I could go back to the facts of the situation
14 in this video from the Walmart parking lot from about
15 three different angles, two of which really show what
16 happened and where everybody was and as it occurs
17 sequentially would be enlightening and informative to
18 the Court, but basically Plaintiff Harrelson in the
19 liability action was waiting in the parking lot of
20 Walmart to pull into a parking place. While he was
21 waiting in the middle of the parking lot to pull into
22 this parking place that a vehicle was getting ready to
23 vacate, and actually did subsequently vacate by
24 pulling forward, because that space was empty, too.
25 They just went on this way instead of backing out. It

1 went on through. Then Mr. Harrelson pulled on in this
2 vacant parking place. Before he pulled in, his wife
3 got out of the car while they were waiting for this
4 other car to vacate -- and we don't know who the other
5 car is, they just went on -- vacated that parking
6 place. She got out of the car and walked up to the
7 front of her -- of their car and got a shopping cart
8 up on the left of the passageway or isle, I'll call
9 it, a good bit removed from the vehicles.

10 Well, just shortly after this happened,
11 Ms. Harrelson getting out of the car, Mr. Duke came up
12 behind them. He was going to pick up his wife in
13 front of the store in Walmart. He was having to wait
14 for Mr. Harrelson, and apparently got impatient and
15 blinked -- there was no turn signal or anything. All
16 of this is shown, so you'll see it. He blinked his
17 eyes -- headlights and it's debatable whether he blew
18 his horn or not, but blinked his headlights. There
19 was testimony that he revved his engine and went up
20 close to Mr. Harrelson's vehicle, all of this being an
21 indication that he needed to move on down the line.

22 Well, Mr. Harrelson subsequently pulled on into
23 that parking place. Mr. Duke went on by to almost the
24 end of the isle way or passageway -- we'll call it the
25 isle way there, passage. There is allegations by the

1 plaintiff that Mr. Duke's car blocked him in and he
2 couldn't leave or anything.

3 We think the plaintiff's movement for summary
4 judgment in this case, Farm Bureau and Geico -- the
5 video clearly shows there was no blocking, whatsoever.
6 Mr. Harrelson got out of his car in the parking place
7 and kind of walked in, kind of like a 45-degree angle
8 behind Mr. Duke's car who had stopped up there to
9 talk. It is disputed as to why he stopped and who was
10 saying what to the other, Ms. Harrelson or Mr. Duke.
11 But, anyway, there were apparently uncomfortable words
12 spoken between the two one way or the other, depending
13 on who heard what and what they were saying took place
14 to the verbal exchange there. While Ms. Harrelson and
15 Mr. Duke apparently were having the exchange, Mr.
16 Harrelson came up and he started participating in the
17 exchange. Mr. Duke got out of his -- put it in park,
18 got out of his car, opened the door, completely exited
19 his vehicle and an altercation with Mr. Harrelson
20 ensued pretty much immediately. There is some
21 testimony that Ms. Harrelson also got physically
22 struck. It is kind of hard to see that on the video.
23 The video is not as sharp as it could be, I suppose,
24 but you can't really tell.

25 Then, Mr. Harrelson and Mr. Duke, both of them

1 being fairly -- neither of them small folks, they
2 exchange blows for, I would say, looks to be 10
3 seconds, roughly. Mr. Duke got back in his car and
4 left. Mr. Harrelson -- they complain that the vehicle
5 of Mr. Duke had something to do with the altercation.
6 Part of it is during this brief altercation -- and you
7 can see on the video again it looks like maybe two,
8 three seconds that he was -- he, being Mr.
9 Harrelson -- was against Mr. Duke's car briefly during
10 the exchange of blows, and then the subsequent blows
11 occurred a good bit behind them, behind the vehicle.

12 So that is basically it. I'll defer to the video
13 for Your Honor to view. In fact, it is attached
14 somehow technologically to my brief. My partner, Mary
15 Ann, managed to do that so you could get the brief and
16 plug it in with the reference there in the memorandum
17 and view the videos. There is two segments you have
18 to go to to see it from two different angles.

19 So, basically, our position is, Your Honor, that
20 of course this is -- was an intentional act that
21 occurred. It would be excluded by the UI policy, Farm
22 Bureau, that it was not an accident in any way, no two
23 vehicles or anything else, and that the coverage --
24 insurance coverage did not arise out of the ownership,
25 maintenance or use of the vehicle.

1 To establish ownership, maintenance or use, as
2 cited in the briefs, there must be a causal connection
3 between the vehicle and the injury, that no act of
4 independence, breaks the causal link between the
5 vehicle and the injury, and the vehicle was being used
6 for transportation purposes at the time of the injury.
7 As cited in our brief, we don't feel that they meet
8 any of that criteria.

9 The law in South Carolina, and the cases are
10 cited in our motion, that a causal connection exists
11 when the vehicle is an active accessory to the injury,
12 and that the vehicle was something less than the
13 proximate cause, but more than mere site of the
14 injury, and that the injury was foreseeable and
15 identifiable with the normal use of a vehicle.

16 For all the reasons that I have stated, the
17 plaintiff in the liability action, Mr. Harrelson,
18 simply doesn't meet any of that criteria. They try to
19 say that, well, because during the first fight out
20 there in the parking lot that he was briefly up
21 against Mr. Duke's vehicle for just a couple of
22 seconds. You can view that again for yourself, Your
23 Honor, but that somehow makes the accessory argument
24 valid in this situation.

25 We have numerous cites that everything that

1 happened here was simply a fist fight in the parking
2 lot, did not involve the vehicle actively, whatsoever.
3 The vehicle was not being used for transportation.
4 Mr. Duke's vehicle was in park. He was completely
5 removed from the vehicle. Mr. Harrelson was
6 completely removed from any vehicle he was -- he never
7 touched the vehicle of Mr. Duke other than when he was
8 very briefly up against it during their fist fight,
9 and subsequently the fist fight went on substantially
10 with more blows being exchanged by both parties away
11 from the car after this brief touching of Mr. Duke's
12 vehicle during the altercation.

13 We have a number of cases, and there is a U.S.
14 District case that covers it as good as any, I think,
15 dealing in the -- in Nevada -- dealing with
16 altercations in the parking lot, and as a result of
17 cars, road rage, different people getting mad and it
18 resulting in a fist fight. Uniformly, these districts
19 such as Nevada, Illinois, New Mexico, Florida,
20 California find no coverage. These fist fights and
21 altercations are just not what was designed to be
22 covered by the operation, use and ownership of the
23 vehicle. The parties may have come out of their
24 vehicles, but that was the end of the vehicles. They
25 were not being used for transportation. They were not

1 involved in the fist fight, whatsoever. Mr. Harrelson
2 could have been pushed against anyone else's car, a
3 light pole or a shopping cart by anybody or anything
4 out there in this fist fight.

5 So for that reason we say that, in addition to
6 the exclusions and the fact that no accident took
7 place, all of this was intentional, an intentional
8 fist fight. There is no coverage under the
9 underinsured motorist policy issued by Farm Bureau,
10 and all of that is attached to the brief, Your Honor.

11 THE COURT: All right. Any argument on yours?

12 MS. GOFORTH: Yes, Your Honor. Our position is
13 slightly different, but the standard that governs it
14 is essentially the same. Since Geico's liability
15 coverage is mandatory, then I'm not hanging my hat on
16 the intentional act or anything like that, but the
17 mandatory coverage that is required is for damages
18 that are sustained arising out of the ownership,
19 maintenance or use of the vehicle. I did not attach
20 the Geico policy to our memo. It was produced in
21 discovery, and that is exactly what it provides
22 coverage for.

23 So the question is: Did this incident occur out
24 of the use of Mr. Duke's vehicle? I think that not
25 only the video, but the testimony of record shows that

1 it did not. One thing that I found actually
2 interesting when -- I guess I'll call the Harrelsons
3 the claimants, but the Harrelsons' memo -- in the
4 second paragraph of their memo states, The parties'
5 testimony and versions of the encounter is consistent.
6 This is true. I don't believe there is really a
7 genuine issue of material fact here. Where I differ
8 from the Harrelsons' view is that they said it
9 precludes summary judgment. Well, I think this is
10 exactly the reason why summary judgment is
11 appropriate. The parties agree on what happened, and
12 they have also agreed -- all three depositions,
13 specific testimony, is cited. If it is helpful for
14 the Court, I'll point you to the page and line where
15 the parties definitely agree that the video represents
16 exactly what happened that night. There is no sound.
17 So for purposes of this motion, if the Harrelsons say
18 Mr. Duke blew his horn or yelled, then we'll take it
19 as true for purposes of this motion. There are small
20 differences like that. But, basically, he drove up
21 behind someone waiting for a space. He flashed his
22 lights, wanted them to move on. Mr. Harrelson moved
23 into the space. Ms. Harrelson was already at the
24 front of the store. She had gotten out and retrieved
25 a shopping cart. Mr. Duke pulled down, and some

1 conversation took place between Mr. Duke and
2 Ms. Harrelson. We'll take Ms. Harrelson's version,
3 and in her testimony she said that he yelled at her
4 and asked if that is her husband. Mr. Duke said she
5 yelled at him. It doesn't really matter for purposes
6 of this motion. Let's assume that he yelled at
7 Ms. Harrelson. Mr. Harrelson came around, words
8 ensued. At that point, everyone agrees -- and the
9 record is very clear and the testimony is very
10 specific -- that Mr. Duke put his car in park, got out
11 of the car, had a fight with Mr. Harrelson. It is
12 alleged by Ms. Harrelson she was struck at one point,
13 so let's assume that. It is also alleged that at one
14 point they spun around the back of the car, and Mr.
15 Harrelson was in contact with the back of the car.

16 If you will -- when you do look at the video,
17 Your Honor, it has the time stamp on it. I'll
18 represent that the time stamp shows that from the
19 time, approximately 6:14 in the evening, is the
20 beginning of the video when Mr. Duke pulls behind Mr.
21 Harrelson. At 6:15:58 Mr. Duke gets out of his car.
22 At 6:16:25, some approximate 30 seconds later, he gets
23 back in his car. So this altercation took place at
24 about 30 seconds, and he got in his car and left.

25 Although the Harrelsons' memo seems to insinuate

1 otherwise, I'll let them address this. Our standard,
2 as far as I can tell from my research, is that there
3 is no coverage even under the liability insurance that
4 Geico covers unless the injuries arose out of the use
5 of the vehicle. There is actually -- the three
6 elements are that causal connection must exist between
7 the vehicle and the injury, that no act of independent
8 significance breaks that causal link, and the vehicle
9 was being used for transportation. Our courts
10 actually have interpreted all of those.

11 In terms of causal connection existing between
12 the vehicle and the injury, that has three elements
13 itself that the Court needs to look at. The first one
14 being was it an active accessory to the assault, not a
15 passive accessory, but an active accessory, was the
16 car used for the assault? The vehicle doesn't have to
17 be the proximate cause, but it has to be more than
18 just the site of the injury. Finally, the injury must
19 be foreseeable and identifiable with the use of a
20 vehicle.

21 So looking at these three elements as far as the
22 causal connection goes, was it an active accessory to
23 the assault? It was not. There is South Carolina law
24 on point that is cited in our brief. One case I do
25 want to direct the Court to is Holmes versus Allstate

1 Insurance, and that is a district court case
2 interpreting South Carolina law and citing the Yates
3 case that was just decided by the South Carolina
4 Supreme Court before that. In this case, an
5 individual actually used his car to drive and stalk
6 someone, stopped his car, shot the person and drove
7 on. The Court said that that did not constitute an
8 act of accessory required to establish coverage, even
9 though he used it to arrive at the scene and used it
10 to flee the scene.

11 THE COURT: That is district court?

12 MS. GOFORTH: It is.

13 THE COURT: It wasn't appealed?. That decision
14 was not appealed?

15 MS. GOFORTH: No. Not to my knowledge, no, sir.

16 THE COURT: The case that it cites, was that
17 case --

18 MS. GOFORTH: The case it cites is State Farm
19 versus Yates, Y-A-T-E-S, 332 S.E. 30. The Court held
20 that even though a driver used a car to go to a scene,
21 a stationary car is not an active accessory and not
22 used for transportation when the driver exits the
23 vehicle to become an assailant, that that breaks the
24 causal connection, and that it is not used for
25 transportation and not an act of accessory.

1 So in addition to the other arguments and to the
2 specific cites to the record showing there is really
3 no genuine issue of material fact, I think the Yates
4 case, and the Holmes case citing that Yates case,
5 preclude Geico's liability coverage in this case.

6 THE COURT: All right. Mr. Monckton.

7 MR. HUDSON: Your Honor, just a tidbit. Our
8 brief also has Geico's brief, which was filed a few
9 days before ours, so the cites that Geico refers to in
10 their brief where it has the exact times of the video
11 is in their brief, so when you go in our brief to pull
12 up the video, their brief is attached to ours and
13 shows exact times. You can go straight to the time.

14 THE COURT: I don't know that I'll be looking,
15 but we'll see.

16 MS. GOFORTH: There is a CD also.

17 THE COURT: We have a lot to cover. Mr. Monckton
18 or Mr. Connell.

19 MR. MONCKTON: Mr. Connell, Your Honor.

20 MR. CONNELL: I'll start by saying this. The
21 accident happened on December 22 a few days before
22 Christmas in a Walmart parking lot. If Your Honor has
23 ever been to Walmart before Christmas, it is mass
24 chaos. In this case, the Harrelsons were waiting for
25 a car to pull out. You'll see on the video, if you

1 look at it, that there are people walking everywhere,
2 cars everywhere. Mr. Duke is behind them racing his
3 engine, flashing his lights, backing up and pulling
4 forward in a threatening manner because either he
5 wants to get around them, or he's arguing with how
6 they are operating the vehicle. We say -- and the
7 video bares this out -- they finally pull into the
8 space. Mr. Duke used his car to block the car of the
9 Harrelsons, and then an altercation occurs outside of
10 the car in which Mr. Duke, a retired police officer,
11 winds up fracturing Mr. Harrelson's eye orbital and
12 causing brain injury when he bends him across the back
13 of the vehicle, the Duke vehicle, and pummels him.
14 There is evidence --

15 THE COURT: When you say "pummels," beats his
16 head against the car, or punches him with something
17 else?

18 MR. CONNELL: Punches him with a fist and uses
19 his own car to hold him against the car. Your Honor,
20 this case is not about the trial, as Your Honor knows,
21 today. We're here whether there is evidence for a
22 jury trial and whether there is a scintilla of
23 evidence.

24 THE COURT: How is that injury arising out of the
25 use, maintenance or ownership of that vehicle if he's

1 outside of the car and he punches someone in the face?
2 How is that car involved in that injury?

3 MR. CONNELL: I'll explain, and there are two
4 separate arguments. One for the underinsured
5 motorist, and one for Geico. I would point out that
6 the Geico policy has not been presented, so I don't
7 know how they can get summary judgment on a policy
8 that they have not presented for you to look at. I
9 don't know how that is possible in this situation.

10 I'll point out this. The Geico policy is under
11 the South Carolina Financial Responsibility Act. As
12 Your Honor knows, intentional acts are covered under
13 the Financial Responsibility Act. There are a number
14 of cases that hold --

15 THE COURT: Give me one where the person has
16 exited his vehicle, gotten into a fist fight and the
17 liability policy on the car was shown at fault? I
18 understand if you intentionally try to run over
19 someone, ram someone, you use that car, but give me a
20 case where a person exited his vehicle, caused the
21 injury and then got back into the vehicle and left and
22 liability was held.

23 MR. CONNELL: I can't give one because there
24 hasn't been one decided by the supreme court. All I
25 can give is the language. Farm Bureau versus Mumford,

1 in which the court said that intention uses which
2 cause damage require liability insurance to pay!

3 THE COURT: What is the intentional use of the
4 car in this case?

5 MR. CONNELL: Blocking his vehicle.

6 THE COURT: How did that injury -- how did that
7 cause his skull to be fractured?

8 MR. CONNELL: First, an argument over the
9 operation of the motor vehicle, that is what it
10 started with, he couldn't get around. Using his car
11 so he could not escape when he pulled into the parking
12 lot, and then using his own car -- Mr. Duke using his
13 own car to beat someone senseless on the back of his
14 car and using that as a weapon. In the deposition of
15 Mr. Harrelson, you'll hear over and over again Mr.
16 Harrelson say, He used his car as a weapon against me.
17 He was threatening with his car, backing up, pulling
18 forward, flashing his lights. He blocked my exit. He
19 got out and pummeled me against his car and then left
20 the scene.

21 So, Your Honor, as to the Geico policy, the
22 Financial Responsibility Act, we say, clearly applies
23 in that it covers intentional acts. Farm Bureau
24 versus the Mumford case in which someone was going to
25 decide they wanted to commit suicide and ran their car

1 into another person. The courts even extended that.
2 State Farm versus Moorer in which a passenger threw a
3 bottle out of the car -- not even the driver, a
4 passenger threw a bottle and blinded someone in the
5 eye. The Court said in that case, Third-party loss
6 arising out of the use of a vehicle is all you need,
7 and then they went on to say that the policies require
8 all South Carolinians to have the ability to pay for
9 any injuries regarding automobiles.

10 So, Your Honor, even though in this particular
11 situation -- I'm only talking about the Geico policy
12 now because the Farm Bureau has a different test, but
13 even though we haven't had a situation like this yet,
14 this case is one in which the same logic can be
15 applied against Geico in their intentional acts.

16 Now, as to the Farm Bureau policy, the issue of
17 the three-prong test, that is the test that Your Honor
18 heard a lot about already. That is Section 38-77-140
19 of the South Carolina Code. It talks about
20 underinsured motorist is optional coverage. It is not
21 required to -- it is required to be offered, but you
22 don't have to have it. It talks about the use of an
23 automobile. The case law cited in our brief talks
24 about the term "active accessory." If you use the
25 vehicle for an active accessory, then that is enough

1 to get coverage under that policy.

2 In this case, we have testimony from Mr.
3 Harrelson that his car was blocked by the Duke car.
4 We have testimony that Mr. Duke was upset about the
5 way the car was being driven. We have testimony that
6 Mr. Duke got out of his car after trying to -- after
7 using his car to block Mr. Harrelson in, and then he
8 actually used the back of his car to hold Mr.
9 Harrelson and beat him, and there was blood on the
10 back of the vehicle. All of this which involved
11 touching by the vehicle and him using that vehicle as
12 an active accessory.

13 Second point is the issue of causation, and the
14 Court says in those cases it is something less than
15 proximate cause. Well, all of this happened in the
16 space of two or three minutes over an argument either
17 about who was going to get the parking space, or in
18 the alternative about who was driving and how they
19 were driving. The test also says the use of the
20 automobile. The Court goes to great pains to say the
21 use of the automobile includes making your escape in
22 the car. In this case, the defendant in this case,
23 Mr. Duke, jumped into his car and left the scene.

24 The final thing is, is this the kind of conduct
25 that could be foreseeable? All of which, Your Honor,

1 points again to the scintilla of the evidence and what
2 the jury will think about this case when Farm Bureau
3 and Geico want to have a jury trial over whether there
4 is coverage, because we've asked for a jury trial. So
5 when you're talking about a scintilla of evidence,
6 there is more than a scintilla evidence for Mr. and
7 Mrs. Harrelson about Mr. Duke's operation of the
8 vehicle and how he used his car to injure them.

9 So, Your Honor, we submit to the Court that based
10 on summary judgment, that there are two different
11 standards, one is the Financial Responsibility Act for
12 the Geico policy, and the other is the standard I
13 talked about, the three-prong test with the
14 underinsured. There is more of a scintilla of
15 evidence for which this case should be heard before a
16 jury.

17 THE COURT: Mr. Monckton.

18 MR. MONCKTON: I'm here on behalf of Kevin Duke
19 and only involved with the Geico policy, and I
20 reiterate Mr. Connell's arguments rather than review.

21 THE COURT: Anything in reply?

22 MS. GOFORTH: I just have a couple of things.
23 One, the consistent reference to Mr. Duke's car
24 blocking the Harrelson car. Your Honor can view the
25 video, but on Page 21 of Mr. Harrelson's deposition he

1 said I thought the car was a little bit closer than
2 what it looks from the camera. He was asked, Are you
3 disagreeing with what is on the video? And he said, I
4 thought the car was closer, but the video shows what
5 he was doing. The other thing is there is no
6 different standard. The Financial Responsibility Act
7 does require provision of liability insurance in
8 certain amounts, and the two cases that the
9 Harrelsons' counsel cites state that based on intent,
10 you can't do that. What we have is still a
11 requirement that -- it is not just a blanket
12 requirement. You can't just say I beat someone up, my
13 car insurance has to cover it. It has to arise out of
14 the use of the vehicle no matter what. So the same
15 three-part test applies to Geico's coverage, as well
16 as the underinsured and uninsured coverage.

17 The supreme court in State Farm versus Yates made
18 it very clear that simply using a vehicle to get to
19 the scene and to leave a scene does not constitute
20 being an active accessory, and when you leave a
21 vehicle, it is not used for transportation at the time
22 of the incident.

23 MR. HUDSON: She beat me to it. Just a couple
24 words, if I may. On the act of accessory, as far as
25 UI, I mean in this situation the vehicle is not being

1 used for transportation, and the injuries and fist
2 fight were not reasonably foreseeable in the normal
3 use of the vehicle. All of that is required, and
4 those tests are simply not met with a fist fight going
5 on outside of the parking lot.

6 MS. GOFORTH: May I hand up a copy of the Geico
7 policy?

8 THE COURT: No, I'm fine. I'll grant the motions
9 for summary judgment. Mr. Hudson and/or Ms. Goforth,
10 if you want to put it in one order, or if you want to
11 do one for one, and one for the other which
12 basically -- my ruling is it is undisputed by viewing
13 those facts in the light most favorable to the
14 plaintiff injuries arose after Mr. Duke exited his
15 vehicle, there was a physical altercation that caused
16 the injury, he got back in the vehicle, left. Even if
17 he blocked him in, the blocking in didn't cause the
18 injury. Even if he was revving his engine, flashing
19 lights, that did not cause the injury. The injury was
20 caused when Mr. Duke exited the vehicle, or even if he
21 was up against the vehicle physically assaulted --
22 what is the other -- Harrelson. So I'll rule as a
23 matter of law that that is not an injury arising out
24 of the use, maintenance or ownership of the vehicle.

25 MR. HUDSON: I think one order could be done, as

1 obviously it is 95 percent the same issues.

2 THE COURT: All right.

3 MR. CONNELL: Can I ask to have two orders? I
4 think we need two separate ones. I also would like to
5 make sure that all of the depositions that have been
6 cited to are presented and added as Court's exhibits,
7 because no one has presented those to you, that I know
8 of.

9 THE COURT: I understand your argument, but I
10 think your client admits that his eye socket was
11 injured with a punch by Mr. Duke when he was outside
12 of his vehicle.

13 MR. CONNELL: No, I'm not arguing about that.
14 I'm arguing for purposes about what we will do later
15 on. If we make sure we have everything in the record,
16 those are the three depositions that they have been
17 citing to, and I think the policy needs to be in
18 there, too. I don't see how Your Honor can make a
19 ruling about the policy without them adding that.

20 MR. HUDSON: Our policy is attached to the brief,
21 and we certainly proffer all of the depositions that
22 were cited in the briefs.

23 MS. GOFORTH: I will attach all three in full to
24 our motions, so those are all a part of the record.

25 THE COURT: If it is not in the record and I

1 screwed up the decision, they'll kick it back down and
2 reverse my decision and grant summary judgment.

3 MS. GOFORTH: I would like to put the Geico
4 policy in the record, just to cover all the bases.

5 MR. CONNELL: I think Your Honor needs the policy
6 to make a ruling.

7 THE COURT: All right. Let's go ahead and get
8 everything you want in the record and get the court
9 reporter to mark it, copy for the record. So your A,
10 B, C, D, get them out. One, two, three depositions.
11 Get those marked.

12 MS. GOFORTH: I don't have originals, but I filed
13 with you and I mailed it to you and it should be part
14 of the Court's record.

15 THE COURT: You should have a copy of it. Let's
16 get it together and we'll put them in the record now.
17 I don't want anyone coming back saying I didn't do it.
18 Before you leave, get them up here to the court
19 reporter what you want marked.

20 MR. CONNELL: Only thing I want is what they
21 referred to.

22 THE COURT: Get what they referred to and get
23 them up here and get them marked. You are the one
24 that wanted them in the record, so get them in the
25 record.

1 MR. CONNELL: I think the three she has are
2 attached -- copies --

3 MS. GOFORTH: There are. They are already a part
4 of the record. My copies I have with me, Your Honor,
5 are marked and tabbed.

6 MR. HUDSON: You want depositions and policy?

7 MR. CONNELL: If she has the three that are
8 attached that I got, those are fine.

9 THE COURT: So you acknowledge they are already
10 in the record?

11 MS. GOFORTH: The minusccripts.

12 MR. CONNELL: Yeah, the minusccripts. Okay. And
13 you have the Geico policy. I think the Farm Bureau is
14 attached to your complaint.

15 THE COURT: Everything in the record is in the
16 record?

17 MR. CONNELL: Yes, sir.

18 THE COURT: All right. Thank you.

19 (Whereupon, the proceedings concluded.)
20
21
22
23
24
25

1
2
3 CERTIFICATE OF REPORTER
4

5 State of South Carolina)

6 County of Horry)
7

8 I, Natalie Dahl, Official Court Reporter for the
9 State of South Carolina, do hereby certify that the
10 foregoing is a true, accurate and complete Transcript
11 of Record of the proceedings had and evidence
12 introduced in the proceedings of the captioned case,
13 relative to appeal, in the Court of Common Pleas for
14 Horry County, South Carolina, on the 27th day of
15 February, 2017.

16 I do further certify that I am neither of kin,
17 counsel, nor interest to any party hereto.
18

19 April 18, 2017.
20

21
22 

23 Natalie Dahl, RPR

24 Court Reporter
25

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) C.A. # 16-CP-26-798

SOUTH CAROLINA FARM BUREAU MUTUAL)
INSURANCE COMPANY,)
PLAINTIFF,)
VERSUS)
MICHAEL DAVID HARRELSON, DEVORA)
HARRELSON, KEVIN DUKE, AND GOVERNMENT)
EMPLOYEES INSURANCE COMPANY,)
DEFENDANTS.)

DEPOSITION OF
DEVORA HARDEE HARRELSON

PURSUANT TO NOTICE OF DEPOSITION AND/OR AGREEMENT
IN THE ABOVE-ENTITLED CASE, THE DEPOSITION OF DEVORA HARDEE
HARRELSON WAS TAKEN ON THE 29TH DAY OF NOVEMBER, 2016,
COMMENCING AT THE HOUR OF 11:05 A.M., IN THE OFFICES OF THE
HUDSON LAW FIRM, MYRTLE BEACH, SOUTH CAROLINA:

REPORTED BY: MARCIE L. SMITH, VERBATIM REPORTER.

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EXHIBITS:

(NONE MARKED)

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL
IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

MLS REPORTING (864) 415-4198

1 STIPULATIONS:

2 IT IS AGREED BY AND BETWEEN THE COUNSEL FOR THE PARTIES AS
3 FOLLOWS:

- 4 1. THAT THIS DEPOSITION IS TO BE TAKEN PURSUANT TO RULE 30
5 OF THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE.
6 2. THAT THE DEPONENT WAIVES THE RIGHT TO READ AND SIGN THE
7 DEPOSITION TRANSCRIPT.

8 ***** ***** ***** *****

9 DEVORA HARDEE HARRELSON, BEING DULY SWORN TO TELL THE TRUTH,
10 THE WHOLE TRUTH AND NOTHING BUT THE TRUTH, TESTIFIED
11 CONCERNING THE MATTER HEREIN AS FOLLOWS:

12 EXAMINATION BY MR. TEAGUE:

13 Q. MS. HARRELSON, MY NAME IS REED TEAGUE. I REPRESENT
14 GEICO INSURANCE COMPANY. I APPRECIATE YOU BEING HERE
15 TODAY. COULD YOU PLEASE STATE YOUR FULL NAME FOR THE
16 RECORD.

17 A. DEVORA HARDEE HARRELSON.

18 Q. HAVE YOU EVER GIVEN A DEPOSITION BEFORE?

19 A. NO, SIR.

20 Q. OKAY, I'LL GIVE YOU A FEW GROUND RULES. YOUR ATTORNEY
21 MAY HAVE ALREADY TOLD YOU THIS, BUT IF YOU NEED A BREAK
22 AT ANY TIME, JUST LET ME KNOW. IF YOU WOULD RESPOND
23 VERBALLY, BECAUSE WE'RE TAKING EVERYTHING DOWN. WE
24 WANT TO MAKE SURE WE HAVE A YES OR NO, OR WHATEVER YOU
25 PROVIDE. RATHER THAN NODDING THE HEAD, LIKE WE DO IN

1 NORMAL CONVERSATION.

2 A. OKAY.

3 Q. IF YOU'LL ALSO ALLOW ME TO FINISH MY QUESTIONS BEFORE
4 YOU RESPOND, AND I'LL TRY MY BEST TO DO THE SAME WHEN
5 YOU ANSWER TO NOT TALK OVER YOU. SHE CAN'T TAKE BOTH
6 OF US TALKING AT THE SAME TIME. ARE YOU ON ANY
7 MEDICATION TODAY?

8 A. JUST MY BASIC MEDICATIONS.

9 Q. NOTHING THAT WOULD AFFECT YOUR ABILITY TO PROVIDE
10 TRUTHFUL AND ACCURATE RESPONSES?

11 A. NO, SIR.

12 Q. AND IF I ASK YOU A QUESTION AND YOU RESPOND, I'LL TAKE
13 THAT TO MEAN THAT YOU UNDERSTOOD IT AND CAN PROVIDE A
14 TRUTHFUL AND ACCURATE RESPONSE. IS THAT FAIR?

15 A. YES, SIR.

16 Q. AND IF I ASK YOU A QUESTION AND YOU DON'T UNDERSTAND
17 IT, JUST ASK ME TO REPHRASE IT OR SAY IT A DIFFERENT
18 WAY. OKAY?

19 A. YES, SIR.

20 Q. ALL RIGHT, WHAT'S YOUR DATE OF BIRTH?

21 A. ,

22 Q. I WON'T PUT THIS ON THE RECORD, BUT WHAT'S YOUR SOCIAL
23 SECURITY NUMBER?

24 (OFF THE RECORD)

25 EXAMINATION RESUMED BY MR. TEAGUE:

1 Q. AND WHERE WERE YOU BORN?
2 A. IN LORIS, SOUTH CAROLINA.
3 Q. AND DID YOU GRADUATE HIGH SCHOOL?
4 A. I DID.
5 Q. WHERE?
6 A. LORIS HIGH SCHOOL.
7 Q. WHAT YEAR?
8 A. 1983.
9 Q. ANY COLLEGE OR ADDITIONAL EDUCATION?
10 A. YES, SIR.
11 Q. WHERE?
12 A. I WENT TO HORRY GEORGETOWN TECHNICAL COLLEGE AND WORKED
13 ON MY CRIMINAL JUSTICE DEGREE. I WENT TO COASTAL
14 CAROLINA UNIVERSITY AND EARNED MY POLITICAL SCIENCE
15 BACHELOR'S DEGREE. AND THEN I WENT TO THE UNIVERSITY
16 OF SOUTH CAROLINA IN COLUMBIA AND EARNED MY MASTER'S
17 DEGREE IN SOCIAL WORK.
18 Q. WHAT YEAR DID YOU GRADUATE FROM USC?
19 A. WHEN I WAS AT COASTAL IT WAS USC ---
20 Q. OKAY, SO YOU ---
21 A. SO FOR MY MASTER'S DEGREE?
22 Q. YES.
23 A. IN DECEMBER OF 2002, I THINK.
24 Q. WHAT'S YOUR CURRENT ADDRESS?
25 A. , LORIS, SOUTH CAROLINA, 29569.

1 Q. I LIVE IN THE UPSTATE, AND I KNOW LORIS EXISTS, BUT I
2 DON'T KNOW EXACTLY WHERE. WHERE IS IT IN PROXIMITY TO
3 CONWAY?

4 A. TO CONWAY? IT'S NORTH.

5 Q. HOW FAR IS IT FROM WHERE THIS INCIDENT HAPPENED AT WAL-
6 MART? HOW FAR IS IT FROM THAT WAL-MART?

7 A. WELL, THE WAL-MART IS AT LITTLE RIVER GATOR HOLE AT
8 NORTH MYRTLE BEACH. SO IT WOULD BE EAST OF LORIS.

9 Q. MILES-WISE?

10 A. I DON'T KNOW HOW MANY MILES. IT TAKES ABOUT 25 MINUTES
11 TO GET THERE.

12 Q. OKAY, I HAVE IT FIGURED OUT NOW. SO YOU'VE LIVED IN
13 LORIS YOUR ENTIRE LIFE?

14 A. I HAVE.

15 Q. I'LL JUST GO AHEAD AND GET SOME INFORMATION THESE OTHER
16 ATTORNEYS MIGHT WANT. DO YOU HAVE ANY FAMILY MEMBERS
17 THAT LIVE IN HORRY COUNTY WITH LAST NAMES OTHER THAN
18 HARRELSON?

19 A. YES, SIR.

20 Q. COULD YOU GIVE THOSE TO US.

21 A. THE LAST NAMES?

22 Q. YES.

23 A. HARDEE.

24 Q. OKAY.

25 A. PYVER. COX. I THINK THAT WOULD BE MOST OF THEM.

1 Q. THE ONLY REASON I'M ASKING IS SOMEBODY AT SOME POINT
2 MAY HAVE TO PICK A JURY, AND THEY DON'T WANT YOUR
3 COUSIN ON THE JURY. SO THAT'S THE ONLY REASON. CAN
4 YOU GIVE ME YOUR EMPLOYMENT BACKGROUND. PLACES THAT
5 YOU'VE WORKED SINCE YOU GRADUATED FROM COLLEGE.

6 A. I WORKED AT HORRY COUNTY DEPARTMENT OF SOCIAL SERVICES.
7 I WORKED AT WACCAMAW CENTER FOR MENTAL HEALTH IN
8 CONWAY, WHICH IS THE SOUTH CAROLINA DEPARTMENT OF
9 MENTAL HEALTH. I WORKED IN NORTH CAROLINA FOR A DAY
10 TREATMENT PROGRAM FOR JUVENILES. THE NAME OF THAT WAS
11 NEW OPPORTUNITIES. AND I WORKED AT EVERGREEN
12 BEHAVIORAL IN NORTH CAROLINA. AND THEN I CAME BACK TO
13 SOUTH CAROLINA AND WORKED IN CONWAY MEDICAL CENTER.

14 Q. WHERE WAS THAT?

15 A. CONWAY MEDICAL CENTER. AND NOW I'M BACK AT WACCAMAW
16 CENTER FOR MENTAL HEALTH.

17 Q. WHAT DO YOU DO AT WACCAMAW CENTER?

18 A. I AM A THERAPIST. I WORK WITH THE MENTAL HEALTH COURT
19 PROGRAM.

20 Q. ARE YOU A MENTAL HEALTH THERAPIST?

21 A. YES.

22 Q. IS THAT HOW IT'S DEFINED?

23 A. YES.

24 Q. YOU'VE BEEN WORKING THERE FOR HOW LONG?

25 A. THIS TIME?

1 Q. YES, THIS TIME.

2 A. SINCE SEPTEMBER OF 2014..

3 Q. HAVE YOU EVER BEEN ARRESTED?

4 A. NO, SIR.

5 Q. HAVE YOU EVER FILED A WORKER'S COMPENSATION CLAIM?

6 A. YES, SIR.

7 Q. WHAT TYPE OF WORKER'S COMPENSATION CLAIM?

8 A. WHEN I WAS WORKING AT DSS IN HORRY COUNTY, I
9 HYDROPLANED ON WATER ON THE ROAD WITH A STATE TRUCK ON
10 MY WAY TO COURT AND FLIPPED THE TRUCK OVER SEVERAL
11 TIMES. STRUCK A LIGHT POLE. AND ALL OF THE WINDOWS
12 WERE BEAT OUT OF THE TRUCK. MY HEAD HIT OUT THE SIDE
13 OF THAT WINDOW, AND I HAD A WHIPLASH INJURY.

14 Q. ANY OTHER WORKER'S COMPENSATION CLAIMS?

15 A. NO.

16 (OFF THE RECORD DISCUSSION)

17 EXAMINATION RESUMED BY MR. TEAGUE:

18 Q. YOU'RE CURRENTLY MARRIED. WHAT'S YOUR HUSBAND'S NAME?

19 A. MICHAEL DAVID HARRELSON.

20 Q. AND HE'S IN THE ROOM HERE, CORRECT?

21 A. HE IS.

22 Q. HOW LONG HAVE YOU ALL BEEN MARRIED?

23 A. FOR 33 YEARS.

24 Q. DO YOU HAVE ANY CHILDREN?

25 A. I DO.

1 Q. GIVE ME THEIR NAMES.

2 A. NAME?

3 Q. YES.

4 A. HARRELSON CHESTNUT.

5 Q. JUST ONE CHILD?

6 A. THAT'S IT.

7 Q. DO YOU HAVE ANY GRANDCHILDREN OVER THE AGE OF 16?

8 A. NO, SIR.

9 Q. I'LL JUST JUMP FORWARD TO JUST THE FACTUAL ISSUES AS TO

10 THE INCIDENT FOR WHICH YOU FILED THE UNDERLYING

11 COMPLAINT AGAINST MR. DUKE. CORRECT?

12 A. (AFFIRMATIVE RESPONSE)

13 Q. AND THAT'S RELATED TO AN INCIDENT THAT OCCURRED

14 DECEMBER 22ND, 2012, AT THE WAL-MART IN NORTH MYRTLE

15 BEACH. IS THAT WHEN THE INCIDENT OCCURRED?

16 A. IT HAPPENED IN GATOR HOLE AT NORTH MYRTLE BEACH AT WAL-

17 MART, BUT IT WAS ON DECEMBER 21ST, 2012.

18 Q. OKAY, THAT'S FINE. SO THE 21ST?

19 A. YES, SIR.

20 Q. ALL RIGHT. WERE YOU WITH YOUR HUSBAND AND YOUR HUSBAND

21 ONLY?

22 A. YES.

23 Q. AND TELL ME WHAT YOU'D BEEN DOING THAT DAY. WHAT DAY

24 OF THE WEEK WAS IT? I'M NOT SURE ---

25 A. FRIDAY.

1 Q. IT WAS A FRIDAY. OKAY, HAD YOU WORKED THAT DAY?
2 A. I HAD.
3 Q. HAD YOUR HUSBAND WORKED THAT DAY?
4 A. HE DID.
5 Q. AND WHAT HAD YOU ALL DONE IN THE HOURS LEADING UP TO
6 GOING TO WAL-MART?
7 A. MY HUSBAND HAD GOTTEN OFF A FEW HOURS EARLY. HE HAD
8 WENT HOME AND TOOK A SHOWER. I GOT OFF WORK AT MY
9 TYPICAL TIME. 5:00. I CAME HOME. WE IMMEDIATELY GOT
10 INTO THE VEHICLE AND WENT TO NORTH MYRTLE BEACH WHERE
11 WE STOPPED FOR DINNER AT APPLEBEE'S. WE ATE DINNER AT
12 APPLEBEE'S, AND I TOLD HIM THAT I NEEDED TO RUN TO WAL-
13 MART, WHICH I DID NOT WANT TO DO BECAUSE IT WAS THE
14 FRIDAY NIGHT BEFORE CHRISTMAS. TO GET A BOX OF TIDE SO
15 I COULD WASH LAUNDRY THE NEXT DAY. SO WE LEFT
16 APPLEBEE'S AND WENT RIGHT DOWN THE STREET AND ACROSS
17 THE ROAD INTO WAL-MART.
18 Q. LIVING WHERE YOU LIVE IS THAT THE WAL-MART THAT YOU
19 NORMALLY GO TO?
20 A. IT IS.
21 Q. SO YOU SAID THE APPLEBEE'S IS CLOSE TO THE WAL-MART?
22 A. YES.
23 Q. ALL RIGHT, AND DO YOU KNOW APPROXIMATELY WHAT TIME YOU
24 TRAVELED INTO THE WAL-MART PARKING LOT THAT NIGHT?
25 A. IT WAS JUST BEFORE 6:00.

1 Q. AND IT WAS DARK OUTSIDE?

2 A. THAT TIME OF YEAR, YES.

3 Q. DID YOU HAVE TO CIRCLE THE LOT TO FIND A SPACE, OR DID
4 YOU ---

5 A. NO, SIR.

6 Q. YOU PULLED RIGHT IN AND TELL ME WHAT HAPPENED AS FAR AS
7 WHEN YOU PULLED INTO THE AREA WHERE YOU WERE GOING TO
8 PARK.

9 A. WHEN YOU TURN OFF OF 17 INTO THE WAL-MART PARKING LOT
10 YOU HAVE TO GO INTO THE LOT ITSELF. SO WE PULLED IN
11 AND WENT INTO THE LOT AND WE WENT TO THE END. THE
12 SOUTH END OF THE BUILDING ENTRY. IT WAS BETWEEN ROWS
13 SEVEN AND EIGHT AT THE WAL-MART. AND WHEN WE PULLED UP
14 THERE WAS HARDLY ANY PARKING SPACES BECAUSE IT WAS THE
15 FRIDAY NIGHT BEFORE CHRISTMAS. AND I SAW A GENTLEMAN
16 UP IN THE FOURTH PARKING SPACE FROM THE FRONT. HE WAS
17 PUTTING STUFF IN THE BACK OF HIS SUV. SO I ASKED
18 MICHAEL, I SAID IF YOU'LL JUST STOP HERE, I'LL JUMP OUT
19 AND GET HIS BUGGY SO WE DON'T HAVE TO WAIT FOR HIM TO
20 WALK AND PUT THAT UP. AND I'LL MEET YOU INSIDE. AND
21 HE SAID, OKAY. I GOT OUT OF THE CAR AND THERE WAS
22 NOBODY AROUND US. NOBODY WAS THERE. I WALKED UP TO
23 THE GENTLEMAN AND HE HAD EMPTIED HIS BUGGY, AND I SAID
24 THANK YOU, I'LL TAKE THAT. HE SAID THANK YOU. AND I
25 TOOK THE BUGGY AND WALKED DIAGONALLY ACROSS. I MADE IT

1 TO THE FRONT OF ROW SEVEN AT THE END PARKING SPACE.
2 AND AS I WAS WALKING ACROSS DIAGONALLY, I HEARD THIS
3 LONG CAR HORN BEEPING. BECAUSE NOBODY HAD BEEN AROUND
4 US WHEN I GOT OUT OF THE CAR JUST SECONDS BEFORE, I
5 THOUGHT IT WAS MICHAEL BLOWING THE HORN. SO I TURNED
6 TO LOOK TO SEE IF HE NEEDED ME FOR ANYTHING. AND WHEN
7 I TURNED AROUND THERE WAS ANOTHER LONG BEEP AND ---
8 Q. LET ME STOP YOU FOR A SECOND. THIS WAS WHEN YOU WERE
9 STANDING UP TOWARDS THE ENTRANCE OF WAL-MART WITH THE
10 BUGGY AND YOU HEAR ---
11 A. I WAS ---
12 Q. --- THE BEEP?
13 A. RIGHT. I WAS WALKING BETWEEN THE PARKING ROWS. I
14 WASN'T UP AT THE FRONT ENTRANCE. I WAS STILL ON THE
15 PARKING ROW.
16 Q. BUT YOU WERE PAST THE LAST PARKED CAR IN THE PARKING
17 LOT?
18 A. NO, SIR.
19 Q. YOU WERE NOT?
20 A. I WAS AT THE LAST SPACE.
21 Q. AND THAT'S WHEN YOU HEARD THE BEEPING?
22 A. I HEARD THE BEEPING WHEN I WAS WALKING OVER. AND WHEN
23 I WALKED -- WHEN IT STOPPED BEEPING, I TURNED AND
24 LOOKED AND I RECOGNIZED THAT THERE WAS ANOTHER CAR
25 THERE. AND I LOOKED AT MICHAEL AND MICHAEL LOOKED AT

1 ME, AND THE PERSON IN THE CAR BEHIND HIM BACKED HIS CAR
2 UP AND WAS FLASHING HIS HEADLIGHTS. AND STOMPED THE
3 GAS LIKE HE WAS GOING TO RUN INTO THE BACK OF MICHAEL'S
4 CAR. HE ACTUALLY HIT THE BRAKES SO HARD THE LIGHTS
5 WENT DOWN AND I COULDN'T SEE THE LIGHTS FOR A MINUTE
6 BECAUSE OF MICHAEL'S CAR. AND ---

7 Q. WHAT KIND OF CAR WERE YOU IN?

8 A. I WAS IN A BLACK BMW.

9 Q. OKAY, GO AHEAD. I DIDN'T MEAN TO INTERRUPT YOU.

10 A. SO THE HORN WAS BEEPING AND HE WAS FLASHING HIS LIGHTS
11 AND COMING UP LIKE THAT. WELL, THE GENTLEMAN WHO HAD
12 PUT HIS STUFF IN THE CAR AND I HAD GOTTEN THE BUGGY
13 FROM -- WHEN MICHAEL INITIALLY STOPPED IT WAS SO THAT I
14 COULD GET THE BUGGY AND HE WAS GOING TO LET HIM BACK UP
15 AND PULL OUT SO MICHAEL COULD PARK THERE. WELL, BY THE
16 TIME I GOT THE BUGGY AND GOT ACROSS THE STREET AND THE
17 HORN WAS BLOWING, APPARENTLY THERE WAS NO CAR PARKED IN
18 FRONT OF HIM ON ROW NINE. SO HE DIDN'T HAVE TO BACK
19 OUT. HE DIDN'T HAVE TO TAKE THE TIME TO BACK OUT. HE
20 JUST PULLED FORWARD AND LEFT.

21 Q. OKAY.

22 A. SO MICHAEL PULLED INTO THAT PARKING SPACE. AND WHEN HE
23 PULLED UP INTO THE PARKING SPACE, I'M STANDING THERE
24 WITH THE BUGGY BECAUSE I DIDN'T KNOW WHAT WAS GOING ON.
25 I DIDN'T KNOW WHY THIS MAN WAS ACTING LIKE THIS. WHY

1 HE WAS REVVING HIS MOTOR. WHY HE WAS BEEPING HIS HORN.
2 WHY HE WAS FLASHING HIS LIGHTS. I HAD NO CLUE WHY HE
3 WAS ACTING LIKE THIS. SO I'M JUST LIKE -- I DIDN'T
4 KNOW WHETHER TO GO TO MICHAEL OR IF I NEEDED TO GO IN
5 THE STORE. I DIDN'T KNOW WHAT TO DO. I'M STANDING
6 THERE WITH THE BUGGY.

7 Q. LET ME JUST UNDERSTAND. IF YOU'D WANTED TO GO TO THE
8 STORE, YOU COULD HAVE? YOU COULD HAVE WALKED TO THE
9 STORE AT THAT TIME?

10 A. I DON'T EVEN KNOW IF I WOULD HAVE HAD TIME TO GET TO
11 THE STORE BY THE TIME ALL OF THIS STUFF HAPPENED. IT
12 WAS -- MY BRAIN WAS GOING A HUNDRED MILES AN HOUR ABOUT
13 WHAT I NEEDED TO DO FOR MY OWN SAFETY. BECAUSE WHEN
14 MICHAEL PULLED UP AND PULLED INTO THE PARKING SPACE,
15 I'M STANDING THERE WITH NOTHING BUT A BUGGY FROM WAL-
16 MART, AND THIS MAN IS ACTING LIKE THIS WITH HIS
17 VEHICLE. I DIDN'T KNOW IF -- I MEAN, WHAT -- HE COULD
18 HAVE HIT HIS GAS AND RAN ME OVER FOR ALL I KNOW. I
19 DIDN'T KNOW WHAT TO DO. AND MICHAEL PULLED UP INTO THE
20 PARKING SPACE. AND HE COMES UP AND I THOUGHT HOPEFULLY
21 HE'S GOING TO GO ON BY AND LEAVE. HE PULLS UP AND
22 STOPS BETWEEN MYSELF AND MICHAEL AT THE BACK END OF OUR
23 CAR AND ROLLS HIS WINDOW DOWN AND SAYS, IS THAT YOUR
24 HUSBAND?

25 Q. TELL ME EXACTLY WHERE HE STOPPED HIS CAR.

1 A. WELL, MICHAEL HAD PULLED UP INTO THAT PARKING SPACE.
2 AND I WAS STANDING OVER HERE WITH THE BUGGY. SO IT'S
3 LIKE THE DRIVEWAY WAS BETWEEN THE TWO OF US. AND HE
4 PULLS UP AND STOPS AT THE BACK END OF MICHAEL'S CAR.

5 Q. SO IT'S YOUR TESTIMONY THAT HE STOPPED BEFORE HE PASSED
6 YOUR VEHICLE?

7 A. NO. HE WAS -- MICHAEL PARKED IN THE PARKING SPACE.
8 AND HE PULLED UP AND THE BACK END OF HIS CAR WAS
9 PROBABLY ABOUT THAT FAR -- YOU ALL HAVE TO FORGIVE MY
10 SHAKING. I'VE BEEN LIKE THIS EVER SINCE THIS HAPPENED.

11 Q. THAT'S OKAY.

12 A. EVERY TIME I HAVE TO TALK ABOUT IT MY NERVES GO ALL TO
13 PIECES.

14 Q. TAKE YOUR TIME. WE'RE NOT IN ANY HURRY. AND IF YOU
15 NEED A BREAK, JUST LET US KNOW.

16 A. SO MICHAEL PULLED INTO THE PARKING SPACE ---
17 BY MR. TEAGUE:

18 LET'S TAKE A QUICK BREAK.

19 (OFF THE RECORD)

20 EXAMINATION RESUMED BY MR. TEAGUE:

21 Q. SO WE WERE JUST DISCUSSING WHERE MR. DUKE'S CAR STOPPED
22 AFTER YOUR HUSBAND PULLED YOUR VEHICLE INTO THE PARKING
23 SPOT. AND IF YOU COULD JUST TELL ME DID HE STOP -- IT
24 WAS AT THE END OF THE AISLE HE'D STOPPED TO PULL OUT
25 INTO THE ROAD GOING THE OPPOSITE DIRECTION, CORRECT?

1 DID HE STOP BEFORE THERE, OR DID HE STOP FURTHER BACK?
2 A. WELL, I NEED TO EXPLAIN TO YOU THAT THE ROW EIGHT AND
3 NINE PARKING SPACES GO FURTHER THAN ROW SEVEN. BECAUSE
4 ROW SEVEN IS RIGHT IN FRONT OF THE DOORS. SO THERE'S
5 LIKE MORE PARKING SPACES ON THIS LANE. SO WHEN MICHAEL
6 PULLED UP INTO THE FOURTH PARKING SPACE ON THIS LANE,
7 IT WAS LIKE SORT OF RIGHT ACROSS FROM WHERE I WAS
8 STANDING. SO WHEN DUKE PULLED HIS CAR UP, HE STOPPED
9 BETWEEN MICHAEL AND MYSELF. HIS -- THE BACK END OF HIS
10 CAR WAS BEHIND THE SIDE OF OUR CAR. AND IT WAS
11 PROBABLY ABOUT BETWEEN TWO OR THREE FEET AWAY FROM OUR
12 CAR. I WAS ON THE OTHER SIDE OF DUKE'S CAR, AND I WAS
13 PROBABLY THREE OR FOUR FEET AWAY FROM HIS CAR. I'VE
14 BEEN A SOCIAL WORKER. I'M NOT GOING NEAR ANYBODY IN
15 THAT -- I'M USED TO TRYING TO DE-ESCALATE A SITUATION.
16 NOT AMP ONE UP. SO I'M STANDING THERE LIKE -- HE PULLS
17 UP AND HE SAYS, IS THAT YOUR HUSBAND? AND I SAID, YES.
18 WELL, MICHAEL HAD PARKED AND GOT OUT OF THE CAR.
19 MICHAEL WALKED FROM THE DRIVER'S SIDE OF HIS CAR, WHICH
20 WAS FACING SOUTH. HAD TO WALK AROUND THE BACK OF
21 DUKE'S CAR AND CAME UP OVER WHERE I WAS STANDING. AND
22 HE HEARD DUKE SCREAM AT ME IS THAT YOUR HUSBAND, AND HE
23 -- I SAID YES. AND HE SAID, YES, I AM. AND WHEN
24 MICHAEL SPOKE ---
25 Q. CAN I ASK YOU SOMETHING REAL QUICK.

1 A. YES.

2 Q. DID YOU APPROACH MR. DUKE'S VEHICLE PRIOR TO HIM
3 ROLLING DOWN HIS WINDOW AND ---

4 A. NO, SIR, I DID NOT.

5 Q. OKAY, GO AHEAD.

6 A. I SAID, YES. AND MICHAEL SAID, YES, I AM. AND WHEN
7 MICHAEL SAID, YES, I AM, HE SAID, OH, YOU WANT SOME OF
8 THIS YOU MF'ing S.O.B. AND OPENED HIS CAR DOOR AND
9 TOOK ABOUT THREE STEPS TOWARDS MICHAEL AND COLDCKOCKED
10 HIM IN THE FACE, BREAKING HIS GLASSES WITH THE FIRST
11 PUNCH. HE LACERATED MICHAEL'S EYE. BLOOD POURING
12 EVERYWHERE. HE WAS DRENCHED IN BLOOD FROM HIS EYEBROWS
13 TO HIS PANTS -- THE BELT OF HIS PANTS.

14 Q. WHEN HE MADE THE FIRST CONTACT WITH YOUR HUSBAND HE WAS
15 OUTSIDE OF THE VEHICLE, CORRECT?

16 A. ABSOLUTELY.

17 Q. AND THE VEHICLE WAS IN PARK, CORRECT?

18 A. I WOULD ASSUME, BECAUSE IT WASN'T ROLLING.

19 Q. AND HOW MANY STEPS WOULD YOU SAY DID HE HAVE TO TAKE
20 OUTSIDE OF HIS VEHICLE TO MAKE CONTACT WITH YOUR
21 HUSBAND?

22 A. WELL, HE PUT HIS LEFT FOOT DOWN WHEN HE STEPPED OUT OF
23 THE CAR AND THE SECOND -- WITH THE SECOND STEP WAS WHEN
24 HE SWUNG AND HIT MICHAEL IN THE FACE AND BROKE HIS
25 GLASSES. AND THERE HAD BEEN NO ARGUMENT. THERE HAD

1 BEEN NO YELLING. THERE HAD BEEN NO CURSING. THERE HAD
2 BEEN NOTHING. SO- I WAS BLINDSIDED. MICHAEL WAS
3 BLINDSIDED. I HAD NOTHING IN MY POSSESSION.

4 Q. I UNDERSTAND.

5 A. AND I HAD SOFT SHOES ON WHERE I'D BEEN WORKING AT THE
6 HOSPITAL THAT DAY. THEY DIDN'T EVEN HAVE A HEEL ON
7 THEM. THERE WAS NOTHING. ALL I COULD DO WAS STAND AND
8 WATCH. HE HIT MICHAEL AND MICHAEL PUT HIS HANDS UP
9 LIKE THIS AND STARTED WALKING TOWARDS HIM TRYING TO
10 KEEP HIM PUSHED OFF OF HIM. MICHAEL DIDN'T EVEN HIT
11 HIM AND WAS PUSHING ON HIM LIKE THIS ---

12 Q. AND WHEN THAT'S HAPPENING ARE THEY STAYING IN THE SAME
13 POSITION, OR ARE THEY MOVING ABOUT?

14 A. OKAY, WHERE I WAS STANDING WHEN DUKE STOPPED IN FRONT
15 OF ME, I WAS STANDING IN THE SAME PLACE. WHEN MICHAEL
16 CAME AROUND THE CAR, HE CAME OVER WHERE I WAS AT. HE
17 DID NOT GET ANYWHERE NEAR DUKE'S CAR. HE CAME OVER
18 HERE BESIDE ME AND SAID, YES, I AM. AND THAT'S WHEN HE
19 JUMPED OUT OF THE CAR AND CAME AND HIT MICHAEL IN THE
20 FACE. AND MICHAEL WAS PUSHING -- PUSHING AWAY FROM
21 HIM. LIKE TO PUSH HIM OFF OF HIM TO TRY TO KEEP HIM
22 FROM HITTING HIM. AND DUKE IS SWINGING WITH BOTH ARMS.
23 EVERY THROW THAT HE THREW WITH HIS FIST HE WAS TRYING
24 TO HIT MICHAEL IN THE TEMPLE. MICHAEL WAS PUSHING BACK
25 AT HIM. AND THEY ENDED UP WALKING WITH THE FORCE BACK

1 OVER TOWARDS HIS CAR.

2 Q. WHOSE CAR?

3 A. DUKE'S CAR.

4 Q. DUKE'S CAR?

5 A. THE DRIVER'S SIDE TOWARDS THE BACK END. AND DUKE KEPT
6 RIGHT ON SWINGING. AND MICHAEL MANAGED TO TURN HIS
7 BACK TO HIM BECAUSE HE COULDN'T EVEN SEE -- HE TOLD ME,
8 HE SAID I COULDN'T EVEN SEE ANYTHING FOR ALL THE BLOOD
9 THAT WAS GOING EVERYWHERE. WHEN THEY GOT TO THE BACK
10 OF THE CAR ---

11 Q. WHEN YOU SAY GOT TO THE BACK OF THE CAR, YOU MEAN THEY
12 WERE AT THE REAR BACK NEAR THE TRUNK AREA?

13 A. YES.

14 Q. OKAY.

15 A. AND WHEN THEY GOT NEAR THE CAR DUKE -- IS IT OKAY IF I
16 STAND UP?

17 Q. YES. PLEASE FEEL FREE.

18 A. DUKE WAS THROWING HIS PUNCHES AND MICHAEL HAD GOTTEN
19 HIS BACK TURNED AND WAS PUTTING HIS HANDS UP LIKE THIS,
20 BECAUSE HE WAS REACHING AROUND AND PUNCHING MICHAEL.
21 AND HE TOOK THE LOWER PART OF HIS BODY AND PINNED
22 MICHAEL UP AGAINST THE TRUNK OF HIS CAR. AND MICHAEL
23 WAS LEANED OVER LIKE THIS TRYING TO PROTECT HIS FACE,
24 AND I WAS STANDING OVER THERE SCREAMING FOR HIM TO
25 STOP.

1 Q. AND HOW LONG DID THAT GO ON WHERE HE WAS LEANED OVER
2 THE CAR ---

3 A. IT'S HARD TO SAY HOW LONG IT WENT ON. BECAUSE FOR ME
4 IT FELT LIKE TEN MINUTES. NOW, I KNOW IT COULDN'T HAVE
5 BEEN THAT LONG. BUT HE WAS STILL LEANING AROUND
6 PUNCHING MICHAEL IN THE FACE, BECAUSE HE HAD MICHAEL
7 PINNED AGAINST THE TRUNK OF THE CAR. AND HE WAS
8 BEATING HIM.

9 Q. DID YOUR HUSBAND HAVE AN OPPORTUNITY TO HIT MR. DUKE AT
10 ALL OR ---

11 A. NO. IF YOU LOOK AT THE MUG SHOT WHEN DUKE WAS ARRESTED
12 -- WHEN HE FINALLY PRESENTED HIMSELF AT THE JUDGE'S
13 CHAMBERS FOR A BOND HEARING AND HE WAS PROCESSED.
14 BECAUSE HE NEVER WENT TO JAIL. HE HAD A SCRATCH ON THE
15 LEFT SIDE OF HIS FACE. NOW, YOU MIGHT THINK THAT WOULD
16 HAVE COME FROM A HIT. MICHAEL HAD A DIAMOND RING ON
17 HIS FINGER AND HE WAS DOING THIS NUMBER (WITNESS
18 DEMONSTRATES). THAT COME FROM DUKE SWINGING AROUND
19 HARD ENOUGH TO REACH AROUND HIS ARMS AND HIT HIM IN THE
20 FACE AND APPARENTLY SCRATCHED HIS FACE WITH THE RING
21 MICHAEL HAD ON. BECAUSE MICHAEL WAS LIKE THIS THE
22 WHOLE TIME. HE COULDN'T SEE ANYTHING. AND ---

23 Q. WHEN YOU SAY LIKE THIS, YOU HAVE YOUR HANDS UP AROUND
24 YOUR HEAD?

25 A. YES. HE WAS TRYING TO BLOCK THE SHOTS THAT WERE COMING

1 IN. AND DUKE HAD HIM PINNED UP AGAINST THE BACK OF HIS
2 CAR AND WAS JUST BEATING AND BEATING AND BEATING AND
3 BEATING. AND I KEPT TELLING HIM TO STOP, AND HE
4 WOULDN'T STOP.

5 Q. WHEN YOU SAY HE WAS BEATING AND BEATING HIM. DO YOU
6 KNOW HOW MANY PUNCHES HE WOULD HAVE THROWN AT THAT
7 POINT IN TIME WHEN HE WAS PINNED AGAINST THE CAR?

8 A. I HAVE NO IDEA. PROBABLY 20.

9 Q. TWENTY?

10 A. YES.

11 Q. I'M ASSUMING AT SOME POINT THEY GOT AWAY FROM THE BACK
12 OF THE VEHICLE, IS THAT RIGHT?

13 A. YES.

14 Q. AND WHERE DID THEY ---

15 A. WELL, LET ME TELL YOU HOW THAT HAPPENED.

16 Q. ALL RIGHT.

17 A. HE HAD MICHAEL PINNED UP AGAINST THE BACK OF THE CAR
18 AND WAS BEATING HIM. MICHAEL WAS SO ADDLED HE COULDN'T
19 EVEN FIGHT BACK. AND THE ONLY THING I COULD THINK WAS
20 TO GET HOLD OF HIM AND PULL HIM FROM BETWEEN DUKE AND
21 HIS CAR. SO I WENT OVER AND GOT MICHAEL -- I PUT MY
22 HANDS AROUND HIS WAIST AND YANKED AS HARD AS I COULD TO
23 DISLODGE HIM FROM BETWEEN DUKE AND THE BACK OF DUKE'S
24 CAR.. AND WHEN I WAS ABLE TO PULL HIM FREE, WITH THE
25 MOMENTUM HE ACTUALLY WENT PAST ME. AND WHEN HE ENDED

1 UP BEHIND ME, DUKE COULDN'T HIT HIM ANYMORE SO HE
2 --TURNED AND STARTED BEATING ME IN THE FACE.

3 Q. SO HOW MANY TIMES DID MR. DUKE HIT YOU IN THE FACE?

4 A. I HAVE NO CLUE. I KNOW THAT HE HIT ME IN THE EAR. HE
5 HIT ME IN THE FACE. HE HIT ME IN THE NECK AND THE
6 SHOULDERS. AND FOR SOME REASON WHEN I GOT TO THE
7 HOSPITAL BOTH MY KNEES ON BOTH MY LEGS WAS HURTING. SO
8 I DON'T KNOW IF HE KICKED ME IN ADDITION TO THAT. I
9 HAVE NO CLUE.

10 Q. DID YOU HAVE ANY ABRASIONS OR BRUISES ON YOUR ---

11 A. YES, SIR, I DID.

12 Q. WHERE WERE THEY AT?

13 A. THE TOP OF MY EAR WAS BRUISED. I HAD A BRUISE DOWN THE
14 SIDE OF MY CHEEK RIGHT HERE. I HAD A BRUISE ON THE
15 SIDE OF MY NECK RIGHT HERE. I HAD SCRAPES ON THIS SIDE
16 OF MY ARM. I DON'T EVEN KNOW WHERE THAT COME FROM.

17 Q. HOW LONG WOULD YOU ESTIMATE THAT THIS ALTERCATION TOOK
18 BEFORE MR. DUKE GOT BACK IN HIS CAR AND LEFT?

19 A. WHEN HE WAS AROUND BEHIND ME AND HE STARTED PUNCHING ME
20 IN THE FACE I WAS TRYING TO DEFEND MYSELF. AND WHEN
21 MICHAEL REALIZED WHAT WAS GOING ON HE COME AROUND AND
22 PULLED ME BACK OUT OF THE WAY. AND DUKE STARTED
23 BEATING HIM A SECOND TIME. AND THAT'S WHEN I REALIZED
24 THAT SOMETHING -- I HAD TO DO SOMETHING MORE THAN BEG
25 HIM TO STOP.

1 BY MR. TEAGUE: .

2 LET'S TAKE A FIVE MINUTE BREAK. . . .

3 (OFF THE RECORD)

4 EXAMINATION RESUMED BY MR. TEAGUE:

5 Q. I THINK WHEN WE LEFT OFF WE WERE KIND OF AT A POINT
6 WHERE YOU WERE ATTEMPTING TO PULL YOUR HUSBAND AWAY
7 FROM MR. DUKE. IS THAT RIGHT?

8 A. YES, SIR.

9 Q. AND THEN DO YOU RECALL HOW MANY TIMES MR. DUKE STRUCK
10 YOU?

11 A. I DON'T KNOW HOW MANY TIMES HE HIT ME.

12 Q. YOU DON'T RECALL. OKAY. AND THEN AFTER YOU PULLED HIM
13 AND AFTER HE HIT YOU, WHAT DID HE DO AT THAT POINT?

14 A. WELL, HE WAS HITTING ME. AND THEN MICHAEL REALIZED
15 THAT HE WAS HITTING ME AND HE PULLED ME BACK AND
16 STEPPED BACK IN FRONT OF DUKE. AND DUKE STARTED
17 BEATING HIM THEN. AND ALL I COULD THINK WAS I'VE GOT
18 TO DO SOMETHING AT THIS POINT. IT'S GOT TO STOP.
19 BECAUSE I WAS SCARED TO DEATH MICHAEL WAS GOING TO FALL
20 DOWN. AND IF HE FELL DOWN I DON'T KNOW WHAT WOULD HAVE
21 HAPPENED. SO I PULLED MY CELL PHONE OUT OF MY PURSE,
22 AND I STEPPED OVER BEHIND DUKE'S CAR AND I CALLED 911.
23 AND I STARTED TELLING THE OPERATOR THAT WE HAD BEEN
24 ASSAULTED. . AND I WAS GIVING HER THE TAG NUMBER OFF OF
25 HIS CAR. AND BETWEEN THE FACT THAT I WAS CALLING IT IN

1 AND THERE WERE BEGINNING TO BE PEOPLE SHOWING UP, HE
2 GOT -- HE JUMPED INTO HIS CAR AND DROVE OFF AND ALMOST
3 HIT A VEHICLE WHEN HE WENT AROUND THE CORNER TRYING TO
4 LEAVE.

5 Q. AND WHILE THE ALTERCATION WHERE YOU AND YOUR HUSBAND
6 WERE BEING STRUCK BY MR. DUKE OCCURRED, ALL OF THIS
7 OCCURRED OUTSIDE OF THE VEHICLE, CORRECT?

8 A. YES.

9 Q. AND AT ALL TIMES WHILE THIS WAS GOING ON THE CAR WAS
10 PARKED AND STATIONARY, CORRECT?

11 A. WHEN THE PHYSICAL HITTING -- YES.

12 Q. THE PHYSICAL -- THAT'S RIGHT.

13 A. YES.

14 Q. AND THE ACTIONS OF MR. DUKE, WOULD IT BE YOUR TESTIMONY
15 THAT THESE WERE INTENTIONAL ACTIONS OF HIM HITTING YOU?

16 A. WELL, I WOULD THINK SO, YES, SIR.

17 Q. OKAY.

18 A. BUT HE DIDN'T ACT LIKE HE WAS GOING TO BE OUT OF HIS
19 CAR VERY LONG BECAUSE HE LEFT THE DOOR OPEN.

20 Q. AND WHEN HE GOT BACK IN HIS CAR HE LEFT THE SCENE AND
21 THERE WAS NO FURTHER CONTACT WITH YOU OR YOUR HUSBAND,
22 IS THAT RIGHT?

23 A. NOT DIRECTLY, NO.

24 Q. YOUR TESTIMONY IS THAT HE ROLLED DOWN HIS WINDOW AND
25 YELLED AT YOU. AT THAT POINT IN TIME WAS THERE

1 ANYTHING THAT WOULD HAVE KEPT HIM FROM JUST PULLING ON
2 AND LEAVING THE PARKING LOT?

3 A. NO, SIR.

4 Q. AND WHEN MR. DUKE WAS IN HIS VEHICLE, AND YOU WERE
5 OUTSIDE OF THE VEHICLE AND YOU WERE STANDING OUT THERE
6 AND HE HAD HIS WINDOW DOWN AND YOUR HUSBAND APPROACHED,
7 WAS THERE ANYTHING BETWEEN YOU AND THE WAL-MART STORE
8 THAT YOU'RE AWARE OF?

9 A. THE BUGGY THAT I BROUGHT OVER WITH ME.

10 Q. THE ONLY THING WAS THE BUGGY?

11 A. IF PEOPLE WERE COMING IN AND OUT OF THOSE CARS THAT
12 WERE GOING IN FRONT OF THE STORE, I DON'T KNOW WHAT WAS
13 GOING ON OVER THERE.

14 Q. BUT YOU WERE BETWEEN THE STORE AND MR. DUKE'S CAR
15 BEFORE MR. DUKE GOT OUT OF HIS CAR?

16 A. YES.

17 Q. OKAY. WHEN THE ACTUAL ASSAULT AND BATTERY OCCURRED
18 WHERE MR. DUKE STRUCK YOUR HUSBAND AND ULTIMATELY
19 STRUCK YOU, MR. DUKE'S VEHICLE WAS NOT BEING DRIVEN OR
20 USED FOR ANY TYPE OF TRANSPORTATION. IS THAT CORRECT?

21 A. CAN YOU REPEAT THE QUESTION.

22 Q. YES. WHEN THE INCIDENT OCCURRED. I'M CALLING IT THE
23 INCIDENT WHEN YOU WERE ALL OUT IN THE PARKING LOT WHEN
24 MR. DUKE HIT YOUR HUSBAND AND YOUR TESTIMONY IS HE
25 CONTINUED TO HIT HIM AND ULTIMATELY HIT YOU. WOULD YOU

1 AGREE THAT HIS VEHICLE WAS NOT BEING USED AT ALL FOR
2 TRANSPORTATION? ...

3 A. NOT FOR TRANSPORTATION, NO.

4 Q. WHAT I'M GOING TO DO IS THIS IS KIND OF THE END OF MY
5 QUESTIONS, AND THEN THESE OTHER ATTORNEYS WILL HAVE
6 SOME FOR YOU. AND YOU MAY HAVE ALREADY SEEN THESE
7 VIDEOS THAT HAVE BEEN PRODUCED IN THIS CASE. THERE'S
8 THREE OF THEM. AND WHAT I WANT TO DO IS JUST PLAY THEM
9 FOR YOU AND LET YOU TELL ME ANYTHING THAT YOU SEE. BUT
10 BASICALLY JUST LET ME KNOW IF THIS IS AN ACCURATE
11 REFLECTION OF WHAT OCCURRED THAT NIGHT IN THE WAL-MART
12 PARKING LOT. WE'VE ALREADY MARKED THESE AS EXHIBITS 1,
13 2, AND 3 TO MR. DUKE'S DEPOSITION. I'LL START WITH
14 EXHIBIT 1, WHICH WAS THE ROOFTOP 12 CAM. THAT'S HOW
15 IT'S IDENTIFIED. I'M JUST DOING THAT FOR THE RECORD.

16 A. OKAY.

17 Q. I'LL PULL IT UP AND TURN IT TOWARDS YOU.

18 (OFF THE RECORD DISCUSSION)

19 EXAMINATION RESUMED BY MR. TEAGUE:

20 Q. HAVE YOU SEEN THE VIDEO BEFORE ---

21 A. I'VE SEEN ONE FILMING. I'VE SEEN ONE RECORDING. I'VE
22 HEARD THERE'S THREE DIFFERENT RECORDINGS. I'VE SEEN
23 ONE RECORDING IN COURT. AND I DON'T KNOW ABOUT THE
24 OTHER TWO. I MAY HAVE. I CAN'T REMEMBER, TO BE HONEST
25 WITH YOU.

1 (OFF THE RECORD DISCUSSION)

2 BY MR. TEAGUE:

3 IS IT OKAY IF MR. HARRELSON WATCHES ALONG WITH
4 HER, SO WE DON'T HAVE TO ---

5 BY MR. CONNELL:

6 SURE.

7 (MR. AND MRS. HARRELSON VIEW VIDEO)

8 EXAMINATION RESUMED BY MR. TEAGUE:

9 Q. YOU'VE HAD AN OPPORTUNITY TO WATCH THE FULL VIDEO OF
10 EXHIBIT 1, WHICH IS IDENTIFIED AS THE ROOFTOP CAM 12.
11 WAS THAT A FAIR AND ACCURATE REFLECTION OF WHAT
12 HAPPENED IN THE WAL-MART PARKING LOT THAT NIGHT?

13 A. YES, SIR.

14 Q. AND DID YOU SEE YOURSELF AND YOUR HUSBAND IN THAT
15 VIDEO?

16 A. YES, SIR.

17 Q. LET'S GO AHEAD AND PLAY THE SECOND VIDEO, WHICH IS
18 EXHIBIT 2. IT'S JUST A DIFFERENT ANGLE. IT SHOWS IT
19 FROM A DIFFERENT ANGLE. FOR THE SAME REASON. IT'S
20 PLGMDOOR 122112. I'M GOING TO OPEN IT UP.

21 (MR. AND MRS. HARRELSON VIEW VIDEO)

22 EXAMINATION RESUMED BY MR. TEAGUE:

23 Q. HAVE YOU SEEN ENOUGH OF THAT ONE?

24 A. (AFFIRMATIVE RESPONSE)

25 Q. IS THAT A YES?

1 A. YES. I'M SORRY.

2 Q. THAT'S OKAY. YOU JUST WATCHED EXHIBIT 2, WHICH WAS THE
3 VIDEO IDENTIFIED AS PLGMDOOR 122112. YOU'VE HAD AN
4 OPPORTUNITY TO VIEW THAT RECORDING FROM THE NIGHT OF
5 THE INCIDENT. DOES IT ACCURATELY REFLECT THE
6 OCCURRENCES THAT HAPPENED ON THE DATE OF THE INCIDENT?

7 A. YES.

8 Q. OKAY. ALL RIGHT, AND FROM THE VIDEO THE PERSON THAT
9 GETS OUT OF YOUR VEHICLE, THE VEHICLE YOU WERE
10 TRAVELING IN, THE PERSON WHO GETS OUT AND GRABS THE
11 BUGGY AND WALKS FORWARD. THAT'S YOU, CORRECT?

12 A. THAT'S CORRECT.

13 Q. AND THE PERSON THAT GETS OUT OF THE VIDEO AFTER IT'S
14 PARKED IS YOUR HUSBAND?

15 A. THAT'S CORRECT.

16 Q. ALL RIGHT. THERE'S A THIRD VIDEO THAT NONE OF US CAN
17 SEEM TO FIND MUCH ON. BUT THERE IS A THIRD VIDEO AND
18 IT'S EXHIBIT 3. IT'S IDENTIFIED AS DOOR SHOT. I'LL
19 OPEN IT UP, BECAUSE I WANT TO MAKE SURE YOU HAVE AN
20 OPPORTUNITY TO VIEW ALL THESE.

21 (OFF THE RECORD DISCUSSION)

22 (MR. AND MRS. HARRELSON VIEW VIDEO)

23 EXAMINATION RESUMED BY MR. TEAGUE:

24 Q. THAT WAS EXHIBIT 3. THE VIDEO IS IDENTIFIED AS DOOR
25 SHOT. DID YOU SEE ANYTHING FROM THE NIGHT OF THE

1 INCIDENT THAT WAS ACTUALLY CAPTURED ON THAT VIDEO?

2 A. NO, SIR. NOT FROM THAT ANGLE.

3 Q. ALL RIGHT, SO THE FIRST TWO VIDEOS THAT WE VIEWED,
4 EXHIBITS 1 AND 2, ARE THE ONLY VIDEOS THAT ACTUALLY
5 CAPTURED THE INCIDENT. IS THAT RIGHT?

6 A. THAT'S CORRECT.

7 BY MR. TEAGUE:

8 I APPRECIATE YOUR TIME. THAT'S ALL I HAVE FOR
9 YOU. THESE OTHER LAWYERS WILL PROBABLY ASK YOU SOME
10 QUESTIONS.

11 EXAMINATION BY MR. HUDSON:

12 Q. MS. HARRELSON, I'M ATTORNEY DWIGHT HUDSON. I'M
13 APPEARING IN THIS FAIRLY COMPLICATED MATTER WITH ALL
14 THESE LAWYERS FOR SOUTH CAROLINA FARM BUREAU MUTUAL
15 INSURANCE COMPANY. LET ME ASK YOU A FEW QUESTIONS. I
16 HOPE THEY'RE NOT TOO REPETITIVE. THE VIDEOS THAT YOU
17 JUST VIEWED, AT LEAST IN PART, AND I THINK HAVE BEEN
18 IDENTIFIED TODAY AS FAR AS WHAT THEY PURPORT TO SHOW
19 THAT FAIRLY AND ACCURATELY REPRESENT WHAT HAPPENED THAT
20 NIGHT IN THE WAL-MART PARKING LOT. TELL US AGAIN HOW
21 MANY TIMES, EXCLUSIVE OF TODAY AND PRIOR TO COMING HERE
22 TODAY, THAT YOU HAVE VIEWED THESE -- I'LL CALL THEM
23 VIDEOS.

24 A. I SAW THE VIDEO WHEN WE WERE IN COURT IN -- AT THE
25 TRIAL ---

1 Q. DID YOU SEE ALL THREE OR ---

2 A. NO.

3 Q. BE AS SPECIFIC AS YOU CAN. I DON'T KNOW WHAT YOU SAW.

4 A. I THINK IT WAS THE SECOND ONE THAT YOU SHOWED TODAY IS
5 THE ONE THAT I SAW IN COURT. DUKE WAS TRYING TO GET
6 THE MAKE MY DAY LAW FOR ---

7 Q. I'M SORRY, WHAT?

8 A. IT'S THE MAKE MY DAY LAW OR WHATEVER. HE WAS TRYING TO
9 GET HIS CHARGES DISMISSED. AND THEY SHOWED IT AND I
10 SAW IT THEN.

11 Q. "THEY" BEING?

12 A. IN THE COURTROOM.

13 Q. THE PROSECUTOR WITH THE SOLICITOR'S OFFICE?

14 BY MR. CONNELL:

15 THE DEFENDANTS WERE TRYING TO DO THAT IN THE
16 CRIMINAL CASE. THEY WERE USING THE VIDEO AS A DEFENSE
17 TO THE CRIMINAL MATTER.

18 EXAMINATION RESUMED BY MR. HUDSON:

19 Q. THIS WAS A HEARING CONCERNING WHAT?

20 A. IT WAS A HEARING THAT THEY HAD BEFORE HE PLED GUILTY TO
21 THE CHARGE.

22 Q. OKAY.

23 (OFF THE RECORD DISCUSSION)

24 EXAMINATION RESUMED BY MR. HUDSON:

25 Q. SO YOU SAW EXHIBIT NUMBER 2 THEN ONE TIME?

1 A. YES, SIR.

2 Q. ... HAVE YOU SEEN ANY OF THE OTHERS ANY OTHER TIME BEFORE

3 TODAY?

4 A. YES. BRAD RICHARDSON SHOWED IT TO US WHEN WE WERE IN

5 THE SOLICITOR'S OFFICE ONE DAY.

6 Q. WHO IS US?

7 A. THE SOLICITOR.

8 Q. WHO IS US?

9 A. MYSELF AND MY HUSBAND.

10 Q. AND THE SOLICITOR'S OFFICE SHOWED YOU WHAT? ALL THREE

11 TAPES? TWO TAPES?

12 A. NO, SIR. JUST THE ONE.

13 Q. WHICH ONE WAS IT?

14 A. I'M THINKING IT'S THE SAME ONE THAT THEY USED IN THE

15 COURTROOM DURING THE -- DURING THAT PRELIMINARY

16 HEARING.

17 Q. THAT WAS NUMBER 2?

18 A. YES, SIR.

19 Q. ANY OTHER TIMES? I'M JUST TRYING TO FIGURE OUT HOW

20 MANY TIMES YOU'VE SEEN IT.

21 A. THOSE WOULD BE THE ONLY TWO THAT I CAN RECALL.

22 Q. AND WHEN YOU SAW NUMBER 2 TODAY, IT APPEARS TO BE THE

23 SAME ONE THAT YOU IDENTIFIED EARLIER?

24 A. YES, SIR.

25 Q. AND THEY DO FAIRLY AND ACCURATELY REPRESENT WHAT TOOK

1 PLACE THAT NIGHT?

2 A. YES, SIR.

3 Q. HAVE YOU READ THE COMPLAINT THAT HAS BEEN FILED BY YOU
4 AND YOUR HUSBAND?

5 A. YES, SIR.

6 Q. AND YOU'VE READ THE NARRATIVES AND THE SPECIFICATIONS
7 OF NEGLIGENCE OR WRONGDOING SET OUT IN THAT COMPLAINT?

8 A. YES, SIR.

9 Q. AND DID YOU REVIEW THEM BEFORE THE COMPLAINT WAS SERVED
10 IN THE ACTION OR LATER?

11 A. I'M NOT SURE EXACTLY. I RECEIVED A COPY IN THE MAIL.

12 Q. SO IT HAD ALREADY BEEN TYPED?

13 A. I DON'T KNOW. IT HAD BEEN TYPED, YES, SIR.

14 Q. BUT YOU DON'T KNOW WHETHER OR NOT IT HAD BEEN SERVED?

15 A. NO, SIR.

16 Q. DID YOU AGREE WITH EVERYTHING THAT WAS IN IT AS BEING
17 ACCURATE?

18 A. FOR THE MOST PART.

19 Q. EXPLAIN.

20 A. CAN I HAVE A COPY OF THE DOCUMENT?

21 Q. SURE.

22 (OFF THE RECORD DISCUSSION)

23 BY MR. HUDSON:

24 REVIEW THE COMPLAINT, AND I'LL ASK YOU A COUPLE OF
25 QUESTIONS.

1 WITNESS ANSWERS:

2 A. (WITNESS REVIEWS DOCUMENT)

3 EXAMINATION RESUMED BY MR. HUDSON:

4 Q. PAGE TWO, PARAGRAPH SIX OF THE COMPLAINT. THE
5 NARRATIVE THAT YOU HAD IN PARAGRAPH SIX THERE, MRS.
6 HARRELSON; DO YOU FEEL LIKE THAT IS FAIRLY AND
7 ACCURATELY SUPPORTED BY THE VIDEOS THAT WE VIEWED HERE
8 TODAY OR THAT YOU HAD VIEWED PREVIOUSLY TO TODAY?

9 A. YES. THIS DEFENDANT -- HE PINNED AGAINST THE CAR.

10 Q. THE REST OF THE PARAGRAPH IS ACCURATE?

11 A. WELL, THAT WAS MY ONLY CONCERN. IT SAYS DEFENDANT DUKE
12 CONTINUED TO USE HIS VEHICLE TO PIN THE PLAINTIFF. HE
13 DIDN'T PIN ME AGAINST THE CAR, BUT HE DID PIN HIM
14 AGAINST THE CAR.

15 Q. YOU'RE SAYING HE PINNED YOUR HUSBAND AGAINST THE CAR?

16 A. YES, SIR.

17 Q. ON PAGE THREE YOU HAVE PARAGRAPH 13. THAT'S WHAT WE
18 CALL SPECIFICATIONS OR PARTICULARS OF ACTS. YOU SAY
19 YOU DID REVIEW THIS AND I BELIEVE YOU GOT IT IN THE
20 MAIL?

21 A. YES, SIR.

22 Q. ALL RIGHT, AND YOU DON'T KNOW WHETHER IT WAS SERVED
23 BEFOREHAND OR NOT?

24 A. THAT'S CORRECT.

25 Q. IT SAYS A, USING HIS VEHICLE AS A WEAPON. CAN YOU

1 EXPLAIN THAT. WHAT DO YOU MEAN HE WAS USING IT AS A
2 WEAPON?

3 A. WELL, TO BEGIN WITH HE HAD NO CAUSAL ACTION FOR
4 ANYTHING THAT HE DID COMING INTO THE PARKING LOT. HE
5 HAD FREE REIN, YOU COULD SEE ON THE VIDEOTAPE, TO GO
6 AROUND US ON EITHER SIDE OF OUR VEHICLE. HE COULD HAVE
7 LEFT THE SCENE AT ANY TIME. EVEN AFTER MICHAEL PULLED
8 INTO THE PARKING SPACE, HE COULD HAVE CONTINUED DRIVING
9 TO LEAVE THE SCENE WITHOUT CAUSING THE INJURIES HE
10 CAUSED TO EITHER ONE OF US.

11 Q. YOU'RE ALLEGING HE USED HIS VEHICLE AS A WEAPON?

12 A. WELL, SIR, YOU CAN USE A WEAPON FOR QUITE A FEW THINGS.
13 YOU CAN THREATEN PEOPLE WITH A WEAPON AND YOU CAN
14 ACTUALLY USE A WEAPON AGAINST PEOPLE. AND WHEN HE
15 COMES UP FLASHING HIS LIGHTS AND HONKING HIS HORN AND
16 YELLING AND SCREAMING AND DRIVING BACKWARDS AND COMING
17 TOWARDS YOU AT A HIGH RATE OF SPEED AND HAVING TO JAM
18 HIS BRAKES TO KEEP FROM HITTING YOUR VEHICLE WITH HIS,
19 I WOULD SAY THAT WOULD BE THREATENING A WEAPON. AND
20 WHEN YOU USE IT TO PIN SOMEBODY DOWN SO YOU CAN
21 CONTINUE TO PUMMEL THEM IN THE FACE AND ABOUT THE HEAD,
22 I WOULD SAY THAT THAT WOULD BE USING IT AS A WEAPON.

23 Q. DO YOU FEEL LIKE THE VIDEOS SUPPORT ---

24 A. YES, SIR.

25 Q. --- YOUR ALLEGATIONS OF WHAT YOU JUST TESTIFIED TO ---

1 A. YES, I DO.

2 Q. --- OF USING THE VEHICLE AS A WEAPON?

3 A. YES, I DO.

4 Q. THEN NEXT B, PINNING TO THE VEHICLE BY USE OF HIS
5 VEHICLE. EXPLAIN THAT.

6 A. WELL, I DEMONSTRATED TO YOU EARLIER TODAY THAT HE
7 PHYSICALLY WAS USING HIS BODY -- YOU'VE GOT TO
8 UNDERSTAND THAT THIS IS A TRAINED LAW ENFORCEMENT
9 OFFICER. HE'S TRAINED IN FIGHTING. HE KNOWS HOW TO
10 PUNCH ACCURATELY IN LOCATION AND WITH SPEED AND FORCE.
11 AND THAT'S EXACTLY WHAT HE DID TO MY HUSBAND. HE TRIED
12 TO INCAPACITATE MY HUSBAND JUST LIKE HE WOULD TRY TO
13 INCAPACITATE ANY CRIMINAL ON THE STREET. ALBEIT MY
14 HUSBAND IS NOT A CRIMINAL, AND HE WAS NOT ONE THAT
15 NIGHT. HE USED HIS VEHICLE TO PIN HIM UP AGAINST IT BY
16 USING HIS LOWER BODY WHILE HE WAS SWINGING HIS UPPER
17 BODY TO CONTINUE PUNCHING MY HUSBAND IN THE FACE WHILE
18 MY HUSBAND WAS COMPLETELY ADDLED AND COULD NOT FIGHT
19 BACK.

20 Q. NEXT YOU HAVE HIM USING HIS VEHICLE IN A THREATENING
21 MANNER, INCLUDING REVVING HIS ENGINE, HITTING THE HIGH
22 BEAM LIGHTS, AND BLOCKING THE PLAINTIFF IN. WHEN YOU
23 WERE IN THE CAR DID YOU HEAR HIM REVVING HIS ENGINE?

24 A. WHEN I WAS IN MY CAR?

25 Q. YES.

1 A. NO, SIR. HE WASN'T BEHIND ME WHEN I WAS IN MY CAR.
2 Q. WHERE WERE YOU WHEN HE WAS REVVING HIS ENGINE?
3 A. I HAD GOTTEN OUT AND RECEIVED THE BUGGY FROM THE
4 GENTLEMAN THAT WAS LOADING HIS STUFF UP, AND I WAS
5 WALKING OVER TOWARDS THE WAL-MART DOOR. WHEN I HEARD
6 THE HORN BLOWING. AND I THOUGHT IT WAS MY HUSBAND,
7 BECAUSE THERE HAD BEEN NOBODY BEHIND US.
8 Q. LET'S GET THE REVVING OF HIS ENGINE.
9 A. I'M GETTING THERE, SIR.
10 Q. OKAY.
11 A. WHENEVER I HEARD THE HORN BLOW, I ASSUMED IT WAS MY
12 HUSBAND BECAUSE THERE HAS BEEN NOBODY BEHIND US. WHEN
13 I GOT OUT OF THE CAR. SO I TURNED TO LOOK TO SEE IF MY
14 HUSBAND NEEDED ME. AND WHEN I TURNED AND LOOKED,
15 THAT'S WHEN HE BLEW THE HORN THE SECOND TIME AND WAS
16 REVVING HIS ENGINE. AND PUT IT IN REVERSE AND PULLED
17 BACKWARDS AND PULLED BACK UP LIKE HE WAS GOING TO HIT
18 MICHAEL IN THE BACK END OF OUR CAR.
19 Q. WOULD YOU AGAIN DEFER TO WHAT THE VIDEO SHOWS AS
20 OPPOSED TO WHAT YOU JUST SAID YOU OBSERVED?
21 A. THERE IS NO DIFFERENCE BETWEEN WHAT I AM TELLING YOU
22 AND WHAT'S ON THE VIDEO.
23 Q. MY QUESTION WAS WOULD YOU DEFER? IF YOU DON'T DEFER,
24 THEN SAY NO.
25 A. NO.

1 Q. OKAY.

2 A. IF YOU WATCH THE VIDEO YOU WILL SEE THE HIGH BEAMS ...
3 FLASHING AND YOU WILL SEE HIM BACKING UP AND COMING
4 FORWARD TOWARDS THE BACK OF THE CAR. AND YOU WILL --
5 YOU CAN'T SEE THE ENGINE REVING AND YOU CAN'T SEE THE
6 HORN BLOWING. BUT YOU CAN SEE MY RESPONSE WHEN I HEARD
7 THE HORN BLOW THAT I TURNED AROUND AND LOOKED BACK.

8 Q. THE CAR YOU ALL WERE DRIVING WAS A BMW?

9 A. YES, SIR.

10 Q. AND I BELIEVE MR. DUKE'S CAR WAS A BMW?

11 A. YES, SIR.

12 Q. SO WE HAD A COUPLE OF BMWs OUT THERE. DO THESE HORNS
13 SOUND ALIKE? CAN YOU RECOGNIZE A HORN FROM A BWM, AS
14 OPPOSED TO A CHEVROLET OR SOMETHING?

15 A. YES, SIR, I CAN.

16 Q. YOU CAN?

17 A. YES, SIR.

18 Q. OKAY.

19 A. I GREW UP ON A FARM AND MY HUSBAND IS A MECHANIC. AND
20 I CAN RECOGNIZE THE DIFFERENCE BETWEEN A BMW CAR HORN
21 AND A CHEVROLET PICK UP TRUCK. YES, SIR, I CAN.

22 Q. EXPLAIN HOW REVING YOUR ENGINE WAS THREATENING. I'M
23 TRYING TO FIGURE THAT OUT.

24 A. WELL, IF YOU'RE SITTING STILL AND YOU'RE REVING YOUR
25 ENGINE YOU MIGHT BE DOING LIKE MY HUSBAND DOES WHEN HE

1 DOES MECHANIC WORK. YOU MIGHT BE JUST CHECKING THE
2 FUEL SYSTEM. BUT WHEN YOU'RE COMBINING IT WITH
3 FLASHING YOUR LIGHTS AND BLOWING YOUR HORN AND BACKING
4 YOUR CAR UP AND COMING AT SOMEBODY AT A HIGH RATE OF
5 SPEED IN A PARKING LOT FOR ABSOLUTELY NO REASON. THEN
6 IT WOULD BE THREATENING.

7 Q. AND YELLING ABOUT PLAINTIFF'S DRIVING IS D. EXPLAIN
8 THAT. WHO'S YELLING AND WHEN?

9 A. I DID NOT HEAR ANY YELLING GOING ON UNTIL HE GOT UP
10 WHERE I WAS AT AFTER MICHAEL HAD PARKED HIS CAR. AND
11 THAT'S WHEN HE ROLLED DOWN THE WINDOW SCREAMING AT ME,
12 IS THAT YOUR HUSBAND. AND THEN WHENEVER I SAID YES,
13 AND MICHAEL SAID YES, I AM, HE SAID, OH, YOU WANT SOME
14 OF THIS YOU MF'ING S.O.B. AND GOT OUT OF HIS CAR AND
15 STARTED PUMMELING MICHAEL. HE WAS TALKING AND
16 SCREAMING AND THREATENING THE WHOLE TIME HE WAS BEATING
17 MICHAEL.

18 Q. AND THEN E, HAVING HIT PLAINTIFFS AND THEN USING HIS
19 VEHICLE TO TRAP PLAINTIFFS IN THE PARKING LOT.

20 A. MM-HMM (AFFIRMATIVE RESPONSE).

21 Q. WOULD YOU DEFER TO THE VIDEO ON THAT, OR WOULD YOU SAY
22 THAT HE USED HIS VIDEO TO TRAP YOU AND YOUR HUSBAND IN
23 THE PARKING LOT?

24 A. WELL, HE PLAINLY WAS HITTING BOTH OF US. AND IN USING
25 HIS VEHICLE TO TRAP US IN THE PARKING LOT -- WELL,

1 MICHAEL HAD PARKED HIS CAR. HIS CAR WAS BEHIND OURS.
2 MICHAEL HAD THE KEY TO THE BMW. I HAD CLEARLY GOTTEN
3 OUT BEFORE HIM SO I DID NOT HAVE A KEY. WHEN HE GETS
4 OUT OF THE CAR AND PUNCHES MICHAEL IN THE FACE AND
5 ADDLES HIM AND BREAKS HIS GLASSES, AND MICHAEL CAN'T
6 EVEN SEE, I DON'T EVEN KNOW WHERE THE KEYS ARE AT THAT
7 POINT. I COULDN'T HAVE GOT IN MY CAR AND LEFT IF I'D
8 WANTED TO. I DIDN'T HAVE THE KEY TO MY VEHICLE TO GET
9 IN IT AND LEAVE.

10 Q. ARE YOU SAYING THAT THE VIDEO SHOWS THAT MR. DUKE'S
11 VEHICLE WAS BLOCKING YOUR AND YOUR HUSBAND'S BMW IN THE
12 PARKING PLACE? ARE YOU SAYING IT WAS BLOCKING IT IN
13 THERE?

14 A. WELL, HE WAS PARKED BEHIND THE CAR ---

15 Q. YOU CAN ANSWER YES OR NO, AND THEN EXPLAIN. ARE YOU
16 SAYING IT BLOCKED YOU IN THE PARKING SPACE?

17 A. THE VIDEO DOESN'T SHOW IT FROM WHERE I THOUGHT IT WAS
18 SITTING. THE VIDEO SHOWS THAT IT MAY BE FURTHER DOWN
19 THAN I HAD INITIALLY SAID. BUT I WAS AT THE TIME ---

20 Q. SO YOU'RE DISAGREEING WITH YOUR NARRATIVE AND YOUR
21 SPECIFICATIONS THAT IT WAS BLOCKING YOUR CAR IN THE
22 PARKING PLACE?

23 A. IT WAS BLOCKING IN MORE THAN ONE WAY. IT COULD BE
24 PHYSICALLY BLOCKING BACK INTO MY CAR. IT COULD BE
25 BLOCKING FROM THE FACT THAT I HAD NO ACCESS TO A KEY TO

1 GET IN IT. BELIEVE ME IF I'D HAD ACCESS TO GET A KEY
2 TO MY CAR, I WOULD HAVE DONE THINGS FAR DIFFERENT THAN
3 I DID DO.

4 Q. WELL, WE'RE USING PLAIN ENGLISH TERMINOLOGY HERE.
5 YOU'RE A COLLEGE GRADUATE. IN FACT YOU HAVE YOUR
6 MASTER'S. WAS MR. DUKE'S BMW BLOCKING YOUR BMW IN THAT
7 PARKING PLACE PHYSICALLY?

8 A. IN MY OPINION, YES.

9 Q. ALL RIGHT. AND YOU ALSO HAVE F, IN USING HIS VEHICLE
10 TO ESCAPE. EXPLAIN THAT. WHAT WAS HE ESCAPING FROM?

11 A. WELL, HE LEFT WAL-MART PARKING LOT THAT NIGHT AND HE
12 CALLED NORTH MYRTLE BEACH POLICE DEPARTMENT AND TOLD
13 THEM THAT HE HAD BEEN ASSAULTED AT WAL-MART, WHICH WAS
14 A FALSE POLICE REPORT. HE ALSO DIDN'T CALL THROUGH
15 911. HE CALLED THEIR PERSONAL NUMBER BECAUSE HE'S
16 WORKED THERE IN LAW ENFORCEMENT. HE CALLED THEM NOT
17 ONCE, BUT TWICE. AND ON THE SECOND PHONE CALL ---

18 Q. LET ME BACK UP. WHAT WAS HE ESCAPING FROM? I MEAN YOU
19 SAID HE USED HIS ---

20 A. CRIMINAL ---

21 Q. --- VEHICLE TO ESCAPE ---

22 A. CRIMINAL CHARGES OF FELONY ASSAULT AND BATTERY.

23 Q. SO YOU'RE SAYING THAT THE VEHICLE WAS USED TO ESCAPE?

24 A. YES, SIR.

25 Q. OKAY.

1 A. IT WAS USED TO TRANSPORT HIM TO THE SCENE TO DO WHAT HE
2 DID: IT WAS USED IN THE COMMISSION OF A CRIME, AND IT
3 WAS USED TO ESCAPE WHEN HE WAS DONE WITH THE CRIME.

4 Q. ALL RIGHT.

5 A. AND HE REFUSED TO COME BACK TO THE SCENE. HAD HE BEEN
6 THERE YOU WOULD HAVE SEEN THE BLOOD ON THE BACK OF THE
7 VEHICLE WHERE MICHAEL BLED ALL OVER IT WHILE HE WAS
8 PINNED UP AGAINST IT.

9 Q. AT ANY TIME DURING THE ALTERCATION IN THE PARKING LOT
10 WAS THE VEHICLE BEING USED FOR TRANSPORTATION?

11 A. YES, SIR. I JUST EXPLAINED IT. IT TRANSPORTED HIM
12 THERE AND IT TRANSPORTED HIM TO ESCAPE.

13 Q. I'M TALKING ABOUT AT THE TIME OF THE ALTERCATION.

14 A. NO, SIR, I ALREADY ANSWERED ---

15 Q. THE ALTERCATION BEING ---

16 A. --- THAT FOR THIS GENTLEMAN EARLIER.

17 Q. SO IT WAS NOT BEING USED?

18 A. CORRECT.

19 Q. OKAY.

20 A. IT WOULD BE ALMOST IMPOSSIBLE FOR HIM TO BE DRIVING A
21 VEHICLE AND BEATING SOMEBODY ON THE OUTSIDE OF IT ALL
22 AT THE SAME TIME. SO IT COULDN'T HAVE BEEN
23 TRANSPORTING HIM AT THE TIME.

24 Q. HOW MUCH DID YOUR HUSBAND WEIGH AT THE TIME?

25 A. PROBABLY ABOUT 320.

1 Q. OKAY. AND WHAT WAS HIS AGE AT THE TIME?
2 A. IT'S BEEN FOUR YEARS AGO, SO HE WAS 51.
3 Q. AND WHAT WAS HIS OCCUPATION AT THE TIME?
4 A. AUTO MECHANIC.
5 Q. AND WHERE DID HE WORK?
6 A. THE STATE DEPARTMENT OF TRANSPORTATION.
7 Q. WHERE IS THAT LOCATED IN HORRY COUNTY?
8 A. CONWAY.
9 Q. CONWAY?
10 A. YES, SIR.
11 Q. WHAT DID HE DO AS A MECHANIC?
12 A. HE'S A HEAVY EQUIPMENT MECHANIC. DOES GENERAL REPAIRS.
13 WORKS ON ANY OF THE VEHICLES THAT COME IN.
14 Q. DOES HE WORK ON TRANSMISSIONS AND THINGS OF THAT
15 NATURE?
16 A. YES, SIR.
17 Q. DID HE HAVE ANY HEALTH OR PHYSICAL PROBLEMS THAT ---
18 A. DIABETES.
19 Q. --- WERE PREVALENT THAT EVENING OF THE ---
20 A. NO, SIR.
21 Q. --- ALTERCATION?
22 A. NO, SIR. HE WORKED AT D.O.T., AND HE RAN A SHOP AT OUR
23 HOUSE.
24 Q. HAS A SHOP AT THE HOUSE?
25 A. HE DID HAVE A SHOP AT THE HOUSE.

1 Q. AT THAT TIME?

2 A. YES, SIR.

3 Q. WHAT WAS THE NAME OF THAT?

4 A. MICHAEL'S ENGINES.

5 Q. WHERE DO YOU ALL LIVE? WHERE IS THAT LOCATED?

6 A. IN LORIS. DOGWOOD ROAD.

7 BY MR. HUDSON:

8 I THINK THAT'S ALL I HAVE. WE'VE COMBINED THESE
9 CASES, AND I THINK THESE LAWYERS WILL PROBABLY ASK YOU
10 SOME THINGS ABOUT INJURIES AND DAMAGES AND THINGS LIKE
11 THAT.

12 RE-EXAMINATION BY MR. TEAGUE:

13 Q. JUST TWO FOLLOW-UPS, AND THEY'RE GOING TO SHIFT INTO
14 ANOTHER AREA. BUT YOU INDICATED THAT MR. DUKE PINNED
15 YOUR HUSBAND AGAINST THE CAR, CORRECT?

16 A. YES, SIR.

17 Q. IF THE SHOPPING BUGGY HAD BEEN SITTING IN THAT
18 POSITION, HE WOULD HAVE LIKELY ALSO PINNED HIM AGAINST
19 THE SHOPPING BUGGY, CORRECT?

20 A. NO, SIR. YOU CAN'T PIN SOMETHING AGAINST A SHOPPING
21 BUGGY. IT ROLLS.

22 Q. IF IT WAS LIKE THIS, YOU'LL ADMIT IT WON'T ROLL UNLESS
23 IT'S POINTED IN A CERTAIN DIRECTION. IS THAT CORRECT?

24 A. WELL, THE WHEELS ON THE FRONT OF A SHOPPING CART TURN.
25 SO IF YOU PUT PRESSURE ON IT AT ANY ANGLE IT'S GOING TO

1 MOVE.

2 Q. IF IT WAS ANOTHER OBJECT THERE. THE CAR JUST HAPPENED
3 TO BE THERE AND THAT'S THE PLACE WHERE THE PERSON WAS
4 PINNED. IS THAT CORRECT? HE WOULD HAVE PINNED HIM
5 AGAINST ANY OBJECT BASED ON HOW THE ALTERCATION WAS
6 GOING?

7 A. NO, SIR. HE DROVE MICHAEL BACK TOWARDS HIS CAR. AS
8 MICHAEL WAS PUSHING HIM, HE WAS PUSHING MICHAEL TOWARDS
9 HIS CAR AND PINNED HIM AGAINST HIS CAR. AGAIN, THIS IS
10 A TRAINED LAW ENFORCEMENT OFFICER. HE KNOWS HOW TO USE
11 THESE TACTICS.

12 Q. SO IT'S YOUR TESTIMONY THAT HE PINNED HIM AGAINST THE
13 CAR JUST BECAUSE IT WAS A CAR?

14 A. HE PINNED HIM AGAINST THE CAR SO HE COULD ASSAULT HIM.

15 Q. AND IF IT HAD BEEN ANY OTHER OBJECT OTHER THAN A CAR,
16 HE WOULD HAVE ALSO PINNED HIM AGAINST THAT OBJECT.
17 WOULD YOU AGREE?

18 A. I DON'T KNOW WHAT'S IN HIS HEAD. I DON'T EVEN KNOW WHY
19 THE MAN WAS THAT MAD THAT NIGHT.

20 Q. ALL RIGHT, AND WAS MR. DUKE'S VEHICLE IN ANY WAY
21 BLOCKING YOU AND YOUR HUSBAND FROM GOING INTO THE WAL-
22 MART STORE?

23 A. I DIDN'T HAVE A CHANCE TO GO INTO THE WAL-MART STORE.

24 Q. YOU WATCHED THE VIDEO, DIDN'T YOU?

25 A. IF SOMEBODY WAS BEATING YOUR WIFE WOULD YOU TURN AROUND

1 ---

2 Q. NO, NO ---

3 A. --- AND WALK AWAY FROM ---

4 Q. NO, NO ---

5 A. I'M JUST ASKING AN HONEST QUESTION.

6 Q. BEFORE THAT OCCURRED. BEFORE ANYBODY GOT OUT OF CARS,
7 WAS THERE ANYTHING KEEPING YOU FROM GOING INTO THE WAL-
8 MART STORE?

9 A. YES, SIR, THERE WAS.

10 Q. WHAT WAS IT?

11 A. KEVIN LEE DUKE.

12 Q. BUT NOT HIS CAR, IT WAS HIM?

13 A. IT WAS KEVIN LEE DUKE AND HIS CAR REVVING HIS ENGINE.

14 I DIDN'T KNOW WHETHER I NEEDED TO GO BACK TO MY HUSBAND
15 TO GET IN THE CAR TO BE SAFE. IF THE MAN WAS GOING TO
16 COME AROUND THE CAR AND RUN OVER ME. I DIDN'T HAVE ANY
17 IDEA OF WHAT HE WAS GOING TO DO. I DON'T THINK LIKE HE
18 DOES, OBVIOUSLY.

19 Q. WHAT KEPT YOU FROM GOING IN WAL-MART WAS NOT HIS CAR,
20 BUT MR. DUKE. IS THAT CORRECT?

21 A. BOTH. HE WAS IN HIS CAR AT THE TIME THAT HE STARTED
22 THIS WHOLE ISSUE. HE WAS IN HIS CAR ANGRY ABOUT GOD
23 KNOWS WHAT. I BEGGED LAW ENFORCEMENT THAT NIGHT TO
24 TEST HIM TO SEE WHAT WAS IN HIS BLOOD, AND THEY TOLD ME
25 IT WASN'T PROTOCOL.

1 Q. BUT AT THE TIME OF THE FIGHT ARE YOU AWARE OF ANYTHING
2 BETWEEN YOU AND WAL-MART THE FIRST TIME YOUR HUSBAND
3 WAS HIT BY MR. DUKE?

4 A. FROM THE VIDEO I WATCHED?

5 Q. YES.

6 A. LOTS OF PEOPLE AND LOTS OF CARS GOING BY. OTHER THAN
7 THAT, NO. BUT IF MY HUSBAND ---

8 Q. AND NOT MR. DUKE'S CAR?

9 A. BUT IF MY HUSBAND HAD NOT BEEN BEING ASSAULTED I
10 WOULDN'T HAVE HAD TO DO ANYTHING ABOUT GOING INTO WAL-
11 MART TO BEGIN WITH. I STAYED THERE TO PROTECT MY
12 HUSBAND WHO WAS PINNED AGAINST THE VEHICLE BY SOMEBODY
13 WHO WAS BEATING HIM IN THE HEAD. WHEN YOU'VE GOT A MAN
14 THIS SIZE THAT CAN'T DEFEND HIMSELF, I KNEW THAT THIS
15 WAS NOT A GOOD THING FOR HIM. SO I PULLED HIM FROM
16 BETWEEN THE VEHICLE AND KEVIN LEE DUKE TO STOP THE
17 ASSAULT.

18 Q. I WAS JUST TALKING ABOUT YOUR ACCESS TO WAL-MART.
19 BY MR. TEAGUE:

20 THAT'S ALL I HAVE FOR YOU.

21 RE-EXAMINATION BY MR. HUDSON:

22 Q. ONE MORE QUESTION FOR YOU AND THEN I'LL MOVE ON. I
23 JUST OVERLOOKED IT, AND I APOLOGIZE. AT ANY TIME
24 DURING THE EVENTS THAT WE'RE HERE TODAY ABOUT AND THE
25 ALTERCATION, AND THE MOMENTS IMMEDIATELY PRECEDING THE

1 ALTERCATION, WAS EITHER ONE OF YOUR HUSBAND'S LEFT OR
2 ... RIGHT TURN SIGNALS ON? ...

3 A. I DO NOT KNOW. I WAS NOT DRIVING THE CAR. I HAVE NO
4 CLUE. I GOT OUT ---

5 Q. WELL, YOU WERE IN THE CAR, WEREN'T YOU? WAS THE TURN
6 SIGNAL ON? DID YOUR HUSBAND HAVE THE TURN SIGNAL ON?

7 A. I DO NOT KNOW.

8 Q. WELL, YOU LOOKED BACK AND LOOKED AT THE VEHICLE, DIDN'T
9 YOU?

10 A. YOU MEAN AFTER I HEARD THE HORN BLOW?

11 Q. BEFORE, DURING, OR AFTER.

12 A. AS I EXPLAINED TO YOU WHEN WE FIRST STARTED TALKING
13 ABOUT THIS ---

14 Q. YOU CAN ANSWER YES OR NO, AND THEN EXPLAIN.

15 A. I DID ANSWER YES OR NO. NO, I DON'T KNOW THAT THERE
16 WAS A SIGNAL ON. I HAVE NO CLUE. I WASN'T DRIVING THE
17 CAR. HE HAD TO TURN OFF OF 17 TO GO INTO THE WAL-MART
18 PARKING LOT.

19 Q. LET ME ASK YOU THIS.

20 A. SO I DON'T KNOW.

21 Q. WAS THERE ANYTHING BLOCKING YOUR VIEW OF YOUR HUSBAND'S
22 CAR AS HE WAS SITTING WAITING TO GO INTO THIS PARKING
23 SPOT? WAS THERE ANYTHING BLOCKING YOUR VIEW ---

24 A. NO, SIR.

25 Q. WELL, WHEN YOU LOOKED AT THE CAR WHEN YOU HEARD THIS

1 REVVING AND HORN THAT YOU HAVE DESCRIBED EARLIER, DID
2 YOUR HUSBAND'S CAR HAVE A TURN SIGNAL ON LEFT OR RIGHT?

3 A. I DO NOT KNOW. I WAS NOT LOOKING FOR A TURN SIGNAL. I
4 WAS LOOKING TO SEE WHY THIS PERSON WAS RESPONDING THE
5 WAY THEY WERE WHEN NOTHING HAD BEEN DONE TO INSTIGATE
6 ANYTHING. I WAS SCARED.

7 BY MR. HUDSON:

8 THANK YOU.

9 EXAMINATION BY MR. POWELL:

10 Q. MS. HARRELSON, I'M JIMMY POWELL, AND I'M HERE FOR THE
11 UIM CARRIER FARM BUREAU. AND WE'RE EVALUATING THE
12 POTENTIAL UNDER INSURED CLAIM. SO I'M IN THE
13 UNDERLYING SUIT WHERE THE DAMAGES ARE ALSO AN ISSUE, SO
14 I'M GOING TO GET INTO THE DAMAGES A LITTLE BIT. BUT I
15 WILL ASK YOU A COUPLE MORE BACKGROUND QUESTIONS. ARE
16 YOU A MEMBER OF ANY CIVIC GROUPS OR CHURCHES OR GROUPS
17 THAT YOU'RE INVOLVED IN, IN HORRY COUNTY?

18 A. IN HORRY COUNTY?

19 Q. YES.

20 A. THE AMERICAN RED CROSS.

21 Q. OKAY. ANYTHING ELSE?

22 A. NOTHING CURRENT. MY LIFE PRETTY MUCH CAME TO A
23 STANDSTILL WHEN ALL OF THIS HAPPENED.

24 Q. I MEAN IN TERMS OF THE LAST TEN YEARS. CHURCH
25 INVOLVEMENT, CIVIC GROUPS ---

- 1 A. NO. BECAUSE RIGHT BEFORE -- I HAD STARTED WORKING AT
2 CONWAY MEDICAL CENTER RIGHT BEFORE THIS HAPPENED. AND
3 PRIOR TO THAT, I WAS WORKING IN NORTH CAROLINA. SO NO.
- 4 Q. HOW ABOUT YOUR HUSBAND?
- 5 A. NO, SIR, NOT THAT I'M AWARE OF.
- 6 Q. HAD EITHER OF YOU BEEN A PARTY TO A LAWSUIT PRIOR TO
7 THIS LITIGATION?
- 8 A. NO, SIR, NOT THAT I KNOW OF.
- 9 Q. HAVE YOU EVER MADE ANY TYPE OF A CLAIM FOR INSURANCE
10 MONEY RELATED TO AN INJURY THAT YOU'VE HAD BEFORE THIS
11 INCIDENT?
- 12 A. YES. I DON'T EVEN REMEMBER HOW MANY YEARS AGO. THE
13 NURSE THAT WORKED AT LORIS MIDDLE SCHOOL WAS GOING TO
14 WORK ONE MORNING, AND SHE RAN A STOP SIGN IN FRONT OF
15 MY HUSBAND AND MY DAUGHTER. AND HE GOT A BACK INJURY
16 THAT HE WAS TREATED FOR.
- 17 Q. HOW ABOUT YOU?
- 18 A. THE WORKER'S COMP.
- 19 Q. OTHER THAN WORKER'S COMPENSATION.
- 20 A. NO, SIR.
- 21 Q. ALL RIGHT, AND HAVE YOU EVER HAD ANY MILITARY SERVICE?
- 22 A. NO, SIR.
- 23 Q. HOW ABOUT YOUR HUSBAND?
- 24 A. NO, SIR.
- 25 Q. YOU TESTIFIED WHEN WE FIRST STARTED THAT YOU WERE

1 TAKING JUST YOUR BASIC MEDICATIONS. ARE YOU TAKING
2 -- ANYTHING CURRENTLY THAT YOU WERE NOT TAKING PRIOR TO
3 THE INCIDENT?

4 A. PROBABLY, YES. I HAVE FIBROMYALGIA, AND MY
5 FIBROMYALGIA MEDICATIONS HAVE CHANGED. I WAS TAKING
6 ARTHROTEC, AND THEY SWITCHED IT TO TWO GENERICS TO MAKE
7 UP FOR THE CHEMICAL EQUATION.

8 Q. RATHER THAN PUT YOU THROUGH ALL THAT. ARE YOU TAKING
9 ANY MEDICATIONS NOW THAT YOU ATTRIBUTE TO THE INJURIES
10 FROM THIS INCIDENT?

11 A. HYDROCODONE.

12 Q. WHAT DO YOU USE THAT FOR?

13 A. THE POST-TRAUMATIC STRESS DISORDER AND PAIN FROM THE
14 TMJ AND FIBROMYALGIA. HEADACHES.

15 Q. ANY OTHER MEDICATION THAT YOU ATTRIBUTE TO THE
16 INCIDENT?

17 A. NO.

18 Q. HAD YOU EVER BEEN DIAGNOSED WITH POST-TRAUMATIC STRESS
19 DISORDER PRIOR TO THIS INCIDENT?

20 A. NO, SIR.

21 Q. HAD YOU EVER BEEN TREATED FOR PROBLEMS WITH TMJ PRIOR
22 TO THIS INCIDENT?

23 A. YES, SIR.

24 Q. WITH WHO?

25 A. MY DENTAL -- MY DENTIST.

1 Q. WHO IS THAT?

2 A. TEAL.

3 Q. IN LORIS?

4 A. YES.

5 Q. THE TMJ, ARE YOU SAYING IT'S WORSE NOW BECAUSE OF THIS

6 INCIDENT?

7 A. IT'S HARD TO SAY, BECAUSE IT WAS PRETTY BAD BEFORE. I

8 WOULDN'T TRY TO SEEK ANY DAMAGES OR ANYTHING FOR THAT.

9 Q. THAT'S NOT AN ISSUE IN THIS CASE?

10 A. NO.

11 Q. THE FIBROMYALGIA. HAD YOU TREATED FOR THAT PRIOR TO

12 THE INCIDENT?

13 A. YES, I HAD.

14 Q. WHO HAD YOU TREATED WITH FOR THAT?

15 A. DR. WILKINS AND ANDREW SEJAN.

16 Q. SEJAN IS IN LORIS AND WILKINS IN CONWAY?

17 A. YES, SIR.

18 Q. AND THE FIBROMYALGIA CONDITION, DO YOU TAKE THE

19 POSITION THAT THE INCIDENT IMPACTED IT IN ANY WAY?

20 A. YES.

21 Q. IN WHAT WAY? HOW IS IT WORSE ---

22 A. MORE FREQUENT. MORE SEVERE. WHENEVER I HAVE FLARES.

23 Q. TELL ME ABOUT A FLARE. WHAT IS A FLARE TO YOU?

24 A. WELL, STRESS CAN LEAD TO A FLARE.

25 Q. WHAT HAPPENS TO YOUR BODY WHEN IT FLARES UP?

1 A. I HAVE OVERALL PAIN. I DON'T -- I HAVE FIBROMYALGIA,
2 FIBROMYALGIA DOES NOT HAVE ME. I GO TO WORK. I DO MY
3 THING. I CLEAN MY HOUSE. I DO EVERYTHING THAT I'VE
4 ALWAYS DONE. BUT I'VE HAD TO START TAKING THE
5 HYDROCODONE BECAUSE THE PAIN HAS GOTTEN SO BAD.

6 Q. IN TERMS OF HOW OFTEN YOU HAVE A FLARE UP. DO YOU HAVE
7 FLARE UPS MORE SINCE THIS INCIDENT THAN YOU DID PRIOR?

8 A. YES.

9 Q. IN A WEEK HOW IS IT DIFFERENT NOW VERSUS BEFORE THIS
10 INCIDENT?

11 A. WELL, I HAVE PAIN DAILY. BUT THAT WAS THE CASE BEFORE.

12 Q. YES.

13 A. BUT NOW THE SLIGHTEST LITTLE THING -- THIS TODAY WILL
14 PROBABLY HAVE ME IN BED FOR WEEKS.

15 Q. IS THERE A WAY FOR YOU TO DIFFERENTIATE BETWEEN A FLARE
16 UP FROM ANOTHER LIFE STRESSOR VERSUS IF YOU HAVE ISSUES
17 RELATED TO THIS INCIDENT?

18 A. NOT OTHER THAN KNOWING WHAT THE STRESSOR IS.

19 Q. ALL RIGHT. WHO TREATS YOU CURRENTLY FOR THAT? IS THAT
20 WILKINS AND SEJAN?

21 A. DR. SEJAN.

22 Q. ANY NEW DOCTORS ON THAT ISSUE?

23 A. NO, SIR.

24 Q. YOU MENTIONED HEADACHES. HAD YOU SUFFERED FROM
25 HEADACHES BEFORE THE INCIDENT?

1 A. YES, SIR.

2 Q. WHO DID YOU TREAT WITH FOR THAT?

3 A. DR. SEJAN.

4 Q. IS IT FAIR TO SAY DR. SEJAN HAS TREATED YOU FOR THE

5 LAST TEN YEARS AS A PRIMARY CARE ---

6 A. YES, SIR.

7 Q. LONGER THAN THAT?

8 A. YES, SIR.

9 Q. ARE THE HEADACHES ANY DIFFERENT NOW THAN THEY WERE

10 BEFORE THIS INCIDENT?

11 A. YES, SIR.

12 Q. IN WHAT WAY?

13 A. IT'S ALL LEFT-SIDED. MY TMJ, AND MY NECK AND HEADACHES

14 ARE JUST INTENSE ON THE LEFT SIDE.

15 Q. DO THEY HAPPEN MORE OFTEN, OR ARE THEY TRIGGERED BY

16 DIFFERENT THINGS SINCE THIS INCIDENT?

17 A. IT'S LIKE I SAID BEFORE. STRESS. ANYTHING THAT MAKES

18 ME CLENCH MY JAW MAKES IT WORSE. JUST THE MUSCLES

19 PULLING IN MY NECK FROM BEING TENSE.

20 Q. THOSE THINGS CAN ALL HAPPEN ON A BAD DAY FROM OTHER

21 THINGS, CORRECT?

22 A. YES, SIR.

23 Q. OBVIOUSLY I'VE HEARD YOUR TESTIMONY, AND I KNOW THIS

24 HAS HAD A HUGE IMPACT ON YOU. BUT ON A DAY-TO-DAY

25 BASIS, HOW OFTEN DO YOU THINK ABOUT IT OR DOES THIS SET

1 OF EVENTS IMPACT YOU?

2 A. ARE YOU TALKING ABOUT THIS ASSAULT? . . .

3 Q. YES.

4 A. EVERY SINGLE DAY. ALMOST EVERY MINUTE OF EVERY DAY.
5 EVERYTHING I DO REVOLVES AROUND LOOKING OUT FOR MY
6 HUSBAND WHO HAS A PERMANENT BRAIN INJURY AND TRYING TO
7 LEARN HOW TO MANAGE THINGS THAT I DIDN'T HAVE TO MANAGE
8 BEFORE. OUR DAUGHTER WAS IN COLLEGE AT THE TIME THAT
9 THIS HAPPENED. AND WE WERE NOT ABLE TO FINISH PAYING
10 FOR HER COLLEGE.

11 Q. WHERE WAS SHE IN SCHOOL?

12 A. FRANCIS MARION UNIVERSITY. SHE HAD ALREADY GRADUATED
13 FROM COASTAL CAROLINA AND THEN WENT TO FRANCIS MARION
14 TO GET HER BACHELOR'S OF SCIENCE IN NURSING. I LOST MY
15 JOB BECAUSE OF THIS. TOOK A \$15,000 PER YEAR PAY CUT
16 WHEN I GOT THIS JOB BACK AT WACCAMAW.

17 Q. I'LL GET TO THAT AND GIVE YOU AN OPPORTUNITY TO TALK
18 ABOUT THAT. BUT JUST IN TERMS OF THE INCIDENT. YOU
19 THINK ABOUT IT DAILY?

20 A. YES, SIR, I DO. MOST DAYS IT IS THE LAST THING I THINK
21 ABOUT AT NIGHT AND IT'S THE FIRST THING I THINK ABOUT
22 IN THE MORNING. I LIVE IN FEAR OF MY LIFE EVERY DAY
23 FROM THIS MAN. HE IS CRAZY.

24 Q. DO YOU WORK FULL TIME?

25 A. I DO.

1 Q. DOES YOUR HUSBAND WORK FULL TIME?

2 A. YES, SIR.

3 Q. WHO DOES HE WORK FOR?

4 A. THE DEPARTMENT OF TRANSPORTATION.

5 Q. DOES HE DO THE SAME JOB HE DID BEFORE, OR IS IT
6 DIFFERENT?

7 A. IT'S THE SAME JOB.

8 Q. SO YOUR TYPICAL DAY STARTS AT WHAT TIME?

9 A. 5:00 A.M.

10 Q. AND YOU DO WHAT?

11 A. I GET UP, GET READY FOR WORK. I HAVE TO TAKE A HOT
12 SHOWER BECAUSE OF MY FIBRO. I HAVE TO GET READY. BY
13 THE TIME I GET TO WORK IT'S USUALLY 8:30. I SEE
14 CLIENTS THROUGHOUT THE DAY DEPENDING ON WHAT DAY IT IS.
15 I GO TO COURT EVERY MONDAY. ON TUESDAYS AND THURSDAYS
16 I DO INTERNAL ASSESSMENTS FOR WACCAMAW MENTAL HEALTH
17 IN-HOUSE PATIENTS. I HAVE MY OWN CASE LOAD THAT I DO
18 MONDAY, WEDNESDAY, AND FRIDAY. WHEN I GET OFF OF WORK
19 I GO HOME. IT'S TIME TO FIX SUPPER OR MAKE
20 ARRANGEMENTS TO GO SOMEWHERE QUICK AND GET SOMETHING.
21 I HAVE TO CLEAN MY HOUSE AND WASH THE CLOTHES AND HELP
22 MICHAEL IN THE SHOP. TAKE CARE OF MY VEHICLES. FEED
23 THE ANIMALS. ON SATURDAY I WASH CLOTHES. CLEAN MORE
24 HOUSE. MY PARENTS...

25 (OFF THE RECORD DISCUSSION)

1 WITNESS ANSWERS:

2 A. WHEN WE WENT TO TRIAL ON THIS CASE MY MOTHER WAS ON HER
3 DEATHBED. IT TOOK HER 40 DAYS TO DIE, AND I COULDN'T
4 EVEN BE THERE FOR HER BECAUSE I WAS DEALING WITH ALL
5 THIS. MY DAD DIED IN SEPTEMBER, AND I WAS SERVED WITH
6 A NOTICE TO BE HERE FOR THIS WHEN I WAS GOING THROUGH
7 HIS FUNERAL. SO YES, I THINK ABOUT KEVIN LEE DUKE
8 EVERY SINGLE DAY OF MY LIFE.

9 EXAMINATION RESUMED BY MR. POWELL:

10 Q. I DON'T KNOW YOUR SITUATION. ALL I KNOW IS WHAT'S ON
11 THE PAPER. SO I DON'T MEAN TO OFFEND YOU WITH MY
12 QUESTIONS. I'M JUST TRYING ---

13 A. NO OFFENSE TAKEN. I THINK WE'RE ALL TRYING TO GET TO
14 AN UNDERSTANDING HERE.

15 Q. YOU MADE A COMMENT ABOUT TAKING CARE OF YOUR HUSBAND
16 BECAUSE OF HIS PERMANENT BRAIN INJURY. AND WHAT I WAS
17 TRYING TO GET TO ABOUT YOUR DAY IS WHAT DO YOU HAVE TO
18 DO SPECIFICALLY FOR HIM IN TERMS OF HELPING BECAUSE OF
19 HIS INJURIES?

20 A. I HAVE TO MAKE SURE THAT HE'S TAKING HIS MEDICATION. I
21 HAVE TO MAKE SURE THAT HE'S KEEPING HIS APPOINTMENTS
22 AND MAKING SURE THAT HE GETS HIS EYE DROPS IN. KEEPING
23 UP WITH RECORDS OF WHERE HE'S TRYING TO BUILD A
24 BUSINESS BACK UP, BECAUSE HE'S NOT THE WORLD'S GREATEST
25 ORGANIZED PERSON. AND I DON'T LIKE TALKING ABOUT HIM

1 IN FRONT OF HIM. HE'S AN INTELLIGENT MAN, BUT HIS
2 PROCESSING SPEED HAS BEEN DRASTICALLY SLOWED BY THIS.
3 HE HAS NOTHING MUCH LEFT TO ENJOY IN LIFE. BECAUSE HE
4 ENJOYED RIDING HIS MOTORCYCLE, AND BECAUSE OF THIS IT
5 IS NOT SAFE FOR HIM ANYMORE. SO HE HAD TO SELL IT.
6 AND HE'S BEEN CLINICALLY DEPRESSED SO I TRY TO KEEP HIM
7 SUPPORTED AND MOTIVATED. KEEP HIM FOCUSED.

8 Q. DOES HE TAKE MEDICATIONS NOW THAT HE DID NOT TAKE
9 BEFORE THIS INCIDENT?

10 A. YES, SIR. HE'S TAKING NAMENDA FOR DEMENTIA.

11 Q. OKAY.

12 A. HE'S TAKING IBUPROFEN FOR HEADACHES THAT HE ALMOST --
13 HAS ALMOST EVERY SINGLE DAY. AND WHEN THAT'S NOT
14 ENOUGH HE'S HAVING TO TAKE HYDROCODONE, TOO. AND I
15 WOULD LIKE TO SAY ON A SIDE NOTE OF THAT, THAT NEITHER
16 ONE OF US HAVE A PROBLEM WITH HYDROCODONE. IT'S
17 MONITORED BY OUR DOCTOR. AND THE ONLY REASON I BRING
18 THIS IS UP IS BECAUSE I DEAL WITH SUBSTANCE ABUSE WITH
19 MY CLIENTS EVERY SINGLE DAY. AND I'M NOT GOING THERE.
20 IT'S NOT A PROBLEM IN MY HOUSEHOLD. AND IF IT WAS A
21 PROBLEM I WOULD DO THE SAME THING -- DR. SEJAN PUT ME
22 ON XANAX FOR THE ANXIETY AFTER THIS HAPPENED. AND IT
23 WAS HELPFUL, BUT WHEN IT WORE OFF THE ANXIETY WAS
24 10,000 TIMES WORSE THAN IT WAS IF I DIDN'T TAKE THE
25 MEDICINE. SO I WAS STRUGGLING. AND NOW INSTEAD OF

1 TAKING XANAX FOR IT...

2 Q. YOU MENTIONED MR. HARRELSON'S SHOP OR HIS BUSINESS. IS
3 THAT DONE TO DERIVE INCOME FOR THE FAMILY?

4 A. YES, SIR.

5 Q. AND WHAT KIND OF THINGS DOES HE DO IN HIS SHOP?

6 A. WELL, BEFORE THE INCIDENT HAPPENED, HE DID ANYTHING.
7 HE WORKED ON BUILDING ENGINES. HE DID OIL CHANGES,
8 TIRE ROTATIONS. STANDARD MOTOR CARE, BRAKE JOBS. HE
9 EVEN WORKED -- HE BUILT OUR NEIGHBOR'S TRACTOR. HE HAD
10 AN OLD TRACTOR AND MICHAEL TORE IT DOWN AND REBUILT IT.
11 HE HAD A '69 CAMARO HE HAD PURCHASED YEARS AGO THAT HE
12 HAD STRIPPED DOWN AND COMPLETELY BUILT FROM THE GROUND
13 BACK UP, WHICH WAS HIS PRIDE AND JOY. AND HE HAD SOLD
14 IT TO BUY A MOTORCYCLE SO WE COULD RIDE IT TOGETHER.
15 AND NOW HE'S ENDED UP HAVING TO SELL THE MOTORCYCLE.
16 SO YEAH, THAT...

17 Q. WHAT KIND OF THINGS CAN HE STILL DO IN THE SHOP OR DOES
18 HE STILL DO?

19 A. HE DOES OIL CHANGES. HE DOES -- CHANGES TIRES. BASIC
20 THINGS THAT ARE ROUTINE TO HIM THAT HE'S BEEN DOING
21 SINCE HE WAS 18 YEARS OLD.

22 Q. WHAT KIND OF INCOME DO YOU ALL DERIVE YEARLY FROM THE
23 OPERATION OF THE SHOP?

24 A. I DON'T KNOW. IT VARIES. MAYBE A FEW THOUSAND
25 DOLLARS. IT'S JUST A PART TIME THING. HE ONLY WORKS

1 ON THE WEEKEND, LIKE ON SATURDAY. HE DON'T WORK ON

2 SUNDAY. HE WORKS ON SATURDAYS AND AT NIGHT.

3 Q. KIND OF A SIDE GIG?

4 A. YES, SIR.

5 Q. DO YOU ALL SHOW THAT AS TAXABLE INCOME?

6 A. YES, SIR.

7 Q. SO IN TERMS OF MEDICATIONS. DEMENTIA MEDICATION,

8 IBUPROFEN, AND SOME HYDROCODONE?

9 A. YES.

10 Q. WHO IS HE TREATING WITH CURRENTLY FOR HIS INCIDENT

11 INJURIES?

12 A. HE WAS SEEING LESLIE HUDGENS, BUT SHE LEFT. AND DR.

13 MCCAFFREY, MICHAEL MCCAFFREY, HAS TAKEN OVER THAT CARE.

14 AND THEN HE SEES DR. SEJAN.

15 Q. AND ARE YOU SEEING ANYBODY OTHER THAN SEJAN RIGHT NOW?

16 A. NO, SIR.

17 Q. YOUR ATTORNEY HAS GIVEN US A BUNCH OF MEDICAL RECORDS

18 AND BILLS AND THINGS. MOST OF THAT INFORMATION IN THE

19 BILLS ARE FROM 2012, ON INTO 2013. AND THERE MIGHT BE

20 SOME FROM EARLY 2014. HAVE YOU ALL BEEN CONTINUOUSLY

21 TREATING SINCE THEN OR AT SOME POINT ---

22 A. HE HAS.

23 Q. --- DID YOU ALL GET TO YOUR MAX LEVEL?

24 A. HE HAS. HE'S STILL BEING TREATED. HE STILL SEES DR.

25 VAUGHT FOR HIS EYE.

1 Q. HOW OFTEN DOES HE SEE DR. VAUGHT?

2 A. EVERY SIX MONTHS.

3 Q. ALL RIGHT, AND WHO ELSE?

4 A. DR. SEJAN, HE SEES HIM. AND DR. MCCAFFREY EVERY SIX
5 MONTHS.

6 Q. ANYBODY AT MUSC OR ANYTHING LIKE THAT?

7 A. NO. NOT FOLLOW UP, NO, SIR.

8 Q. I DON'T WANT TO GET TOO FAR INTO HIS CASE, BUT YOU'RE A
9 GOOD HISTORIAN I THINK OF HIS CONDITION. THAT MAY JUST
10 HELP SHORTEN HIS UP. IN TERMS OF HIS MEDICAL OR HIS
11 PROBLEMS. HE HAS HEADACHES ON A DAILY BASIS?

12 A. YES, SIR. JUST ABOUT EVERY DAY.

13 Q. WHAT ARE THE NOTICEABLE EFFECTS THAT YOU SEE FROM WHAT
14 YOU CALL HIS PERMANENT BRAIN INJURY?

15 A. WELL, OBVIOUSLY THERE'S A PROCESSING SPEED. LIKE I
16 SAID, HE'S FAIRLY INTELLIGENT, BUT HE'S SLOW TO
17 RESPOND.

18 Q. IS THAT IN EVERY FUNCTION, OR DOES IT JUST HIT HIM AT
19 CERTAIN TIMES?

20 A. IT'S ALL THE TIME. HIS STEP-DAD IS IN GRAND STRAND.
21 AND WE WENT TO THE HOSPITAL TO SEE HIM SATURDAY. AND
22 THIS IS JUST AN EXAMPLE. THE AVERAGE PERSON WOULD WALK
23 UP TO AN ELEVATOR AND PRESS THE BUTTON AND STAY AWAY
24 FROM THE DOOR SO SOMEBODY DOESN'T COME OUT ON TOP OF
25 YOU. AND HE WALKS UP AND MASHES THE BUTTON AND HE'S

1 STANDING RIGHT IN FRONT OF THE DOOR. I HAD TO TAKE HIM
2 BY THE ARM AND BACK HIM UP AND TELL HIM, YOU KNOW, IF
3 SOMEBODY IS COMING OFF OF THE ELEVATOR, THEY'RE GOING
4 TO RUN INTO YOU. SO STAND OVER HERE. IT'S JUST...

5 Q. NOT THE SAME?

6 A. NO, SIR.

7 Q. HAS HE BEEN LIMITED IN WHAT HE CAN DO ON HIS JOB?

8 A. THE DOCTOR ORDERED A PSYCHOLOGICAL NEURO-PSYCH EVAL ON
9 HIM WHEN THIS HAPPENED. HE TOLD HIM TO GO ON
10 DISABILITY. BUT MICHAEL SAID A MAN SHOULD WORK AND HE
11 DIDN'T WANT TO BE HOME WITH NOTHING TO DO. AND WE
12 TALKED TO DR. HUDGENS ABOUT IT, AND SHE TOLD HIM TO GO
13 BACK PART TIME TO SEE HOW HE COULD DO. BUT WHEN HE
14 TRIED TO DO THAT, D.O.T. TOLD HIM THAT HE WOULD EITHER
15 COME BACK FULL TIME OR HE WOULDN'T HAVE A JOB. SO
16 AGAIN WE TALKED TO DR. HUDGENS ABOUT IT AND SHE SAID
17 THAT HIM SITTING AT HOME AND BEING DEPRESSED PROBABLY
18 WOULDN'T HELP ANY AND TO SEE IF HE COULD DO IT. SO HE
19 WENT BACK TO WORK. AND HE'S WORKED, BUT IT'S BEEN A
20 STRUGGLE.

21 Q. WHO IS HIS BOSS?

22 A. JIMMY. HE'S A NEW GUY. I DON'T KNOW WHAT -- WHAT'S
23 JIMMY'S LAST NAME -- JIMMY

24 Q. AND HE'S AT D.O.T.?

25 A. HE WASN'T THERE WHEN MICHAEL WAS ASSAULTED. MACK SUGGS

1 WAS THE PERSON WHO WAS THERE BEFORE THE ASSAULT AND
2 AFTER THE ASSAULT.

3 Q. ARE THEY AT THE 701 SHOP?

4 A. YES.

5 Q. SO CORRECT ME IF I'M WRONG. WHAT I'M HEARING IS HE'S
6 DOING HIS SAME JOB DAY-TO-DAY, BUT IT'S A STRUGGLE FOR
7 HIM TO DO IT?

8 A. YES, SIR. HE'S BEEN PICKED ON AT WORK. PEOPLE -- AND
9 I QUOTE: "YOU WANT TO TAKE IT UP WITH ME, THEN I'LL GO
10 OUTSIDE AND BEAT YOUR ASS LIKE THE LAST ONE DID." AND
11 MICHAEL HAS ALWAYS BEEN A GIVING AND CARING PERSON.
12 HE'S NEVER BEEN IN A FIGHT THAT I KNOW OF. AND HE'D
13 COME HOME STRESSED OUT ABOUT THAT AND DEPRESSED AND
14 EMBARRASSED. AND THE ONE THAT WAS GIVING HIM THE
15 HARDEST TIME ENDED UP GETTING FIRED, BUT IT WASN'T
16 BECAUSE OF ANYTHING HE DID TO MICHAEL. AND DURING
17 HURRICANE ANDREW HE HAD TO WORK 12 HOUR SHIFTS, SIX
18 DAYS A WEEK, FOR SEVERAL WEEKS. AND HE CAME HOME AT
19 THE END OF DAY AND COULDN'T EVEN CARRY ON A
20 CONVERSATION BECAUSE HE WAS STRESSED OUT. HIS HEAD
21 HURT. WHEN HE SLEEPS AT NIGHT -- THAT'S WHY HE WENT TO
22 MUSC. BECAUSE WHEN HE SLEEPS AT NIGHT HE JERKS ALL
23 OVER THE BED. HE'S PUSHED ME A COUPLE OF TIMES AND
24 KICKED ME. AND HE WOULD NEVER DO THAT ---
25 Q. DID THE MEDS HELP HIM WITH THAT?

- 1 A. THEY DID EKGs TO SEE IF HE HAD EPILEPSY OR IF HE WAS
2 HAVING SEIZURES.- AND THEY RULED OUT THAT IT WAS
3 SEIZURES. SO DR. HUDGENS SAID IT WAS PROBABLY JUST
4 EMOTIONAL STRESS. LAST NIGHT WASN'T A GOOD NIGHT
5 EITHER BECAUSE HE KNEW HE HAD TO COME HERE TODAY. HE
6 TOLD ME THIS MORNING -- HE SPENT HALF THE MORNING IN
7 THE BATHROOM, AND HE SAID HIS STOMACH AND HIS HEAD WERE
8 KILLING HIM BEFORE HE EVER EVEN MADE IT DOWN HERE
9 TODAY.
- 10 Q. I LOOKED AT A BUNCH OF MEDICAL RECORDS, AND I KNOW
11 THERE WAS A HEAD INJURY INVOLVED. DID YOUR HUSBAND
12 HAVE ANY HISTORY OF SEIZURES BEFORE THIS INCIDENT?
- 13 A. NO, SIR.
- 14 Q. DID HE HAVE ANY ISSUES WITH MIGRAINE HEADACHES?
- 15 A. NO, SIR.
- 16 Q. HAD HE EVER HAD A CONCUSSION PRIOR?
- 17 A. NO, SIR. NOT THAT I'M AWARE OF.
- 18 Q. DID HE EVER SUFFER FROM DIZZINESS OR DEPRESSION
19 DISORDER BEFORE THIS ---
- 20 A. NO, SIR. MICHAEL WAS HAPPY GO LUCKY. HE WAS EVERY
21 SINGLE DAY THE SAME WAY EVERY DAY, ALL DAY LONG. HE
22 LOVES KIDS. LOVES TO BE OUTSIDE.
- 23 Q. DID HE EVER HAVE ANY KIND OF PROBLEMS WITH EPILEPSY?
- 24 A. NO, SIR.
- 25 Q. EVER ANY TYPE OF DRUG OR ALCOHOL ABUSE?

1 A. NO, SIR.

2 Q. HAD HE EVER HAD POST-CONCUSSION SYNDROME BEFORE?

3 A. NO, SIR.

4 Q. HAD HE EVER BEEN TREATED FOR STRESS RELATED ILLNESSES?

5 A. NO, SIR.

6 Q. HAD HE EVER HAD ANY INJURY TO EITHER OF HIS EYES PRIOR

7 TO THIS?

8 A. YES, SIR.

9 Q. IN WHAT WAY?

10 A. HE HAD BEEN ON THE SCHOOL BUS WHEN HE WAS A LITTLE BOY.

11 AND ONE OF THE PIECES OF GLASS HAD BROKE. AND HE WAS

12 PULLING IT OUT AND IT FELL AND WENT INTO HIS EYEBALL.

13 I DON'T REMEMBER IF IT WAS THE LEFT OR -- AND HE DIDN'T

14 WANT TO TELL HIS MAMA BECAUSE HE HATED GOING TO THE

15 DOCTOR. SO HE HAD ONE OF THE BOYS ON THE SCHOOL BUS

16 PULL IT OUT.

17 Q. ANY PERMANENT ISSUES WITH IT?

18 A. NO, SIR.

19 Q. IN SOME OF THE RECORDS THAT GENE GAVE US THERE WAS AN

20 INDICATION -- AND IT COULD BE FROM WHAT YOU TOLD ME

21 EARLIER FROM HIS PRIOR ACCIDENT. THAT HE HAD SOME

22 SPINAL INJECTIONS?

23 A. YES, THAT WAS ---

24 Q. WAS THAT FOR HIS LOW BACK PAIN?

25 A. YES. THAT WAS WHEN THE NURSE RUN OUT IN FRONT OF HIM.

1 Q. HAD HE RECOVERED FULLY FROM THAT BACK INJURY, OR IS
2 THAT SOMETHING HE DEALS WITH, TOO?

3 A. HE HAD INJECTIONS PUT IN, AND IT TOOK CARE OF -- AS FAR
4 AS I KNOW IT HAD TAKEN CARE OF IT.

5 Q. HOW FAR BACK WAS THAT?

6 A. OUR DAUGHTER WAS ---

7 Q. OVER TEN YEARS?

8 A. SHE WAS IN MIDDLE SCHOOL. YES, SIR.

9 Q. AT THE TIME OF THIS INCIDENT THAT OCCURRED AT WAL-MART
10 WAS YOUR HUSBAND TAKING ANY MEDICATIONS?

11 A. BLOOD PRESSURE, DIABETES, CHOLESTEROL.

12 Q. DID HE HAVE ANY LIMITATIONS ON HIS ACTIVITIES ON WHAT
13 HE COULD DO?

14 A. I THINK HE HAD A WEIGHT LIMIT BECAUSE OF THE PREVIOUS
15 BACK INJURY.

16 Q. IN TERMS OF PICKING STUFF UP?

17 A. YES.

18 Q. DID HE HAVE ANY PLANS TO HAVE ANY KIND OF SURGERY OF
19 ANY SORT IN THE FUTURE?

20 A. NO, SIR. NOT THAT I'M AWARE OF.

21 Q. WERE YOU HAVING ANY MEDICAL PROBLEMS AT THE TIME THIS
22 INCIDENT OCCURRED?

23 A. JUST THE FIBROMYALGIA STUFF GOING ON.

24 Q. ANY PLANS FOR ANY SURGERY OR PROCEDURE THAT YOU NEEDED?

25 A. NO, SIR.

1 Q. WERE YOU WORKING FULL TIME WHEN THE INCIDENT TOOK
2 PLACE?
3 A. YES, SIR.
4 Q. WHERE WERE YOU WORKING THEN?
5 A. CONWAY MEDICAL CENTER.
6 Q. WHAT DID YOU DO AT CONWAY MEDICAL CENTER?
7 A. I WAS A SOCIAL WORKER IN THE CASE MANAGEMENT
8 DEPARTMENT. I DID DISCHARGES.
9 Q. I'M SORRY, YOU WERE A WHAT?
10 A. I WAS A DISCHARGE PLANNER.
11 Q. YOU MADE A COMMENT AND I THINK I MAY HAVE MISSED IT.
12 BUT YOU SAID YOU WERE MAKING 50K AT CONWAY MEDICAL
13 CENTER?
14 A. YES, SIR.
15 Q. HOW LONG HAD YOU BEEN THERE?
16 A. I THINK A YEAR AND THREE MONTHS.
17 Q. WERE YOU IN GOOD STANDING WITH THE COMPANY WHEN THIS
18 INCIDENT OCCURRED?
19 A. YES, SIR.
20 Q. WHO WAS YOUR SUPERVISOR?
21 A. CRYSTAL
22 Q.
23 A. MM-HMM (AFFIRMATIVE RESPONSE).
24 Q. WHAT WOULD BE HER JOB TITLE?
25 A. SHE'S CASE MANAGEMENT DIRECTOR.

1 Q. IN THAT ONE YEAR AND THREE MONTHS YOU WERE THERE HAD
2 YOU MISSED ANY EXTENDED PERIOD OF TIME FROM WORK ---

3 A. NO, SIR.

4 Q. --- DUE TO A MEDICAL CONDITION?

5 A. NO, SIR.

6 Q. WHY DID YOU LOSE YOUR JOB AT CONWAY MEDICAL CENTER?

7 A. A SERIES OF UNFORTUNATE EVENTS RELATED TO POST-
8 TRAUMATIC STRESS DISORDER. EVERY TIME SOMETHING WENT
9 WRONG WITH A CLIENT OR SOMEBODY -- A FAMILY -- YOU TRY
10 TO TALK TO FAMILY ABOUT THEIR ELDERLY PARENT'S
11 DISCHARGE PLANS OR WHATEVER. AND ROUTINELY, IF YOU
12 EVER TALK TO A DISCHARGE PLANNER THEY'LL TELL YOU THIS,
13 THEY DON'T WANT TO HEAR THE BAD NEWS. YOU KIND OF HAVE
14 TO EASE INTO IT AND TALK TO THEM THREE OR FOUR
15 DIFFERENT TIMES TO GET THEM TO UNDERSTAND. I'M
16 GENERALLY GOOD AT HELPING PEOPLE UNDERSTAND THINGS.
17 AND IF THERE WAS ANY QUESTION OR ANYTHING THAT WENT
18 WRONG, I WOULD GO INTO A PANIC ABOUT IT. AND MY STRESS
19 WOULD GO UP AND I WOULD BECOME DEFENSIVE, AS YOU SEE
20 HERE TODAY. JUST STRESS AND ANXIETY LED TO ONE
21 INCIDENT AFTER ANOTHER. AND THEN CRYSTAL FINALLY SAID
22 THAT SHE JUST DIDN'T FEEL LIKE IT WAS A GOOD FIT. AND
23 THEY LET ME GO.

24 Q. AT ANY TIME PRIOR TO THIS INCIDENT HAD YOU HAD ANY KIND
25 OF WRITE-UPS OR PROBLEMS OR ANYTHING ---

1 A. NO, SIR.

2 Q. --- RELATED TO YOUR JOB ---

3 A. NOT THAT I RECALL, NO, SIR.

4 Q. WHAT WAS THE DATE OF YOUR TERMINATION? BALLPARK.

5 A. I DON'T EVEN KNOW. JULY, AUGUST SOMETIME.

6 Q. OF '13?

7 A. I DON'T REMEMBER IF IT WAS '13 -- NO, IT WAS '14.

8 Q. SO YOU WORKED ANOTHER YEAR AND A HALF?

9 A. I TRIED, YES, SIR.

10 Q. AT WHAT POINT IN TIME AFTER THE INCIDENT WERE YOU

11 DIAGNOSED WITH POST-TRAUMATIC STRESS DISORDER?

12 A. IN THE WEEKS FOLLOWING IT.

13 Q. WEEKS?

14 A. YES, SIR. I DON'T EVEN KNOW EXACTLY HOW LONG. I THINK

15 THAT WAS ANOTHER PROBLEM AT CONWAY MEDICAL CENTER. I

16 HAD A OFFICE WHERE I WAS BY MYSELF. AND IF -- WHEN I

17 CAME IN AND DID MY WORK AND WAS CAUGHT UP -- WHICH I

18 DID EVERY DAY. CRYSTAL DIDN'T WANT US ON THE FLOOR NOT

19 DOING ANYTHING. SO SHE WOULD TELL US -- MYSELF AND THE

20 OTHER SOCIAL WORKER THAT WAS THERE TO GO TO OUR OFFICE.

21 SO MY OFFICE HAD NO WINDOWS. THERE WAS NO -- NOTHING

22 IN THERE. AND I WOULD GO SIT IN MY OFFICE AND JUST --

23 AT THAT TIME I WAS SENDING STUFF TO -- FROM THE

24 ACCIDENT, AND I WOULD GO IN THERE AND WORK ON THIS

25 STUFF EVERY DAY. AND IT'S EAT AWAY AT MY SELF-

1 CONFIDENCE. THE ANXIETY.

2 Q. DID DR. SEJAN DIAGNOSE YOU WITH THE POST-TRAUMATIC?

3 A. YES, SIR.

4 Q. I APOLOGIZE IF YOU TOLD ME THIS, BUT DID HE GIVE YOU
5 ANYTHING SPECIFICALLY FOR THAT?

6 A. HE HAD PUT ME ON -- WELL, ACTUALLY HE MAY NOT HAVE MADE
7 THAT DIAGNOSIS. BECAUSE I WENT TO COUNSELING FOR A
8 LITTLE WHILE WITH JOHNNY DELOACHE. D-E-L-O-A-C-H-E. I
9 THINK IT'S GOT AN "E" ON THE END OF IT. HE DIAGNOSED
10 ME WITH POST-TRAUMATIC STRESS DISORDER. WE DID
11 E.M.D.R. THERAPY. MICHAEL ALSO SAW HIM.

12 Q. DID THE THERAPY HELP YOU?

13 A. IT DID. IT HELPED ME GET BACK OUT IN PUBLIC. BECAUSE
14 THERE WAS A WHILE THAT I COULDN'T EVEN PUMP GAS WITHOUT
15 HAVING A WEAPON IN MY HAND.

16 Q. YOUR ATTORNEY HAS SOME NOTES HE GAVE ME. YOU MISSED
17 WORK FROM DECEMBER 21, 2012, THROUGH JANUARY 14 OF
18 2013?

19 A. YES, SIR.

20 Q. YOU MISSED EVERY DAY?

21 A. YES, SIR.

22 Q. IS THIS THE TIME PERIOD YOU WERE TELLING ME ABOUT WHERE
23 YOU WERE FEARFUL?

24 A. OH, NO. THAT FEAR WENT ON FOR YEARS.

25 Q. I DIDN'T MEAN IT THAT WAY. DURING THOSE TWO OR THREE

1 WEEKS YOU WERE IN BAD SHAPE?

2 A. YES, SIR. THE FIRST TWO WEEKS IT WAS CHRISTMAS. AND
3 WITH MICHAEL'S EYE AND HEAD HURTING SO BAD RIGHT AFTER
4 THE ASSAULT, HE COULDN'T STAND THE LIGHT TO BE ON. AND
5 SOMEBODY I KNEW AT CONWAY HOSPITAL HAD GIVEN ME A SMALL
6 CHRISTMAS TREE. AND I HAD IT ON THE TABLE IN THE DEN.
7 SO I PLUGGED THAT IN FOR LIGHT, AND I SAT WITH HIM IN
8 THE DARK AROUND THE CLOCK CRYING AND PRAYING FOR HIM TO
9 GET WELL. I HAD TO DRIVE HIM TO ALL HIS DOCTOR'S
10 APPOINTMENTS BECAUSE HE COULDN'T DRIVE.

11 Q. LET ME JUST ASK YOU A LITTLE BIT ABOUT YOU. I HAVE
12 MOST OF THIS. ON THE DAY OF THE INCIDENT WERE YOU
13 TRANSPORTED BY EMS?

14 A. I WAS NOT.

15 Q. OKAY.

16 A. I WAS WORRIED ABOUT HIM. I WANTED HIM TO BE TAKEN CARE
17 OF. AND THEY ASKED ME IF I NEEDED TREATMENT, AND I
18 TOLD THEM NO. THAT I JUST GOT PUNCHED, BUT I DIDN'T
19 THINK I WAS HURT. AND I SIGNED A WAIVER TO THAT
20 EFFECT. BUT I ASKED IF I COULD RIDE IN THE AMBULANCE
21 WITH MICHAEL TO THE HOSPITAL. BECAUSE I DIDN'T KNOW
22 WHERE MY KEYS WERE.

23 Q. ALL RIGHT, I DO WANT TO REVISIT -- BECAUSE YOU WERE NOT
24 HERE WHEN MR. DUKE TESTIFIED THIS MORNING. AND I WANT
25 TO GIVE YOU AN OPPORTUNITY TO RESPOND TO A COUPLE OF

1 THINGS HE SAID. HE MADE THE COMMENT THAT HE PULLED UP
2 IN HIS CAR AND YOU WERE AT THE END OF THE AISLE, WHICH
3 THE VIDEO SHOWS. THAT HE ROLLED HIS WINDOW DOWN AND
4 YOU MADE THE FIRST COMMENT TO HIM, AND YOU CALLED HIM
5 AN IMPATIENT SON OF A BITCH AND WERE REALLY, HE USED
6 THE TERM, BLESSING HIM OUT. DID YOU DO THAT?

7 A. NO, SIR. THE ONLY WORDS I HAVE -- THE ONLY WORD I HAVE
8 EVER UTTERED TO THAT MAN WAS YES. THAT WAS THE ONLY
9 THING THAT I SAID TO HIM. AND THAT WAS WHEN HE ASKED
10 ME IF THAT WAS MY HUSBAND.

11 Q. I WANT TO TAKE IT IN BABY STEPS, SO DON'T JUMP TOO FAR
12 AHEAD OF ME. SO YOU DID NOT SAY THAT TO HIM?

13 A. NO, SIR.

14 Q. HE THEN MADE THE COMMENT THAT HE STATED DO YOU HAVE A
15 PROBLEM OR SOMETHING TO THAT EFFECT, AND YOU SAID NO,
16 YOU HAVE A PROBLEM, BECAUSE HERE'S MY HUSBAND.

17 A. NO, SIR.

18 Q. DID YOU MAKE THAT COMMENT?

19 A. NO, SIR.

20 Q. DID YOUR HUSBAND EXCHANGE ANY WORDS WITH MR. DUKE
21 BEFORE HE GOT OUT OF HIS VEHICLE?

22 A. NO, SIR.

23 Q. OTHER THAN WHAT YOU SAID AND TESTIFIED TO HOW IT WENT
24 DOWN, WERE THERE ANY OTHER WORDS EXCHANGED BETWEEN YOU
25 AND MR. DUKE?

1 A. NO, SIR.

2 Q. DID YOU IN ANY WAY SUGGEST THAT YOUR HUSBAND WAS A
3 THREAT TO MR. DUKE?

4 A. NO, SIR. I TOLD YOU EARLIER MY HUSBAND IS A VERY
5 GENTLE SOUL.

6 Q. DID MR. HARRELSON MAKE ANY TYPE OF MOVEMENT OR GESTURE
7 TOWARD MR. DUKE TO SUGGEST THAT HE HAD A PROBLEM WITH
8 HIM?

9 A. NO, SIR. HE COME TO STAND BESIDE ME. TO MAKE SURE I
10 WAS OKAY.

11 Q. I KNOW THIS WAS HAPPENING FAST, BUT DID MR. HARRELSON
12 MAKE CONTACT WITH HIS HANDS OR FIST WITH MR. DUKE?

13 A. NOT THAT I SAW. NOT THAT I'M AWARE OF. HE HAD
14 SCRATCHES ON HIS FACE. AND THE ONLY THING I COULD
15 THINK IS WHEN HE WAS LEANING SO FAR AROUND THAT HE
16 LITERALLY WAS UP AGAINST MICHAEL UP AGAINST THE CAR AND
17 WAS LEANING AROUND TO SLING TO HIT HIM IN THE FACE.
18 BECAUSE MICHAEL HAD HIS ARM UP, AND HE WAS HAVING TO
19 SWING AROUND THAT TO HIT HIM IN THE FACE.

20 Q. IN NO PART OF THIS WAS MR. HARRELSON FIGHTING BACK?

21 A. NO, SIR.

22 Q. ALL RIGHT.

23 A. HE WAS TOO ADDLED. AGAIN, IF THERE HAD BEEN AN
24 ARGUMENT THERE WOULD HAVE BEEN SOME TYPE OF STANCE OF
25 DEFENSE. THERE WAS NO ARGUMENT. THERE WAS NO NOTHING.

1 THE MAN ASKED A QUESTION. IS THAT YOUR HUSBAND. I
2 SAID YES, AND MICHAEL SAID YES, HE IS. AND THAT'S ALL
3 IT WAS. AND HE JUMPED OUT OF HIS CAR SWINGING.

4 Q. SO NOTHING MR. HARRELSON DID OR SAID PRIOR TO MR. DUKE
5 GETTING OUT OF HIS CAR WAS BELLIGERENT OR THREATENING
6 IN ANY WAY?

7 A. NO, SIR.

8 Q. SO AFTER THE INCIDENT, MR. DUKE PULLS OFF. DOES
9 ANYBODY FROM WAL-MART -- WE REALLY HADN'T TALKED ABOUT
10 THAT. I MEAN DUKE DRIVES OFF, AND WE HAVEN'T TALKED
11 ABOUT ANYTHING. WHEN DUKE DRIVES OFF, WHAT HAPPENED?

12 A. WELL, BEFORE HE DROVE OFF, THERE WAS SOME CUSTOMERS
13 THAT HAD COME AROUND BECAUSE I WAS SCREAMING AT THE TOP
14 OF MY LUNGS FOR HIM TO STOP. AND I GUESS IT GOT
15 PEOPLE'S ATTENTION, AND THEY STARTED COMING OVER THERE
16 TO SEE WAS GOING ON. AND HE JUMPED IN HIS CAR AND
17 DROVE OFF. AND THERE WAS A MAN AND WOMAN THAT OFFERED
18 MICHAEL SOME TISSUES AND A BOTTLE OF WATER TO WASH THE
19 BLOOD OFF OF HIS FACE. AND I WAS BEGGING SOMEBODY TO
20 BRING HIM SOMETHING TO SIT DOWN ON, BECAUSE I WAS SO
21 SCARED HE WAS GOING TO FALL OUT. AND SOMEBODY FINALLY
22 SAID SOMETHING ABOUT THEY WERE GOING TO SEE IF WAL-MART
23 COULD GET A CHAIR OUT THERE. AND FINALLY AN EMPLOYEE
24 CAME AND THEY HOLLERED FOR SOMEBODY THAT WAS PUSHING
25 BUGGIES TO GO IN AND BRING THE WHEELCHAIR OUT SO

1 MICHAEL COULD SIT DOWN IN IT. BUT THAT WAS -- I MEAN
2 DUKE HAD BEEN GONE BY THAT POINT. BUT THERE WAS PEOPLE
3 STANDING AROUND. AND I GUESS IT'S BECAUSE OF MY SOCIAL
4 WORK AND MY CRIMINAL JUSTICE BACKGROUND AND STUFF, I
5 WAS LIKE IF THERE'S ANYBODY AROUND HERE THAT SEEN ANY
6 OF THIS, PLEASE WRITE YOUR NAME DOWN. AND THERE WAS A
7 MAN THAT HAD A PIECE OF PAPER AND A PEN, AND HE WAS
8 NICE ENOUGH TO TAKE DOWN PEOPLE'S NAMES AND PHONE
9 NUMBERS. AND I INCLUDED ALL OF THAT INFORMATION WHEN I
10 WROTE MY VICTIM'S STATEMENT THE NIGHT OF THE ASSAULT.

11 Q. HOW LONG WAS IT BEFORE THE AMBULANCE CAME?

12 A. I DON'T KNOW. I'M TELLING YOU EVERYTHING SEEMED LIKE
13 IT TOOK FOREVER, BUT THEN IT SEEMED LIKE IT WAS IN A
14 SPEED WARP. SO IT FELT LIKE FOREVER BECAUSE SHE KEPT
15 ASKING ME, WHERE ARE YOU AT, AT WAL-MART. AND I KEPT
16 TELLING HER WE'RE ON ROW EIGHT AND NINE, AND SHE WAS --
17 SOMEBODY WAS YELLING, I SEE THE AMBULANCE OUT ON 17.
18 JUST TELL THEM TO TURN RIGHT AND COME IN HERE. AND
19 THEY FINALLY GOT THERE.

20 Q. DID YOU TALK TO LAW ENFORCEMENT AT WAL-MART OR AT THE
21 HOSPITAL?

22 A. AT THE HOSPITAL.

23 Q. DID YOU EVER HAVE ANY CONTACT OR COMMUNICATION WITH
24 ANYBODY FROM WAL-MART ABOUT THE INCIDENT?

25 A. WHEN WE WENT TO SEACOAST THEY WERE WORKING ON MICHAEL,

1 AND THE POLICE OFFICER CAME AND HE TOOK MY STATEMENT.
2 HE COME BACK AND TOLD ME THAT THEY HAD GOTTEN THE C.D.
3 FROM WAL-MART. AND HIS CAPTAIN HAD LOOKED AT IT AND
4 SAID EVERYTHING YOU SAID IN YOUR REPORT IS EXACTLY WHAT
5 HAPPENED ON THE VIDEO. AND HE ASKED ME IF I NEEDED
6 SOMETHING, AND I TOLD HIM MY CAR WAS STILL AT WAL-MART
7 AND I DIDN'T HAVE A WAY TO GET IT. SO HE PUT ME IN THE
8 BACK OF HIS POLICE CAR AND DROVE ME TO WAL-MART. AND
9 ON THE WAY I TOLD HIM THAT MICHAEL'S CELL PHONE WAS
10 MISSING AND THAT I NEEDED TO MAKE A REPORT. THAT IF
11 ANYBODY HAD TURNED IT IN HOW TO GET IN TOUCH WITH US.
12 SO WHEN WE GOT TO WAL-MART, HE ESCORTED ME INSIDE AND
13 WE WENT TO THE SERVICE DESK. AND I TOLD THEM THAT WE
14 WERE THE ONES INVOLVED IN THE ASSAULT AND MICHAEL'S
15 PHONE WAS MISSING. AND I GAVE THEM MY PHONE NUMBER,
16 AND SHE TOLD ME SHE WOULD CALL ME. AND SHE ASKED IF
17 MICHAEL WAS OKAY, AND SHE TOLD ME THAT SHE HOPED HE
18 WOULD BE ALL RIGHT. AND WE WENT OUTSIDE AND THE
19 OFFICER AND I WERE LOOKING AROUND IN THE PARKING LOT
20 UNDER CARS FOR HIS PHONE. THERE WAS BLOOD ALL OVER THE
21 GROUND. AND HE STAYED THERE WITH ME LONG ENOUGH TO GET
22 IN THE CAR AND DRIVE BACK TO SEACOAST.

23 Q. SO THE NIGHT OF THE INCIDENT DID YOU GET ANY TREATMENT
24 WHATSOEVER AT GRAND STRAND?

25 A. NO.

1 Q. YOU TESTIFIED THAT YOU HAD BEEN HIT IN A COUPLE SPOTS
2 ON YOUR BODY. YOU DIDN'T WANT TO GET ANY TREATMENT FOR
3 THAT?

4 A. (NEGATIVE RESPONSE)

5 Q. NO?

6 A. I WAS TOO WORRIED ABOUT HIM.

7 Q. WAS THERE ANY OBVIOUS CUTS, ABRASIONS, OR BRUISING THAT
8 NIGHT ON YOUR FACE OR PERSON?

9 A. MY EAR -- THE WHOLE TOP OF MY EAR WAS RED AND TURNED
10 BLUE. AND THE SIDE OF MY CHEEK WAS RED AND MY ARM ---

11 Q. HAD THAT HAPPENED BEFORE THE NEXT DAY?

12 A. IT WAS -- IT LOOKED LIKE THAT WHEN I WAS AT SEACOAST.
13 THE OFFICER MADE PICTURES OF IT.

14 Q. GENE HAS GIVEN US A BUNCH OF MEDICALS, AND IT LOOKS
15 LIKE YOU FIRST SAW DR. SEJAN DECEMBER 28TH, A FEW DAYS
16 LATER?

17 A. YES. EVERYTHING WAS CLOSED FOR CHRISTMAS.

18 Q. YOU TREATED WITH DR. SEJAN. I JUST WANT TO MAKE SURE I
19 HAVE THE COMPLETE LIST OF INJURIES FOR YOU FROM THIS
20 INCIDENT. FLARE UPS MORE REGULAR OF FIBROMYALGIA.
21 MORE FLARED UP ON YOUR HEADACHES. THE POST-TRAUMATIC
22 STRESS DISORDER. SOME ABRASIONS AND CUTS ON YOUR BODY.
23 ANYTHING ELSE I MISSED?

24 A. NOT THAT I CAN THINK OF.

25 Q. IS THE PTSD STILL A PRESENT DIAGNOSIS FOR YOU?

1 A. YES, SIR.

2 Q. SO YOU'RE STILL CARRYING THAT DIAGNOSIS?

3 A. YES, SIR.

4 Q. YOU SAW THE COUNSELOR DELOACHE FOR MOST OF 2013?

5 A. YES, SIR.

6 Q. HAVE YOU TREATED WITH DR. DELOACHE SINCE THE END OF
7 2013?

8 A. NO, SIR. WE STOPPED GOING TO HIM BECAUSE THE MEDICAL
9 COSTS WERE SO EXPENSIVE. AND LIKE I SAID, I COULDN'T
10 AFFORD FOR MY DAUGHTER TO GO TO SCHOOL. WE DIDN'T HAVE
11 ANY MONEY. AND WHEN THE END OF THE YEAR ROLLED AROUND
12 AND I HAD TO MEET NEW DEDUCTIBLES, I JUST QUIT GOING.

13 Q. AND YOU HAVE SOME PHARMACY WITH POWERS PHARMACY. ANY
14 OTHER DOCTORS THAT YOU'VE SEEN AFTER THE INCIDENT THAT
15 YOU BELIEVE THE MEDICAL BILLS ARE RELATED TO THE
16 INCIDENT?

17 A. FOR ME NOT THAT I KNOW OF.

18 Q. I'M TALKING ABOUT JUST FOR YOU.

19 A. NO.

20 Q. SO WE HAVE YOUR MEDICAL BILLS. AND YOUR ATTORNEY HAS
21 NOT TOLD ME THIS, BUT IN THE CONTEXT OF THE DISCOVERY
22 IT APPEARS TO ME THAT YOU WERE MAKING 50K AT THE TIME.
23 YOU'VE GOT A JOB NOW MAKING 38K ROUGHLY; IS THAT
24 CORRECT?

25 A. YES.

1 Q. ABOUT \$12,000 DIFFERENCE?

2 A. BUT WHEN I TOOK THE JOB IT WAS 35.

3 Q. 35?

4 A. YES. I'VE HAD A PAY RAISE, YES.

5 Q. IT LOOKS AS IF YOU MAY MAKE A CLAIM THAT THE DIFFERENCE
6 IN THOSE JOBS IS LOST INCOME FOR YOU?

7 A. YES, SIR.

8 Q. DO YOU PLAN TO MAKE THAT CLAIM?

9 A. I ABSOLUTELY WILL MAKE THAT CLAIM. BECAUSE I HAVE
10 ALWAYS BEEN AN EXCELLENT EMPLOYEE. WHEN I WAS WORKING
11 IN NORTH CAROLINA, I WAS THE DIRECTOR OF A DAY
12 TREATMENT PROGRAM FOR JUVENILES WHO HAD EXHAUSTED EVERY
13 AVENUE IN THE PUBLIC SCHOOL SYSTEM. AND WHEN THEY
14 COULDN'T DO ANYTHING ELSE WITH THEM, THEY SENT THEM TO
15 ME. AND IT WAS A SUCCESSFUL PROGRAM. I WAS -- MY
16 NEAREST SUPERVISOR WAS THREE HOURS AWAY IN WILSON,
17 NORTH CAROLINA. AND I RAN THAT FOR THREE YEARS. I'VE
18 ALWAYS BEEN ON AN ACCELERATED PATH IN MY CAREER SINCE
19 I'VE BEEN OUT OF COLLEGE.

20 Q. BUT DO YOU KNOW IF YOU WOULD HAVE EVER MOVED ON TO
21 ANOTHER JOB FOR CONWAY MEDICAL CENTER?

22 A. WELL, THAT WAS THE MOST MONEY I'D EVER MADE, SO I WOULD
23 HAVE STAYED THERE AS LONG AS I POSSIBLY COULD. IF I'D
24 BEEN ABLE TO.

25 Q. WAS THERE ANY TYPE OF TEMPORARY STATUS IN THAT JOB OR

1 PROVISIONAL PERIOD?

2 A. NO, SIR. THE ONLY THING IS I DIDN'T HAVE MY LICENSURE
3 FOR SOCIAL WORK WHEN I STARTED THERE. AND THEY HAD A
4 SIX -- I THINK IT WAS A SIX MONTH OR TWELVE MONTH TIME
5 FRAME THAT I HAD TO BE LICENSED. AND I WENT AND PASSED
6 MY LICENSE. AND THAT WAS IT.

7 Q. SO IF I WENT AND GOT YOUR PERSONNEL FILE, THERE REALLY
8 WOULDN'T BE ANYTHING IN THERE THAT WOULD BE OF ANY
9 CONCERN PRIOR TO THIS INCIDENT?

10 A. NO, SIR. NOT THAT I'M AWARE OF.

11 Q. HAVE YOU HAD ANY PROBLEMS INCORPORATING YOURSELF INTO
12 YOUR NEW COMPANY AND DOING A GOOD JOB THERE?

13 A. NO, SIR. BUT AGAIN, I HAVE MY OWN CASELOAD THAT I WORK
14 WITH. AND I WORK WITH THEM MONDAY, WEDNESDAY, AND
15 FRIDAY. AND THEN TUESDAY AND THURSDAY, I'M IN-HOUSE.
16 SO I REALLY DON'T DEAL WITH THAT MANY PEOPLE.

17 Q. SO YOU'VE LOST AT LEAST \$12,000 OF INCOME A YEAR, AND
18 YOU BELIEVE THAT WILL CONTINUE THROUGH YOUR CAREER
19 POSSIBLY?

20 A. I HOPE IT DOESN'T. I HOPE IT DOESN'T.

21 Q. IS THERE AN OPPORTUNITY FOR ADVANCEMENT WITHIN THE
22 POSITION YOU'RE IN NOW AT YOUR CURRENT EMPLOYER?

23 A. I WOULD SAY YES. IT'S A PRETTY BIG FACILITY AND PEOPLE
24 ARE MOVING IN AND OUT ALL THE TIME. I DON'T KNOW HOW
25 MUCH ROOM THERE IS FOR GROWTH, BECAUSE THERE'S NOT A

1 GREAT DEAL OF SLOTS BETWEEN MYSELF AND THE DIRECTOR.

2 BUT I WOULD LIKE TO THINK THAT PROMOTIONS COULD BE HAD.

3 Q. WERE YOU EVER BEEN TERMINATED FOR CAUSE FROM ANY OF
4 YOUR JOBS?

5 A. NO, SIR.

6 BY MR. POWELL:

7 I APPRECIATE IT. THAT'S ALL I HAVE.

8 BY MR. TEAGUE:

9 NO FURTHER QUESTIONS.

10 BY MR. CONNELL:

11 NO QUESTIONS.

12 (THERE BEING NO FURTHER QUESTIONS, THIS DEPOSITION CONCLUDED
13 AT 1:20 P.M.)

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF HORRY) C.A. # 16-CP-26-798

SOUTH CAROLINA FARM BUREAU MUTUAL)
INSURANCE COMPANY,)
)
PLAINTIFF,)
)
VERSUS)
)
MICHAEL DAVID HARRELSON, DEVORA)
HARRELSON, KEVIN DUKE, AND GOVERNMENT)
EMPLOYEES INSURANCE COMPANY,)
)
DEFENDANTS.)

DEPOSITION OF
MICHAEL DAVID HARRELSON

PURSUANT TO NOTICE OF DEPOSITION AND/OR AGREEMENT
IN THE ABOVE-ENTITLED CASE, THE DEPOSITION OF MICHAEL DAVID
HARRELSON WAS TAKEN ON THE 29TH DAY OF NOVEMBER, 2016,
COMMENCING AT THE HOUR OF 1:28 P.M., IN THE OFFICES OF THE
HUDSON LAW FIRM, MYRTLE BEACH, SOUTH CAROLINA:

REPORTED BY: MARCIE L. SMITH, VERBATIM REPORTER.

MLS REPORTING
Certified Verbatim Reporters
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Spartanburg, South Carolina 29301
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ALSO ATTENDING: DEVORA HARRELSON

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EXHIBITS:

(NONE MARKED)

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL
IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

MLS REPORTING (864) 415-4198

1 STIPULATIONS:

2 IT IS AGREED BY AND BETWEEN THE COUNSEL FOR THE PARTIES AS
3 FOLLOWS:

4 1. THAT THIS DEPOSITION IS TO BE TAKEN PURSUANT TO RULE 30
5 OF THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE.

6 2. THAT THE DEPONENT WAIVES THE RIGHT TO READ AND SIGN THE
7 DEPOSITION TRANSCRIPT.

8 ***** ***** ***** *****

9 MICHAEL DAVID HARRELSON, BEING DULY SWORN TO TELL THE TRUTH,
10 THE WHOLE TRUTH AND NOTHING BUT THE TRUTH, TESTIFIED
11 CONCERNING THE MATTER HEREIN AS FOLLOWS:

12 EXAMINATION BY MR. TEAGUE:

13 Q. MR. HARRELSON, MY NAME IS REED TEAGUE. YOU WERE IN THE
14 ROOM HERE FOR YOUR WIFE'S DEPOSITION. IF YOU COULD
15 STATE YOUR FULL NAME FOR THE RECORD.

16 A. MICHAEL DAVID HARRELSON.

17 Q. DID YOU HEAR THE INSTRUCTIONS THAT I GAVE HER REGARDING
18 THE DEPOSITION?

19 A. YES.

20 Q. HAVE YOU EVER GIVEN A DEPOSITION BEFORE?

21 A. NO, SIR.

22 Q. HAVE YOU EVER BEEN INVOLVED IN A LAWSUIT BEFORE?

23 A. NO, SIR.

24 Q. YOU'RE DOING WELL, BUT IF YOU WOULD ANSWER VERBALLY SO
25 WE CAN TAKE IT DOWN. I'LL DO MY BEST NOT TO INTERRUPT

1 YOU AND IF YOU'LL DO THE SAME WHEN I ASK MY QUESTIONS,
2 SO WE CAN GET EVERYTHING DOWN CLEARLY. IF YOU NEED A
3 BREAK AT ANY TIME, LET US KNOW. ARE YOU ON ANY
4 MEDICATION TODAY THAT WOULD AFFECT YOUR ABILITY TO
5 PROVIDE TRUTHFUL AND ACCURATE RESPONSES TO MY
6 QUESTIONS?

7 A. NO, SIR.

8 Q. IF I ASK YOU A QUESTION AND YOU RESPOND, I'LL TAKE THAT
9 TO MEAN THAT YOU UNDERSTOOD IT AND CAN PROVIDE A
10 TRUTHFUL AND ACCURATE RESPONSE. IS THAT FAIR?

11 A. YES, SIR.

12 Q. AND IF I DO ASK YOU A QUESTION THAT YOU DON'T
13 UNDERSTAND, JUST LET ME KNOW AND I'LL REPHRASE IT. ALL
14 RIGHT?

15 A. OKAY.

16 Q. OKAY. WHAT'S YOUR DATE OF BIRTH?

17 A. .

18 Q. AND WHAT'S YOUR SOCIAL SECURITY NUMBER?

19 BY MR. TEAGUE:

20 OFF THE RECORD.

21 (OFF THE RECORD)

22 EXAMINATION RESUMED BY MR. TEAGUE:

23 Q. AND YOUR CURRENT ADDRESS?

24 A. , LORIS.

25 Q. HOW LONG HAVE YOU LIVED THERE?

1 A. FOR 20 -- SOMEWHERE AROUND 18 YEARS I THINK. FOR 18,
2 19 YEARS.

3 Q. OKAY. DO YOU KNOW WHAT TODAY'S DATE IS?

4 A. YEAH, IT'S THE 29TH.

5 Q. OF NOVEMBER?

6 A. OF NOVEMBER.

7 Q. 2016?

8 A. 2016.

9 Q. HAVE YOU EVER BEEN ARRESTED?

10 A. NO, SIR.

11 Q. NO CRIMINAL RECORD?

12 A. NO, SIR.

13 Q. HAVE YOU EVER BEEN FIRED FROM A JOB?

14 A. NO, SIR.

15 Q. DO YOU HAVE ANY PRIOR MARRIAGES?

16 A. NO, SIR.

17 Q. I DON'T NEED THE ONES YOUR WIFE GAVE ME, BUT CAN YOU
18 GIVE ME THE LAST NAMES OF ANY RELATIVES IN HORRY COUNTY
19 THAT IS NOT HARRELSON.

20 A. JUST HARRELSON IN HORRY COUNTY.

21 Q. ARE YOU A LIFELONG RESIDENT OF THIS COUNTY?

22 A. BASICALLY. WHEN I WAS YOUNG SOME OF THE TIME WAS AT
23 MYRTLE BEACH. AND I MOVED WITH MY MOM TO NORTH
24 CAROLINA FOR ABOUT TWO YEARS AND THEN COME RIGHT BACK.

25 Q. TELL ME ABOUT YOUR EDUCATIONAL BACKGROUND. DID YOU

1 GRADUATE HIGH SCHOOL?

2 A. YES, SIR.

3 Q. WHERE?

4 A. LORIS.

5 Q. WHAT YEAR?

6 A. 1980.

7 Q. WHAT ABOUT ANY ADDITIONAL EDUCATION?

8 A. I GRADUATED IN '82, FROM HG-TECH WITH A DIPLOMA IN

9 AUTOMOTIVE TECHNOLOGY. AND I GRADUATED FROM HG-TECH

10 SOMEWHERE AROUND '97 OR '8, WITH AN ASSOCIATE'S IN

11 CRIMINAL JUSTICE. AND THEN I GRADUATED FROM CHARLESTON

12 SOUTHERN IN 2010, WITH A BACHELOR DEGREE IN CRIMINAL

13 JUSTICE.

14 Q. WHERE WAS THE 2010 DEGREE?

15 A. CHARLESTON SOUTHERN.

16 Q. OKAY. THAT WAS A BACHELOR'S DEGREE?

17 A. BACHELOR'S IN CRIMINAL JUSTICE.

18 Q. THEN LET'S WALK THROUGH YOUR EMPLOYMENT HISTORY,

19 STARTING WHEN YOU WERE FIRST EMPLOYED AFTER YOUR

20 EDUCATION.

21 A. BEACH FORD AFTER GRADUATION IN '82.

22 Q. BEACH FORD DEALERSHIP?

23 A. YES, SIR.

24 Q. HOW LONG DID YOU WORK THERE?

25 A. I WANT TO THINK IT WAS ABOUT FIVE YEARS. IT'S BEEN SO

1 LONG AGO.

2 Q. WHERE DID YOU GO AFTER BEACH FORD?

3 A. TO BLANTON'S EXHAUST IN LORIS.

4 Q. WHAT DID YOU DO THERE?

5 A. AUTO MECHANIC.

6 Q. WHEN YOU WERE AT BEACH FORD WERE YOU AN AUTO MECHANIC

7 AS WELL?

8 A. YES, SIR.

9 Q. HOW LONG DID YOU WORK FOR BLANTON'S?

10 A. I THINK IT WAS AROUND FIVE OR SIX YEARS, SOMETHING LIKE

11 THAT.

12 Q. WHERE DID YOU GO AFTER THAT?

13 A. AND THEN I SOLD LIFE INSURANCE FOR ABOUT TWO YEARS I

14 THINK.

15 Q. WHO DID YOU DO THAT FOR?

16 A. SOUTHERN LIFE.

17 Q. SOUTHERN LIFE?

18 A. MM-HMM (AFFIRMATIVE RESPONSE).

19 Q. DOES THAT TAKE US TO ABOUT 1995?

20 A. YEAH. SOMEWHERE AROUND IN THERE. THERE WAS ONE OTHER

21 PLACE. AND THEN IT'S BEEN AT D.O.T. THE REST OF THE

22 TIME. I WAS A MANAGER OF CUSTOM STITCHES IN LORIS.

23 Q. CUSTOM STITCHES?

24 A. MM-HMM (AFFIRMATIVE RESPONSE).

25 Q. WAS THAT AFTER YOUR LIFE INSURANCE AT SOUTHERN ---

1 A. YEAH.

2 Q. AND HOW LONG DID YOU WORK AT CUSTOM STITCHES?

3 A. FOUR YEARS, SOMETHING LIKE THAT. THEN I WENT TO D.O.T.

4 Q. AND YOU STARTED WORKING AT D.O.T. IN ABOUT '99 OR 2000?

5 A. IT WAS ABOUT '96, WHEN I WENT TO D.O.T.

6 Q. '96?

7 A. YEAH. AND I'VE BEEN THERE EVER SINCE.

8 Q. WHEN YOU WERE FIRST HIRED AT D.O.T., WHAT WERE YOU

9 HIRED AS?

10 A. AUTO MECHANIC 1.

11 Q. HOW DID YOU PROGRESS THROUGH TIME?

12 A. I'M AN AUTO MECHANIC 3 NOW. OR MECHANIC 3 THEY CALL

13 IT.

14 Q. WHEN DID YOU BECOME AN AUTO MECHANIC 2?

15 A. THEY DIDN'T HAVE A 2 SLOT WHEN THEY DID THAT. THEY

16 CHANGED -- REVAMPED THAT. IT WENT FROM A 1 TO A 3.

17 Q. WHEN DID YOU BECOME AN AUTO MECHANIC 3?

18 A. LIKE TWO YEARS OR SOMETHING LIKE THAT AFTER I STARTED.

19 Q. SO YOU'VE BEEN AN AUTO MECHANIC 3 SINCE ABOUT '98?

20 A. YES, SIR.

21 Q. IS THERE ANYTHING ABOVE AUTO MECHANIC 3?

22 A. NOTHING BUT SUPERVISOR, AND THAT'S IT.

23 Q. ALL RIGHT, HAVE YOU USED YOUR DEGREE IN CRIMINAL

24 JUSTICE AT ALL?

25 A. NO, SIR.

1 Q. DID YOU GET THAT ON LINE?

2 A. I HAD TO GO TO COASTAL AND THE AIR BASE. SOME OF IT

3 WAS ON LINE, BUT IT WAS ALL JOINED TOGETHER. THEY HAD

4 -- CHARLESTON SOUTHERN HAD A BRANCH AT THE AIR BASE AT

5 ONE TIME.

6 Q. ALL RIGHT, AND YOU'RE STILL WORKING AT D.O.T. TODAY AS

7 AN AUTO MECHANIC 3?

8 A. (AFFIRMATIVE RESPONSE)

9 Q. TELL ME WHAT YOUR JOB DUTIES ARE AS AN AUTO MECHANIC 3.

10 A. I REPAIR WHATEVER COMES IN. WHETHER IT BE BIG TRUCKS,

11 TRACTORS, BACKHOES. TRACKHOES. JUST WHATEVER COMES

12 IN.

13 Q. WHAT'S YOUR ROLE? ARE YOU PROVIDING OVERSIGHT OR ARE

14 YOU UP UNDER THE MACHINE ---

15 A. NO, I WORK ON THE MACHINES AND DO REPAIRS. DIAGNOSE

16 THEM AND DO REPAIRS.

17 Q. WHAT DOES THAT REQUIRE YOU TO DO ON A DAILY BASIS?

18 WHAT I'M TRYING TO GET AT IS PHYSICALLY. ARE YOU

19 CLIMBING OR GOING UNDER VEHICLES OR ---

20 A. WE HAVE LIFTS AND STUFF.

21 Q. LIFTS?

22 A. THE ONLY THING YOU REALLY HAVE TO CLIMB UNDER ANYMORE

23 IS LIKE A TRACKHOE. AND I MEAN, YOU KNOW, THAT'S UP

24 HIGH. JUST TO SERVICE IT. THAT'S ABOUT ALL WE CAN DO

25 TO IT.

1 Q. WHAT'S THE MOST PHYSICALLY DEMANDING WORK YOU HAVE TO
2 DO AS A MECHANIC 3?

3 A. WELL, THEY GOT A WEIGHT -- WE DON'T HAVE TO LIFT BUT A
4 HUNDRED POUNDS, BECAUSE YOU'VE GOT AN ELECTRIC HOIST
5 AND STUFF. BUT LIFTING A HEAD OUT OR TEARING A MOTOR
6 DOWN COMPLETELY AND REBUILDING IT. WE DO -- WE GO AS
7 FAR AS DOING THAT AND CHANGING A TRANSMISSION.

8 Q. AND ARE YOU CURRENTLY STILL ABLE TO TEAR DOWN A MOTOR
9 AND REBUILD IT TODAY?

10 A. I'VE BEEN DOING IT SO MANY YEARS THAT I PRETTY MUCH
11 KNOW WHAT TO DO ON THAT. BUT I STILL HAVE TO THINK
12 REAL HARD WHEN I'M DOING STUFF TO MAKE SURE I DON'T
13 MAKE MISTAKES. WHEREAS I USED TO DIDN'T HAVE TO. IT
14 JUST COME NATURAL.

15 Q. DO YOU HAVE AN EXAMPLE OF ANY MISTAKES THAT YOU'VE
16 MADE?

17 A. I HADN'T MADE ANY THAT I KNOW OF SINCE I'VE BEEN BACK.
18 BECAUSE I MAKE SURE TO TAKE EXTRA TIME AND REALLY
19 CONCENTRATE ON WHAT I'M DOING. I HAVE LEFT A LUG LOOSE
20 ON A TIRE A COUPLE OF TIMES. ONE THAT HAD LIKE TEN
21 LUGS AND I MISSED ONE AND IT HAD TO BE BROUGHT BACK IN
22 TO BE TIGHTENED.

23 Q. OKAY. HAVE YOU EVER FILED A WORKER'S COMPENSATION
24 CLAIM?

25 A. NO, SIR.

1 Q. HAVE YOU EVER FILED FOR DISABILITY?
2 A. NO, SIR.
3 Q. THE INCIDENT WAS DECEMBER 21ST OF 2012, IS THAT RIGHT?
4 A. YES, SIR.
5 Q. AS FAR AS WHERE YOU WERE COMING FROM. WHAT YOUR WIFE
6 PROVIDED WAS THAT YOU WERE AT APPLEBEE'S, IS THAT RIGHT
7 ---
8 A. YES, SIR.
9 Q. THIS WAS THE WAL-MART YOU NORMALLY USE, IS THAT RIGHT?
10 A. YES, SIR.
11 Q. AND IT WAS CHRISTMASTIME AND IT WAS CROWDED, IS THAT
12 RIGHT?
13 A. YES, SIR.
14 Q. AND WERE YOU DRIVING THE VEHICLE?
15 A. YES, SIR.
16 Q. CAN YOU TELL ME A LITTLE BIT ABOUT THAT VEHICLE. WHAT
17 TYPE OF BMW IT WAS.
18 A. IT WAS A '03 318-I, I BELIEVE IT WAS. I BELIEVE IT WAS
19 A 318-I. BLACK.
20 Q. AND HAD YOU WORKED THAT DAY?
21 A. YES, SIR.
22 Q. DO YOU HAVE ANY RECOLLECTION OF WHAT YOU DID AT WORK
23 THAT DAY?
24 A. I KNOW I DID SERVICE. CHANGING OILS AND STUFF. I
25 DON'T REMEMBER ANYTHING IN PARTICULAR.

1 Q. IS THAT MOSTLY WHAT YOU DO IS CHANGE OIL AND THAT KIND
2 OF THING?

3 A. WE HAVE A LOT OF THAT.

4 Q. SO WHEN YOU WENT INTO THE WAL-MART PARKING LOT IT WAS
5 CHRISTMASTIME AND IT WAS FULL. IS THAT RIGHT?

6 A. YES, SIR.

7 Q. AND YOU AND YOUR WIFE WERE SEARCHING FOR A PARKING
8 SPOT?

9 A. YES, SIR.

10 Q. AND IF YOU WILL JUST KIND OF WALK ME THROUGH. YOU WERE
11 DRIVING THE VEHICLE, CORRECT?

12 A. YES, SIR.

13 Q. AND WE'VE GONE THROUGH IT, BUT IF YOU'LL IN YOUR WORDS
14 JUST WALK ME THROUGH WHAT YOU SAW AND WHAT HAPPENED.

15 A. WE PULLED INTO THE PARKING LOT AND WENT UP THAT LANE
16 WHERE THE INCIDENT HAPPENED. AND I SEEN THE MAN
17 PUTTING HIS STUFF IN THE BACK OF HIS CAR THAT WAS
18 GETTING READY TO LEAVE. AND MY WIFE SAYS I'LL JUST GET
19 OUT AND TAKE THE BUGGY SO HE WON'T HAVE TO CARRY IT
20 BACK UP THERE, AND WE CAN PARK QUICK. A LOT QUICKER
21 THAT WAY. AND SHE GOT OUT OF THE CAR AND GOT HIS BUGGY
22 AND WALKED OVER TO THE SIDE. AND ALL OF THE SUDDEN I
23 HEAR SOMEBODY BLOWING THE HORN BEHIND ME AND FLASHING
24 THE LIGHTS. AND THEN THEY BACK UP AND COME FLYING BACK
25 UP TOWARDS ME, AND THEY GET SO CLOSE I CAN SEE HIS FACE

1 IN THE REARVIEW MIRROR AND CAN'T EVEN SEE THE LIGHTS OR
2 THE VERY FRONT OF THE HOOD HE'S SO CLOSE ON THE BACK
3 END WHEN HE RUNS UP THERE. AND THEN HE'S REVVING THE
4 MOTOR AND STILL FLASHING THE LIGHTS. AND THE MAN GETS
5 IN HIS VEHICLE THAT WE GOT THE CART FROM AND PULLS
6 STRAIGHT THROUGH OUT OF THE OTHER SIDE OF THE PARKING
7 LOT. AND I PULL IN THE PARKING SPACE AND DUKE PULLS UP
8 BEHIND MY CAR. KIND OF OVER TOWARDS MY CAR AND UP TO
9 THE BACK BUMPER. THE BACK BUMPERS WERE CLOSE. I MEAN
10 I COULD WALK TO HIM. THEY WEREN'T LIKE INCHES, BUT I
11 HAD ---

12 Q. LET ME INTERRUPT YOU A MINUTE. HIS CAR HAD PULLED ON
13 PAST YOUR VEHICLE, CORRECT?

14 A. I HAD TO WALK AROUND THE BACK OF HIS CAR, THOUGH, TO
15 GET BY. I MEAN, I COULDN'T HAVE BACKED OUT IF I'D
16 WANTED TO WITHOUT BACKING INTO HIS CAR.

17 Q. BUT YOU COULD HAVE PULLED FORWARD, BECAUSE THE CAR
18 BEFORE YOU PULLED FORWARD ---

19 A. I DON'T KNOW IF ANYBODY HAD PARKED THERE AFTER I GOT
20 OUT OR NOT.

21 Q. IT HAD ONLY BEEN A FEW SECONDS, THOUGH, RIGHT?

22 A. YEAH, IT HADN'T BEEN LONG.

23 Q. SO YOU PARKED YOUR CAR, AND WHAT DID YOU DO ONCE YOU
24 PARKED THE VEHICLE?

25 A. WHEN I SEEN THAT HE HAD STOPPED RIGHT THERE BEHIND ME

1 AND GOT OUT -- OR HE WAS STOPPED THERE BY MY WIFE. SO
2 I COME AND WALKED AROUND THE BACK OF HIS CAR TO SEE
3 WHAT WAS GOING ON. I HEARD HIM ASK HER IS THAT ---

4 Q. LET ME STOP YOU REAL QUICK. AT THAT POINT IN TIME WAS
5 MR. DUKE STILL IN HIS VEHICLE?

6 A. YES, SIR.

7 Q. OKAY, GO AHEAD.

8 A. I HEARD HIM ASK HER IS THAT YOUR HUSBAND. AND THEN SHE
9 SAID YES. AND AT THE SAME TIME I SAID YES, I AM. AND
10 BY THE TIME I SAID THAT, HE COME OUT OF THE CAR AND
11 SAID, DO YOU WANT SOME OF THIS YOU M.F. S.O.B. AND PUT
12 MY EYEGLASSES IN MY EYE SOCKET. SPLIT ALL THIS FROM
13 ALL THE WAY OVER.

14 Q. DID YOU SAY ANYTHING TO HIM WHEN HE MADE THOSE REMARKS
15 TO ---

16 A. NO, SIR.

17 Q. SO MR. DUKE IS SAYING ALL THESE THINGS, AND THE ONLY
18 THING BETWEEN YOU AND YOUR WIFE THAT WAS SAID WAS YES?

19 A. YES, SIR.

20 Q. NEITHER ONE OF YOU SAID ANYTHING ELSE?

21 A. NO, SIR.

22 Q. AND WHEN YOU FIRST APPROACHED IT, MR. DUKE'S CAR WAS
23 SITTING THERE AND THE WINDOW WAS DOWN, CORRECT?

24 A. YES, SIR.

25 Q. AND THEN HE ULTIMATELY PUT THE CAR IN PARK, IS THAT

1 RIGHT?

2 A. I GUESS HE DID. BECAUSE IT DIDN'T MOVE OR NOTHING, YOU
3 KNOW.

4 Q. AND THEN HE EXITED THE VEHICLE, RIGHT?

5 A. HE EXITED THE VEHICLE.

6 Q. AND ONCE HE EXITED THE VEHICLE, HOW LONG WAS IT BETWEEN
7 WHEN HE EXITED THE VEHICLE AND WHEN HE HIT YOU?

8 A. BY THE TIME HE HIT HIS FOOT ON THE CONCRETE, PROBABLY -
9 - ALMOST BEFORE HE GOT HIS OTHER FOOT OUT OF THE CAR.
10 I MEAN HE CAME OUT SWINGING.

11 Q. AND HE WAS COMPLETELY OUT OF THE VEHICLE WHEN THAT
12 HAPPENED?

13 A. YES, SIR.

14 Q. AND HE WASN'T USING THE VEHICLE AT THAT TIME FOR
15 TRANSPORTATION OR ANY MEANS OF THAT ---

16 A. NOT AT THAT TIME. HE DROVE IT THERE.

17 Q. WHEN HE HIT YOU HE WAS NOT IN ANY WAY USING HIS CAR, IS
18 THAT CORRECT?

19 A. NO, SIR.

20 Q. YOU INDICATED HE HIT YOU. FROM YOUR RECOLLECTION CAN
21 YOU RECALL HOW HE HIT YOU, WHERE HE HIT YOU, AND HOW
22 THE FIGHT KIND OF EVOLVED.

23 A. HE HIT ME STRAIGHT INTO MY GLASSES AND SPLIT IT ALL
24 OPEN AND PUT MY EYEGLASS INTO MY EYE SOCKET.

25 Q. WAS THAT THE FIRST HIT?

1 A. THE FIRST HIT. AND I HELD MY HANDS UP AFTER THAT
2 TRYING TO BLOCK THEM, AND HE ENDED UP PUSHING ME RIGHT
3 ONTO THE BACK OF HIS CAR. AND PUSHED ME UP TO HIS CAR.
4 I HAD -- I WOULDN'T HAVE HAD A BRAIN INJURY IF HE
5 HADN'T BEEN ABLE TO USE HIS CAR TO PIN ME AGAINST IT.
6 BECAUSE I COULD HAVE GOT AWAY FROM HIM.

7 Q. DID YOUR HEAD GET PUSHED INTO THE VEHICLE AT ALL?

8 A. NO, SIR. HE HAD ME PUSHED ALL THE WAY UP AGAINST IT.
9 AND I WAS LEANING -- TRYING TO LEAN FORWARD TO -- OR
10 NO, I WASN'T TRYING TO LEAN. HE PUSHED ME. BUT I WAS
11 TRYING TO HOLD MY HANDS UP TO KEEP HIM FROM PUMMELING
12 ME RIGHT ON AND ON.

13 Q. DID YOU FIGHT BACK AT ALL?

14 A. NO, SIR. I DIDN'T HAVE A CHANCE TO.

15 Q. HOW TALL ARE YOU?

16 A. FIVE NINE, TEN, SOMETHING LIKE THAT.

17 Q. ALL RIGHT.

18 A. AND I KNOW THERE HAD TO BE BLOOD ALL OVER THE BACK OF
19 HIS CAR. BECAUSE OF THE WAY HE HAD ME PUSHED UP ON HIS
20 CAR AND I WAS POURING BLOOD.

21 Q. HOW LONG WERE YOU PUSHED UP ON THE CAR?

22 A. I DON'T KNOW HOW LONG IT WAS THAT HE KEPT POUNDING ME.
23 ALL I KNOW IS HE KEPT HITTING ME.

24 Q. HOW MANY TIMES DO YOU THINK HE HIT YOU?

25 A. I DON'T HAVE A CLUE. I DON'T KNOW.

1 Q. DO YOU KNOW ABOUT HOW LONG THE FIGHT WENT ON TIME-WISE?

2 A. IT SEEMED LIKE A LONG TIME TO ME. BUT I DON'T KNOW --

3 I KNOW IT COULDN'T HAVE BEEN TOO LONG, BUT I DON'T KNOW

4 EXACTLY HOW LONG IT ALL...

5 Q. WHERE WERE YOU POSITIONED WHEN HE FINALLY STOPPED

6 HITTING YOU AND WENT BACK INTO HIS CAR?

7 A. KIND OF OFF FROM THE BACK WHEN HE GOT BACK ON ME THE

8 SECOND TIME. NOT RIGHT AT HIS CAR, BUT A LITTLE BIT

9 OFF TO THE BACK WHERE I HAD PULLED -- GOT BETWEEN HIM

10 AND MY WIFE.

11 Q. BEFORE MR. DUKE EXITED HIS VEHICLE WAS THERE ANYTHING

12 BETWEEN YOU, YOUR WIFE, AND THE WAL-MART SHOPPING

13 CENTER AND MR. DUKE?

14 A. I DON'T KNOW WHAT -- HIS CAR WAS THERE AND WAS ---

15 Q. THE WAY YOU GO INTO THE WAL-MART, FROM LOOKING AT THE

16 VIDEOS, WAS OVER TO YOUR LEFT. AND MR. DUKE IS OVER TO

17 YOUR RIGHT. SO WAS THERE ANYTHING THAT WAS BLOCKING

18 YOU OR KEEPING YOU FROM CONTINUING ON TO THE WAL-MART

19 AND IGNORING MR. DUKE?

20 A. I DON'T KNOW WHAT WAS THERE, BECAUSE I WOULDN'T HAVE

21 TURNED MY EYESIGHT AWAY FROM LOOKING AT HIM THERE AND

22 MY WIFE RIGHT THERE. I'M NOT GOING TO TURN MY BACK ON

23 NOBODY THAT IS ACTING LIKE THAT WITH A CAR.

24 Q. SO YOU WENT UP THERE BECAUSE YOUR WIFE WAS AT THE

25 WINDOW?

1 A. WELL, I WAS GOING INTO WAL-MART ANYWAY. BUT I COME
2 AROUND HIS CAR TO SEE WHY HE HAD ROLLED DOWN THE WINDOW
3 AT HER.

4 Q. ALL RIGHT. EARLIER IN YOUR WIFE'S DEPOSITION WE HAD AN
5 OPPORTUNITY TO LOOK AT THESE VIDEOS. DID YOU GET A
6 CHANCE TO WATCH THE VIDEOS?

7 A. I SEEN THEM IN THE COURTROOM AND I SEEN IT TODAY.

8 Q. YOU'VE HAD AN OPPORTUNITY TO WATCH THE VIDEOS JUST LIKE
9 YOUR WIFE DID A LITTLE EARLIER, IS THAT RIGHT?

10 A. YES, SIR.

11 BY MR. TEAGUE:

12 GIVE ME ONE SECOND.

13 (OFF THE RECORD)

14 EXAMINATION RESUMED BY MR. TEAGUE:-

15 Q. EXHIBIT 1 WAS THE ROOFTOP CAM 12. AND EXHIBIT 2 WAS
16 THE PLGM DOOR 122112. AND EXHIBIT 3 WAS THE DOOR SHOT.
17 YOU HAD AN OPPORTUNITY TO REVIEW ALL THREE OF THOSE
18 VIDEOS, IS THAT RIGHT?

19 A. TODAY, YES, SIR.

20 Q. AND FROM VIEWING THOSE VIDEOS AND WHAT IS SET FORTH IN
21 THOSE VIDEOS, DOES IT ACCURATELY REFLECT WHAT HAPPENED
22 THAT NIGHT ON THE DATE OF THE INCIDENT?

23 A. THE CAR WAS ACTUALLY A LITTLE BIT CLOSER THAN WHAT THE
24 VIEWS FROM THE CAMERA SHOW. IT LOOKS LIKE FROM THE
25 VIDEO THAT IT'S A DISTANT -- MORE DISTANCE THAN WHAT IT

1 WAS.

2 Q. SO ARE YOU DISAGREEING WITH WHAT'S ON THE VIDEO, OR ARE
3 YOU TELLING ME YOU THOUGHT THE CAR WAS CLOSER TO YOUR
4 VEHICLE?

5 A. I THOUGHT THE CAR WAS CLOSER TO THE VEHICLE.

6 Q. DO YOU HAVE ANY REASON TO DISAGREE WITH WHAT'S DEPICTED
7 ON THE VIDEOS?

8 A. NO, THE VIDEO SHOWS HIM DOING WHAT HE DID AND ALL.

9 Q. AND WOULD YOU AGREE THAT WHAT IS DEPICTED ON THE VIDEOS
10 ACCURATELY REFLECTS WHAT HAPPENED ON THE NIGHT OF THE
11 INCIDENT?

12 A. YES, SIR.

13 Q. ALL RIGHT. YOU INDICATED THAT YOUR INJURIES ARE
14 SOMEHOW WORSENER BECAUSE THE VEHICLE WAS THERE.

15 A. YES, SIR.

16 Q. IS THAT WHAT YOU SAID EARLIER?

17 A. (AFFIRMATIVE RESPONSE)

18 Q. WOULD YOU AGREE WITH ME THAT THE FIGHT COULD HAVE JUST
19 AS EASILY MOVED TO THE RIGHT OR TO THE LEFT, AND YOU
20 COULD HAVE ENDED UP PINNED UP AGAINST A SEPARATE
21 VEHICLE?

22 A. NO, SIR. BECAUSE HE MADE SURE TO PUT ME ON HIS CAR.
23 THAT'S WHERE HE FORCED ME TO.

24 Q. SO IT COULD NOT HAVE MOVED IN THE OPPOSITE DIRECTION
25 BASED ON HOW THE FIGHT OCCURRED?

1 A. NO, SIR.

2 Q. DO YOU THINK THE ACTIONS OF MR. DUKE IN USING HIS CAR
3 WERE FORESEEABLE AS TO THE NORMAL USE OF A VEHICLE?

4 A. NO, SIR.

5 Q. DO YOU BELIEVE THAT MR. DUKE'S VEHICLE ACTUALLY INJURED
6 YOU IN ANY WAY, OR WAS IT MR. DUKE THAT INJURED YOU?

7 A. IT WAS BECAUSE OF THE CAR PINNING ME THAT I HAD THE
8 BRAIN INJURY. REPETITIVE HITS.

9 Q. BUT MR. DUKE WAS THE ONE HITTING YOU, CORRECT?

10 A. YES, SIR.

11 Q. AND HE WAS THE ONE THAT WAS STRIKING YOU?

12 A. YES, SIR.

13 Q. AND WHEN THE FIGHT WAS ACTUALLY GOING ON HE WAS NOT
14 ACTUALLY USING HIS VEHICLE FOR TRANSPORTATION. IS THAT
15 CORRECT?

16 A. NOT FOR TRANSPORTATION. JUST USING IT AS A WEAPON.

17 Q. HOW WAS HIS VEHICLE A WEAPON?

18 A. BECAUSE OF USING IT TO PIN ME AGAINST. JUST LIKE IF I
19 COME AT YOU AND HELD A BASEBALL BAT UP TO YOU. I MEAN
20 IT WAS A WEAPON. BECAUSE IF I HAD -- IF HE HADN'T
21 THROWN ME AGAINST THE CAR, I COULD HAVE GOT AWAY FROM
22 HIM AND TWISTED AROUND. BUT WITH HIM HAVING ME PINNED
23 TO THE CAR THERE WAS NOWHERE FOR ME TO GO OR TO GET
24 AWAY FROM HIM.

25 Q. SO THAT'S THE ONLY REASON THAT YOU'RE SAYING IT'S A

1 WEAPON IS BECAUSE IT WAS THERE AND HE PINNED YOU
2 . . . AGAINST IT?

3 A. BECAUSE OF HIS ACTIONS OF USING IT AND HOW HE REVVED
4 THE ENGINE AND PULLED UP BEHIND ME. THE WHOLE -- THE
5 WHOLE THING.

6 Q. HOW WOULD REVVING THE ENGINE HAVE ANYTHING TO DO WITH
7 IT BEING A WEAPON?

8 A. THAT'S LIKE POINTING A GUN AT YOU. HIM REVVING THE
9 ENGINE TO THREATEN YOU LIKE HE'S GOING TO RUN OVER YOU.
10 YOU DON'T KNOW -- I DIDN'T KNOW WHAT HE WAS GOING TO
11 DO.

12 Q. WELL, YOU WERE IN YOUR VEHICLE, WEREN'T YOU, WHEN HE
13 REVVED HIS ENGINE?

14 A. YEAH, BUT HE STILL WAS BEHIND ME BEING AGGRESSIVE WITH
15 THE CAR.

16 Q. BUT YOU WERE ABLE TO PULL IN THE PARKING SPOT AND PARK,
17 RIGHT?

18 A. I PULLED IN THE PARKING SPACE, YES, SIR.

19 Q. PRIOR TO MR. DUKE EXITING HIS VEHICLE, DO YOU BELIEVE
20 THE CAR STOPPED YOU IN ANY WAY FROM PROCEEDING INTO
21 WAL-MART? THE ACTUAL VEHICLE?

22 A. YES, SIR. BECAUSE I HAD TO GO AROUND THE CAR TO EVEN
23 GET TOWARDS THE DOOR. FROM THE TIME I EXITED MY CAR.

24 Q. OKAY, SO THAT'S YOUR TESTIMONY THAT BASED ON WHAT YOU
25 SAW IN THE VIDEO, YOU WOULD HAVE HAD TO WALK AROUND THE

1 CAR ---

2 A. I HAD TO WALK AROUND THE CAR.

3 Q. YOU COULDN'T HAVE PEELED OUT A LITTLE FURTHER AND
4 WALKED A LITTLE FURTHER AWAY FROM THAT CAR?

5 A. I WOULD HAVE STILL HAD TO WALK AROUND THE CAR. I MEAN
6 IT WAS -- FROM WHERE I GOT OUT OF MY CAR, THAT CAR --
7 HIS CAR WAS BETWEEN ME AND THE FRONT DOOR.

8 Q. SO IT'S YOUR TESTIMONY THAT IT WAS A DIRECT PATH
9 THROUGH HIS VEHICLE TO GET TO THE WAL-MART DOOR?

10 A. IF YOU'RE GOING TO WALK STRAIGHT. YES, SIR, IT WOULD
11 BE.

12 Q. THAT'S WHAT YOU SAW ON THE VIDEO?

13 A. YES, SIR.

14 BY MR. TEAGUE:

15 THAT'S ALL I HAVE FOR YOU. I'LL LET THESE OTHER
16 GENTLEMEN ASK YOU SOME QUESTIONS. THANK YOU FOR YOUR
17 TIME.

18 EXAMINATION BY MR. HUDSON:

19 Q. MR. HARRELSON, ATTORNEY DWIGHT HUDSON. I REPRESENT THE
20 SOUTH CAROLINA FARM BUREAU. YOU'VE BEEN HERE THE WHOLE
21 TIME SO ---

22 A. YES, SIR.

23 Q. IN YOUR WIFE'S DEPOSITION. SO I WON'T BOTHER TO REPEAT
24 ALL THOSE THINGS. LET ME ASK YOU IN WHAT YOU'VE
25 DESCRIBED SO FAR, YOU WOULD AGREE THAT THE INJURIES

1 THAT YOU RECEIVED AND WHICH YOU'RE COMPLAINING ABOUT
2 WERE CAUSED BY MR. DUKE'S FISTS?

3 A. HIS FISTS AND HIS CAR.

4 Q. AND WHAT PART OF HIS CAR CAUSED ANY INJURY TO YOU
5 DIRECTLY?

6 A. FROM HIM PINNING ME AGAINST IT WHERE I COULD NOT MOVE
7 OR GET AWAY.

8 Q. WHAT PART OF THE CAR CAUSED WHAT INJURY TO YOU?

9 A. THE CAR DIDN'T CAUSE THE INJURY, BUT IT HELPED -- IT
10 ENABLED HIM TO DO THE INJURY.

11 Q. WOULD YOU NOT AGREE THAT THE PRIMARY CAUSE OF YOUR
12 INJURIES WAS MR. DUKE'S FISTS?

13 A. I WOULDN'T AGREE WITH THAT TOTALLY, SIR. BECAUSE LIKE
14 I SAID, IF HE HADN'T BEEN ABLE TO FORCE ME TO HIS CAR
15 AND USE HIS CAR, I COULD HAVE TWISTED AND TURNED WHERE
16 HE COULDN'T HAVE BEAT ME AND CAUSED THE BRAIN INJURY.
17 I WOULD HAVE STILL HAD THE CUT EYE, BUT I WOULDN'T HAVE
18 TO LIVE WITH THE BRAIN INJURY AND TAKE MEDICATION THE
19 REST OF MY LIFE.

20 Q. WERE YOU TREATED BY ANY MEDICAL PEOPLE THAT REFERRED TO
21 THE AUTOMOBILE AS BEING DIRECTLY ATTRIBUTABLE TO YOUR
22 PHYSICAL INJURIES?

23 A. NO, SIR.

24 Q. SO IT WAS THE PHYSICAL ASSAULT WITH MR. DUKE'S FISTS
25 THAT CAUSED YOUR INJURIES?

1 A. IT'S HIM AND HIS CAR. USING HIS CAR AS A WEAPON.

2 Q. SO YOU'RE CLAIMING HE USED HIS CAR AS A WEAPON?

3 A. YES, SIR.

4 Q. AND YOU MAJORED IN CRIMINAL JUSTICE IN COLLEGE?

5 A. YES, SIR, I DID.

6 Q. HAVE YOU EVER HELD A POSITION WITH ANY EMPLOYER OR
7 BUSINESS IN WHICH YOU EMPLOYED YOUR DEGREE IN CRIMINAL
8 JUSTICE?

9 A. NO, SIR. I HAD APPLICATIONS IN WITH COUNTY POLICE WHEN
10 HE DID THIS. AND NOW I CAN NEVER HAVE A JOB WITH THE
11 POLICE BECAUSE OF THE BRAIN INJURY, AND I'VE GOT TO PAY
12 \$30,000 IN STUDENT LOANS BACK.

13 Q. HOW LONG HAD YOU HAD YOUR DEGREE IN CRIMINAL JUSTICE?

14 A. 2010.

15 Q. YOU GOT YOUR DEGREE IN 2010?

16 A. YES, SIR.

17 Q. AND THIS INCIDENT OCCURRED WHEN?

18 A. 2012.

19 Q. SIR?

20 A. 2012.

21 Q. BETWEEN 2010 AND 2012, WHAT WAS YOUR OCCUPATION?

22 A. I WAS AT D.O.T. AS A MECHANIC. BUT I WAS PUTTING IN
23 APPLICATIONS THE WHOLE TIME AND TRYING TO GET ON WITH
24 LAW ENFORCEMENT.

25 Q. HAD YOU EVER BEEN OFFERED A JOB?

1 A. NO, SIR.

2 -Q. HOW MUCH DID YOU WEIGH AT THE TIME?

3 A. SOMEWHERE AROUND 320, 325, SOMETHING LIKE THAT.

4 Q. OTHER THAN YOUR JOB DID YOU EVER WORK OUT WITH WEIGHTS
5 OR ANYTHING LIKE THAT TO ---

6 A. NO, SIR.

7 Q. YOU NEVER DID?

8 A. NO, SIR.

9 Q. SO YOUR HEAVY LIFTING WAS BASICALLY DONE ON THE JOB I
10 SUPPOSE.

11 A. YES, SIR.

12 Q. WOULD THAT BE A FAIR STATEMENT?

13 A. YES, SIR.

14 -Q. AND WHAT DO YOU WEIGH TODAY?

15 A. I WEIGH AROUND 306 OR 5, SOMETHING LIKE THAT.

16 BY MR. HUDSON:

17 THAT'S ALL I HAVE RIGHT NOW. THANK YOU.

18 EXAMINATION BY MR. POWELL:

19 Q. MR. HARRELSON, DID YOU LAND ANY PUNCHES ON MR. DUKE?

20 A. NO, SIR.

21 Q. OPEN HAND, CLOSED FIST, ANYTHING?

22 A. NO, SIR.

23 Q. SO IF HE SAID UNDER OATH THAT YOU HIT HIM OR MADE
24 CONTACT OR FOUGHT BACK, YOU WOULD DENY THAT?

25 A. YES, SIR.

1 Q. DID THE FIRST BLOW STUN YOU, IS THAT WHY YOU -- I MEAN
2 YOU'RE A BIG GUY, SO I WOULD THINK YOU COULD LAND SOME
3 PUNCHES ON HIM. WHAT KIND OF CAUGHT YOU OFF GUARD
4 THERE?

5 A. JUST NOT EXPECTING HIM TO COME OUT LIKE THAT. AND THEN
6 WITH THE FIRST BLOW HE SPLIT MY EYEBROW ALL THE WAY
7 ACROSS AND BROKE MY GLASSES.

8 Q. CAN YOU SEE WITHOUT YOUR GLASSES?

9 A. YES, SIR.

10 Q. ON THE DAY OF THIS INCIDENT WHAT MEDICATIONS WERE YOU
11 TAKING BEFORE IT HAPPENED?

12 A. JUST STANDARD BLOOD PRESSURE AND DIABETES.
13 CHOLESTEROL.

14 Q. DID THEY IN ANY WAY AFFECT YOUR ABILITY TO DO YOUR JOB
15 OR FUNCTION?

16 A. NO, SIR.

17 Q. YOU ALL WENT TO APPLEBEE'S. HAD YOU HAD ANY ALCOHOL
18 THAT EVENING?

19 A. NO, SIR, I DON'T DRINK.

20 Q. HAD YOU ALL DONE ANY TYPE OF DRUGS OR ANYTHING THAT
21 WOULD AFFECT YOUR ABILITY TO REMEMBER ---

22 A. NO, SIR, I DON'T DO DRUGS EITHER.

23 Q. HAD YOU ALL HAD DINNER WITH ANYBODY AT APPLEBEE'S?

24 A. NO, SIR.

25 Q. WHAT INJURIES DO YOU ALLEGE WERE CAUSED BY THIS FIGHT

1 OR THIS INCIDENT?

2 A. THE BRAIN INJURY. THE CUT ON THE EYE.

3 Q. WHICH EYE?

4 A. MY LEFT.

5 Q. OKAY.

6 A. AND I STILL MAY HAVE TO HAVE SURGERY ON THE EYELID
7 LATER.

8 Q. WHICH EYE?

9 A. THE LEFT. AND HEADACHES EVERY DAY. EAR RINGING ALL
10 THE TIME. AND PTSD.

11 Q. I'LL GO ONE BY ONE ON THESE THINGS AND ASK YOU A FEW
12 QUESTIONS. THEY MAY SEEM SILLY, BUT I'M JUST TRYING TO
13 CREATE A RECORD OF THINGS. PRIOR TO THIS INCIDENT HAD
14 YOU EVER BEEN DIAGNOSED WITH ANY TYPE OF A BRAIN
15 INJURY?

16 A. NO, SIR.

17 Q. MINOR, TRAUMATIC, MAJOR, ANY HEAD INJURY?

18 A. NO, SIR.

19 Q. HAD YOU EVER SUFFERED FROM EPILEPSY OR SEIZURES?

20 A. NO, SIR.

21 Q. HAD YOU EVER BEEN DIAGNOSED WITH A CONCUSSION OR
22 CONCUSSION SYNDROME?

23 A. NO, SIR.

24 Q. DID YOU EVER SUFFER FROM DIZZINESS OR MASSIVE VISUAL
25 PROBLEMS PRIOR?

1 A. NO, SIR.

2 Q. HAD YOU EVER BEEN DIAGNOSED WITH DEPRESSION PRIOR?

3 A. NO, SIR.

4 Q. HAD YOU HAD MIGRAINES PRIOR?

5 A. NO, SIR.

6 Q. HAD YOU EVER BEEN IN A CAR WRECK WHERE YOU HAD ANY KIND

7 OF A BANG OR HIT OF YOUR HEAD?

8 A. NO, SIR, NOT MY HEAD.

9 Q. THE WORD BRAIN INJURY IS A BIG UMBRELLA FOR A LOT OF

10 THINGS. I'VE SEEN IN YOUR RECORDS A TRAUMATIC BRAIN

11 INJURY. WHAT IS YOUR JUST COMMON MAN'S UNDERSTANDING

12 OF WHAT IS WRONG WITH YOU IN TERMS OF YOUR BRAIN?

13 A. I HAVE TO THINK MORE ABOUT WHAT I'M DOING OR WHAT I'M

14 SAYING.

15 Q. IT'S SLOWED YOU DOWN?

16 A. SLOWED ME DOWN.

17 Q. HAVE YOU BEEN TESTED ON THAT?

18 A. YES, SIR.

19 Q. AND THAT'S BEEN CONFIRMED?

20 A. YES, SIR.

21 Q. WHAT KIND OF TREATMENT PLAN CAN THEY GIVE YOU FOR THAT?

22 IS THERE ANYTHING THEY CAN DO FOR YOU?

23 A. THERE'S NOTHING THEY CAN DO THEY SAID.

24 Q. IS THERE ANY KIND OF MEDICATION THAT CAN INCREASE YOUR

25 FOCUS OR ---

1 A. I'M ON NAMENDA FOR THAT FOR THE REST OF MY LIFE.

2 Q. THAT'S THE ---

3 A. THE SAME ONE THEY GIVE DEMENTIA PATIENTS.

4 Q. AND IS THAT IN AN EFFORT TO INCREASE YOUR FOCUS?

5 A. TO HELP IT WORK BETTER.

6 Q. IS THAT THE ONLY MEDICATION YOU'RE TAKING FOR THE BRAIN

7 INJURY?

8 A. THE HEADACHE -- I MEAN, YEAH, FOR THE ACTUAL BRAIN

9 INJURY. YES, SIR.

10 Q. HAVE THEY TOLD YOU THAT YOU CAN GET ANY KIND OF FUTURE

11 COUNSELING OR FUTURE MEDICAL PROCEDURE OF ANY SORT THAT

12 MAY HELP YOU?

13 A. NO, SIR.

14 Q. YOU'RE JUST GOING TO HAVE TO LIVE WITH IT THE REST OF

15 YOUR LIFE?

16 A. HAVE TO LIVE WITH IT THE REST OF MY LIFE.

17 Q. HAVE YOU BEEN TOLD BY ANYBODY THAT THESE CONDITIONS CAN

18 IMPROVE OVER TIME?

19 A. NO, SIR. THEY SAY ALL THE IMPROVEMENTS HAS ALREADY

20 BEEN DONE OF ANYTHING THAT'S GOING TO CHANGE.

21 Q. SO IF IT WAS GOING TO IMPROVE IT HAS PROBABLY ---

22 A. IT WOULD HAVE ALREADY. AND THEY SAID THAT ALSO IT

23 HIGHLY INCREASES MY CHANCES OF GETTING DEMENTIA.

24 Q. IT INCREASES YOUR CHANCES OF DEMENTIA?

25 A. YES, SIR.

1 Q. AT AN EARLIER AGE OR JUST IN GENERAL?
2 A. AT AN EARLIER AGE. - - - - -
3 Q. WHO WERE THE DOCTORS WHO DIAGNOSED YOU WITH A BRAIN
4 INJURY?
5 A. THERE'S A BUNCH OF THEM.
6 Q. THE BEST YOU CAN RECALL.
7 A. DR. HUDGENS.
8 Q. WELL, I HAVE THE LIST HERE. DR. SEJAN?
9 A. YES, SIR.
10 Q. DOES HE BELIEVE YOU HAVE A HEAD INJURY?
11 A. YES, SIR.
12 Q. DR. HUDGENS AND MCCAFFREY?
13 A. YES, SIR.
14 Q. DO THEY BELIEVE THAT THE INJURIES THAT YOU SUSTAINED ON
15 THE DATE OF THIS INCIDENT CAUSED YOUR BRAIN INJURY?
16 A. YES, SIR.
17 Q. THEY TOLD YOU THAT?
18 A. YES, SIR.
19 Q. DO YOU HAVE ANY PERMANENT MARKINGS ON YOUR HEAD AND
20 FACE THAT ARE SCARS FROM THE INCIDENT?
21 A. ON MY FACE. THE SCAR THAT GOES ALL THE WAY AROUND
22 HERE. AND THIS EYE SOCKET IS A LITTLE BIT FLATTER.
23 Q. THE LEFT EYE SOCKET IS FLATTER?
24 A. YEAH. AND THE EYELID, IT DROOPS A LITTLE BIT MORE THAN
25 THE OTHER ONE. THAT'S WHY THEY WERE SAYING I MAY HAVE

1 TO HAVE SURGERY ON IT LATER BECAUSE OF IT DROOPING.
2 Q. THE EYELID?
3 A. YES, SIR.
4 Q. BEFORE I GET AWAY FROM THE BRAIN INJURY. WHAT SPECIFIC
5 DAMAGES WAS DONE TO YOUR HEAD AND FACE AS A RESULT OF
6 THE INCIDENT? DID YOU HAVE FRACTURES, BREAKS ---
7 A. YES, SIR. I HAD LIKE THREE DIFFERENT FRACTURES ALL
8 THROUGH HERE. AND IT HAD A ORBITAL FRACTURE THERE,
9 TOO.
10 Q. THREE FRACTURES?
11 A. YES, SIR.
12 Q. DID YOU HAVE SURGERY?
13 A. NO, SIR.
14 Q. SO THAT WAS JUST A RECOVERY TIME?
15 A. YES, SIR.
16 Q. DO THE LEFT ORBITAL OR FACIAL FRACTURES STILL BOTHER
17 YOU?
18 A. THE EYE SOCKET UP HERE BOTHERS ME FROM -- I GUESS IT'S
19 NERVES OR WHATEVER.
20 Q. BUT IN TERMS OF ---
21 A. BUT IN TERMS OF THE ACTUAL FRACTURES THERE, NOT THAT
22 I'M AWARE OF.
23 Q. HAVE YOU BEEN TOLD THAT THOSE FRACTURES HAVE RECOVERED
24 OR HEALED I GUESS?
25 A. YES, SIR.

1 Q. HAVE YOU BEEN TOLD YOU NEED ANY FUTURE PROCEDURE OR
2 SURGERY FOR THOSE FRACTURES?
3 A. NOT FOR THE FRACTURES.
4 Q. MOVING OVER TO THE CUT OVER YOUR LEFT EYE. DID YOU
5 HAVE TO GET STITCHES?
6 A. YES, SIR.
7 Q. HOW MANY?
8 A. I DON'T REMEMBER HOW MANY.
9 Q. SO YOU HAVE SOME SCARRING FROM THAT. ARE YOU
10 INTERESTED IN HAVING THAT REVISED, OR IS THAT JUST ---
11 A. NO, SIR, NOT THAT SCAR.
12 Q. THE EYELID SURGERY. WHAT IS THE DAMAGE TO YOUR EYELID?
13 A. IT'S MADE IT DROOP. AND WHAT THEY WOULD DO IS -- I
14 DON'T KNOW EXACTLY WHAT THE PROCEDURE WOULD ENTAIL, BUT
15 IT WOULD PULL THE EYELID UP.
16 Q. JACK IT UP?
17 A. YES, SIR.
18 Q. IS THAT NERVE DAMAGE?
19 A. IT'S FROM THE CUT AND THE SCAR TISSUE AND STUFF THERE.
20 Q. THE HEADACHES. LET ME ASK YOU THIS. DID YOU HAVE ANY
21 PROBLEMS WITH YOUR LEFT EYELID BEFORE THIS INCIDENT?
22 A. NO, SIR.
23 Q. THE HEADACHES. DID YOU HAVE PROBLEMS OR REQUIRE
24 MEDICAL TREATMENT BEFORE THIS ACCIDENT FOR HEADACHES?
25 A. NO, SIR.

1 Q. TELL ME ABOUT YOUR HEADACHES NOW.

2 A. IT HURTS ABOUT EVERY DAY. SOME DAYS I CAN HANDLE IT
3 WITH IBUPROFEN 800 MILLIGRAM. AND IF IT CONTINUES THEN
4 I HAVE TO TAKE HALF A HYDROCODONE.

5 Q. DO YOU TAKE SOME FORM OF MEDICATION ON A DAILY BASIS
6 FOR HEADACHES?

7 A. YES, SIR.

8 Q. EVERY DAY?

9 A. EVERY DAY.

10 Q. HAS THERE BEEN A DAY IN THE LAST 30 THAT YOU HAVEN'T
11 TAKEN ANYTHING?

12 A. NO, SIR, NOT THAT I REMEMBER.

13 Q. HAS THAT BEEN CONSISTENT SINCE THE DATE OF THE
14 INCIDENT?

15 A. YES, SIR.

16 Q. AT ANY TIME WERE YOU GIVEN SOMETHING MORE THAN
17 OXYCODONE FOR THE HEADACHES? ANY KIND OF PAIN PILLS OR
18 ---

19 A. AT THE INITIAL PART OF IT. I DON'T KNOW WHAT IT WAS.
20 I DON'T REMEMBER.

21 Q. HAVE YOU BEEN TOLD THAT THERE'S ANY KIND OF PROCEDURE
22 OR MEDICATION OR THERAPY THAT YOU COULD HAVE DONE TO
23 HELP YOU WITH YOUR HEADACHES?

24 A. NO, SIR.

25 Q. HAVE YOU BEEN TOLD WHAT'S CAUSING YOU TO HAVE

1 CONTINUING HEADACHES?

2 A. THEY SAY IT'S FROM THE TRAUMATIC BRAIN INJURY.

3 Q. CAUSING THE HEADACHES?

4 A. YES, SIR.

5 Q. HAVE YOU BEEN TOLD THAT'S JUST SOMETHING YOU'RE GOING

6 TO HAVE TO LIVE WITH?

7 A. YES, SIR.

8 Q. THE EAR RINGING. TELL ME ABOUT THAT. HOW OFTEN DO YOU

9 HAVE THAT?

10 A. IT'S ALL THE TIME. CONTINUOUSLY.

11 Q. THE EAR RINGING?

12 A. YES, SIR.

13 Q. HAVE YOU BEEN DIAGNOSED WITH TINNITUS?

14 A. THEY SAID THAT'S WHAT IT IS. FROM THE INJURY. AND

15 THERE'S NOTHING THEY CAN DO FOR IT.

16 Q. HAD YOU EVER HAD PROBLEMS WITH YOUR EARS BEFORE THIS

17 INCIDENT?

18 A. NO, SIR.

19 Q. ANY RINGING IN YOUR EARS BEFORE?

20 A. NO, SIR.

21 Q. IS THAT DAILY OR BASED ON CERTAIN ACTIVITIES THAT YOU

22 DO?

23 A. NO, SIR, IT'S DAILY. IT'S ALL THE TIME.

24 Q. HOW ABOUT WHEN YOU SLEEP? ARE YOU ABLE TO SLEEP?

25 A. YEAH, I CAN SLEEP. I DON'T HEAR IT THEN I DON'T GUESS,

1 BECAUSE I GO TO SLEEP.

2 Q. POST-TRAUMATIC STRESS DISORDER. WERE YOU EVER
3 DIAGNOSED WITH THAT PRIOR TO THIS INCIDENT?

4 A. NO, SIR.

5 Q. LET ME ASK YOU THIS. ARE YOU DOING ANYTHING
6 MEDICATION-WISE FOR THE EAR?

7 A. NO, SIR. THEY SAY THERE'S NOTHING -- THEY CLAIM
8 THERE'S AN OVER-THE-COUNTER MEDICINE. BUT I'VE TRIED
9 IT AND IT DIDN'T HELP ANY.

10 Q. WHAT KIND OF TREATMENT PLAN DO YOU HAVE CURRENTLY FOR
11 YOUR POST-TRAUMATIC STRESS DISORDER?

12 A. HE INCREASED MY ZOLOFT. I TAKE IT TO HELP TAKE OFF THE
13 EDGE.

14 Q. PRIOR TO THIS INCIDENT HAD YOU EVER HAD ANY KIND OF
15 DEPRESSION OR ANXIETY OR ANY TYPE OF MENTAL INFIRMITY
16 THAT YOU WERE HAVING TO DEAL WITH?

17 A. NO, SIR.

18 Q. AS OF TODAY'S DATE. AND IF YOU ANSWERED THIS, IT'S
19 BEEN A LONG DAY AND I JUST FORGOT. YOU TAKE IBUPROFEN.
20 YOU TAKE SOME HYDROCODONE ON OCCASION. WHAT OTHER
21 MEDICATIONS DO YOU TAKE?

22 A. JUST MY BLOOD PRESSURE AND HIGH CHOLESTEROL MEDICINE
23 AND DIABETES.

24 Q. AND YOU STILL TAKE ZOLOFT?

25 A. I STILL TAKE ZOLOFT.

1 Q. HAVE THEY TOLD YOU THAT THERE'S ANY KIND OF COUNSELING
2 OR ANYTHING THAT YOU MIGHT COULD DO TO IMPROVE THE
3 POST-TRAUMATIC STRESS DISORDER?

4 A. NO, SIR, THEY HADN'T SAID ANYTHING.

5 Q. HOW DOES THAT MANIFEST ITSELF? I MEAN WHAT IS
6 HAPPENING TO YOU WHEN THAT'S GOING ON?

7 A. YOU TENSE UP AND TRY TO BE VISUAL OF EVERYBODY AROUND
8 YOU. ESPECIALLY WHEN YOU'RE IN THE PUBLIC. WHEN I'M
9 AT HOME IT'S NOT AS BAD. BUT ANY TIME I GET OUTSIDE.

10 Q. ARE THERE CERTAIN THINGS THAT TRIGGER IT?

11 A. NOT KNOWING WHERE HE'S AT.

12 Q. DUKE?

13 A. YES, SIR.

14 Q. HAS ANYBODY GIVEN YOU ANY REASON TO BELIEVE THAT DUKE
15 MIGHT CARRY SOME KIND OF A GRUDGE WITH YOU?

16 A. JUST THE COMMENTS THAT SOME OF THE OFFICERS THAT WORKED
17 WITH HIM SAID. THAT HE WAS CRAZY. TO EXPECT ANYTHING
18 OUT OF HIM.

19 Q. SOME OF THE OFFICERS THAT INVESTIGATED THIS CASE?

20 A. NO. SOME THAT HAD WORKED WITH HIM IN THE PAST THAT
21 KNEW ME AND KNEW WHAT HAPPENED.

22 Q. YOU OR MAYBE YOUR WIFE MENTIONED THAT YOU HAD SOME
23 DENTAL INJURIES FROM THIS ACCIDENT?

24 A. YES, SIR. I HAD FORGOTTEN ABOUT THAT. HE CHECKED ON
25 ME AND MY TEETH WERE LOOSE. AND HE SAID THAT IN THE

1 FUTURE IF THE NERVES DIE ON THEM I WOULD LOSE MY TEETH.

2 BUT HE COULDN'T --- I MEAN HE DIDN'T SAY IT WOULD FOR
3 SURE HAPPEN. HE JUST SAID IT COULD HAPPEN.

4 Q. BECAUSE OF THE BLOWS TO THE MOUTH?

5 A. YEAH, BECAUSE OF THE BLOWS FROM ---

6 Q. WHICH SIDE?

7 A. BOTH SIDES. I HAD SOME LOOSE ON BOTH SIDES.

8 Q. WHAT DOCTOR?

9 A. DR. FERRAR.

10 Q. HE'S A DENTIST?

11 A. YES, SIR.

12 Q. WHERE IS HE?

13 A. AT THE END OF HIGHWAY 90 AND 501.

14 Q. SO YOUR TEETH ARE OKAY NOW. BUT IF THERE WAS NERVE
15 DAMAGE, IT COULD CAUSE YOU SOME PROBLEMS LATER?

16 A. YES, SIR. AND HE WOULD HAVE TO PULL THEM THEN.

17 Q. WHICH TEETH? DID HE IDENTIFY CERTAIN TEETH?

18 A. I DON'T REMEMBER HIM SAYING WHICH ONES, BECAUSE THERE
19 WERE SEVERAL OF THEM THAT WERE LOOSE.

20 Q. HOW LONG DID YOUR TEETH CAUSE YOU PROBLEMS?

21 A. PROBABLY ABOUT A MONTH.

22 Q. AND THEN HOW LONG WOULD YOU SAY YOUR FRACTURES AND
23 FACIAL PAIN LASTED?

24 A. PROBABLY ACTUALLY LASTED ABOUT THREE MONTHS. AND I
25 BLEED OUT OF THE NOSE AND STUFF FOR, I DON'T KNOW, FOUR

1 -- PROBABLY ABOUT FOUR WEEKS, FIVE WEEKS.

2 Q. MOST OF THE MEDICAL TREATMENT THAT YOUR LAWYER GAVE ME,
3 AND HE GAVE ME A BUNCH OF MEDICAL RECORDS AND BILLS.
4 THEY RUN TO EARLY '14, OR MID '14. IS IT FAIR TO SAY
5 THAT SINCE THAT TIME FRAME, THAT BASICALLY YOU'RE JUST
6 MAINTAINING YOUR HEALTH THROUGH THE MEDICATION? THE
7 ZOLOFT, THE HYDROCODONE, THE IBUPROFEN?

8 A. YES, SIR. STILL SEEING DR. MCCAFFREY.

9 Q. WHAT DOES MCCAFFREY DO FOR YOU?

10 A. THAT'S FOR THE BRAIN INJURY.

11 Q. JUST CHECKING IN?

12 A. YEAH.

13 Q. AND KEEPING YOU IN YOUR MEDICATION?

14 A. AND KEEPING ME IN MY MEDICATION.-

15 Q. IN TERMS OF FUTURE MEDICAL CARE AT THIS POINT, YOU HAVE
16 NOT BEEN TOLD YOU NEED ANY KIND OF SURGERY OR MEDICAL
17 TREATMENT OR MEDICATION ---

18 A. NO, SIR. OTHER THAN JUST HAVE TO CONTINUE WITH THE
19 MEDICATION.

20 Q. HAVE YOU BEEN TOLD THAT YOU WILL NEED THE USE OF THESE
21 MEDICATIONS FOR YOUR ENTIRE LIFE?

22 A. YES, SIR.

23 Q. HOW OLD ARE YOU?

24 A. I'M 55.

25 Q. THIS WILL BE A HARD QUESTION TO ANSWER. JUST DO THE

1 BEST YOU CAN. IN YOUR JOB HOW ARE YOU IMPACTED WHEN
2 YOU DO YOUR JOB BECAUSE OF YOUR BRAIN INJURY? I MEAN,
3 IS IT EVERY DAY OR SOME DAYS? KIND OF TELL ME HOW YOU
4 ARE DIFFERENT WHEN YOU DO YOUR JOB.

5 A. IT'S EVERY DAY. BECAUSE I HAVE TO MAKE SURE TO THINK
6 ABOUT WHAT I'M DOING AND TAKE MY TIME. I WAS A LOT
7 FASTER BEFORE.

8 Q. LESS EFFICIENT?

9 A. YES, SIR.

10 Q. YOU STILL DO A GOOD JOB, BUT YOU'RE SLOWER?

11 A. YES, SIR.

12 Q. ALL RIGHT.

13 A. AND IT WOULD TAKE ME LONGER TO LEARN THE NEW STUFF ON
14 THE COMPUTERS. USING SCAN TOOLS AND STUFF.

15 Q. SO YOUR ABILITY TO PICK UP THINGS YOU BELIEVE IS
16 IMPACTED?

17 A. YES, SIR.

18 Q. WHAT WOULD YOUR SUPERVISOR SAY ABOUT YOU?

19 A. HE WOULD SAY I'M A GOOD EMPLOYEE, BECAUSE I'M DEDICATED
20 TO MY JOB. BUT HE HASN'T BEEN THERE THAT LONG.

21 Q. WHAT ABOUT YOUR LAST BOSS?

22 A. HE WOULD SAY I WAS A GOOD EMPLOYEE, BUT HE COULD TELL A
23 DIFFERENCE FROM BEFORE IT HAPPENED AND NOW.

24 Q. IS HE OUT OF THE COMPANY?

25 A. YES, SIR.

1 Q. RETIRED?

2 A. YES, SIR.

3 Q. IS HE STILL IN HORRY COUNTY?

4 A. YES, SIR.

5 Q. WHAT'S HIS NAME?

6 A. MACK .

7 Q. WHERE DOES HE LIVE?

8 A. RIGHT NEAR DAISY.

9 Q. HOW ABOUT OUTSIDE OF THE WORKPLACE. HOW HAS YOUR

10 PERSONALITY OR YOUR ABILITY TO FUNCTION BEEN ALTERED BY

11 YOUR DIAGNOSIS OF A BRAIN INJURY?

12 A. IT TOOK AROUND NINE MONTHS FOR ME TO EVEN GET MY

13 PERSONALITY BACK. I DON'T REALLY HANG AROUND WITH

14 ANYBODY ELSE. I SPEND MY TIME WITH MY WIFE AND MY

15 DAUGHTER.

16 Q. WERE YOU SOCIAL BEFORE?

17 A. NO, SIR. NOT AS FAR AS US DOING -- I WAS JUST ALWAYS

18 DEDICATED TO MY FAMILY.

19 Q. I UNDERSTAND. THOSE NINE MONTHS YOU SAY IT TOOK TO GET

20 YOUR PERSONALITY BACK. WERE YOU AT HOME DURING THOSE

21 NINE MONTHS?

22 A. NO, SIR, I HAD GONE BACK TO WORK AFTER 47 OR 50 DAYS.

23 Q. YOU WERE AT HOME FOR 50 DAYS RECOVERING?

24 A. YES, SIR.

25 Q. WAS THAT 50 DAYS THE LOW POINT OF YOUR INJURIES AND

1 PROBLEMS?

2 A. NO, SIR. I'VE HAD MORE TROUBLE WITH DEPRESSION AFTER I
3 WENT BACK TO WORK THAN I DID BEFORE.

4 Q. WHY IS THAT?

5 A. I DON'T KNOW. IT COMES FROM -- THEY SAY IT'S FROM THE
6 BRAIN INJURY, TOO. THAT THAT RUNS WITH IT. BUT IT
7 WILL HIT SPELLS WHERE IT WILL BE REAL BAD AND THEN IT
8 WILL GET A LITTLE BIT BETTER. AND THEN IT WILL COME
9 BACK.

10 Q. SO FOR 50 STRAIGHT DAYS YOU WERE OUT AND THEN YOU
11 RETURNED TO WORK?

12 A. YES, SIR.

13 Q. DID YOU GO BACK TO YOUR SAME JOB TITLE?

14 A. YES, SIR. THAT'S THE ONLY WAY I COULD GO BACK ANYWAY.

15 Q. THE SAME RATE OF PAY?

16 A. YES, SIR.

17 Q. THE SAME JOB DUTIES?

18 A. THE SAME JOB DUTIES.

19 Q. THEN IT TOOK YOU ANOTHER FOUR OR FIVE MONTHS OR SIX
20 MONTHS TO GET BACK TO YOUR ---

21 A. TO MY PERSONALITY AS FAR AS BEING JOLLY AND STUFF.

22 Q. HAVE YOU GOTTEN INTO ANY KIND OF LEGAL TROUBLE OR
23 ARRESTED OR ANY PROBLEMS AFTER THE INCIDENT THAT YOU
24 RELATE TO THE HEAD INJURY?

25 A. NO, SIR.

1 Q. FROM WHAT WE HAVE TODAY YOU HAVE INCURRED ABOUT 38 OR
2 40 THOUSAND DOLLARS IN MEDICAL BILLS. AND I WROTE DOWN
3 WHERE YOU MISSED WORK FROM DECEMBER 21 THROUGH JUNE 21
4 OF 2013?

5 A. YES, SIR.

6 Q. ROUGHLY \$17,000 OF LOST WAGES?

7 A. YES, SIR.

8 Q. HAVE YOU MISSED ANY TIME FROM WORK DUE TO YOUR ACCIDENT
9 RELATED INJURIES SINCE JUNE OF 2013?

10 A. EVERY DOCTOR APPOINTMENT. ALL THE TRIPS. AND I WAS IN
11 MUSC HOSPITAL WHEN THEY WERE CHECKING FOR THE SEIZURES.

12 Q. ARE YOU ABLE TO TAKE SICK TIME? DO YOU LOSE THAT
13 COMPENSATION ---

14 A. I GET PAID FOR IT, BUT IT USES UP MY SICK TIME. -

15 Q. THERE WAS A MENTION IN ONE OF YOUR NOTES -- I DON'T
16 KNOW IF IT WAS AN ERROR OR WHAT. IT MENTIONS A PRIOR
17 CONCUSSION FROM 1977. THAT'S A LONG TIME AGO. DO YOU
18 KNOW IF YOU GAVE ANY HISTORY TO ANY OF YOUR DOCTORS
19 ABOUT A PRIOR CONCUSSION?

20 A. I DON'T REMEMBER ANYTHING ABOUT -- I DON'T REMEMBER.

21 Q. HAVE YOU EVER BEEN INVOLVED IN A LAWSUIT PRIOR TO THIS
22 ONE?

23 A. WE DIDN'T -- THAT WRECK I WAS IN. THAT'S IT.

24 Q. THAT DIDN'T GO TO A LAWSUIT?

25 A. IT DIDN'T GO TO COURT.

1 Q. ARE YOU ABLE TO FEED AND BATHE AND CLOTHE YOURSELF?

2 A. YES, SIR.

3 Q. IS THERE ANYTHING THAT YOU CANNOT DO NOW THAT YOU COULD
4 DO PRIOR TO THE INCIDENT?

5 A. IT'S JUST BEING SLOWER.

6 Q. BUT YOU'RE ABLE TO DO IT?

7 A. YES, SIR.

8 Q. I'LL JUST GO THROUGH THIS REAL QUICKLY. ON THE DATE OF
9 THE INCIDENT YOU WERE SEEN IN THE EMERGENCY ROOM?

10 A. YES, SIR.

11 Q. WERE YOU RELEASED THAT NIGHT?

12 A. YES, SIR, THEY SENT ME HOME THAT NIGHT. BUT ON
13 CHRISTMAS EVE, I HAD TO GO BACK TO THE EMERGENCY ROOM
14 AT LORIS BECAUSE OF THE BRAIN ISSUES.

15 Q. YOU'VE CONSISTENTLY FOLLOWED UP WITH DR. SEJAN AT
16 SOUTHERN MEDICAL IN LORIS?

17 A. YES, SIR.

18 Q. HAD YOU TREATED WITH SEJAN BEFORE THIS INCIDENT?

19 A. YES, SIR.

20 Q. WAS HE YOUR FAMILY DOCTOR?

21 A. HE WAS MY FAMILY DOCTOR.

22 Q. HAD YOU TREATED AT GRAND STRAND REGIONAL FOR ANY REASON
23 BEFORE THIS INCIDENT?

24 A. NO, SIR.

25 Q. HOW ABOUT LORIS HOSPITAL?

1 A. OTHER THAN STITCHES FOR A CUT OR SOMETHING. I THINK
2 THAT WAS THE ONLY TIME I'D BEEN THERE.

3 Q. HAD YOU EVER TREATED WITH DR. HUDGENS OR MCCAFFREY
4 BEFORE THIS INCIDENT?

5 A. NO, SIR.

6 Q. HAD YOU EVER BEEN SEEN BY ANY NEUROLOGIST BEFORE THIS
7 INCIDENT?

8 A. NO, SIR.

9 Q. WAS DR. VAUGHT YOUR REGULAR EYE DOCTOR BEFORE THIS
10 INCIDENT?

11 A. YES, SIR.

12 Q. ANY ISSUES WITH THAT LEFT EYE BEFORE THE INCIDENT?

13 A. NO, SIR.

14 Q. THERE IS A DR. DARREN SUTTON, CAROLINA ENT.

15 A. YES, SIR. HE WAS THE ONE THAT CHECKED FOR THE ORBITAL
16 FRACTURE, AND HE ALSO HAD TO RUPTURE MY EARDRUM TO
17 DRAIN THE STUFF BEHIND IT SO I COULD HEAR NORMAL RIGHT
18 AFTER THE INCIDENT.

19 Q. THIS INCIDENT RUPTURED YOUR EARDRUM?

20 A. NO. IT PUT FLUID BEHIND IT. AND HE HAD TO RUPTURE IT
21 TO DRAIN IT.

22 Q. DR. RAINWATER WITH LIFE CARE PSYCHOLOGY GROUP. THAT
23 WAS FROM FEBRUARY, '13, THROUGH MAY OF '13. HAD YOU
24 EVER SEEN DR. RAINWATER BEFORE THE INCIDENT?

25 A. NO, SIR.

1 Q. DID THE THERAPY HELP YOU ANY?

2 A. YES, SIR, IT HELPED SOME. BUT I HAD TO QUIT BECAUSE OF

3 NOT BEING ABLE TO AFFORD IT.

4 Q. WERE YOU ALL GOING TO FLORENCE TO DO IT?

5 A. NO, SIR, IT WAS IN CONWAY.

6 Q. DR. ROBERT FERRAR IS THE GUY YOU TOLD ME ABOUT FOR THE

7 DENTAL?

8 A. YES, SIR.

9 Q. DR. JOHN S. DELOACHE, COUNSELOR. YOU ALSO DID SOME

10 COUNSELING ---

11 A. YES, SIR.

12 Q. DID THAT HELP?

13 A. YES, SIR. THAT'S WHAT I WAS TALKING ABOUT. IT HELPED,

14 BUT WE HAD TO QUIT BECAUSE OF THE INCOME.

15 BY THE COURT REPORTER:

16 I'M SORRY, BECAUSE OF WHAT?

17 WITNESS ANSWERS:

18 A. BECAUSE OF THE EXPENSES AND NOT BEING ABLE TO AFFORD

19 IT.

20 EXAMINATION RESUMED BY MR. POWELL:

21 Q. YOU WERE SENT TO PAUL PRITCHARD DOWN AT MUSC. DO YOU

22 REMEMBER THAT?

23 A. YES, SIR.

24 Q. AND HE DID TESTING ON YOU?

25 A. YES, SIR. THEY KEPT ME OVERNIGHT AND WERE TESTING FOR

1 THE EPILEPSY AFTER THE INJURY.

2 Q. THEY RULED OUT EPILEPSY?

3 A. YES, SIR.

4 Q. HAVE YOU BEEN SEEN BY DR. PRITCHARD SINCE THAT VISIT?

5 A. NO, SIR.

6 Q. WAS POWERS PHARMACY YOUR PHARMACY OF CHOICE BEFORE THIS

7 INCIDENT?

8 A. YES, SIR.

9 Q. HOW MANY YEARS HAVE YOU WORKED FOR THE STATE?

10 A. FOR 21 YEARS.

11 Q. HOW MANY DO YOU HAVE TO WORK TO BE VESTED BEFORE YOU

12 CAN RETIRE?

13 A. FULLY RETIRE? IT WOULD BE 28 YEARS.

14 Q. SO HOW OLD WILL YOU BE WHEN YOU HAVE THAT?

15 A. LET'S SEE. SIXTY-ONE OR TWO, SOMETHING LIKE THAT.

16 BY MR. POWELL:

17 THAT'S ALL I HAVE. THANKS FOR YOUR TIME.

18 RE-EXAMINATION BY MR. TEAGUE:

19 Q. I HAVE A COUPLE. DO YOU OR YOUR WIFE USE SOCIAL MEDIA

20 AT ALL?

21 A. I DON'T MESS WITH A COMPUTER OTHER THAN LOOKING AT

22 CRAIG'S LIST FOR SOMETHING FOR SALE.

23 Q. AND YOU'D AGREE THAT MR. DUKE'S ACTIONS ON THE NIGHT OF

24 THE INCIDENT WERE INTENTIONAL ACTIONS, CORRECT?

25 A. I DON'T -- AS FAR AS -- YES. I DON'T KNOW WHY, BUT...

1 BY MR. TEAGUE:

2 THAT'S ALL I HAVE.

3 RE-EXAMINATION BY MR. HUDSON:

4 Q. I HAVE THE SAME QUESTION I HAD FOR YOUR WIFE. AS YOU
5 WERE SITTING THERE IN THE PARKING LOT WAITING FOR THIS
6 PARKING SPACE TO BECOME VACANT, DID YOU HAVE YOUR TURN
7 SIGNAL ON, LEFT OR RIGHT?

8 A. I DON'T REMEMBER WHETHER I HAD IT ON OR NOT.

9 Q. YOU DON'T REMEMBER?

10 A. NO, SIR.

11 Q. WHEN YOU SAY YOU HEARD A HORN BLOW, HOW MANY TIMES DID
12 YOU HEAR IT BLOW?

13 A. HE BLEW MULTIPLE TIMES. I MEAN I ---

14 Q. HOW MANY EXACTLY?

15 A. I DON'T KNOW EXACTLY HOW MANY. AT LEAST FIVE TIMES.

16 Q. FIVE TIMES?

17 A. YEAH.

18 Q. HOW ABOUT BLINKING OF THE LIGHTS. HOW MANY TIMES ---

19 A. PROBABLY ABOUT THE SAME TIME. BECAUSE HE WAS DOING
20 THEM AT -- HE'D DO THE LIGHTS AND THE HORN.

21 Q. DID YOU THINK TO PUT ON YOUR TURN SIGNAL THEN OR DID
22 YOU ---

23 A. NO, SIR. I WAS LOOKING IN THE REARVIEW MIRROR TO SEE
24 WHAT HE WAS GOING TO DO.

25 Q. SO YOU DIDN'T THINK TO PUT ON YOUR TURN SIGNAL ONE WAY

1 OR THE OTHER?

2 A. I DIDN'T EVEN THINK ABOUT A TURN SIGNAL AT THAT TIME.

3 AND I DON'T KNOW IF I HAD IT TURNED ON OR NOT.

4 BY MR. HUDSON:

5 THAT'S ALL I HAVE.

6 BY MR. CONNELL:

7 NO QUESTIONS.

8 (THERE BEING NO FURTHER QUESTIONS, THIS DEPOSITION CONCLUDED

9 AT 2:37 P.M.)

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF HORRY) C.A. # 16-CP-26-798

SOUTH CAROLINA FARM BUREAU MUTUAL)
INSURANCE COMPANY,)
)
 PLAINTIFF,)
)
VERSUS)
)
)
MICHAEL DAVID HARRELSON, DEVORA)
HARRELSON, KEVIN DUKE, AND GOVERNMENT)
EMPLOYEES INSURANCE COMPANY,)
)
 DEFENDANTS.)

 DEPOSITION OF
 KEVIN LEE DUKE

PURSUANT TO NOTICE OF DEPOSITION AND/OR AGREEMENT
IN THE ABOVE-ENTITLED CASE, THE DEPOSITION OF KEVIN LEE DUKE
WAS TAKEN ON THE 29TH DAY OF NOVEMBER, 2016, COMMENCING AT
THE HOUR OF 9:42 A.M., IN THE OFFICES OF THE HUDSON LAW FIRM,
MYRTLE BEACH, SOUTH CAROLINA:

REPORTED BY: MARCIE L. SMITH, VERBATIM REPORTER.

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Certified Verbatim Reporters
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(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL
IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

MLS REPORTING (864) 415-4198

1 STIPULATIONS:

2 IT IS AGREED BY AND BETWEEN THE COUNSEL FOR THE PARTIES AS
3 FOLLOWS:

- 4 1. THAT THIS DEPOSITION IS TO BE TAKEN PURSUANT TO RULE 30
5 OF THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE.
6 2. THAT THE DEPONENT WAIVES THE RIGHT TO READ AND SIGN THE
7 DEPOSITION TRANSCRIPT.

8 ***** ***** ***** *****

9 KEVIN LEE DUKE, BEING DULY SWORN TO TELL THE TRUTH, THE
10 WHOLE TRUTH AND NOTHING BUT THE TRUTH, TESTIFIED CONCERNING
11 THE MATTER HEREIN AS FOLLOWS:

12 EXAMINATION BY MR. TEAGUE:

13 Q. COULD YOU PLEASE STATE YOUR FULL NAME FOR THE RECORD.

14 A. KEVIN LEE DUKE.

15 Q. AND HAVE YOU EVER GIVEN A DEPOSITION BEFORE?

16 A. YES.

17 Q. DO YOU NEED ME TO GO OVER THE RULES IN SOUTH CAROLINA,
18 OR FROM YOUR PRIOR EXPERIENCE DO YOU KNOW THE RULES ON
19 GIVING DEPOSITIONS?

20 A. YES.

21 Q. WELL, YOU'RE DOING WELL. YOU'RE ANSWERING VERBALLY,
22 AND THAT'S ONE OF THE MAIN THINGS. SO WE CAN GET
23 EVERYTHING DOWN. MY NAME IS REED TEAGUE, AND I
24 REPRESENT GEICO IN THE DECLARATORY JUDGMENT ACTION.
25 THERE'S ALSO SOME OTHER ATTORNEYS HERE THAT WILL

1 PROBABLY NEED TO ASK YOU SOME QUESTIONS, TOO, ON THE
2 UNDERLYING CASE. JUST FOR THE RECORD, THIS IS CASE
3 2016-CP-26-424, WHICH IS GEICO INSURANCE COMPANY AND
4 SOUTH CAROLINA FARM BUREAU VERSUS KEVIN DUKE, MICHAEL
5 DAVID HARRELSON, AND DEVORA HARRELSON. THERE ARE SOME
6 DIFFERENT THINGS BETWEEN THE SOUTH CAROLINA FARM BUREAU
7 HEADING AND GEICO, BUT THE TWO ACTIONS HAVE BEEN
8 CONSOLIDATED. THERE'S AN UNDERLYING CASE THAT WAS
9 FILED AGAINST YOU BY THE HARRELSONS, WHICH IS
10 IDENTIFIED AS 2015-CP-26-6601. THE ATTORNEYS HAVE
11 AGREED IN THIS DEPOSITION TO GO AHEAD AND DO THE
12 QUESTIONS ON THE DECLARATORY JUDGMENT ACTION AND ALSO
13 THE UNDERLYING CASE. THE ATTORNEYS ARE GOING TO ASK
14 YOU QUESTIONS ABOUT THE INCIDENT. SO CAN I GET YOUR
15 DATE OF BIRTH.

16 A.

17 Q. AND YOUR SOCIAL SECURITY NUMBER? WE WON'T PUT IT ON
18 THE RECORD. IF YOU'LL JUST SAY IT, WE WON'T PUT IT
19 DOWN.

20 A. NO, I'M NOT GIVING MY SOCIAL SECURITY NUMBER.

21 Q. THAT'S FINE. I'LL DEAL WITH THAT. CAN YOU GIVE ME
22 YOUR CURRENT ADDRESS.

23 A. DO I HAVE TO GIVE MY ADDRESS?

24 BY MR. GROOMS:

25 I DON'T THINK IT'S GOING TO HURT YOU. JUST GIVE

1 HIM YOUR ADDRESS.

2 WITNESS ANSWERS: ..

3 A. -- ---- ----, LITTLE RIVER, SOUTH CAROLINA,
4 29566.

5 EXAMINATION RESUMED BY MR. TEAGUE:

6 Q. DO YOU HAVE ANY PLANS TO MOVE FROM THERE, OR HAVE YOU
7 BEEN THERE A WHILE?

8 A. I'VE BEEN THERE 27 YEARS.

9 Q. ALL RIGHT. AND ARE YOU MARRIED?

10 A. YES.

11 Q. WHAT'S YOUR WIFE'S NAME?

12 A. SANDRA DUKE.

13 Q. DO YOU HAVE ANY CHILDREN?

14 A. NO.

15 Q. ARE YOU CURRENTLY EMPLOYED?

16 A. YES.

17 Q. WHERE ARE YOU EMPLOYED?

18 A. I'M NOT GIVING MY FINANCIAL INFORMATION OUT.

19 Q. I'M NOT ASKING FOR YOUR FINANCIAL INFORMATION. I'M
20 JUST TRYING TO FIGURE OUT WHERE YOU'RE EMPLOYED.

21 BECAUSE AT SOME POINT ---

22 A. NO, SIR, I'M NOT GIVING YOU ---

23 Q. --- SOME OF THE ATTORNEYS IN HERE MAY HAVE TO PICK A
24 JURY, AND THEY DON'T WANT SOMEONE FROM YOUR ---

25 A. I'M NOT TELLING YOU WHERE I WORK AT. NO, SIR.

1 BY MR. TEAGUE:

2 IF SOME OF YOU NEED IT, YOU MAY HAVE TO PRESS HIM
3 ON IT. FOR MY ISSUES I'M NOT GOING TO PICK A JURY, SO
4 IT'S NOT THAT BIG OF A DEAL. SO I'LL LET YOU PRESS
5 THAT IF YOU NEED TO.

6 EXAMINATION RESUMED BY MR. TEAGUE:

7 Q. AT SOME POINT YOU WERE EMPLOYED AS A POLICE OFFICER, IS
8 THAT RIGHT?

9 A. BEFORE THIS INCIDENT.

10 Q. WHERE WERE YOU EMPLOYED AS A POLICE OFFICER?

11 A. I'M RETIRED FROM HORRY COUNTY POLICE DEPARTMENT.

12 Q. HOW LONG DID YOU WORK THERE?

13 A. FOR 23 YEARS.

14 Q. YOU STARTED THERE IN THE 1980s?

15 A. I STARTED IN SUMTER. WORKED AT NORTH MYRTLE BEACH AND
16 THEN WENT TO HORRY COUNTY. A LITTLE OVER 25 YEARS.

17 Q. WHAT YEAR DID YOU RETIRE?

18 A. 2011.

19 Q. AND AFTER YOU RETIRED, DID YOU STAY RETIRED FOR A WHILE
20 OR DID YOU BECOME EMPLOYED?

21 A. I HAVE WORKED SEVERAL PLACES AFTER I RETIRED.

22 Q. AND THAT'S JUST THE INFORMATION YOU DON'T WANT TO GIVE
23 ME RIGHT NOW, IS THAT RIGHT? OR CAN YOU TELL ME WHERE
24 YOU WORKED AFTER YOU WORKED FOR HORRY COUNTY POLICE
25 DEPARTMENT.

1 A. YEAH, I WORKED FOR HORRY COUNTY PUBLIC SCHOOLS.
2 Q. WHAT DID YOU DO THERE?
3 A. SCHOOL TEACHER.
4 Q. WHAT DID YOU TEACH?
5 A. CRIMINAL JUSTICE.
6 Q. HOW LONG DID YOU WORK THERE?
7 A. A LITTLE LESS THAN A YEAR.
8 Q. SO YOU WORKED THERE FROM 2011 TO 2012, IS THAT RIGHT?
9 A. NO, I DIDN'T START -- I DIDN'T GO TO WORK THERE TILL
10 2012.
11 Q. SO 2012 TO 2013?
12 A. UP UNTIL THIS INCIDENT.
13 Q. SO YOU WERE THERE UP UNTIL THIS INCIDENT. WERE YOU
14 RELEASED AFTER THIS INCIDENT OCCURRED?
15 A. THAT'S CORRECT.
16 Q. AND THEN HOW LONG DID YOU REMAIN UNEMPLOYED AFTER THE
17 INCIDENT?
18 A. A WEEK.
19 Q. A WEEK?
20 A. I MEAN, AFTER I WAS INCARCERATED FOR A SHORT TIME. I
21 WENT STRAIGHT TO WORK AFTERWARDS.
22 Q. WHERE WERE YOU BORN?
23 A. IN CHARLESTON.
24 Q. HAVE YOU LIVED IN SOUTH CAROLINA YOUR WHOLE LIFE?
25 A. NO.

1 Q. MOST OF YOUR LIFE?

2 A. THE MAJORITY OF IT, YES.

3 Q. WHERE DID YOU GRADUATE HIGH SCHOOL?

4 A. IN SUMTER.

5 Q. DID YOU GO TO COLLEGE?

6 A. YES.

7 Q. WHERE DID YOU GO?

8 A. I WENT TO NUMEROUS DIFFERENT COLLEGES.

9 Q. WHAT COLLEGES DID YOU GO TO?

10 A. I WENT TO THE UNIVERSITY OF SOUTH CAROLINA. I WENT TO

11 COASTAL CAROLINA. I WENT TO HORRY GEORGETOWN TECH.

12 CENTRAL TEXAS COLLEGE. THE UNIVERSITY OF MARYLAND.

13 AND SUMTER AREA TECHNICAL COLLEGE.

14 Q. DID YOU GRADUATE FROM ANY OF THOSE UNIVERSITIES?

15 A. YES.

16 Q. WHICH ONES?

17 A. I GRADUATED FROM HORRY GEORGETOWN TECH, AND I GRADUATED

18 FROM COASTAL CAROLINA.

19 Q. WHAT DEGREES DID YOU GET?

20 A. I HAVE AN ASSOCIATE'S DEGREE AND A BACHELOR'S DEGREE

21 AND A MASTER'S DEGREE.

22 Q. IN WHAT?

23 A. I HAVE AN ASSOCIATE'S DEGREE IN CRIMINAL JUSTICE. A

24 BACHELOR'S DEGREE IN CRIMINAL STUDIES, AND A MASTER'S

25 DEGREE IN CRIMINAL JUSTICE.

1 Q. WHERE IS THE MASTER'S FROM?

2 A. ALMEDA UNIVERSITY.

3 Q. WHEN DID YOU GET THAT DEGREE?

4 A. 2004 OR '5, SOMEWHERE AROUND THERE.

5 Q. HAVE YOU EVER BEEN FIRED FROM A JOB OTHER THAN THE
6 SCHOOL DISTRICT?

7 A. I WASN'T FIRED FROM THE SCHOOL DISTRICT.

8 Q. WHAT HAPPENED? HOW DID YOU GET RELEASED?

9 A. MY CONTRACT WAS CANCELED. I HAD A CONTRACT UP THROUGH
10 THE YEAR, AND THEY DIDN'T RENEW IT IN JANUARY.

11 Q. HAVE YOU EVER BEEN FIRED FROM A JOB?

12 A. NO.

13 Q. AND YOU'RE NOT WILLING TO TELL US WHERE YOU'RE
14 CURRENTLY EMPLOYED?

15 A. THAT'S CORRECT.

16 Q. OKAY. ARE YOU A MEMBER OF ANY CIVIC ORGANIZATIONS,
17 CHURCHES, IN THE HORRY COUNTY AREA?

18 A. YEAH. FRATERNAL ORDER OF POLICE. MYRTLE BEACH
19 CORVETTE CLUB. WOODWAY BAPTIST CHURCH.

20 Q. ANYTHING ELSE?

21 A. NO.

22 Q. SO I'LL JUST GO AHEAD AND JUMP TO THE DATE OF THE
23 INCIDENT. SOME OTHER PEOPLE MIGHT WANT SOME ADDITIONAL
24 INFORMATION. THE UNDERLYING CASE INVOLVED AN INCIDENT
25 THAT OCCURRED AT THE WAL-MART HERE IN HORRY COUNTY ON

1 DECEMBER 22ND, 2012. SO IF YOU COULD JUST TELL ME WHAT
2 YOU WERE DOING ON DECEMBER 22ND, 2012, PRIOR TO GOING
3 WHERE THE INCIDENT OCCURRED IN THE WAL-MART PARKING
4 LOT. WHAT DID YOU DO THAT DAY?

5 A. I WORKED.

6 Q. I WORKED ---

7 A. NO, I DIDN'T. I'M SORRY. I WAS OUT ON CHRISTMAS
8 BREAK. CHRISTMAS SHOPPING I GUESS.

9 Q. YOU HAD BEEN DOING THAT ALL DAY?

10 A. I DON'T RECALL EXACTLY WHAT I WAS DOING FOUR YEARS AGO.

11 Q. AND WHAT LED YOU TO WAL-MART?

12 A. ME AND MY WIFE WENT UP THERE SHOPPING.

13 Q. SO WAS YOUR WIFE IN THE CAR AT THE TIME OF THE
14 INCIDENT?

15 A. NO, SHE WAS IN WAL-MART.

16 Q. SO TELL ME, AS YOU SIT HERE TODAY DO YOU KNOW WHAT TIME
17 YOU ARRIVED AT WAL-MART?

18 A. SOMEWHERE AROUND 6:00 IN THE EVENING.

19 Q. AND THAT'S JUST AN ESTIMATE, CORRECT?

20 A. CORRECT.

21 Q. DO YOU KNOW HOW LONG YOUR WIFE WAS IN WAL-MART PRIOR TO
22 THIS INCIDENT?

23 A. WE WERE BOTH IN THERE.

24 Q. HOW LONG WERE IN WAL-MART?

25 A. PROBABLY A GOOD HOUR.

1 Q. AN HOUR?

2 A. MM-HMM. (AFFIRMATIVE RESPONSE).

3 Q. DID YOU BUY ANYTHING?

4 A. WE FILLED A WHOLE BUGGY FULL.

5 Q. WHERE DID YOU PARK IN THE WAL-MART PARKING LOT WHEN YOU

6 WERE IN THE STORE?

7 A. I DON'T KNOW EXACTLY WHERE IT WAS AT.

8 Q. WHAT I'M TRYING TO FIGURE OUT IS THE LOCATION WHERE

9 THIS INCIDENT ---

10 A. I WENT TO GO GET THE CAR TO COME PICK MY WIFE UP WHEN

11 THIS INCIDENT OCCURRED.

12 Q. WAS IT ON THAT SAME AISLE?

13 A. NO.

14 Q. SO WERE YOU PARKED IN THE BACK OF THE PARKING LOT?

15 A. YES.

16 Q. THIS WAS DECEMBER 22ND. WAL-MART WAS PROBABLY FULL,

17 RIGHT?

18 A. EXACTLY. THAT'S WHY I WAS PICKING HER UP.

19 Q. SO BEFORE THIS INCIDENT OCCURRED YOU HAD NOT HAD AN

20 OPPORTUNITY TO PICK HER UP?

21 A. THAT'S CORRECT.

22 Q. HOW LONG HAD YOU BEEN IN YOUR VEHICLE PRIOR TO THE

23 INCIDENT WITH MR. AND MRS. HARRELSON?

24 A. A MINUTE OR TWO. I HAD JUST WENT AND GOT IN MY CAR AND

25 WAS COMING TO PICK HER UP OUT FRONT.

1 Q. DID YOU HAVE TO WAIT ON ANY OTHER VEHICLES PRIOR TO
2 HAVING TO STOP BEHIND THE HARRELSON VEHICLE?

3 A. IT WAS CHRISTMAS TIME IN WAL-MART. SO I...

4 Q. YES, I UNDERSTAND THESE ARE SOME NIT-PICKY FACTS. I'M
5 JUST TRYING TO FIGURE OUT SO WE CAN ALL GET AN IDEA OF
6 WHAT WAS GOING ON THAT DAY. SO IF YOU DON'T REMEMBER,
7 IT'S FINE. BUT IF YOU DO REMEMBER THAT THERE WERE SOME
8 OTHER STOPPED CARS ---

9 A. IT WAS A PARKING LOT AT WAL-MART. I WENT AND GOT MY
10 CAR AND WAS COMING DOWN THE AISLE.

11 Q. DO YOU RECALL SPECIFICALLY IF THERE WERE ANY OTHER CARS
12 THAT YOU HAD TO WAIT ON TO PULL IN THE PARKING LOT?

13 A. NOT SPECIFICALLY, NO.

14 Q. SO YOU WERE IN YOUR VEHICLE FOR ONE TO TWO MINUTES.
15 WERE YOU ON YOUR CELL PHONE AT ALL?

16 A. NO.

17 Q. DID YOU HAVE YOUR RADIO ON?

18 A. PROBABLY.

19 Q. SO YOU'RE IN YOUR CAR FOR ONE TO TWO MINUTES. HOW LONG
20 WERE YOU ACTUALLY DRIVING YOUR VEHICLE PRIOR TO WHEN
21 THE INCIDENT OCCURRED?

22 A. AS LONG AS IT TAKES TO GET IN THE CAR AND CRANK IT UP.

23 Q. SO YOU DIDN'T JUST SIT IN THE VEHICLE FOR A LITTLE ---

24 A. NO.

25 Q. --- BIT AND WAIT?

1 A. NO.

2 Q. SO YOU ALL HAD BOTH CHECKED OUT AND SHE HAD ALL THE
3 STUFF ---

4 A. SHE HADN'T CHECKED OUT YET. SHE HAD JUST GOT IN LINE
5 TO CHECK OUT, AND I WENT TO GET THE CAR.

6 Q. ALL RIGHT. AND THE AISLE THAT YOU WENT DOWN WHERE THIS
7 INCIDENT OCCURRED ON DECEMBER 22ND WAS RIGHT NEAR THE
8 ENTRANCE TO WAL-MART, IS THAT RIGHT?

9 A. THAT'S CORRECT.

10 Q. AND IF YOU WOULD JUST IN YOUR OWN TESTIMONY TELL ME --
11 WALK ME THROUGH WHEN YOU FIRST ENCOUNTERED MR. AND MRS.
12 HARRELSON'S VEHICLE, TO WHEN THE INCIDENT OCCURRED, AND
13 WHAT YOU DID AS FAR AS PRIOR TO GETTING OUT OF YOUR
14 VEHICLE.

15 A. I WAS COMING DOWN THE AISLE TO GO PICK UP MY WIFE. AND
16 A CAR WAS IN FRONT OF ME JUST SITTING THERE. SO I
17 WAITED BEHIND THE CAR FOR A PERIOD OF TIME. IT WASN'T
18 MOVING AND HAD NO TURN SIGNAL ON. JUST SITTING THERE.
19 SO I TAPPED MY HORN. IT STILL DIDN'T MOVE. I TAPPED
20 MY HORN AGAIN, AND IT STILL DIDN'T MOVE. I PULLED UP
21 AND BLEW MY HORN AGAIN. IT WAS JUST SITTING THERE. NO
22 TURN SIGNAL, NO ANYTHING. THERE WAS NOBODY BACKING OUT
23 OF ANY PARKING SPOTS OR NO ONE -- NOTHING. THEN THE
24 CAR IN FRONT OF ME PULLED INTO A PARKING SPOT, BECAUSE
25 THE PARKING SPOT THEY PULLED INTO, THE PERSON PULLED

1 STRAIGHT OUT THIS WAY. SO THEY PULLED IN THE PARKING
2 SPOT. WHEN THEY PULLED IN THE PARKING SPOT; I DROVE
3 RIGHT PAST THEM. DIDN'T KNOW IF IT WAS A MAN, WOMAN,
4 WHAT -- I DIDN'T KNOW WHO WAS IN THE CAR. I DROVE PAST
5 THEM. AS I DROVE PAST THEM AND WAS COMING UP TO THE
6 END, A WOMAN WITH A SHOPPING CART CAME YELLING AND
7 SCREAMING AND RAISING HER HAND OUT AT ME. I HAD NO
8 IDEA WHO SHE WAS. SHE DIDN'T GET OUT OF THAT CAR. I
9 DIDN'T SEE HER GET OUT OF THAT CAR. I DON'T KNOW WHO
10 SHE WAS. I ROLLED MY WINDOW DOWN, AND SHE STARTS
11 CUSSING AT ME AND SCREAMING AT ME.

12 Q. TELL ME EXACTLY WHAT SHE SAID IF YOU RECALL.

13 A. SHE STARTED SCREAMING, SAYING YOU IMPATIENT SON OF A
14 BITCH AND STARTED JUST YELLING AND SCREAMING. I DON'T
15 KNOW WHAT SHE WAS -- I HADN'T PUT TWO AND TWO TOGETHER
16 AT THAT POINT.

17 Q. ALL RIGHT, LET ME BACK UP. I'M GOING TO GET SOME MORE
18 INFORMATION ON THAT. BUT SO WHEN YOU'RE STOPPED IN THE
19 ---

20 A. I STOPPED AT THE END OF THE AISLE.

21 Q. WELL, BEFORE THAT. WHEN THE HARRELSON CAR IS STILL IN
22 FRONT OF YOUR VEHICLE. WAS THERE ROOM FOR YOU TO GO
23 AROUND ON THE LEFT?

24 A. I DOUBT IT. BECAUSE THEY WERE KIND OF IN THE MIDDLE.
25 AND YOU KNOW IF YOU TRY TO GO AROUND SOMEBODY, THEY

1 WILL HIT YOU OR -- I DIDN'T TRY TO GO AROUND THEM, NO.

2 Q. ALL RIGHT, SO YOU BLEW YOUR HORN?

3 A. MM-HMM (AFFIRMATIVE RESPONSE).

4 Q. DID YOU FLASH YOUR LIGHTS?

5 A. PROBABLY.

6 Q. DID YOU EVER REV YOUR ENGINE AND PULL FORWARD QUICKLY

7 AND SLAM ON BRAKES?

8 A. IT'S A LITTLE 3 SERIES BMW. IT'S QUIET AS A MOUSE. SO

9 NO.

10 Q. OKAY, SO YOU DIDN'T DO THAT. ALL RIGHT. THAT'S JUST

11 ONE THING I'M TRYING TO -- I WASN'T SURE IF THAT

12 HAPPENED OR NOT. SO ---

13 A. I PULLED UP TO LET THE PERSON KNOW I'M BEHIND THEM,

14 BECAUSE THEY WEREN'T MOVING OR ANYTHING. BUT NO, I

15 DIDN'T...

16 Q. SO YOU JUST PULLED FORWARD TO GET CLOSER TO THEIR

17 BUMPER. YOU DIDN'T REV YOUR ENGINE AND INTENTIONALLY

18 TRY TO GO REALLY FAST AND STOP REAL QUICK?

19 A. I NEVER GOT WITHIN SIX FEET OF THEIR CAR, NO.

20 Q. OKAY. SO DID YOU HAVE ANY COMMUNICATION NON-VERBALLY

21 THROUGH THE MIRRORS ---

22 A. NO.

23 Q. --- WITH THE DRIVER OR WITH ---

24 A. NO.

25 Q. I KNOW THIS IS HOW WE COMMUNICATE AND IT'S SOMETIMES

1 DIFFICULT IN THIS SITUATION. BUT IF YOU COULD LET ME
2 FINISH, AND I'LL DO MY BEST TO LET YOU FINISH YOUR
3 STATEMENT. THE MAIN REASON IS SO WE CAN GET IT DOWN
4 CLEARLY, AND WE'LL KNOW AFTER THIS IS DONE. IF YOU
5 NEED A BREAK AT ANY TIME, YOU LET ME KNOW. WE'RE NOT
6 GOING TO HOLD YOU CAPTIVE IN HERE. ALL RIGHT, SO YOU
7 DIDN'T HAVE ANY NON-VERBAL COMMUNICATION THROUGH THE
8 VEHICLES PRIOR TO THE CONVERSATION WITH MS. HARRELSON?

9 A. NO. AS I SAID BEFORE, I DIDN'T KNOW IF IT WAS A MAN OR
10 WOMAN OR WHAT. I COULDN'T SEE WHO WAS IN THE CAR.

11 Q. ALL RIGHT, SO I'LL GO BACK TO ONCE MR. HARRELSON PULLED
12 INTO THE PARKING SPOT. AND YOU MOVED FORWARD TO STOP
13 TO GO OUT OF THE LANE, AND YOU INDICATED THAT MS.
14 HARRELSON WAS YELLING AT YOU, AND YOU INDICATED WHAT
15 SHE YELLED AT YOU.

16 A. IF YOU LOOK AT THE VIDEO, YOU'LL CLEARLY SEE SHE WALKED
17 OUT WITH HER ARM OUT AND STOPPED ME. I DID NOT KNOW
18 WHO SHE WAS.

19 Q. OKAY, SO ---

20 A. AND SHE WASN'T WISHING ME A MERRY CHRISTMAS.

21 Q. ALL RIGHT. SO YOU DID NOT ROLL DOWN YOUR WINDOW UNTIL
22 MS. HARRELSON VERBALLY MADE CONTACT WITH YOU?

23 A. THAT'S CORRECT. BECAUSE IT WAS COLD OUTSIDE.

24 Q. AND YOU KNOW FOR CERTAIN THAT SHE WAS DIRECTING HER
25 COMMENTS AT YOU?

1 A. YES. SHE WALKED UP TO MY CAR WITH A BUGGY WITH HER ARM
2 IN THE AIR. I COULDN'T HEAR WHAT SHE WAS SAYING, SO I
3 ROLLED MY WINDOW DOWN.

4 Q. SO YOU ROLLED YOUR WINDOW DOWN. ALL RIGHT, AND SHE
5 MADE THE STATEMENT THAT YOU INDICATED EARLIER. WHAT
6 DID YOU SAY TO HER AT THAT POINT?

7 A. I ASKED HER WHAT HER PROBLEM WAS. BECAUSE I DIDN'T
8 KNOW WHO SHE WAS.

9 Q. SO WHEN YOU APPROACHED THE HARRELSON VEHICLE EARLY ON,
10 YOU DIDN'T SEE MS. HARRELSON GET OUT OF THAT VEHICLE?

11 A. THAT'S CORRECT. I HAD NO IDEA WHO SHE WAS.

12 Q. AND THE PARKING SPACE WHERE MR. HARRELSON ENDED UP
13 PARKING. THE VEHICLE THAT WAS THERE BEFORE, DID YOU
14 SEE ANYONE ACTUALLY LOADING STUFF IN THAT VEHICLE?

15 A. I COULD NOT SEE.

16 Q. ALL RIGHT. WHEN YOU WERE PARKED THERE DID YOU KNOW
17 THERE WAS A VEHICLE IN THAT SPOT?

18 A. YES. THERE WAS A VEHICLE IN THE SPOT. THAT'S WHY I
19 DIDN'T KNOW WHY THIS PERSON WAS SITTING THERE. THERE
20 WAS NO ---

21 Q. OKAY, I'VE GOT YOU.

22 A. I MEAN, IF THEY'RE WAITING FOR A PARKING SPOT, THERE
23 WAS NO PARKING SPOT. SO I DIDN'T KNOW WHY THEY WERE --
24 LIKE I SAY, NO TURN SIGNAL ON. NO ANYTHING. I DIDN'T
25 KNOW WHY THEY WERE JUST SITTING THERE. I DIDN'T KNOW

1 IF THEY WERE ON THEIR CELL PHONE. I DIDN'T KNOW WHAT
2 THEY WERE DOING, BUT THEY WEREN'T MOVING. THEY WERE
3 BLOCKING THE AISLE.

4 Q. TELL ME THIS. ONCE MS. HARRELSON YELLED AT YOU AND YOU
5 ROLLED YOUR WINDOW DOWN, WAS YOUR CAR IN PARK OR DRIVE?

6 A. MY FOOT WAS ON THE BRAKE. IT WAS IN DRIVE STILL.

7 Q. ALL RIGHT, AT WHAT POINT DID YOU PUT YOUR CAR IN PARK?

8 A. WHEN A 320 POUND MAN CAME UP TO MY WINDOW FROM BEHIND
9 ME.

10 Q. SO HOW LONG DID THE CONVERSATION WITH MS. HARRELSON GO
11 ON BEFORE MR. HARRELSON JOINED THE CONVERSATION?

12 A. PROBABLY A MATTER OF SECONDS. BUT YOU CAN WATCH THE
13 VIDEO, AND I'M SURE IT WILL SHOW IT.

14 Q. YES, WE CAN DO THAT. SO AS HE APPROACHED, YOU PUT THE
15 CAR IN PARK, IS THAT RIGHT?

16 A. YES.

17 Q. WHAT STATEMENTS DID HE MAKE TO YOU?

18 A. WELL, WHEN I ASKED HER WHAT HER PROBLEM WAS, SHE STATED
19 TO ME, "I DON'T HAVE A PROBLEM, YOU DO. HERE'S YOUR
20 PROBLEM." AND THAT'S WHEN THE BIG MAN CAME UP TO MY
21 WINDOW FROM BEHIND MY CAR.

22 Q. AND WHAT DID HE DO?

23 A. HE LEANED OVER AND SAID I'LL YANK YOU OUT -- WELL,
24 FIRST -- I'M SORRY. FIRST, WHEN HE CAME UP TO ME, I
25 SAID WHAT'S YOUR PROBLEM. I STILL HADN'T PUT TWO AND

1 TWO TOGETHER AT THAT POINT. UNTIL SHE SAID I DON'T
2 HAVE A PROBLEM, YOU HAVE A PROBLEM. AND THAT'S WHEN HE
3 CAME UP. AND WHEN I LOOKED BACK TO HIM I TOLD HIM TO
4 CALL HIS DOG OFF. BECAUSE SHE WAS LIKE A CHIHUAHUA.
5 JUST BARKING AND SCREAMING AND YELLING. I DIDN'T KNOW
6 WHAT IT WAS ALL ABOUT.

7 Q. LET ME MAKE SURE THAT'S NOT JUST A TERM OF ART. DID
8 YOU ACTUALLY SAY, "CALL THE DOG OFF"?

9 A. YEAH, I SAID, "CALL YOUR DOG OFF."

10 Q. ALL RIGHT, AND SO WHEN YOU SAID THAT, WHAT DID MR.
11 HARRELSON DO?

12 A. HE SAID HE'D YANK ME OUT THAT WINDOW AND BREAK MY
13 GODDAM NECK.

14 Q. AND THE CAR IS IN PARK AT THAT POINT?

15 A. THE CAR IS IN DRIVE.

16 Q. SO AFTER HE SAID THAT, DID YOU PUT THE CAR IN PARK?

17 A. I CAN'T RECALL EXACTLY IF WHEN I FIRST SAW HIM OR WHEN
18 HE MADE THE STATEMENT. BUT I KNOW I PUT THE CAR IN
19 PARK. WHEN I FELT IN DANGER. WHEN I WAS IN FEAR, I
20 PUT THE CAR IN PARK.

21 Q. WHEN HE SAID THAT DID YOU FEEL THAT YOU WERE IN DANGER?

22 A. DEFINITELY.

23 Q. DID HE MAKE ANY MOVES TOWARDS YOU AT THAT POINT?

24 A. SIR, HE IS A 320 POUND BALD MAN STANDING AT MY WINDOW
25 THAT JUST THREATENED TO BREAK MY NECK.

1 Q. I UNDERSTAND THAT. WE'RE JUST TRYING TO GET THE EXACT
2 FACTS THAT HAPPENED. AND WE CAN LOOK AT THE VIDEO, BUT
3 I JUST WANT TO SEE FROM YOUR RECOLLECTION. BECAUSE WE
4 DON'T HAVE ANY AUDIO. SO WHEN HE SAID THAT ---

5 A. IF WE DID, WE WOULDN'T BE HERE.

6 Q. DID HE MAKE ANY MOVES TOWARDS YOUR WINDOWS?

7 A. I DIDN'T GIVE HIM AN OPPORTUNITY TO. WHEN HE SAID
8 THAT, I DEFENDED MYSELF.

9 Q. AND AT THAT POINT THAT'S WHEN YOU PUT THE CAR IN PARK,
10 CORRECT?

11 A. I EITHER PUT IT IN PARK WHEN HE FIRST CAME UP OR -- I
12 CAN'T RECALL EXACTLY WHEN ---

13 Q. THE CAR WAS IN PARK, THOUGH?

14 A. THE CAR WAS IN PARK AND I GOT OUT ---

15 Q. AND I'M SORRY, I'M TALKING OVER YOU. THAT'S MY FAULT.
16 YOU OPENED YOUR DOOR. WERE THE DOORS LOCKED?

17 A. WHEN YOU PUT THAT CAR IN PARK THE DOORS UNLOCK.

18 Q. THEY UNLOCK, OKAY. AND WHAT YEAR WAS THE BMW?

19 A. IT WAS A 2001. A LITTLE 3 SERIES. 325-I, I THINK.

20 Q. HAD YOU ---

21 A. A VERY QUIET CAR.

22 Q. HAD YOU HAD THAT CAR FOR A WHILE?

23 A. NO, I HADN'T. I BOUGHT IT TO DRIVE BACK AND FORTH TO
24 SCHOOL, BECAUSE I WORKED 40 MILES AWAY.

25 Q. SO THE DOORS WOULD HAVE BEEN UNLOCKED WHEN YOU PUT THE

1 CAR IN PARK. AND THE CAR WAS IN PARK AND YOU EXITED
2 THE VEHICLE, CORRECT?

3 A. YES.

4 Q. AND WHEN YOU EXITED THE VEHICLE, WAS THE CAR STILL
5 TURNED ON?

6 A. YES.

7 Q. AND WHEN YOU EXITED THE VEHICLE, DID YOU IMMEDIATELY
8 STRIKE MR. HARRELSON?

9 A. WHEN I EXITED THE VEHICLE HE DID NOT MOVE. HE STAYED
10 RIGHT THERE. AND HE'S A VERY BIG MAN. AND WHEN I
11 EXITED THE VEHICLE AND GOT OUT THE DOOR, THERE WAS
12 BARELY ENOUGH ROOM BETWEEN ME AND THE DOOR WHEN I GOT
13 OUT. AND HE'S STANDING BETWEEN THE DOOR AND ME. JUST
14 LIKE STRAIGHT WITHIN PROBABLY EIGHT INCHES WHEN I GOT
15 OUT OF THE CAR.

16 Q. AND TELL ME WHAT YOU DID NEXT.

17 A. I PUSHED HIM RIGHT UNDERNEATH THE CHIN AS HARD AS I
18 COULD BACKWARDS.

19 Q. AND THEN WHAT HAPPENED?

20 A. THEN WE BOTH STARTED FIGHTING. HE HIT ME AND I HIT
21 HIM.

22 Q. AND HOW LONG DID THE FIGHT GO ON WITH MR. HARRELSON?

23 A. PROBABLY NO MORE THAN TEN SECONDS.

24 Q. DO YOU RECALL HOW MANY TIMES YOU STRUCK HIM?

25 A. NO, I DON'T.

1 Q. DO YOU KNOW WHAT AREAS OF HIS BODY YOU STRUCK HIM?

2 A. YES. I STRUCK HIM AROUND THE FACE AREA.

3 Q. DO YOU KNOW IF IT WAS NEAR HIS EYES, NEAR HIS NOSE ---

4 A. NO. I KNOW IT WAS ONLY WITH MY RIGHT ARM. BECAUSE I
5 HAD JUST HAD ROTATOR CUFF SURGERY AND MY LEFT ARM I
6 COULDN'T EVEN CATCH YOU ON THE HIP. I HAD COMPLETE --
7 FIVE ANCHORS PUT IN MY SHOULDER. SO IT WAS ALL WITH MY
8 RIGHT ARM.

9 Q. ALL WITH YOUR RIGHT ARM, OKAY. AND DID HE STRIKE YOU?

10 A. YES, HE DID.

11 Q. WHERE DID HE STRIKE YOU?

12 A. IN THE FACE.

13 Q. IN THE FACE? ANY PARTICULAR AREA?

14 A. I HAD A LARGE CUT RIGHT HERE.

15 Q. PRIOR TO YOU EXITING THE VEHICLE, WAS THERE ANYTHING
16 THAT KEPT YOU FROM TURNING RIGHT AND LEAVING THE
17 PARKING LOT?

18 A. PEOPLE EVERYWHERE. IT WAS CHRISTMAS IN THE WAL-MART
19 PARKING LOT.

20 Q. OKAY.

21 A. I DID NOT APPROACH HIM. I DID NOT APPROACH HER. I DID
22 NOT EXIT MY VEHICLE AND INSTIGATE ANYTHING. THEY BOTH
23 CAME TO ME IN MY CAR. AND THE VIDEO WILL SHOW THAT
24 CLEARLY. I NEVER BLOCKED HIM IN AS IS STATED IN THE
25 LAWSUIT. THAT I BLOCKED HIM IN WITH MY CAR. I NEVER

1 DID. I RODE RIGHT BY HIM.

2 Q. HE WAS FREE TO MOVE AWAY FROM YOUR VEHICLE?

3 A. HE CAME TO MY VEHICLE.

4 Q. AND SHE WAS FREE TO MOVE AWAY FROM YOUR VEHICLE?

5 A. SHE'S THE ONE WHO INSTIGATED THE WHOLE THING. SHE WAS
6 STANDING OVER WAITING -- I'M ASSUMING WAITING ON HIM
7 WITH THE BUGGY. SHE CAME OUT AND INSTIGATED THE ENTIRE
8 THING.

9 Q. AND WHEN THE FIRST STRIKE THAT YOU MADE ---

10 A. FIRST WAS A PUSH.

11 Q. I'M JUST IN GENERAL SAYING STRIKE. THE PUSH YOU MADE
12 UPON MR. HARRELSON. YOU WERE OUTSIDE OF YOUR VEHICLE?

13 A. THAT'S CORRECT.

14 Q. ALL RIGHT. AND WERE YOU EVER STRUCK BY MS. HARRELSON?

15 A. I DON'T KNOW.

16 Q. DID YOU EVER STRIKE MS. HARRELSON?

17 A. NO, I DID NOT. YOU CAN WATCH THE VIDEO. I CLEARLY DID
18 NOT.

19 Q. ALL RIGHT, SO THIS INCIDENT ---

20 A. NOW, IN HER STATEMENT I PUNCHED HER SEVERAL TIMES. BUT
21 THE VIDEO CLEARLY SHOWS I DIDN'T. SHE DID NOT HAVE A
22 MARK ON HER. IT WAS A FULL BLOWN SET OF LIES.

23 Q. SO IT WOULD BE YOUR TESTIMONY THAT WITHIN HER STATEMENT
24 WHERE IT INDICATES THAT SHE WAS HIT ---

25 A. SHE HAS LIED THE WHOLE TIME ABOUT EVERYTHING.

1 Q. THAT IS INACCURATE, IS THAT -- I'M JUST TRYING TO MAKE
2 IT CLEAR -----

3 A. IT'S A LIE. SHE LIED. YES.

4 Q. ALL RIGHT, AND SO TO YOUR RECOLLECTION, THIS INCIDENT
5 HAPPENED WHERE THE ACTUAL PUNCHES WERE THROWN OVER
6 ABOUT A TEN TO TWENTY SECOND PERIOD?

7 A. IT WAS VERY QUICK. AND HE WAS NEVER KNOCKED TO THE
8 GROUND. I NEVER HIT HIM WITH ANYTHING. I NEVER KICKED
9 -- NEVER ANYTHING. HE SIMPLY TURNED AWAY. AND WHEN HE
10 TURNED AWAY, I STOPPED. I USED NO FORCE MORE THAN TO
11 INITIALLY STOP THE THREAT. AND THEN I TURNED AND I GOT
12 IN MY CAR, AND I CALLED THE POLICE.

13 Q. AND WERE THERE ANY STATEMENTS MADE BY ANY OF THE
14 PARTIES WHILE THE FIGHT WAS GOING ON?

15 A. I COULDN'T HEAR -- ALL I HEARD WAS THAT WOMAN SCREAMING
16 FROM THE MINUTE I ROLLED MY WINDOW DOWN.

17 Q. TELL ME WHAT YOU DID ONCE THE FIGHT WAS OVER AND YOU
18 GOT BACK IN YOUR CAR.

19 A. I AVOIDED ANYTHING ESCALATING. I DIDN'T WANT A
20 FISTFIGHT TO TURN INTO A GUNFIGHT. OR ANYTHING ELSE.
21 THIS WOMAN IS SCREAMING BLOODY MURDER LIKE A WOMAN IS
22 YELLING RAPE. AND SHE'S SCREAMING AND SHE'S GETTING
23 PEOPLE TO COME OUT -- PEOPLE ARE COMING OUT OF THEIR
24 CARS. I LEFT TO AVOID SOMEBODY GETTING A FIREARM.
25 GETTING A BASEBALL BAT. WHATEVER. I IMMEDIATELY LEFT

1 THE AREA AND CALLED MY WIFE.

2 Q. SO WHAT YOU DID WAS AFTER THE FIGHT OCCURRED YOU GOT
3 BACK IN YOUR VEHICLE, SHUT THE DOOR, PUT THE CAR IN
4 DRIVE. TURNED RIGHT AND EXITED THE WAL-MART PARKING
5 LOT?

6 A. NOT INITIALLY EXITED. I WENT TO THE END OF THE WAL-
7 MART PARKING LOT AND CALLED MY WIFE TO GET AWAY FROM
8 WHERE IT TOOK PLACE ---

9 Q. DID YOU STOP YOUR CAR AT THE END OF THE PARKING LOT?

10 A. YES, I DID.

11 Q. DID YOUR WIFE MEET YOU OUT THERE?

12 A. NO. MY WIFE WAS STANDING IN LINE WITH MY NEIGHBOR. MY
13 NEXT DOOR NEIGHBOR. AND SHE SAYS YOU GO HOME, I'LL
14 RIDE HOME WITH KAREN. WHICH IS OUR NEIGHBOR THAT THEY
15 WERE STANDING IN LINE TOGETHER.

16 Q. SO HOW LONG ---

17 A. I LIVE FIVE MINUTES FROM WAL-MART.

18 Q. HOW LONG DID YOU STAY IN THE PARKING LOT AT WAL-MART
19 BEFORE YOU WENT HOME?

20 A. JUST LONG ENOUGH TO MAKE A PHONE CALL. BECAUSE I
21 WASN'T GOING TO LEAVE MY WIFE.

22 Q. SO YOU CALLED HER. AND WHEN DID YOU CALL THE POLICE?

23 A. AS SOON AS I GOT HOME. I LIVE FIVE MINUTES AWAY.

24 Q. SO YOU DIDN'T CALL THE POLICE UNTIL YOU GOT HOME,
25 RIGHT?

1 A. THAT'S CORRECT.

2 Q. AND WHAT I WANT TO DO ---

3 A. IT'S A LITTLE BIT DIFFERENT FROM WHAT THE HARRELSONS
4 SAID, ISN'T IT?

5 Q. WHAT I'VE GOT HERE ARE THE VIDEOS.

6 (OFF THE RECORD DISCUSSION)

7 EXAMINATION RESUMED BY MR. TEAGUE:

8 Q. WHAT I'LL DO IS SHOW THE VIDEOS TO YOU. THIS IS GOING
9 TO SOUND KIND OF DUMB, BUT WHAT I'D LIKE FOR YOU TO DO
10 IS TELL ME IF THERE'S ANYTHING IN THE VIDEOS THAT YOU
11 WOULD DISAGREE WITH AS TO WHAT HAPPENED. IF THERE'S
12 ANYTHING INACCURATE THAT YOU THINK HAS BEEN CHANGED OR
13 IF IT'S AN ACCURATE REFLECTION OF WHAT HAPPENED THAT
14 NIGHT IN THE WAL-MART PARKING LOT. OKAY?

15 A. OKAY.

16 BY MR. TEAGUE:

17 OFF THE RECORD.

18 (OFF THE RECORD)

19 BY MR. TEAGUE:

20 THIS IS THE ROOFTOP CAM-12 VIDEO. THAT WILL BE
21 EXHIBIT 1.

22 (DEFENDANT'S EXHIBIT NUMBER 1, MARKED, RETAINED)

23 (WITNESS VIEWS VIDEO)

24 WITNESS ANSWERS:

25 A. AND AS YOU CAN SEE, SHE HAD GOTTEN OUT OF THE CAR AND

1 WALKED AWAY LONG BEFORE I GOT BEHIND HER. SO I DID NOT
2 KNOW WHO SHE WAS. THERE SHE'S GETTING A BUGGY.

3 EXAMINATION RESUMED BY MR. TEAGUE:

4 Q. AND WHEN YOU SAY "SHE." MS. HARRELSON?

5 A. YEAH, THAT'S HER RIGHT THERE. AND YOU CAN SEE I JUST
6 PULLED BEHIND HIM. AND HE'S PULLING IN THE PARKING
7 SPOT. THAT'S ME DRIVING BY HIM, IGNORING HIM. I DON'T
8 EVEN KNOW WHO HE IS. NOW HERE SHE COMES OUT STOPPING
9 ME. AND SHE STOPS ME AND WALKS UP BESIDE MY CAR AND
10 STARTS YELLING AND SCREAMING AT ME. AND THEN HE COMES
11 OUT FROM BEHIND THE CAR. WALKS BEHIND MY CAR, WALKS UP
12 TO MY DOOR, AND NOW THEY'RE BOTH AT MY WINDOW. WORDS
13 ARE BEING EXCHANGED. I JUST GOT OUT OF THE CAR. AND
14 THE FIGHT STARTED. SEE SHE'S GRABBING ME AND HE'S
15 HITTING ME. THEY'RE BOTH ON TOP OF ME. HE TURNED AND
16 WALKED AWAY. THAT'S ME GOING BACK TO GET IN MY CAR, SO
17 YOU'RE TALKING A FEW SECONDS IS ALL THIS LASTED. YOU
18 SEE PEOPLE ARE COMING OUT EVERYWHERE. SHE'S HOLLERING
19 AND SCREAMING. I GOT BACK IN MY CAR. THEN EASILY
20 PULLED AWAY TO AVOID ANY FURTHER CONTROVERSY. AND HE'S
21 STILL STANDING BACK THERE BOOHOO'ING.

22 (OFF THE RECORD DISCUSSION)

23 WITNESS ANSWERS:

24 A. IT IS WHAT IT IS. SO IT LASTED A SHORT FEW SECONDS.

25 EXAMINATION RESUMED BY MR. TEAGUE:

1 Q. SO YOU HAVE SEEN ENOUGH ON THIS VIDEO AS FAR AS WHAT
2 HAPPENED ---

3 A. ON THAT ONE. THERE'S ANOTHER VIEW FROM ANOTHER CAMERA
4 THAT I THINK SHOWS -- ACTUALLY SHOWS IT A LITTLE BIT
5 BETTER. BECAUSE IT SHOWS MY CAR.

6 Q. I'LL FLIP TO THAT ONE.

7 (OFF THE RECORD DISCUSSION)

8 EXAMINATION RESUMED BY MR. TEAGUE:

9 Q. WHAT I'D LIKE TO DO ONE TIME WHILE I'VE GOT THIS ONE UP
10 IS GO BACK TO RIGHT WHEN YOU PULLED FORWARD AND LET YOU
11 TELL ME IF THERE WAS ANY REASON YOU COULDN'T HAVE
12 TURNED RIGHT AND EXITED THE PARKING LOT AT THAT TIME.
13 OKAY? LET ME JUST BACK IT UP REAL QUICK.

14 A. YOU NOTICE IT WASN'T BUT A FEW SECONDS.

15 Q. LET ME GET TO IT. WE'LL JUST LET IT RUN.

16 A. THAT CAMERA DOESN'T SHOW A GOOD ENOUGH ANGLE. YOU HAVE
17 TO LOOK AT THE OTHER CAMERA.

18 Q. OKAY, WE'LL LOOK AT THE OTHER ONE. BUT FROM THIS
19 VIDEO, WAS THERE ANYTHING KEEPING YOU FROM TURNING
20 RIGHT AND EXITING THAT LANE OF TRAVEL AT THAT TIME?

21 A. WHEN SHE COMES UP TO MY CAR THERE?

22 Q. FROM TURNING RIGHT? WAS THERE ANYTHING THAT WOULD HAVE
23 KEPT YOU FROM KEEPING GOING?

24 A. I DON'T KNOW. IT HAPPENED FAIRLY QUICKLY.

25 Q. ALL RIGHT, WE'LL CHECK THE OTHER ONE.

1 A. NOTHING KEPT THEM FROM WALKING FROM THERE TO WAL-MART,
2 IF THAT'S WHAT YOU'RE TRYING TO SAY.

3 Q. OKAY.

4 A. YEAH. NOTHING KEPT THEM FROM GOING -- THEY COULD HAVE
5 EASILY WALKED ON THE WAY THEY WERE GOING.

6 Q. WELL, AS FAR AS THEM. THERE WAS NOTHING THAT WAS
7 KEEPING THE HARRELSONS FROM JUST GOING ON INTO WAL-
8 MART, CORRECT?

9 A. SURE. NOTHING, NO.

10 Q. IT WASN'T LIKE YOUR CAR WAS BLOCKING ALL THE AISLE-WAYS
11 OR ---

12 A. NO. I NEVER BLOCKED THEM. I NEVER DID ANYTHING.

13 Q. WE'LL LOOK AT THE OTHER VIDEO. BUT AT THE SAME TIME,
14 THERE WASN'T ANYTHING THAT WAS KEEPING YOU FROM TURNING
15 RIGHT AND JUST EXITING THAT LANE OF TRAVEL AS WELL?

16 A. WELL, INITIALLY I DIDN'T KNOW IF THE WOMAN WAS IN
17 TROUBLE OR IF SHE NEEDED HELP OR SOMETHING. I DIDN'T
18 KNOW WHAT SHE WANTED AS SHE APPROACHED ME. SO I ROLLED
19 MY WINDOW DOWN TO FIND OUT.

20 Q. WE'LL GO ON TO THE NEXT VIDEO IF THAT'S OKAY WITH YOU.

21 A. YEAH. SHE NEVER WISHED ME A MERRY CHRISTMAS, THOUGH.
22 BY MR. TEAGUE:

23 THIS ONE IS IDENTIFIED AS PLGMDOOR-122112. AND
24 THIS WILL BE EXHIBIT 2.

25 (DEFENDANT'S EXHIBIT NUMBER 2, MARKED, RETAINED)

1 EXAMINATION RESUMED BY MR. TEAGUE:

2 Q. I'M GOING TO OPEN IT UP. AND IF YOU'RE OKAY WITH ME
3 DOING THIS, I'M GOING TO GET IT AHEAD TO ABOUT THE TIME
4 THE INCIDENT OCCURRED, UNLESS YOU WANT TO WATCH THE
5 VIDEO ---

6 A. OKAY.

7 (OFF THE RECORD DISCUSSION)

8 EXAMINATION RESUMED BY MR. TEAGUE:

9 Q. I'LL MOVE THIS FORWARD AND TRY TO FIND ABOUT WHEN THIS
10 HAPPENED. I'LL LET YOU WATCH AND TELL US ANYTHING THAT
11 YOU SEE OR WANT TO PROVIDE. AND TELL US WHEN YOU'VE
12 SEEN ENOUGH. OKAY?

13 A. OKAY.

14 (WITNESS WATCHES VIDEO)

15 WITNESS ANSWERS:

16 A. THERE SHE GETS OUT OF THE CAR. OF COURSE THAT'S THE
17 VIDEO SHOWING. I CAN'T SEE THIS. I'M NOT THERE YET.
18 SO I HAD NO IDEA WHO SHE WAS. I DIDN'T KNOW -- THEN I
19 COME PULLING UP A WHILE BEHIND. HE HAS NO TURN SIGNAL
20 ON, SO I DON'T KNOW WHAT HE'S DOING. I FLASHED MY
21 LIGHTS. HE'S STILL SITTING THERE. YOU SEE A CAR NEVER
22 BACKED OUT. THE CAR PULLED ALL THE WAY THROUGH. AND I
23 JUST DROVE BY AND IGNORED HIM UNTIL THIS WOMAN CHASED
24 ME DOWN. AND HE GETS OUT AND COMES STRAIGHT FROM
25 BEHIND MY CAR. UP TO MY WINDOW. THREATENED ME. THEN

1 HE WALKED AWAY. I WENT BACK OUT TO MY CAR AND LEFT.
2 HE'S STANDING JUST FINE. BUT ALL THE INJURIES HE'S
3 CLAIMING AND ALL, HE WASN'T HURT AND HE KNOWS IT. HE'S
4 JUST LOOKING FOR MONEY. THAT'S WHAT THE WHOLE THING
5 WAS ABOUT.

6 EXAMINATION RESUMED BY MR. TEAGUE:

7 Q. DO YOU WANT TO WATCH MORE OF THE VIDEO?

8 A. NO.

9 Q. FROM THAT VIEW, THE VIDEO EXHIBIT 2, WAS IT CLEAR TO
10 YOU THAT THERE WAS A CLEAR PATH FOR THE HARRELSONS TO
11 GET TO WAL-MART AND YOUR CAR WAS NOT BLOCKING THE PATH
12 IN ANY WAY?

13 A. NO, MY CAR NEVER BLOCKED THEM. THEY NEVER...

14 Q. AND FROM THAT VIEW COULD YOU ALSO TELL THAT THERE
15 WASN'T ANYTHING OBSTRUCTING YOU FROM TURNING RIGHT AND
16 LEAVING THAT AREA OF THE PARKING LOT?

17 A. NOT THAT I CAN SEE. BUT ONCE AGAIN, IT HAPPENED SO
18 QUICKLY.

19 BY MR. TEAGUE:

20 LET'S GO OFF THE RECORD.

21 (OFF THE RECORD)

22 BY MR. TEAGUE:

23 SO THIS WILL BE EXHIBIT 3. IT'S JUST IDENTIFIED
24 AS DOOR SHOT. THE VIDEO.

25 (DEFENDANT'S EXHIBIT NUMBER 3, MARKED, RETAINED)

1 (OFF THE RECORD DISCUSSION)

2 (WITNESS WATCHES VIDEO)

3 WITNESS ANSWERS:

4 A. THIS SHOWS THE SAME THING THAT THE OTHER TWO CAMERAS
5 SHOWED.

6 (OFF THE RECORD DISCUSSION)

7 WITNESS ANSWERS:

8 A. IT DOESN'T LOOK LIKE IT SHOWED ANYTHING.

9 EXAMINATION RESUMED BY MR. TEAGUE:

10 Q. ALL RIGHT, THANK YOU FOR DOING THAT. AND FROM
11 REVIEWING THE THREE VIDEOS, EXHIBITS 1, 2 AND 3, FROM
12 WHAT YOU SAW DO THOSE VIDEOS ACCURATELY REFLECT WHAT
13 OCCURRED THAT NIGHT ---

14 A. ABSOLUTELY NOT.

15 Q. OR ON THE DAY OF THE INCIDENT ---

16 A. ABSOLUTELY NOT. THERE'S NO AUDIO. IT'S JUST VIDEO.

17 Q. WELL, YOU ---

18 A. AND SINCE IT'S JUST VIDEO, NO ONE KNOWS WHAT WAS SAID
19 AND WHAT INSTIGATED THE WHOLE THING. AND THAT'S THE
20 PROBLEM WITH IT. IT'S JUST A VIDEO THAT -- IT DOESN'T
21 SHOW WHAT STARTED IT.

22 Q. EXCEPT FOR NOT HAVING AUDIO. BARRING THE AUDIO, DOES
23 IT ACCURATELY REFLECT THE ACTIONS THAT OCCURRED? WE
24 UNDERSTAND ---

25 A. NO, BECAUSE I WAS CHARGED WITH HITTING HER AND

1 CONVICTED OF STRIKING HER, AND I NEVER TOUCHED HER IN
2 THIS VIDEO. I NEVER HIT HER. IT CLEARLY SHOWS I NEVER
3 HIT HER. SO IT SHOWS WHAT HAPPENED, BUT YOU'D HAVE TO
4 CONVINCE THE SOLICITOR'S OFFICE, THE JUDGE, AND
5 EVERYTHING ELSE. BECAUSE I WAS STILL CONVICTED OF
6 HITTING HER.

7 Q. WELL, WE'RE IN THE CIVIL CASE HERE. AND I'M NOT
8 TALKING TO YOU ABOUT WHAT HAPPENED IN THE CRIMINAL
9 CASE. I JUST WANT TO KNOW IF WHAT WE JUST WATCHED IS
10 AN ACCURATE REFLECTION OF WHAT YOU RECALL OCCURRED IN
11 THE PARKING LOT ON THE NIGHT OF THE INCIDENT. BARRING
12 THAT THERE WAS NO AUDIO. BECAUSE IT DOESN'T HAVE THAT.
13 THIS IS JUST THE PHYSICAL ACTIONS THAT OCCURRED. WAS
14 THAT AN ACCURATE REFLECTION ---

15 A. YES.

16 Q. --- OF WHAT HAPPENED THAT NIGHT? THAT'S YES?

17 A. (AFFIRMATIVE RESPONSE)

18 Q. CAN YOU SAY YES ONE MORE TIME.

19 A. YES.

20 Q. SOME OF THESE OTHER FOLKS MAY WANT TO LOOK AT SOME OF
21 THAT WITH YOU. BUT I'M GOING TO ASK YOU A FEW MORE
22 QUESTIONS AND THEN I'LL PASS YOU ON. I DO APPRECIATE
23 YOUR PATIENCE, THOUGH. COULD YOU SAY HOW LONG YOU WERE
24 OUT OF THE VEHICLE BEFORE YOU ACTUALLY MADE CONTACT
25 WITH MR. HARRELSON?

1 A. YOU COULD PROBABLY PLAY THE VIDEO AND IT WOULD TELL YOU
2 EXACTLY. BUT I COULDN'T TELL YOU EXACTLY. IT WAS A
3 MATTER OF SECONDS, AS FAR AS I WAS CONCERNED.

4 Q. AND WOULD YOU AGREE THAT WHEN YOU ACTUALLY STRUCK MR.
5 HARRELSON, YOUR CAR WAS NOT BEING USED FOR
6 TRANSPORTATION?

7 A. I WAS OUT OF MY CAR.

8 BY MR. TEAGUE:

9 I APPRECIATE YOUR TIME AND PATIENCE. I'LL PASS
10 YOU ON TO SOME OF THESE OTHER ATTORNEYS TO ASK YOU SOME
11 QUESTIONS.

12 EXAMINATION BY MR. CONNELL:

13 Q. WOULD YOU AGREE WITH ME THAT THIS WHOLE ARGUMENT
14 OCCURRED OVER YOUR USE OF YOUR VEHICLE AND HIS USE OF
15 HIS VEHICLE?

16 A. NO, IT HAD NOTHING TO DO WITH THE VEHICLES.

17 Q. WASN'T THE ARGUMENT ABOUT THE FACT THAT YOU DIDN'T LIKE
18 THE WAY HE WAS SITTING IN THE ROAD, AND HE DIDN'T LIKE
19 THE FACT THAT YOU WERE FLASHING YOUR LIGHTS AND HITTING
20 YOUR HORN AT HIM?

21 A. I HAVE NO IDEA WHAT HE WAS AGGRAVATED ABOUT, OTHER THAN
22 I CALLED HIS WIFE A DOG. THAT'S WHAT I'M ASSUMING ---

23 Q. BUT PRIOR TO ALL THAT. YOU PULLED UP BEHIND HIM AND
24 APPARENTLY FLASHED YOUR LIGHTS AND HIT YOUR HORN.
25 ISN'T THAT RIGHT?

1 A. THAT'S CORRECT.

2 Q. AND YOU WERE USING YOUR VEHICLE WHEN YOU DID THAT.

3 ISN'T THAT RIGHT?

4 A. I WAS DRIVING MY VEHICLE.

5 Q. AND YOU WERE UPSET WITH THE WAY HE WAS USING HIS

6 VEHICLE, CORRECT? HE WAS SITTING IN HIS ---

7 A. HE WAS JUST BLOCKING THE PARKING LOT.

8 Q. I UNDERSTAND. BUT HE WAS SITTING IN THE PARKING LOT IN

9 HIS VEHICLE AND YOU WERE IN YOUR VEHICLE, AND YOU WERE

10 UPSET WITH HIS OPERATION OF HIS VEHICLE BY HIM, WERE

11 YOU NOT?

12 A. I WASN'T UPSET, NO, SIR.

13 Q. YOU DIDN'T LIKE HIS OPERATION OF THE VEHICLE. ISN'T

14 THAT CORRECT?

15 A. I THOUGHT HE MIGHT HAVE BEEN ON HIS CELL PHONE. I

16 DON'T LIKE PEOPLE ON CELL PHONES NOT PAYING ATTENTION

17 WHEN THEY'RE DRIVING.

18 Q. I THINK YOU SAID EARLIER YOU DIDN'T LIKE THE FACT THAT

19 HE DIDN'T HAVE HIS TURN SIGNAL ON?

20 A. I WASN'T AWARE -- SINCE HE DIDN'T HAVE IT ON, I DIDN'T

21 KNOW WHETHER HE WAS GOING TO GO LEFT OR RIGHT. THAT'S

22 WHY I DIDN'T TRY TO GO AROUND HIM.

23 Q. I UNDERSTAND. SO THE WHOLE DISPUTE, IF YOU WILL,

24 CENTERED AROUND HIS USE OF HIS AUTOMOBILE, DID IT NOT?

25 A. NO, SIR. THE DISPUTE CENTERED AROUND THAT HE

1 THREATENED ME IN MY CAR.

2 Q: BUT BEFORE ALL THAT. THE CATALYST FOR WHAT HAPPENED
3 HERE WAS THE FACT THAT HE WAS SITTING IN THE ROAD AND
4 YOU WERE BEHIND HIM HITTING YOUR HORN AND FLASHING YOUR
5 LIGHTS. ISN'T THAT RIGHT?

6 BY OPPOSING COUNSEL:

7 OBJECT TO THE FORM.

8 WITNESS ANSWERS:

9 A. NO, SIR. THIS WHOLE THING STARTED BECAUSE THAT WOMAN
10 CAME UP TO MY CAR AND STARTED CUSSING AND YELLING AT ME
11 AND INSTIGATING AN ISSUE. I WASN'T LOOKING FOR A
12 PARKING SPOT. I WASN'T TRYING TO PARK. I COULD CARE
13 LESS WHERE HE WAS PARKING. IF YOU READ THE POLICE
14 REPORTS AND ALL THAT, YES, THE POLICE REPORT SAID I WAS
15 ANGRY BECAUSE HE TOOK A PARKING SPOT. YOU KNOW WHAT?
16 I NEVER TALKED TO THE POLICE.

17 EXAMINATION RESUMED BY MR. CONNELL:

18 Q. I UNDERSTAND.

19 A. THEY DON'T KNOW WHAT HAPPENED. THEY JUST KNOW WHAT THE
20 HARRELSONS TOLD THEM. THE HARRELSONS ASSUMED
21 EVERYTHING YOU'RE SAYING. NOT ME.

22 Q. WHEN YOU LOOK AT THE VIDEO, WE JUST SAW YOU SEE MS.
23 HARRELSON TURN AROUND. CAN WE ASSUME THE REASON WHY
24 SHE WAS TURNED AROUND WAS THAT YOU WERE BEEPING YOUR
25 HORN AND FLASHING YOUR LIGHTS? IS THAT WHY SHE TURNED

1 AROUND?

2 A. I DON'T KNOW WHAT SHE WAS THINKING. I DON'T KNOW WHAT
3 SHE WAS THINKING.

4 Q. WOULD SHE HAVE HEARD YOUR HORN?

5 A. SIR, THAT WOMAN IS CRAZY. I DON'T KNOW WHAT SHE DID.

6 Q. I UNDERSTAND, BUT YOU DID SOUND YOUR HORN?

7 A. YES.

8 Q. HOW MANY TIMES DO YOU THINK YOU SOUNDED YOUR HORN?

9 A. PROBABLY ABOUT TWO OR THREE TIMES. AND SO DID
10 EVERYBODY ELSE IN THE PARKING LOT. SO, YOU KNOW, ON
11 CHRISTMAS...

12 Q. I UNDERSTAND. BUT YOU SAID TWO OR THREE TIMES. DO YOU
13 THINK IT WAS MORE THAN THAT OR ---

14 A. HAVE YOU HEARD A HORN ON A 3 SERIES BMW?

15 Q. NO, SIR, I'M ASKING YOU.

16 A. BEEP, BEEP. THAT'S IT.

17 Q. ALL RIGHT, SO YOU DID IT THREE TIMES, IS THAT RIGHT?

18 A. I DON'T KNOW HOW MANY TIMES I DID IT. A COUPLE TIMES.

19 Q. AND YOU FLASHED YOUR LIGHTS HOW MANY TIMES?

20 A. ONCE OR TWICE.

21 Q. NOW, WHEN YOU GOT UP TO HER, I THINK YOU SAID SHE SAID
22 SOMETHING TO YOU. WAS SHE COMPLAINING TO YOU ABOUT
23 YOUR IMPATIENCE? WAS THAT WHAT I HEARD YOU SAY
24 EARLIER?

25 A. SHE STARTED CUSSING ME. I MEAN, SHE JUST STARTED

1 CUSSING. I DIDN'T KNOW WHY.

2 Q. WELL, I THOUGHT I HEARD YOU SAY THAT SHE SAID YOU WERE
3 IMPATIENT IN THE PARKING LOT. IS THAT NOT THE CASE?

4 A. SHE DIDN'T USE THE WORD IMPATIENT. SHE CUSSSED AT ME.
5 SHE WAS SCREAMING AND YELLING. IT TOOK ME A MINUTE TO
6 FIGURE OUT WHY SHE WAS YELLING AT ME. BECAUSE I DIDN'T
7 ASSOCIATE HER WITH THE CAR THAT JUST PULLED IN THE
8 PARKING SPOT.

9 Q. SO WHY WAS SHE YELLING AT YOU?

10 A. YOU'D HAVE TO ASK HER.

11 Q. WHAT DID YOU THINK SHE WAS YELLING AT YOU ABOUT?

12 A. I DIDN'T KNOW. I HAD NO IDEA.

13 Q. DID SHE MENTION ANYTHING ABOUT YOU BEING IMPATIENT? I
14 THOUGHT YOU SAID THAT EARLIER.

15 A. SHE WAS SCREAMING AND CUSSING, AND I DIDN'T REALLY KNOW
16 WHAT WAS GOING ON UNTIL HE CAME AROUND THE CAR. AND
17 THEN I PUT TWO AND TWO TOGETHER THAT SHE WAS WITH HIM,
18 AND SHE WAS IMPATIENT BECAUSE UNDOUBTEDLY I BLEW MY
19 HORN. BUT I DIDN'T KNOW ALL THIS INITIALLY. I DID NOT
20 KNOW THIS, NO.

21 Q. SO THE WHOLE THING STARTED BECAUSE OF BLOWING OF THE
22 HORN ---

23 A. NO. THE WHOLE THING STARTED BECAUSE YOUR CLIENT IS
24 CRAZY.

25 Q. I UNDERSTAND THAT. BUT BEFORE THAT, THE WHOLE THING

1 STARTED BECAUSE OF THE BEEPING OF THE HORN AND THE
2 FLASHING OF THE LIGHTS? - - - - - -

3 BY OPPOSING COUNSEL:

4 OBJECT TO THE FORM.

5 WITNESS ANSWERS:

6 A. YOU'LL HAVE TO ASK YOUR CLIENT THAT. I DON'T KNOW WHAT
7 SHE'S THINKING OR WHAT...

8 EXAMINATION RESUMED BY MR. CONNELL:

9 Q. YOU SAID EARLIER, DID YOU NOT, THAT SHE SAID YOU WERE
10 IMPATIENT?

11 A. SIR, I CAN'T REMEMBER EXACTLY THE WORDS, OTHER THAN SHE
12 WAS SCREAMING AND YELLING AT ME.

13 O. ALL RIGHT.

14 A. I'M ASSUMING THAT'S WHAT INSTIGATED IT, BECAUSE I DON'T
15 KNOW WHY ELSE SHE WOULD COME UP YELLING AT ME. BUT I
16 DON'T KNOW. YOU'D HAVE TO ASK HER.

17 Q. ALL RIGHT, AND ONE OF THE OTHER ISSUES WAS MR.
18 HARRELSON SITTING IN THE ROAD WHERE YOU COULDN'T GET
19 AROUND HIM, AND YOU DIDN'T KNOW WHETHER HE WAS SITTING
20 THERE OR WHETHER HE WAS TRYING TO MAKE A TURN INTO A --
21 -

22 A. I DIDN'T KNOW IT WAS HIM. I DIDN'T KNOW WHO HE WAS. I
23 DIDN'T KNOW ANY OF THIS STUFF.

24 Q. YOU DIDN'T KNOW WHO HE WAS, BUT THERE WAS A CAR IN
25 FRONT OF YOU?

1 A. THAT'S CORRECT.

2 Q. AND YOU DIDN'T KNOW WHETHER OR NOT THAT PERSON WAS JUST
3 SITTING THERE ---

4 A. RIGHT.

5 Q. AND YOU DIDN'T KNOW WHETHER OR NOT HE WAS WAITING TO
6 GET INTO A SPACE, RIGHT?

7 A. THAT'S CORRECT.

8 Q. AND YOU DIDN'T KNOW WHETHER OR NOT HE WAS GOING TO TURN
9 LEFT OR RIGHT?

10 A. I ASSUMED HE WAS WAITING TO PARK, BUT I DIDN'T SEE ANY
11 CARS BACKING OUT SO I DIDN'T ---

12 Q. I UNDERSTAND. AND SO THAT'S WHEN YOU STARTED BEEPING
13 YOUR HORN AND FLASHING YOUR LIGHTS?

14 A. CORRECT.

15 Q. AND THE REASON WHY YOU DID THAT WAS BECAUSE YOU WANTED
16 TO KNOW HIS INTENTIONS ABOUT WHAT HE WAS GOING TO DO?

17 A. I WANTED HIM TO KNOW THAT HE WAS BLOCKING TRAFFIC.

18 Q. I UNDERSTAND. AND YOU DIDN'T WANT TO GO AROUND HIM,
19 BECAUSE YOU FELT LIKE IF YOU DID HE MIGHT TURN IN TO
20 YOU?

21 A. IF HE HAD PUT A TURN SIGNAL ON TO THE RIGHT, I COULD
22 HAVE GONE AROUND TO THE LEFT. IF HE HAD PUT A TURN
23 SIGNAL ON TO THE LEFT, I COULD HAVE GONE AROUND TO THE
24 RIGHT. BUT I DIDN'T KNOW WHAT HE WAS DOING. AND IF I
25 HAD GONE AROUND HIM EITHER WAY HE TURNED, I WOULD BE AT

1 FAULT.

2 Q. I UNDERSTAND EXACTLY. SO THE WHOLE CATALYST FOR WHAT
3 HAPPENED HERE WAS HIM SITTING IN THE PARKING LOT AND
4 YOU NOT KNOWING WHAT HIS INTENTIONS WERE AS ---

5 A. NO, SIR. WHAT STARTED THIS WHOLE THING WAS HIM
6 THREATENING ME AND HIS WIFE CUSSING ME. THAT'S WHAT
7 STARTED THIS. IT HAD NOTHING TO DO WITH A CAR.

8 Q. BUT IT DID START BECAUSE OF ACTIONS IN A VEHICLE, DID
9 IT NOT?

10 A. WELL, I GOT IN MY CAR AND DROVE UP THERE. IF I
11 WOULDN'T HAVE DROVE TO WAL-MART IT WOULDN'T HAVE EVER
12 HAPPENED. BUT IF YOU WANT TO SAY THAT MY CAR, BECAUSE
13 I DROVE IT TO WAL-MART -- THE CAR, IT HAD NOTHING TO DO
14 WITH IT. THE FIGHT STARTED BECAUSE YOUR CRAZY CLIENT
15 STARTED CUSSING AND YELLING AT ME AND HER HUSBAND
16 THREATENED ME. THAT'S WHAT STARTED THIS.

17 Q. THAT'S WHAT I'M GETTING AT. WHAT WAS SHE CUSSING AND
18 YELLING AT YOU ABOUT?

19 A. ASK HER. I NEVER TALKED TO HER.

20 Q. WHAT DO YOU THINK SHE WAS DOING IT FOR?

21 A. WELL, AFTER IT WAS ALL OVER WITH I'M ASSUMING IT'S
22 BECAUSE I BLEW MY HORN AND FLASHED MY LIGHTS. BUT I
23 DIDN'T KNOW THIS AT THE TIME.

24 Q. BUT THAT'S WHAT YOU BELIEVE TO THIS DAY? THAT IT WAS
25 ABOUT YOU FLASHING YOUR ---

1 A. NO. IT -- YOU HAVE A CRAZY CLIENT. THAT'S ALL I CAN
2 TELL YOU.

3 Q. I UNDERSTAND THAT. BUT THERE IS NO ---

4 A. A TOTALLY INSANE INDIVIDUAL. THAT'S ALL I CAN TELL
5 YOU.

6 Q. BUT THERE IS NO REASON FOR HER TO COME TALK WITH YOU,
7 BUT FOR THE FACT THAT YOU WERE FLASHING YOUR LIGHTS AND
8 HITTING YOUR HORN?

9 BY OPPOSING COUNSEL:

10 OBJECT TO THE FORM.

11 WITNESS ANSWERS:

12 A. THEY'RE INSANE PEOPLE. I DON'T KNOW WHY THEY DO WHAT
13 THEY DO.

14 EXAMINATION RESUMED BY MR. CONNELL:

15 Q. BUT IT ALL STARTED FROM THE PARKING LOT AND YOUR
16 DRIVING AND HIS DRIVING?

17 BY OPPOSING COUNSEL:

18 OBJECT TO THE FORM.

19 WITNESS ANSWERS:

20 A. NO. IT STARTED WHEN SHE CAME UP TO MY CAR AND STARTED
21 SCREAMING AND YELLING AT ME.

22 EXAMINATION RESUMED BY MR. CONNELL:

23 Q. YOU WERE USING YOUR CAR THAT NIGHT FOR TRANSPORTATION,
24 WERE YOU NOT?

25 A. MM-HMM (AFFIRMATIVE RESPONSE).

1 Q. AND THAT'S HOW YOU GOT THERE?

2 A. MM-HMM (AFFIRMATIVE RESPONSE) .

3 Q. AND THAT'S HOW YOU LEFT?

4 A. MM-HMM (AFFIRMATIVE RESPONSE) .

5 Q. IS THAT RIGHT?

6 A. THAT'S CORRECT.

7 Q. AND YOU COULD HAVE DRIVEN AWAY ANY TIME YOU WANTED TO,

8 IS THAT RIGHT?

9 A. NO.

10 Q. YOU COULDN'T HAVE?

11 A. NOT NECESSARILY. IT HAPPENED SO QUICK.

12 Q. BUT YOU ACTUALLY GOT OUT OF YOUR CAR, CORRECT?

13 A. IF I HAD PUT IT IN DRIVE AND FLOORED IT I MIGHT HAVE

14 HIT SOMEBODY. THEN MY CAR WOULD HAVE BEEN INVOLVED. I

15 DIDN'T DO THAT. I GOT OUT OF MY CAR.

16 Q. AND WHEN YOU GOT INTO THE FIGHT WITH MR. HARRELSON, DID

17 YOU PUSH HIM AGAINST YOUR CAR?

18 A. NO.

19 Q. DID YOU EVER USE YOUR CAR AS PART OF THE FIGHT AT ALL?

20 A. NOT TO MY KNOWLEDGE.

21 Q. AND THEN YOU GOT INTO YOUR CAR, I UNDERSTAND?

22 A. MM-HMM (AFFIRMATIVE RESPONSE) .

23 Q. AND LEFT THE SCENE, IS THAT RIGHT?

24 A. THAT'S CORRECT.

25 Q. YOU DID NOT CALL THE POLICE OR STAY THERE?

1 A. YES, I CALLED THE POLICE.
2 Q. YOU DIDN'T STAY THERE AND CALL THE POLICE?
3 A. NO, SIR, I WASN'T GOING TO LET SOMETHING TURN INTO A
4 BIG -- EVERYTHING GETS BIGGER. WHEN YOU STICK AROUND -
5 - I WAS A POLICE OFFICER FOR 25 YEARS. YOU AVOID
6 FURTHER INCIDENTS. YOU DON'T LET A FISTFIGHT TURN INTO
7 A GUNFIGHT OR A KNIFE FIGHT. YOU LEAVE, CALL THE
8 POLICE, DISENGAGE FROM -- AND THEN GO FROM THERE. AND
9 I'D DO IT AGAIN AND AGAIN AND AGAIN. I AM NOT GETTING
10 IN A GUNFIGHT OVER A STUPID BLOWING OF A HORN ON A CAR.
11 Q. I UNDERSTAND. DID YOU HAVE A CONCEALED WEAPONS PERMIT
12 AT THE TIME?
13 A. I DIDN'T NEED ONE. I'M A RETIRED POLICE OFFICER.
14 Q. WERE YOU CARRYING A PISTOL ---
15 A. THAT'S NOT RELEVANT. THERE WAS NO GUN USED IN THIS
16 THING, SO IT'S NOT RELEVANT.
17 Q. NO, SIR, I DIDN'T ASK THAT QUESTION. WERE YOU CARRYING
18 A PISTOL THAT NIGHT?
19 A. IT'S NOT RELEVANT.
20 Q. I'M GOING TO ASK YOU THE QUESTION AGAIN, AND I'M GOING
21 TO EXPLAIN TO YOU THE RULES. IF I ASK YOU A QUESTION
22 AND YOU REFUSE TO ANSWER, THEN I HAVE NO CHOICE BUT TO
23 GO TO A JUDGE AND ASK HIM TO ORDER YOU TO ANSWER THE
24 QUESTION. SO AGAIN, DID YOU HAVE A GUN WITH YOU THAT
25 NIGHT?

1 A. I DON'T RECALL.

2 Q. DO YOU HAVE A GUN?

3 A. YES.

4 Q. ALL RIGHT, DO YOU NORMALLY CARRY THE GUN?

5 A. A LOT OF TIMES I DO, YES.

6 Q. ALL RIGHT. AND DO YOU NORMALLY CARRY A GUN WHEN YOU GO
7 TO WAL-MART?

8 A. SOMETIMES I DO AND SOMETIMES I DON'T.

9 Q. WHAT TYPE OF PISTOL DO YOU HAVE?

10 A. I HAVE NUMEROUS PISTOLS.

11 Q. YOU HAVE MORE THAN ONE?

12 A. YES.

13 Q. NOW, I'M NOT FAMILIAR WITH WHAT HAPPENED IN THE
14 CRIMINAL ACTION. DID YOU HAVE A TRIAL IN THE CRIMINAL
15 CASE?

16 A. NO.

17 Q. WHAT HAPPENED?

18 A. THE SOLICITOR'S OFFICE CHARGED ME. MR. MONCKTON SAID
19 THIS IS A SIMPLE LITTLE FISTFIGHT. WE'LL MAKE IT GO
20 AWAY. DON'T WORRY ABOUT IT, AND THIS AND THAT. DON'T
21 SAY NOTHING TO NOBODY AND DON'T DO ANYTHING. SO I DID
22 EXACTLY WHAT I WAS TOLD. THE NEXT THING I KNOW THE
23 SOLICITOR'S OFFICE -- THESE PEOPLE CLAIM THAT HE'S GOT
24 BRAIN INJURIES AND ALL THESE RIDICULOUS THINGS. HE WAS
25 NEVER HOSPITALIZED. HE WENT TO THE EMERGENCY ROOM AND

1 GOT A FEW STITCHES AND WAS RELEASED. BUT NOW HE'S GOT
2 LOSS OF MEMORY AND NOW HE'S GOT ALL THIS STUFF. AND
3 HE'S GOT DOCTORS SAYING HE COULD HAVE THIS AND HE COULD
4 HAVE THAT. THE MRIs ARE ALL NEGATIVE. I'VE SEEN ALL
5 THE MEDICALS. THESE PEOPLE ARE AFTER MONEY. THAT'S
6 ALL THEY'RE AFTER, AND THEY'RE PUSHING AND PUSHING.
7 WELL, THE SOLICITOR'S OFFICE TURNED AROUND AND INDICTED
8 ME ON A FIRST DEGREE ASSAULT AND BATTERY. THAT MEANS I
9 SHOT SOMEBODY OR TRIED TO KILL THEM OR TRIED TO
10 SERIOUSLY INJURE THEM. YOU SEE WHAT HAPPENED. THIS
11 WAS A SIMPLE FISTFIGHT WHERE HE WAS NEVER EVEN KNOCKED
12 TO THE GROUND. HE'S 320 POUNDS. HE GOT A FEW STITCHES
13 ON HIS EYE AND THAT'S IT. THEY ARE ABSOLUTELY CRAZY.
14 THEY PUSHED THIS, PUSHED THIS, PUSHED THIS. AND I WAS
15 FORCED TO PLEA OR GO TO TRIAL ON A FIRST DEGREE FELONY.
16 AND I'M NOT A GAMBLER. THERE'S NO WAY I'M GOING TO
17 GAMBLE MY WIFE AND MY FAMILY OVER SOMETHING THAT YOU
18 NEVER KNOW WHAT A JURY WILL DO. SO I PLED. AND I GOT
19 90 DAYS IN JAIL AND GOT A SECOND DEGREE CONVICTION.

20 Q. YOU PLED GUILTY TO WHAT?

21 A. SECOND DEGREE ASSAULT.

22 Q. AS TO BOTH PEOPLE?

23 A. NO. SECOND DEGREE FOR HIM AND THIRD FOR HER, AND I
24 NEVER TOUCHED THAT WOMAN.

25 Q. AND WHAT YEAR WAS THAT?

1 A. IT HAPPENED IN 2012. I WANT TO SAY SOMEWHERE IN 2013
2 OR '14. I DON'T REALLY -- IT DRUG ON FOR A LONG TIME.

3 Q. AND DID YOU SAY YOU SERVED 90 DAYS IN JAIL?

4 A. I SERVED 36 DAYS. I WAS PUT ON PROBATION. AND I WAS
5 GIVEN ANGER MANAGEMENT, AND I WAS GIVEN COMMUNITY
6 SERVICE. I WAS ORDERED TO PAY RESTITUTION. I NEVER
7 PLED. MY PLEA AGREEMENT WAS NOT THAT. MY PLEA
8 AGREEMENT WAS ORIGINALLY A THIRD DEGREE SIMPLE ASSAULT.
9 THE SOLICITOR ACCEPTED IT. I WENT TO THE COURT TO
10 PLEA, AND THEY TOOK IT OFF THE TABLE. THE SOLICITOR,
11 JIMMY RICHARDSON, SAID NO, I CAN'T ACCEPT THAT PLEA.
12 EVEN THOUGH IT WAS AGREED BETWEEN BILLY MONCKTON AND
13 MYSELF. WE AGREED TO IT. MY FAMILY WENT BACK HOME AND
14 EVERYTHING WAS DONE. AND THEN HE TURNED AROUND -- IT'S
15 THE FIRST TIME BILLY MONCKTON SAID HE'S EVER HAD A
16 DEFENSE -- I MEAN A SOLICITOR GO BACK ON HIS PLEA. AND
17 THEN THE JUDGE SENTENCED ME TO WHAT I DID NOT PLEA. I
18 PLED TO UP TO 90 DAYS IN JAIL AND THAT WAS IT. AND THE
19 JUDGE ADDED ALL THIS OTHER STUFF.

20 Q. SO YOU WENT TO ANGER MANAGEMENT. IS THAT WHAT YOU
21 SAID?

22 A. MM-HMM (AFFIRMATIVE RESPONSE).

23 Q. HOW LONG DID YOU DO THAT?

24 A. TWELVE WEEKS.

25 Q. TWELVE WEEKS?

- 1 A. MM-HMM (AFFIRMATIVE RESPONSE).
- 2 Q. HAD YOU EVER BEEN TO ANGER MANAGEMENT BEFORE?
- 3 A. NEVER NEEDED TO. I WAS A POLICE OFFICER FOR 25 YEARS.
- 4 I'VE NEVER BEEN ACCUSED OF EXCESSIVE FORCE. I'VE NEVER
- 5 SHOT ANYBODY. NEVER ANYTHING. NO. THIS IS THE ONLY
- 6 THING I'VE EVER BEEN ANGRY AT, BECAUSE IT RUINED MY
- 7 LIFE. AND I'M VERY BITTER ABOUT IT. BECAUSE THESE
- 8 PEOPLE HAVE ON AND ON AND ON AND ON. AND THEN THEY
- 9 FIND SOME ATTORNEY THAT WILL TAKE SOME FRIVOLOUS
- 10 LAWSUIT CASE LIKE THIS AND KEEP ON GOING.
- 11 Q. SO YOU THINK THIS IS A FRIVOLOUS LAWSUIT?
- 12 A. ABSOLUTELY. IT'S TRIVIAL. BECAUSE THEY'RE NOT
- 13 INJURED. THIS MAN WAS -- I'VE GOT THE MEDICAL RECORDS.
- 14 HE WAS ON OXYCONTIN AND TAKING MENTAL DRUGS FOR ISSUES
- 15 HE HAD BEFORE HE EVER KNEW ME.
- 16 Q. HOW DID YOU GET HIS MEDICAL RECORDS?
- 17 A. THEY WERE SUBPOENAED.
- 18 Q. AND YOU LOOKED AT HIS MEDICAL RECORDS?
- 19 A. CERTAINLY. ALL OF THEM.
- 20 Q. WHAT ELSE HAVE YOU DONE TO INVESTIGATE THIS CASE?
- 21 A. NOTHING ANY MORE THAN GOING TO TRIAL AND BEING CHARGED
- 22 WITH A CRIME. SO I INVESTIGATED EVERYTHING I COULD.
- 23 FOUND OUT EVERYTHING I COULD ABOUT IT TO GO TO TRIAL --
- 24 -
- 25 Q. TELL ME WHAT ELSE YOU INVESTIGATED. OTHER THAN HIS

1 MEDICAL RECORDS, WHAT ELSE DID YOU DO?

2 A. I DON'T KNOW WHAT ELSE I COULD DO. . . -

3 Q. DID YOU FIND ANY WITNESSES THAT WOULD BE HELPFUL TO
4 YOUR POSITION?

5 A. WELL, MY WIFE WAS THERE. BUT THEY NEVER EVEN KNEW MY
6 WIFE WAS THERE. THE POLICE NEVER EVEN -- YOU NOTICE
7 ALL THESE CAMERAS. YOU NOTICE THERE'S NOTHING OF THE
8 CAMERAS INSIDE WAL-MART WHEN ME AND MY WIFE WERE
9 SHOPPING. THEY KNEW NOTHING ABOUT THIS. THEY NEVER
10 INVESTIGATED IT. THEY TOOK HER WORD THAT THIS IS WHAT
11 HAPPENED AND BOOM, THE POLICE WENT AFTER ME BECAUSE OF
12 THE MEDIA -- I WAS A SCHOOL TEACHER AND RETIRED POLICE
13 OFFICER, AND THE MEDIA JUMPED ALL OVER IT. SO THEY
14 MADE IT A BIG HANGING IN CONWAY IS WHAT THEY TRIED TO
15 DO WITH IT.

16 Q. SO YOU DON'T KNOW OF ANY WITNESS TO THE INCIDENT AT
17 WAL-MART?

18 A. NO.

19 Q. NONE OF THE PEOPLE THAT WERE OUTSIDE WALKING ---

20 A. THERE WAS NO TRIAL. SHE DID SCREAM, "DID ANYBODY SEE
21 THIS? DON'T GO ANYWHERE, DON'T GO ANYWHERE, DON'T GO
22 ANYWHERE." AS I WAS LEAVING. SO I'M SURE THE DOLLAR
23 SIGNS WERE RINGING IN HER EYES FROM THE GET GO.

24 Q. I HEARD YOU SAY THAT HE HAD STITCHES TO HIS EYE, IS
25 THAT RIGHT?

1 A. THAT'S IT. A COUPLE STITCHES IN HIS ---
2 Q. HOW DO YOU KNOW THAT?
3 A. BECAUSE THAT'S WHAT HIS MEDICAL RECORD SHOWS.
4 Q. DID YOU HIT HIM IN THE EYE WITH YOUR FIST?
5 A. I HIT HIM A COUPLE TIMES AND HE HIT ME A COUPLE TIMES.
6 SO I DON'T KNOW.
7 Q. DID YOU HAVE ANY BLOOD LOSS YOURSELF?
8 A. YES, I HAD A LARGE CUT ON MY FACE.
9 Q. AND DID THAT HAVE TO BE STITCHED?
10 A. NO. BUT YOU CAN PULL UP THE BOOKING PHOTO AND IT SHOWS
11 IT PRETTY CLEARLY.
12 Q. DID YOU HAVE ANY CONTACT WITH HIM AFTERWARDS?
13 A. NEVER. I NEVER SPOKE WITH HIM OR HER.
14 Q. SO HOW MANY TIMES DO YOU THINK YOU STRUCK HIM? DO YOU
15 KNOW?
16 A. NOT ENOUGH TO KNOCK HIM DOWN. BECAUSE HE WAS STANDING
17 WHEN I TURNED AND WALKED AWAY.
18 Q. DID YOU USE ANY SPECIALIZED POLICE TRAINING TO STRIKE
19 HIM?
20 A. NO, SIR. INITIALLY I GOT OUT AND PUSHED HIM UNDER THE
21 CHIN AWAY FROM ME. THAT WAS IT.
22 Q. HOW DID YOU LEARN HOW TO DO THAT?
23 A. I SPENT FOUR YEARS IN THE MARINE CORPS AND 25 YEARS IN
24 LAW ENFORCEMENT. I CAN DEFEND MYSELF I BELIEVE.
25 Q. THAT'S A TECHNIQUE THAT'S USED ALL THE TIME, IS IT NOT?

1 TO TAKE YOUR HAND AND PUSH ON A PERSON'S CHIN TO PUSH
2 THEM BACK AWAY FROM YOU?

3 A. WHEN YOU'RE SIX FOOT SOMETHING AND THREE HUNDRED
4 POUNDS, YOU...

5 Q. THAT'S SOMETHING YOU LEARNED ON THE POLICE FORCE AND IN
6 THE ---

7 A. I CAN'T SAY THAT. IT WAS AN INSTINCT TO GET HIM AWAY
8 FROM ME.

9 Q. DID YOU HAVE A RING OR ANYTHING ON THAT NIGHT THAT
10 MIGHT HAVE CUT HIM?

11 A. I WEAR A COLLEGE RING SOMETIMES AND SOMETIMES I DON'T.
12 I DON'T RECALL.

13 Q. AND YOU COMPLETED YOUR PROBATION, I TAKE IT?

14 A. EVERYTHING.

15 Q. YOU DON'T HAVE ANY REQUIREMENTS ON YOU AT THIS POINT?

16 A. NO.

17 BY MR. CONNELL:

18 THANK YOU. I APPRECIATE IT.

19 BY MR. HUDSON:

20 I DON'T BELIEVE I HAVE ANY QUESTIONS, MR. DUKE.

21 I'M DWIGHT HUDSON, AND I REPRESENT SOUTH CAROLINA FARM
22 BUREAU. I THINK YOU'VE COVERED IT FAIRLY WELL.

23 EXAMINATION BY MR. HUDSON:

24 Q. BUT JUST TO REITERATE AND REPEAT. THE VIDEOS THAT WE
25 LOOKED AT ON THE LAPTOP DO ACCURATELY REFLECT AT LEAST

1 WHAT THEY PURPORT TO SHOW, EXCLUSIVE OF AUDIO, OF WHAT
2 HAPPENED THAT NIGHT?

3 A. YES, SIR.

4 Q. AND YOU HAD REVIEWED THEM SEVERAL TIMES PRIOR TO COMING
5 HERE TODAY?

6 A. YES, I HAD.

7 Q. ALL RIGHT. IN THEIR ENTIRETY?

8 A. YES.

9 BY MR. HUDSON:

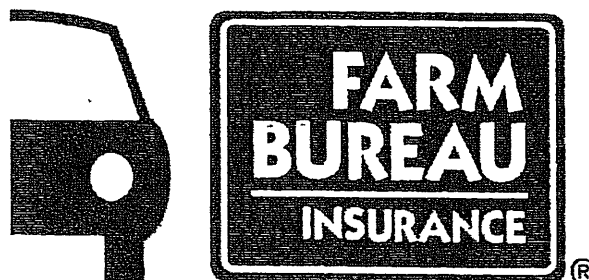
10 THAT'S ALL I HAVE. THANK YOU.

11 (THERE BEING NO FURTHER QUESTIONS, THIS DEPOSITION CONCLUDED
12 AT 10:45 A.M.)

**South Carolina Farm Bureau
Mutual Insurance Company or
Southern Farm Bureau Casualty
Insurance Company**

Personal Auto Policy

Your policy consists of this booklet and the appropriate Declarations, forms and endorsements. Coverages apply only when properly shown on the Declarations page.



Visit our website at www.scfbins.com
or contact us at:

Post Office Box 2124
West Columbia, SC
29171

724 Knox Abbott Drive
Cayce, SC 29033
(803) 796-6700

**Policy conditions require immediate notice of accident or claim.
To report an accident or claim, call us toll-free, at
1-800-799-7500**

Seat Belts Save Lives. Buckle Up for Safety!

FORM #9426

REVISED 1/2009

COUNTY MEMBERSHIP PROVISIONS

1. As a prerequisite to your purchase of this policy and any renewal of this insurance, you must make application to be a member of and maintain your membership in the applicable county Farm Bureau agricultural organization and affiliated state Farm Bureau agricultural organization (hereinafter collectively known as "Farm Bureau Federation").
2. Your failure to apply for membership and to maintain your membership with the applicable Farm Bureau Federation as our sponsoring organization, including but not limited to your failure to pay the required membership dues to the Farm Bureau Federation, shall require us to cancel or nonrenew your policy.
3. Dues payable to the Farm Bureau Federation are in consideration of membership in the Farm Bureau Federation and other agriculture-related services from Farm Bureau Federation and:
 - a. are not in consideration of coverage under this policy; and
 - b. are not payable to South Carolina Farm Bureau Mutual Insurance Company, Southern Farm Bureau Casualty Insurance Company, or any other insurer named on the Declarations.

INSURING AGREEMENT

We will provide the coverages you have selected subject to your payment of premiums in amounts we require. This agreement is made in reliance upon your statements to obtain coverage and subject to all of the terms and conditions of this policy. Your coverage selections are shown in the latest policy Declarations which completes this policy.

DEFINITIONS

The language of this insurance policy includes certain common words for easy understanding. They have specifically defined meanings. In this policy:

1. You and your mean the named insured shown in the Declarations; and the spouse if a resident of the same household.
2. We, us, our and the Company mean the South Carolina Farm Bureau Mutual Insurance Company, the Southern Farm Bureau Casualty Insurance Company, or Palmetto Casualty Insurance Company, as shown on the latest Declarations.
3. Covered person(s) means or refers to the person(s) and organization(s) specifically indicated as entitled to protection under the coverage being described.
4. Auto(s) means a self-propelled motor vehicle, designed primarily to be used on public roads and required to be registered under the South Carolina Motor Vehicle Registration and Licensing Act.
5. Your auto(s) means the vehicle(s) described on your policy Declarations.
6. Your covered auto(s) means your auto and any newly acquired auto(s).

7. **Newly acquired auto(s)** means any private passenger auto, which you purchase as an addition to or a replacement for your auto.
8. **Private passenger auto(s)** means an auto used for farming, pleasure or driving to and from work. It does not include trucks or vans with a rating capacity of more than one ton used in any business other than farming or ranching.
9. **Auto business** means a business or job, the purpose of which is to sell, lease, repair, service, rent, transport, tow, store or park autos.
10. **Motor vehicle** means a self-propelled vehicle or trailer designed for use on public roads.
A motor vehicle does not include:
 - a. tractor engines;
 - b. road rollers;
 - c. farm tractors;
 - d. tractor cranes;
 - e. power shovels;
 - f. well drillers;
 - g. electric trolleys; or
 - h. vehicles designed to operate on rails or crawler treads.
11. **Actual cash value** means the cost to replace new today with materials of like kind and quality, less physical depreciation and economic obsolescence.
12. **Bodily injury** means injury or death of any person.
13. **Covered equipment** means any items permanently attached to the auto, except power-operated machinery or other customized equipment, not specifically covered by endorsement.
A trailer is not considered equipment.
14. **Declarations** means the page that completes this policy by showing your auto(s), the coverages afforded, limits of liability, and other basic information.
15. **Deductible** means the amount of loss to be paid by you when a loss occurs.
16. **Employee(s)** means all persons while employed by you, by family members or by other persons using your auto with your permission, including being transported to and from work, except domestic employees not subject to workers' compensation laws.
17. **Family member(s)** means a person related to you by blood, marriage or adoption who is a resident of your household. This includes a ward or foster child.

18. **Occupying** means having actual physical contact with an auto while in, upon, entering, or alighting from it.
19. **Pedestrian** means a person on foot or while using a wheelchair or a non-motorized bicycle.
20. **Property damage** means damage to or destruction of tangible property.
21. **Sexual harm** means the actual, alleged, threatened, attempted, or coerced involvement in, or witnessing of, verbal or physical sexual molestation, rape, abuse, assault, or harassment.
22. **Trailer(s)** means a vehicle designed to be pulled by a private passenger auto.

TERRITORY

This Territory applies to all policy coverages, extensions, and exclusions. While your policy is in force, the coverage(s) you select apply to auto accidents or covered losses in the United States of America and its territories and possessions, Canada, Puerto Rico or between their ports. This policy does not apply elsewhere.

PART I - LIABILITY COVERAGE

BODILY INJURY LIABILITY COVERAGE PROPERTY DAMAGE LIABILITY COVERAGE

We will:

1. pay for bodily injury and property damage you or any covered persons are legally obligated to pay caused by an accident arising out of the ownership, maintenance or use of your covered auto.
2. use attorneys of our choice to defend suits against you or any covered person for such bodily injury and property damage. We will not defend any suit after we have paid the applicable limit of our liability for the accident, which is the basis of the lawsuit.
3. investigate, negotiate, settle, deny or defend any claim or suit as we consider appropriate.

For the purpose of this coverage, covered person(s) means:

1. you or any family member;
2. any other person using your covered auto with your permission, provided the actual operation or, if he/she is not operating, his or her other actual use thereof is within the scope of such permission.
3. any other person or organization, but only with respect to legal liability imposed on them for the acts or omissions of a person for whom coverage is afforded in 1. or 2. above.

SUPPLEMENTARY PAYMENTS

In addition to our limits of liability, we will pay on behalf of you or any covered person:

1. All of our expenses, including premiums on appeal bonds; all costs taxed against you and other covered persons in any suit; and all interest added to awarded damages, until such damages, falling within our limits of liability, are paid, offered or tendered in court;
2. up to \$250 for the cost of bail bonds required because of an accident, including related traffic law violations. The accident must result in bodily injury or property damage covered under this policy;
3. reasonable expenses you or any covered persons incur at our request, because of attendance at hearings or trials, but not more than \$50 per day for loss of earnings;
4. reasonable expenses you or any covered persons incur for direct first aid to others at the time of an accident which is covered under this policy.

COVERAGE EXTENSIONS FOR PART I

USE OF OTHER AUTOS

When your policy insures a private passenger auto for Bodily Injury and Property Damage Liability Coverage, we will provide those same coverages and limits for the use of certain other private passenger autos:

1. NON-OWNED AUTOS:

We will provide coverage for you and dependent relatives of your household for the use of other private passenger autos. This other autos coverage does not apply to your auto, other autos that are owned by you or members of your household or to autos that are available for the regular use of you or other covered persons.

2. TEMPORARY SUBSTITUTE AUTOS:

You and dependent relatives living in your household have coverage for other private passenger autos not owned by or available for the regular use of you or members of your household, while such other private passenger autos substitute temporarily for your private passenger auto. Your private passenger auto must be out of use because of breakdown, repair, servicing, loss or destruction.

3. ADDITIONAL AUTOS:

When you acquire an additional private passenger auto, liability coverage begins at the time of delivery and continues for thirty (30) consecutive days, or to the termination date of the policy, whichever occurs first, provided that you ask us to insure the additional private passenger auto and pay the premium within this period of time. You must pay any additional premiums resulting from this extension of coverage on or before the date and time shown in any policy termination notice or before policy expiration. This premium must be paid before we can make any claim payment.

4. REPLACEMENT AUTOS:

You have liability coverage for a private passenger auto you acquire as a replacement for one we already insure. You must ask us to insure the replacement private passenger auto within 30 days of you acquiring it. You must pay any additional premiums resulting from this extension of coverage, as of the date you take delivery of the replacement private passenger auto, on or before the date and time shown in any policy termination notice or before policy expiration. This premium must be paid before we can make any claim payment.

THESE COVERAGE EXTENSIONS DO NOT APPLY:

1. to losses that involve the use of an auto in your business or occupation or the business or occupation of a relative living in your household. This exclusion will not apply to a private passenger auto as defined in this policy which is used by you or your employee;
2. to any auto used without the permission of the owner or the person in charge of that auto, or which is stolen or is reasonably known to be stolen;
3. to non-owned autos or temporary substitute autos while used:
 - a. to carry persons or property for a fee or while leased, rented or hired to others without our permission and a premium paid. Shared expense car pools will not be considered carrying persons for a fee;
 - b. in the commission of a felony; or by any person while seeking to elude lawful apprehension or arrest by any law enforcement official;
4. if any premium due is not paid by the termination date and time.

USE OF TRAILERS

Bodily Injury and Property Damage Liability Coverage applies to a trailer or farm machinery used with a private passenger auto described on your Declarations.

This coverage will not apply when the trailer or farm machinery:

1. is used for any business other than farming unless the policy is classified for business use;
2. is used for an office, store, display, demonstration, semi or passenger trailer, home or temporary living quarters.

OUT-OF-STATE COVERAGE

If an auto accident to which this policy applies occurs in any state or province other than the one in which your covered auto is principally garaged, we will interpret your policy for that accident as follows:

1. If the state or province has a financial responsibility or similar law specifying limits of liability for bodily injury or property damage higher than the limit shown in the Declarations, your policy will provide the higher specified limits;

2. This policy does not conform to any requirement by any other state or province as to types and/or amounts of coverages other than bodily injury and property damage liability coverage.
3. We do not provide, and this policy does not conform to, Medical Payments; personal injury protection; accidental death, dismemberment, or disability; or any other similar no fault type coverage requirement in any other state, province, country, territory or political subdivision in excess of our coverage or limits, for anyone.

No one will be entitled to duplicate payments for the same elements of loss.

FINANCIAL RESPONSIBILITY LAW

When certified under any law as proof of future financial responsibility, and while required during the policy period, this policy shall comply with such law to the extent required but not more than our limits of liability for bodily injury or property damage liability coverages.

COVERAGE EXCLUSIONS FOR PART I

We will not provide coverage for:

1. bodily injury or property damage resulting from intentional acts or directions of you or any covered person or acts carried out at the direction of you or any covered person. The expected or unexpected results of these acts are not covered;
2. property damage to property owned by, rented to, in charge of, or transported by you or any covered person. However, we will provide coverage for damage to a residence or private garage rented to you;
3. any person for bodily injury to an employee of that person during the course of employment. This exclusion does not apply to bodily injury to a domestic employee unless workers' compensation benefits are required or available for that domestic employee;
4. bodily injury or property damage for any person protected under a Nuclear Energy Liability Insurance Contract or indemnity coverage, even if the contract has ended upon use of its liability limits, or as a consequence of nuclear reaction, radiation or radioactive contamination;
5. a. The United States of America or any of its agencies;
b. Any person with respect to bodily injury or property damage resulting from the operation of an auto by that person as an employee of the United States Government. This applies only if the provisions of Section 2679 of title 28, United States Code as amended, require the Attorney General of the United States to defend that person in any civil action which may be brought for the bodily injury or property damage.
6. bodily injury or property damage when your private passenger auto is used to carry persons or property for a fee or while leased, rented or hired to others without our permission and a premium paid, for any amount in excess of the required limits of any applicable motor vehicle financial

responsibility law. Shared expense car pools will not be considered carrying persons for a fee;

7. **bodily injury or property damage** resulting from the ownership, maintenance or use of your auto(s) in any business for any amount in excess of the required limits of any applicable motor vehicle financial responsibility law. This exclusion does not apply to the ownership, maintenance or use of your auto by you, a member of your household, partners, agent(s), or anyone employed by you in such a business;
8. **bodily injury or property damage** while any person is using your covered auto without your permission or if any person is using or occupying your covered auto if stolen;
9. **bodily injury or property damage** resulting from the use of any trailer insured under this policy if used with any auto not insured with us for like insurance.
10. **bodily injury or property damage arising from sexual harm** committed in or upon your covered auto by anyone, or caused, instigated, or directed by:
 - a. you or any covered person; or
 - b. your or any covered person's employee or agent;
whether or not such bodily injury or property damage is:
 - (1) intended;
 - (2) expected; or
 - (3) foreseeable;by anyone.
 - c. This exclusion also applies to bodily injury or property damage arising from the negligent:
 - (1) employment, hiring, contracting, and/or retention by anyone of a person who commits sexual harm.
 - (2) investigation of, or reporting or failure to report to the proper authorities, a person:
 - (a) employed;
 - (b) hired;
 - (c) contracted; or
 - (d) retained;by you or any covered person and who commits sexual harm;
 - (3) failure of you or any covered person to seek medical, psychological, or other treatment, rehabilitation, or counseling, to prevent:

(a) involvement in;

(b) instigation of; or

(c) continuation of;

sexual harm by:

1) you or any covered person;

2) your or any covered person's agent; or

3) any person employed, hired, contracted and/or retained by you or any covered person;

(4) supervision of a person who commits sexual harm;

(5) entrustment of a person to any other person who commits sexual harm;

(6) allowing, by anyone, of any other person to be in the presence of any person who commits sexual harm;

(7) failure by anyone to take action to stop any other person from being in the presence of any person who commits sexual harm; including, but not limited to failure to warn such other or any person; and

(8) failure to anyone to prevent the commission of sexual harm.

Paragraphs c. (1), (2), (4), (5), (6), and (7) above also apply to any person who may commit, has committed or is alleged to have committed sexual harm.

11. bodily injury arising out of the actual, alleged, attempted or threatened exposure to or transmission of any communicable disease, bacteria, parasite, virus, other organism, sickness, condition or illness by any covered person, by any insured, by anyone in the insured's employ, by any other person acting on any insured's behalf or at any insured's direction, or by any person seeking coverage.

LIMITS OF LIABILITY AND OTHER INSURANCE

Our obligation to pay bodily injury or property damage liability losses is limited to the Per Person and Per Accident amount shown in your Declarations. The following conditions shall apply:

1. The bodily injury liability limits shown for each person are for all legal damages because of bodily injury to each person from one accident. Subject to the limit for each person, the total limit of our liability shown for any one accident is for all damages suffered by two or more persons.

For property damage liability, the limits shown are for all property damage incurred in one accident and which may be legally recoverable.

2. Subject to the first paragraph of item 1 above, the most we will pay for damages due to bodily injury:

- a. for which any person described in subparagraph (1) or (2) below becomes legally liable to pay is shown on the Declarations page under "Policy Limits - Liability - Bodily Injury", applies only to:
 - (1) you, your family member(s), and others listed on your policy with us; and
 - (2) your employee, but only while your employee is acting within the course and scope of employment with you; and
 - b. for which any covered person not described in subparagraph (1) or (2) above becomes legally liable to pay is the minimum limits of liability for bodily injury required by the applicable state motor vehicle compulsory insurance, financial responsibility or similar law.
3. Subject to the second paragraph of item 1 above., the most we will pay for property damage, including loss of its use:
 - a. for which any person described in subparagraph (1) or (2) below becomes legally liable to pay is shown on the Declarations page under "Policy Limits - Liability - Property Damage", applies only to:
 - (1) you, your family member(s), and others listed on your policy with us; and
 - (2) your employee, but only while your employee is acting within the course and scope of employment with you; and
 - b. for which any covered person not described in subparagraphs (1) or (2) above becomes legally liable to pay is the minimum limit of liability for property damage required by the applicable state motor vehicle compulsory insurance, financial responsibility or similar law.
 4. The limits of liability under all liability coverages, including use of other autos, will not add, stack, pyramid or in any way be increased even if:
 - a. there is more than one auto liability policy issued or applicable to you or any other covered person by us or any other company;
 - b. there is more than one auto on your Declarations and a separate premium charge for each;
 - c. there is more than one covered person against whom a claim is made or suit is brought;
 - d. there is more than one person injured in an auto accident.
 5. An auto and attached trailer are considered one unit for purposes of bodily injury and property damage liability coverage.
 6. For loss involving the use of other autos (which includes non-owned, temporary substitute, additional or replacement autos), or use of trailers, we will pay the insured loss in excess of and not covered by other insurance, provided:
 - a. the limits of our liability will not exceed the highest applicable limits of liability on any one policy written for you by us; and

- b. if there are similar coverages provided by any other company which will apply to the use of other autos or trailers for this loss, then our coverage will be subject to pro rata contribution until the highest applicable limits of liability for any one policy we provide are exhausted.
7. If your covered auto is involved in any covered loss, we will be liable only for our pro rata share of the loss if there is other collectible insurance, which also applies to this loss. Our share is determined by the proportion that our policy limits bear to the total collectible limits available for the loss.

PART II – UNINSURED/UNDERINSURED MOTORIST COVERAGE

UNINSURED MOTORIST COVERAGE

This coverage applies if limits of liability are shown for Uninsured Motorist Coverage on your policy Declarations page or subsequent amendment for the policy term.

We will pay damages for bodily injury or property damage a covered person is legally entitled to collect from the owner or operator of an uninsured motor vehicle. The bodily injury or property damage must be caused by accident arising out of the operation or ownership of the uninsured motor vehicle.

UNDERINSURED MOTORIST COVERAGE

This coverage applies if limits of liability are shown for Underinsured Motorist Coverage on your policy Declarations page or subsequent amendment for the policy term.

We will pay damages for bodily injury or property damage a covered person is legally entitled to collect from the owner or operator of an underinsured motor vehicle. The bodily injury or property damage must be caused by accident arising out of the operation or ownership of the underinsured motor vehicle.

ADDITIONAL DEFINITIONS – AS USED FOR PART II:

1. **Basic limits** means the minimum liability limits required by the South Carolina Financial Responsibility Act for bodily injury and property damage.
2. **Covered person** means:
 - a. you and any family member;
 - b. any other person occupying your covered auto with your permission;
 - c. any legal representative for damages sustained by persons described in a. or b. above, under any wrongful death statute.
3. **Property damage** means injury to or destruction of the property of a covered person.

4. Underinsured motor vehicle means a motor vehicle, the ownership, maintenance or use of which:
 - a. is insured or bonded with limits of liability for bodily injury and property damage at least equal to those required by the South Carolina Financial Responsibility Act, but
 - b. has limits of liability less than the amount of the covered person's damages.
 - c. An underinsured motor vehicle does not include any motor vehicle:
 - (1) owned by any government or any of its political subdivisions or agencies; or
 - (2) while being used as a residence or premises.
5. Uninsured motor vehicle means:
 - a. a motor vehicle, the ownership, maintenance or use of which is:
 - (1) not insured or bonded for bodily injury and property damage liability at the time of the accident; or
 - (2) insured, self-insured or bonded for bodily injury and property damage liability at the time of the accident; but
 - (a) the limits of liability are less than required by the South Carolina Financial Responsibility Act; or
 - (b) the insuring company successfully denies coverage or is, or becomes, insolvent; or
 - b. a motor vehicle as to which there is no deposit of cash or securities in lieu of such bodily injury and property damage liability insurance; or
 - c. a hit-and-run motor vehicle whose operator or operator is unknown and which strikes:
 - (1) a covered person; or
 - (2) the vehicle a covered person is occupying and causes bodily injury to such covered person; or
 - (3) property of a covered person.
 - d. An uninsured motor vehicle does not include any motor vehicle owned by any government or any of its political subdivisions or agencies, when such vehicle is being operated with proper authorization.

LIMITS OF LIABILITY

UNINSURED MOTORIST COVERAGE

1. **Bodily Injury** – the amount of coverage is shown on the Declarations page under Limits of Liability – Uninsured Motorist Coverage – Each Person, Each Accident.

Under Each Person is the amount of coverage for all damages due to **bodily injury** to one person. Under Each Accident is the total amount of coverage, subject to the amount shown under Each Person, for all damages due to **bodily injury** to two or more persons in the same accident.

2. **Property Damage** – the amount of coverage is shown on the Declarations page under Limits of Liability – Uninsured Motorist Coverage – Property Damage, Each Accident. This is the amount of coverage for all property damage as a result of one accident.
3. Any amount payable under this coverage shall be reduced by any amount paid or payable under any workers' compensation, disability benefits or similar law. This does not reduce the limits of liability of this coverage.
4. The most we will pay is the lesser of:
 - a. the difference between:
 - (1) the amount of the covered person's damages; and
 - (2) the amount paid to the covered person by or for any person or organization who is or may be held legally liable for the **bodily injury** or property damage; or
 - b. the limits of liability of this coverage.

LIMITS OF LIABILITY

UNDERINSURED MOTORIST COVERAGE

1. **Bodily Injury** – the amount of coverage is shown on the Declarations page under Limits of Liability – Underinsured Motorist Coverage – Each Person, Each Accident.

Under Each Person is the amount of coverage for all damages due to **bodily injury** to one person. Under Each Accident is the total amount of coverage, subject to the amount shown under Each Person, for all damages due to **bodily injury** to two or more persons in the same accident.

2. **Property Damage** – the amount of coverage is shown on the Declarations page under Limits of Liability – Underinsured Motorist Coverage – Property Damage, Each Accident. This is the amount of coverage for all property damage as a result of the accident.
3. Any amount payable under this coverage shall be reduced by any amount paid or payable under any workers' compensation, disability benefits or similar law. This does not reduce the limits of liability of this coverage.

4. The most we will pay is the lesser of:
 - a. the difference between the amount of the covered person's damages; and
 - (1) the amount paid to the covered person by or for any person or organization who is or may be held legally liable for the bodily injury or property damage; and
 - (2) any applicable uninsured motorist coverage; or
 - b. the limits of liability of this coverage.
5. We will make no payment until:
 - a. the covered person's damages exceed the limits of liability of all applicable:
 - (1) bodily injury liability and property damage liability insurance policies or bonds; or
 - (2) uninsured motor vehicle coverages; and
 - b. the limits of liability that apply to the bodily injury or property damage have been used up by payment of judgments or settlements.

ADDITIONAL LIMITS OF LIABILITY AND OTHER INSURANCE

UNINSURED MOTORIST COVERAGE UNDERINSURED MOTORIST COVERAGE

1. The limits of liability are not increased because more than one motor vehicle or person is insured under this policy.
2. Any amounts otherwise payable for damages under these coverages will be reduced by any amounts paid or payable for the same damages under the liability coverage or physical damage coverage of this policy and by any amounts paid or payable by or on behalf of persons or organizations who may be legally responsible.
3. If you or any family member, while not occupying a motor vehicle, sustains bodily injury or property damage, and uninsured or underinsured motorist coverage from more than one policy issued by us to you or any family member applies to the accident, any amount payable under such policies shall be limited to the coverage on the one motor vehicle with the highest limit.
4. If you or any family member sustains bodily injury or property damage while occupying your covered auto and you or any family member has uninsured or underinsured motorist coverage on another motor vehicle under the policy or under another policy issued by us that applies to the accident, you or any family member may recover the uninsured or underinsured motorist coverage on all other motor vehicles insured under the policy and under all other automobile policies issued by us to you or any family member, but neither you nor any family member may recover

any amount under such coverages that is greater than the amount of uninsured or underinsured motorist coverage on the motor vehicle involved in the accident.

5. If you or any family member sustains bodily injury or property damage while occupying a motor vehicle owned by you or a family member that is insured under another policy not issued by us, you or any family member may recover the uninsured or underinsured motorist coverage on all automobile policies issued by us to you or any family member, but neither you nor any family member may recover any amount under such coverages that is greater than the amount of uninsured or underinsured motorist coverage on the motor vehicle involved in the accident.
6. If you or any family member sustains bodily injury or property damage while occupying a motor vehicle not owned by you or a family member, and uninsured or underinsured motorist coverage from more than one policy issued by us to you or any family member applies to the accident, any amount payable under such policies shall be limited to the amount of coverage on the one motor vehicle with the highest limit.
7. If you or any family member sustains bodily injury or property damage while occupying a motor vehicle owned by you or any family member, and the occupied motor vehicle only has the minimum amount of uninsured motorist coverage required by law, neither you nor any family member may recover any uninsured motorist coverage on any other motor vehicle insured under the policy or under any other policies issued by us to you or any family member that is greater than the minimum amount of uninsured motorist coverage required by law.
8. If you or any family member sustains bodily injury or property damage while occupying a motor vehicle owned by you or any family member and the occupied motor vehicle has no underinsured motorist coverage, neither you nor any family member may recover any underinsured motorist coverage on any other motor vehicle insured under the policy or under any other policies issued by us to you or any family member.
9. If a covered person, other than you or any family member, sustains bodily injury or property damage while occupying your covered auto, he or she is only entitled to recover the uninsured or underinsured motorist coverage on your covered auto. He or she cannot recover any other uninsured or underinsured motorist coverage on any other motor vehicle insured by you or any family member with us or under any other policy issued by us to you or any other family member.
10. No covered person may recover both uninsured and underinsured motorist coverage under this policy for damages arising out of the ownership, operation or use of the same motor vehicle.
11. If you or any family member sustains bodily injury or property damage while occupying a motor vehicle not owned by you or any family member and you or any family member elects to seek uninsured or underinsured motorist coverage under this policy, any uninsured or underinsured motorist coverage available under this policy will be excess

over any policy on the occupied motor vehicle providing uninsured or underinsured motorist coverage.

12. If you or any family member sustains bodily injury or property damage while occupying a motor vehicle owned by you or a family member that is not your covered auto, any uninsured or underinsured motorist coverage available under this policy will be excess over any policy on the occupied motor vehicle providing uninsured or underinsured motorist coverage.
13. If uninsured or underinsured motorist coverage is available to you or any family member under a policy issued by another insurer, we are liable only for our share. Our share is the proportion that the amount of the limits of liability of our policy bears to the total amount of all uninsured and/or underinsured motorist coverage applicable to the accident.

EXCLUSIONS

Under Uninsured Motorist and Underinsured Motorist coverages, we do not provide and there is no coverage:

1. for any covered person who, without our written consent, settles with any person or organization who may be liable for the bodily injury or property damage and thereby impairs our right to recover our payment.
2. for the benefit of:
 - a. any workers' compensation or disability benefits insurance company;
 - b. a self-insurer under any workers' compensation or disability benefits or similar law;
3. for property damage for which the covered person has been paid.
4. for bodily injury or property damage while a covered person, other than you, your spouse or any resident relative, is occupying a motor vehicle other than your covered auto;
5. for bodily injury or property damage resulting from intentional acts of you or any covered person or acts carried out at the direction of you or any covered person. The expected and unexpected results of these acts or directions are not covered;
6. for bodily injury or property damage arising from sexual harm committed in or upon your covered auto by anyone, or caused, instigated, or directed by:
 - a. you or any covered person; or
 - b. your or any covered person's employee or agent;whether or not such bodily injury or property damage is:
 - (1) intended;
 - (2) expected; or
 - (3) foreseeable;

by anyone.

- c. This exclusion also applies to bodily injury or property damage arising from the negligent:

- (1) employment, hiring, contracting, and/or retention by anyone of a person who commits sexual harm.
- (2) investigation of, or reporting or failure to report to the proper authorities, a person:

- (a) employed;
- (b) hired;
- (c) contracted; or
- (d) retained;

by you or any covered person and who commits sexual harm;

- (3) failure of you or any covered person to seek medical, psychological, or other treatment, rehabilitation, or counseling, to prevent:

- (a) involvement in;
- (b) instigation of; or
- (c) continuation of;

sexual harm by:

- 1) you or any covered person;
- 2) your or any covered person's agent; or
- 3) any person employed, hired, contracted and/or retained by you or any covered person;

- (4) supervision of a person who commits sexual harm;
- (5) entrustment of a person to any other person who commits sexual harm;
- (6) allowing, by anyone, of any other person to be in the presence of any person who commits sexual harm;
- (7) failure by anyone to take action to stop any other person from being in the presence of any person who commits sexual harm, including but not limited to failure to warn such other or any person; and
- (8) failure to anyone to prevent the commission of sexual harm.

Paragraphs c. (1), (2), (4), (5), (6), and (7) above also apply to any person who may commit, has committed or is alleged to have committed sexual harm.

7. for the first \$200 of property damage sustained by each covered person in each accident.
8. for bodily injury arising out of the actual, alleged, attempted or threatened exposure to or transmission of any communicable disease, bacteria, parasite, virus, other organism, sickness, condition or illness by any covered person, by any insured, by anyone in the insured's employ, by any other person acting on any insured's behalf or at any insured's direction, by any person seeking coverage; or any other person using any other auto.

CONFORMITY TO STATUTE

This coverage is intended to be in full conformity with the South Carolina Uninsured and/or Underinsured Motorist Law. If any provision of this coverage conflicts with that law, it is changed to comply with the law.

PART III - MEDICAL PAYMENTS COVERAGE

This coverage applies when limits of liability are shown for this coverage on the Declarations page.

We will pay Medical Payments benefits to or for a covered person who sustains bodily injury. The bodily injury must be caused by an accident:

1. resulting from the ownership, maintenance or use of an auto as an auto; or
2. resulting from being struck by any motor vehicle while a pedestrian.

DEATH BENEFITS

We will pay Death Benefits:

1. to or for you or any family member, for death caused by an automobile accident while occupying a motor vehicle, other than:
 - a. motorcycles;
 - b. recreational vehicles or utility vehicles not licensed or required to be licensed for road use; or
2. to or for any employee while occupying your covered auto.
3. to or for you or any family member resulting from being struck by any vehicle while a pedestrian.

We will pay the limit of liability, less any payments otherwise made under this coverage on account of such bodily injury.

The death must be a direct and independent result of such accident, and the death must occur within sixty (60) days of the date of the accident which caused the injury.

ADDITIONAL DEFINITIONS - AS USED FOR PART III:

1. Covered person means:

- a. You or any family member while occupying a motor vehicle other than a motorcycle, recreational vehicle or utility vehicle not licensed or required to be licensed for road use; or while a pedestrian; or
 - b. anyone else who sustains bodily injury only while occupying your covered auto.
2. **Medical Payments** benefits consist of the following:
- a. Medical Expenses, meaning the reasonable and necessary medical expense incurred within one (1) year from the date of the accident for a covered person's care or recovery.
 - b. Funeral Expenses, meaning reasonable funeral and burial expenses incurred.

EXCLUSIONS

We do not provide Medical Payments coverage for bodily injury:

- 1. sustained by anyone:
 - a. who intentionally causes the incident resulting in the injury. The expected or unexpected results of these acts are not covered;
 - b. who drives or uses a motor vehicle without the permission from its owner, or when the vehicle is stolen or is reasonably known to be stolen;
 - c. while participating in any racing, time trial, road rally, or any other motor vehicle event that declares a winner based on speed, time, handling, or endurance, whether organized or not;
 - d. while seeking to elude lawful apprehension or arrest by any law enforcement official; or
 - e. while you, or anyone using your covered auto, are involved in the commission of a felony.
- 2. sustained by any person resulting from the ownership, maintenance or use of an auto while being used as a residence or premises.
- 3. caused by or as a consequence of war, or war-like act whether declared or undeclared.
- 4. from or as a consequence of any nuclear or radioactive occurrence.
- 5. to any person who operates or rides as a passenger upon a motorcycle.
- 6. to any person who is injured while riding, using or occupying a recreational vehicle or utility vehicle not licensed or required to be licensed for road use.
- 7. to you or any family member while occupying or being struck by any auto (other than your covered auto) that is owned by you or any family member.
- 8. arising from sexual harm committed in or upon your covered auto by anyone, or caused, instigated, or directed by:

- a. you or any covered person; or
- b. your or any covered person's employee or agent;
whether or not such bodily injury or property damage is:
 - (1) intended;
 - (2) expected; or
 - (3) foreseeable;
 by anyone.
- c. This exclusion also applies to bodily injury or property damage arising from the negligent:
 - (1) employment, hiring, contracting, and/or retention by anyone of a person who commits sexual harm.
 - (2) investigation of, or reporting or failure to report to the proper authorities, a person:
 - (a) employed;
 - (b) hired;
 - (c) contracted; or
 - (d) retained;
 by you or any covered person and who commits sexual harm;
 - (3) failure of you or any covered person to seek medical, psychological, or other treatment, rehabilitation, or counseling, to prevent:
 - (a) involvement in;
 - (b) instigation of; or
 - (c) continuation of;
 sexual harm by:
 - 1) you or any covered person;
 - 2) your or any covered person's agent; or
 - 3) any person employed, hired, contracted and/or retained by you or any covered person;
 - (4) supervision of a person who commits sexual harm;
 - (5) entrustment of a person to any other person who commits sexual harm;
 - (6) allowing, by anyone, of any other person to be in the presence of any person who commits sexual harm;

(7) failure by anyone to take action to stop any other person from being in the presence of any person who commits sexual harm, including, but not limited to failure to warn such other or any person; and

(8) failure to anyone to prevent the commission of sexual harm.

Paragraphs c. (1), (2), (4), (5), (6), and (7) above also apply to any person who may commit, has committed or is alleged to have committed sexual harm.

9. arising out of the actual, alleged, attempted or threatened exposure to or transmission of any communicable disease, bacteria, parasite, virus, other organism, sickness, condition or illness by any covered person, by any insured, by anyone in the insured's employ, by any other person acting on any insured's behalf or at any insured's direction, or by any person seeking coverage.

LIMITS OF LIABILITY

The limits of liability shown in the Declarations for Medical Payments coverage is our maximum limit of liability for each covered person injured in any one auto accident, provided that covered persons may not collect Medical Payments Coverage from more than one automobile, regardless of the number of:

1. covered persons;
2. claims made;
3. vehicles involved in the accident;
4. vehicles or premiums listed on the Declarations;
5. multiple policies.

In consideration of the premium charged for this coverage, we do not intend Medical Payments Coverage to stack with any other automobile Medical Payments coverage that you may have with this company, or any self-insurer.

Any amount payable under this insurance shall be reduced by any amounts paid or recovered under the Workers' Compensation or similar law of any state or federal government.

CONFORMITY

This Medical Payments coverage does not provide benefits other than those stated in this section, nor does it provide limits above those shown in the latest policy Declarations or amendment. We do not provide, and this policy does not conform to, Medical Payments; personal injury protection; accidental death, dismemberment, or disability; or any other similar no fault type coverage requirement in any other state, province, country, territory or political subdivision in excess of our coverage or limits, for anyone.

DUTIES AFTER AN ACCIDENT

You or someone on your behalf must notify us within six months of how, when and where the accident happened. Notice should also include the names and addresses of any other injured persons and of any witnesses.

A person seeking coverage must:

1. cooperate with us in the investigation or settlement of any claim;
2. submit, at our expense and as often as we reasonably require, to physical examinations by physicians we select;
3. provide and/or authorize us to obtain medical reports and other pertinent records in support of your claim;
4. submit a written proof of claim when required by us;
5. submit to examination under oath, if we require, by a person named by us, and sign any written copy of the same.

PAYMENT PROVISIONS

1. We may pay the insured person or any person or organization rendering the services and such payment shall reduce the amount payable under this coverage for such injury. In the event of death, benefits may be paid by the Company to the surviving spouse, next of kin, or legal representative of the deceased, as we may elect.
2. We will pay covered persons 100% of incurred Medical Payments benefits up to \$1,000.
3. If your Declarations indicate more than \$1,000 for Medical Payments benefits for this coverage, we will pay only you, family members or employees incurred Medical Payments benefits at 80% of the excess above \$1,000 not to exceed the per person limit of liability indicated in the Declarations.
4. If you, any family member, or employee are killed in an automobile accident while utilizing and protected by an air bag and safety belt system, we will double any payable death benefits this coverage provides.
5. Benefits under this policy may not be assigned without our prior written consent.
6. In the event that you or any other payee of Medical Payments benefits has collected or may collect other benefits due from any Federal or State Medicare, Medicaid, veterans or other government program that would seek reimbursement from us, we will not pay you or other payee until we determine that reimbursement will not be required.

DUPLICATION OF BENEFITS

No one will be entitled to duplicate payments for the same elements of loss under this coverage regardless of the number of motor vehicles covered or insurers (including self-insurers).

If there is other applicable automobile Medical Payments insurance, we will pay only our share of the loss. Our share is the proportion that our limits of liability bears to the total of all applicable limits. However, any insurance we provide with respect to a vehicle you do not own shall be excess over any other collectible insurance.

VALIDITY CLAUSE

If a court of competent jurisdiction declares any provision of this coverage invalid, we will have the right to amend that provision to comply with the law and to recompute the premium for this coverage.

PART IV - PHYSICAL DAMAGE COVERAGES

COMPREHENSIVE COVERAGE

We will pay for direct and accidental loss of, or damage to your auto and its covered equipment not caused by collision or upset, but including fire, theft, animal collision and glass breakage. We will pay the actual cash value of loss or damage less any deductible shown on your Declarations. The deductible that applies to safety glass breakage claims will be that deductible that is permitted by law and shown on your Declarations. We will pay reasonable expenses to protect your auto from more damage.

If your auto is stolen we will pay you for transportation expenses. We will pay up to \$15 per day, not to exceed \$300 per occurrence. Payment begins 48 hours after you tell us and the police about the theft. Payment ends when the auto is returned for your use or when we offer to pay you for your loss, whichever occurs first.

COLLISION COVERAGE

We will pay for direct and accidental collision or upset, which causes loss or damage to your auto and its covered equipment. For each accident, we will pay, subject to the limits of liability, the actual cash value of loss or damage less any deductible shown on your Declarations.

EXTENSION OF COLLISION COVERAGE

Emergency Road Service

If your private passenger auto is disabled, we will pay reasonable expenses for:

1. subject to a maximum of \$75, we will pay for delivery of gasoline, oil, battery or tires, but excluding the cost of such items or;
2. subject to a maximum of \$75, we will pay for mechanical labor performed at the place of breakdown or;
3. subject to a maximum of \$75, we will pay for towing to the nearest garage or service station where the necessary repairs can be made if your auto is not driveable.

For each covered Emergency Road Service event, only one of the above benefits (items 1, 2 or 3) will apply. Emergency Road Service coverage is not subject to a deductible.

WAIVER OF DEDUCTIBLE

We will not subtract a deductible for a collision loss when your private passenger auto collides with another private passenger auto insured for liability by us.

This waiver of deductible is subject to a maximum of \$250.

However, your deductible will apply if you collide with another vehicle that you own.

COVERAGE EXTENSIONS FOR COMPREHENSIVE AND/OR COLLISION COVERAGE

USE OF OTHER AUTOS

When your policy insures a private passenger auto for comprehensive and/or collision coverages, we will provide those same coverages for the use of certain other private passenger autos. These extensions of coverage do not include loss from your operation of an auto business.

We will provide coverage for:

1. NON-OWNED AUTOS:

We will provide coverage for you and dependent relatives of your household for the use of other private passenger autos. This other autos coverage does not apply to your auto, other autos that are owned by you or members of your household or to autos that are available for the regular use of you or other covered persons.

2. TEMPORARY SUBSTITUTE AUTOS:

You and dependent relatives living in your household have coverage for other private passenger autos not owned by you or members of your household or available for your regular use, while such private passenger auto(s) substitutes temporarily for your private passenger auto. Your private passenger auto must be out of use because of breakdown, repair, servicing, loss or destruction.

3. ADDITIONAL AUTOS:

When you acquire an additional private passenger auto, comprehensive and/or collision coverage begins at the time of delivery and continues for thirty (30) consecutive days or to the termination date of the policy, whichever occurs first, provided that you ask us to insure the additional private passenger auto and pay the premium within this period of time. You must also pay any additional premiums resulting from this extension of coverage on or before the date and time shown in any policy termination notice or before policy expiration. Any premiums due must be paid before we can make any claim payment.

4. REPLACEMENT AUTOS:-

If the private passenger auto you acquire replaces one we already insure, we will provide the same coverages for the replacement private passenger auto for a period of thirty (30) days following the date of its delivery or to the end of the policy termination date, whichever occurs first. If you want to continue the physical damage coverage, you must notify us within 30 days following the date of its delivery, or before the policy termination date, whichever occurs first, and pay the premium for this extension of coverage. You must pay on or before the date and time shown in any policy termination notice or before policy expiration. Any premiums due must be paid before we can make any claim payment.

CARGO COVERAGE

If we insure your pickup truck for farm use, and if you have either comprehensive or collision coverage, we will pay up to \$250 for damage to feed, seed, fertilizer, pesticides, farm produce and livestock while being hauled in your pickup truck. This coverage is subject to the following provisions:

1. this cargo loss must be a direct result of a covered loss to your pickup truck;
2. the items damaged must be owned by you;
3. this coverage is not subject to a deductible;
4. this coverage does not apply to loss by theft unless your pickup truck is stolen; and
5. we will only pay for loss not covered by other insurance.

COMPREHENSIVE AND COLLISION COVERAGE EXCLUSIONS

We will not pay for loss or damage:

1. if any premium for the coverage(s) has not been paid before the termination date and time. Premiums due must be paid before we can make any claim payment;
2. to a camper or living quarters unit designed to be mounted on or attached to an auto, unless the unit has been reported to us and any required premium paid;
3. caused by wear and tear, freezing, mechanical or electrical breakdown or failure or road damage to tires. This exclusion does not apply if any of the above are the direct result of a loss which is otherwise covered by comprehensive or collision coverage under this policy;
4. to clothes or personal effects;
5. to any private passenger auto while used to carry persons or property for a fee, or while leased, rented or hired to others without our permission. Shared expense car pools will not be considered carrying passengers for a fee;

6. caused from an act of war, or any radioactive contamination, however caused;
7. when your auto is used in preparation for or used in any race or speed contest;
8. when you or any employee intentionally conceals or misrepresents any material fact or circumstance relating to this insurance coverage;
9. when you are driving or using an auto without permission from its owner, or when the auto is stolen or is reasonably known to be stolen;
10. for any radar detection or similar equipment, used to detect or foil enforcement of speed or other traffic laws;
11. while you or anyone using your auto with your permission is involved in the commission of a felony or while seeking to elude lawful apprehension or arrest by any law enforcement official;
12. due to the taking or use of your auto by any governmental authority, its agencies, departments or services;
13. to any auto which is owned by any person or organization in the auto business, if you or the owner has other similar coverage;
14. to any custom equipment or furnishings in or upon any pickup, panel truck, or van. Custom furnishings or equipment include but are not limited to:
 - a. awnings or cabanas; or
 - b. custom murals, painting or other decals or graphics;
 - c. equipment designed to create additional living facilities;
 - d. facilities for cooking and sleeping;
 - e. height-extending roof;
 - f. special carpeting and insulation, furniture, bars.

This exclusion does not apply if the custom equipment or furnishings are specifically endorsed upon the policy and the premium paid for coverage.

15. to any of the following or their accessories for more than a limit of \$1,000:
 - a. citizen band radio;
 - b. two-way mobile radio;
 - c. telephone;
 - d. scanning monitor receiver;
 - e. television receivers and their accessories; or
 - f. computers, including their hardware and/or software.

This exclusion and limit does not apply if the equipment is permanently installed in the console or dash of your covered auto or is endorsed on the

policy. This opening must be normally used by the auto manufacturer for the installation of a radio.

16. to equipment designed for the reproduction of sound for more than a limit of \$1,000. This exclusion and limit does not apply if the equipment is permanently installed in your covered auto in the opening used by the auto manufacturer for the installation of a radio, speakers, or similar equipment; or is endorsed on the policy;
17. to tapes, records or other devices for use with equipment designed for the reproduction of sound;
18. caused by or resulting from the atmospheric condition known as acid rain;
19. caused by any intentional acts by or at the direction of you or any covered person. The expected or unexpected results of these acts are not covered.
20. due to any inherent loss in value, regardless of the reason(s) for such loss in value, of your covered auto(s) or covered equipment;
21. due to any diminished value, regardless of the reason(s) for such diminished value, in the repair of your covered auto(s) or covered equipment;

LIMITS OF LIABILITY

Our duty to pay for comprehensive or collision loss is limited to the actual cash value of the auto or its damaged parts at the time of loss.

Actual cash value will include consideration of fair market value, age and condition of the item in question at the time of loss. We may at our option pay you directly for a loss or repair or replace the auto or its damaged part(s) with like kind and quality, including used or non OEM parts (non OEM parts are those produced by someone other than the Original Equipment Manufacturer). However, we are not required to:

1. return your covered auto(s) or covered equipment to pre-accident market value; or
2. restore, alter, or replace undamaged property or parts, unless required for the safe operation of the vehicle.

If your stolen property is recovered prior to any loss settlement, we may return the property at our expense. We will pay for any damage because of the theft.

OTHER INSURANCE

When there is other insurance for any loss to which this coverage applies, we will pay for only our proportional share of the loss. Our share is determined by the proportion that our coverage bears to the total insurance collectible for the loss.

For losses involving the use of non-owned, temporary substitute, additional or replacement autos, we will pay the insured loss not covered by other insurance.

APPRAISAL

If we and you do not agree on the amount of loss, either may demand an appraisal of the loss. In this event, each party will select a competent appraiser. The two appraisers will select an umpire.

The appraisers will state separately the actual cash value and the amount of loss. If they fail to agree, they will submit their differences to the umpire. The decision agreed upon by any two will be binding. Each party will:

1. pay its chosen appraiser; and
2. bear the expenses of the appraisal and umpire equally.

We do not waive any of our rights under this policy by agreeing to an appraisal.

PART V – GENERAL POLICY CONDITIONS

We, you and any covered person must comply with certain conditions in order for the policy to apply. The following are policy conditions:

1. Abandonment of Property.

We will not accept any property abandoned by you.

2. Assignability or Transfer of Your Interest in this Policy.

Your rights, duties and coverage under this policy may not be assigned without our written consent. However, if a named insured shown in the Declarations dies, coverage will be provided for:

- a. the surviving spouse if a resident in the same household at the time of death. Coverage applies to the spouse as if a named insured shown in the Declarations; or
- b. the legal representative of the deceased person as if a named insured shown in the Declarations. This applies only with respect to the representative's legal responsibility to maintain or use your covered auto.

Coverage will only be provided until the end of the policy period.

3. Changes.

- a. The premium is based on information we have received from you and other sources. You agree to cooperate with us in determining if this information is correct and complete. You agree that if this information changes, or is incorrect or incomplete, we may adjust your premiums accordingly during the policy period.
- b. If during the policy period the risk exposure changes for any of the following reasons, the necessary premium adjustments will be made effective the date of change in exposure. You agree to give us notice of such exposure changes as soon as is reasonably possible for:

- (1) Change in location where any vehicle is garaged;

- (2) Change, addition, or deletion relating to the description, equipment, purchase date, registration, cost, usage, miles driven to or from work or school, business or farm use, or operators of any vehicle;
- (3) Replacement, deletion, or newly acquired auto. You must request coverage for a newly acquired auto within 30 days from the date the auto is acquired and pay any premiums by the policy termination date and time if you wish to continue any coverage;
- (4) Change, addition, or deletion relating to the date of birth, marital status, driving record or driving license status of any operator;
- (5) Addition or deletion of an operator;
- (6) Change, addition, or deletion of any coverage or limits.

4. Changing Policy Provisions.

A change of any provision of this policy must be in writing by us and be shown on an endorsement or successive Declarations to be valid.

5. Conformity to Statutes.

If any of the terms or conditions of your policy conflict either with existing laws or with laws as amended or enacted by the State of South Carolina, we will interpret your policy in conformity to such laws.

6. Declarations.

By accepting this policy, you agree that the statements in the applications, Declarations, or change forms are your agreements and representations.

This policy is issued in reliance upon the truth of your representations. It contains all agreements existing between you and us.

7. Duties After Loss.

You, any covered person, or any person or organization seeking coverage must:

- a. immediately notify the appropriate law enforcement authority in the event of bodily injury or damage to property, the theft of your covered auto, or injury or damage if it is reasonable that a crime was committed;
- b. promptly give us or our agent written notice of all accidents, occurrences and losses as soon as possible;
- c. immediately deliver to us each and every document, notice, demand, summons, complaint or any other document(s) received relating to any alleged claim, accident, occurrence, bodily injury or property damage, however caused;
- d. cooperate with us in the investigation, settlement or defense of any claim or suit;

- e. take reasonable steps after loss to protect your covered auto and its equipment from further loss. We will pay reasonable expenses incurred to do this;
- f. permit us to inspect and appraise your covered auto or other damaged property after loss before its repair or disposal, and thereafter as often as we may require;
- g. provide all records, receipts, invoices or certified copies thereof to support your claim;
- h. submit a sworn statement and proof of loss, completed fully and stating the amount of any claim, when required by us;
- i. submit, separate and apart from any other insured or covered person, to examination under oath, if we require, by any person named by us, and sign any written copy of the same;
- j. attempt to identify the vehicle and operator of any other vehicles which strike you or your covered auto.

8. Excluded Driver.

When your policy is endorsed to exclude any person as a driver, none of the coverages under this policy will be in force when any such excluded driver operates any motor vehicle.

- 9. Fair Credit Reporting Act Statement.** At our option, we may conduct a credit investigation or obtain credit information on you, any insured or future insured, under this policy. This report will be used for underwriting purposes to determine if an offer of coverage will be made; if coverage may continue; or to determine rates, terms, or any other condition.

10. Grace Period.

This grace period applies only to the premium due at the renewal inception date and does not apply to any payments due as part of any installment or premium finance plan, nor any additional premium due to a policy change.

If your premium due for renewal is received by the Company within 15 days, exclusive of the due date, your policy will provide continuous protection without a lapse in coverage. After 15 days, the policy is expired on its own terms as of the expiration date, and an application for a new policy may be required.

11. Liberalization.

You will automatically have the benefit of any extension or broadening of coverage in this policy, as of the effective date of the change, provided it does not require additional premium.

- 12. Misrepresentation.** We do not provide coverage for any covered person, as defined in this policy, who has knowingly concealed or misrepresented any material fact or circumstance relating to this insurance:

- a. at the time application was made; or

- b. at any time during the policy period; or
 - c. in connection with the presentation or settlement of a claim.
13. **No Benefit to Bailee.**
- This insurance shall not directly or indirectly benefit any carrier or other bailee for hire.
14. **Our Right to Recover Payment.**
- If we make a payment under this policy and the person or organization to or for whom payment was made has a right to recover damages from another, we shall be subrogated to that right. That person or organization shall:
- a. do whatever is necessary to enable us to exercise our rights; and
 - b. do nothing after loss to prejudice them; and
 - c. reimburse us to the extent of our payment if such person or organization has made recovery from another person or party responsible for the loss; and
 - d. be required to reimburse us if any settlement or judgment duplicates our payments.
- These provisions will be applied according to state law.
15. **Policy Period and Premium Payments.**
- Your Declarations or renewal certificate will show the policy period. Unless canceled, this policy may be renewed at our option if the required premium is paid by you and accepted by us. Failure to pay before the date and time of policy termination or policy expiration will end coverage. If your policy does expire and you send a later payment of the required premium, we may reinstate at our option. We will determine the effective date and time of the new policy and the coverages and limits we will provide. However, a new application may be required. If we reinstate, a new or additional premium may be required. A new policy period is then established.
- If, while this policy is in force, you request any change in your policy or if your policy is changed by us, any premium difference will be transacted as follows:
- a. refunds, if any, will either be returned to you or applied as a credit to your existing policy;
 - b. additional premium due, if any, on any existing policy will be billed to you and you will be required to pay such additional premium on or before the date and time of policy termination or policy expiration.
16. **Prejudgment Interest.**
- This policy does not pay any prejudgment interest for any coverages.
17. **Suit Against the Company.**

You may not bring legal action against us on any of the coverages provided in this policy until you comply with all terms of this policy.

No legal action may be brought by you or any covered person against us under the liability coverage until the amount of damages you are legally liable to pay has been finally determined by:

- a. a judgment after actual trial and appeal if any; or
- b. agreement between you, the claimant and us.

No one can make us a party to any suit to determine our liability:

- a. under Medical Payments coverage, until thirty (30) days after we get proof of claim and the amount of loss is determined by the terms of this policy.
- b. under Physical Damage Coverages until thirty (30) days after we get proof of claim and the amount of loss is determined by the terms of this policy.

18. Termination.

- a. Cancellation. This policy may be canceled during the policy period as follows:

- (1) During the first 60 days this policy is in effect, this policy may be canceled only if:

- (a) A check or bank draft tendered for payment of premium is returned unpaid for insufficient funds or other reasons by the financial institution. If we cancel for this reason, we will cancel by mailing notice to the named insured shown in the Declarations at the address shown in this policy at least 15 days prior to the date on which cancellation is to take effect or;

- (b) Proof is furnished from the Department of Motor Vehicles that:

- 1) your covered auto shown in the Declarations has been sold or otherwise disposed of; or
- 2) the tags and registration of your covered auto shown in the Declarations have been surrendered.

- (2) If this policy has been in effect for more than 60 days, you may cancel by:

- (a) returning this policy to us; or
- (b) giving us advance written notice of the date cancellation is to take effect.

- (3) If this policy has been in effect for more than 60 days but not more than 90 days, we may cancel by mailing notice to the named insured shown in the Declarations at the address shown

in this policy at least 15 days prior to the date on which cancellation is to take effect.

- (4) If this policy has been in effect for more than 90 days, we may cancel by mailing notice to the named insured at the address shown in the Declarations at the address shown in this policy at least 15 days prior to the date on which cancellation is to take effect, only if:

- (a) the named insured or any other operator who either resides in the same household or customarily operates a motor vehicle insured under this policy has had his or her driver's license suspended or revoked during the policy period or, if the policy is a renewal, during its policy period or the ninety days immediately preceding the last anniversary of the effective date; or
- (b) The named insured fails to pay the premium for the policy or any installment of the premium, whether payable to the insurer or its agent either directly or indirectly under any premium finance plan or extension of credit; or
- (c) Membership in your local county Farm Bureau agricultural organization is not maintained.
- (d) for any other reason lawfully permitted.

- b. Nonrenewal. If we decide not to renew or continue this policy, we will mail notice to the named insured at the address shown in the Declarations of this policy. Notice will be mailed at least 15 days before the end of the policy period. We may non-renew or refuse to continue this policy for the following reasons:

- (1) there exists a valid and enforceable judgment against the named insured shown in the Declarations or any principal operator who is a member of the insured's household for failure to pay when due any payment of automobile premium. This does not apply if the named insured shown in the Declarations pays the entire premium for the renewal or continuation policy in advance; or
- (2) the named insured or any other operator who either resides in the same household or customarily operates a motor vehicle insured under this policy has had his or her driver's license suspended or revoked during the policy period or, if the policy is a renewal, during its policy period or the ninety days immediately preceding the last anniversary of the effective date; or
- (3) for failure to maintain membership in your local county Farm Bureau agricultural organization; or
- (4) for any other reason lawfully permitted.

- c. Automatic Termination. If we offer to renew or continue and you or your representative do not accept, this policy will automatically terminate at the end of the current policy period. Failure to pay the

required renewal or continuation premium when due shall mean that you have not accepted our offer.

If you obtain other insurance on your covered auto, any similar insurance provided by this policy will terminate as to that auto on the effective date of the other insurance.

d. Other Termination Provisions.

- (1) We may deliver any notice instead of mailing it. Proof of mailing of any notice shall be sufficient proof of notice.
- (2) If this policy is canceled, you may be entitled to a premium refund. If so, we will send you the refund. The premium refund, if any, will be computed according to our manuals and as of the date of cancellation. However, making or offering to make the refund is not a condition of cancellation.
- (3) The effective date and time of cancellation stated in the notice shall become the end of the policy period.

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MUTUAL COMPANY CONDITIONS

(Applies only to South Carolina Farm Bureau Mutual Insurance Company)

This policy is issued by a mutual company having special regulations lawfully applicable to its organizations, membership, policies or contracts of insurance, of which the following shall apply to and form a part of this policy:

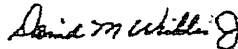
By virtue of this policy, the policyholder is a member of the Company and is entitled to vote, in person or by proxy, at all meetings of the members of the Company.

The policyholder shall participate in the return of unused premiums (dividends) to the extent and on the conditions determined, fixed and declared by the Board of Directors in accordance with the law.

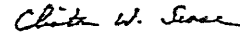
This policy is nonassessable. The holder of this policy is not subject to any contingent liability nor liability to assessment.

The insured is hereby notified that by virtue of this policy he is a member of the South Carolina Farm Bureau Mutual Insurance Company and that the bylaws of the Company fix the annual meeting at 12:00 o'clock Noon on the last Thursday in October of each year at the Company's Home Office.

IN WITNESS WHEREOF, this Company has executed and attested these presents; but this policy shall not be valid unless countersigned by the duly authorized Agent of this Company.



President



Secretary

PARTICIPATING CONDITIONS

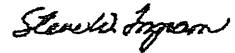
For Policies Issued in Southern Farm Bureau
Casualty Insurance Company Only.

While this policy is in force, the named insured is entitled to share in the distributable net earnings and savings of the Company in accordance with the dividends declared by the Board of Directors on this and like policies.

IN WITNESS WHEREOF, THE COMPANY has caused this policy to be signed by its President and Secretary and countersigned on the Declarations page by a duly authorized representative of the Company.



President - CEO



Secretary

LOSS PAYABLE ENDORSEMENT

If a lienholder is named in the Declarations, the following conditions apply in respect to Comprehensive Coverage and Collision Coverage.

"Loss or damage, if any, under the policy shall be payable as provided in the policy and this insurance as to the interest of the Bailment Lessor, Conditional Vendor or Mortgagee or Assignee of Bailment Lessor, Conditional Vendor or Mortgagee (herein called the Lienholder) shall not be invalidated by any act or neglect of the Lessee, Mortgagor or Owner of the within described automobile nor by any change in the title or ownership of the property; provided, however, that the conversion, embezzlement or secretion by the Lessee, Mortgagor or Purchaser in possession of the property insured under a bailment lease, conditional sale, mortgage or other encumbrance is not covered under such policy, unless specifically insured against and premium paid therefore; and provide, also, that in case the Lessee, Mortgagor or Owner shall neglect to pay any premium due under such policy the Lienholder shall, on demand, pay the same.

"Provided also, that the Lienholder shall notify the Company of any change of ownership or increase of hazard which shall come to the knowledge of said Lienholder and, unless permitted by such policy, it shall be noted thereon and the Lienholder shall, on demand, pay the premium for such increased hazard for the term of the use thereof; otherwise such policy shall be null and void.

"The Company reserves the right to cancel such policy at any time as provided by its terms, but in such case the Company shall notify the Lienholder when not less than 10 days thereafter such cancellation shall be effective as to the interest of said Lienholder therein and the Company shall have the right, on like notice, to cancel this agreement.

"If the insured fails to render proof of loss within the time granted in the policy conditions, such Lienholder shall do so within 60 days thereafter, in form and manner as provided by the policy, and, further, shall be subject to the provisions of the policy relating to appraisal and time of payment and of bringing suit.

"Whenever the Company shall pay the Lienholder any sum for loss or damage under such policy and shall claim that, as to the Lessee, Mortgagor or Owner, no liability therefore existed, the Company shall, to the extent of such payment, be thereupon legally subrogated to all rights of the party to whom such payment shall be made, under all securities held as collateral to the debt, or may at its option, pay to the Lienholder the whole principal due or to grow due on the mortgage with interest, and shall thereupon receive a full assignment and transfer of the mortgage and of all such other securities; but no subrogation shall impair the right of the Lienholder to recover the full amount of its claim.

"Nothing herein contained shall be held to vary, alter, waive, or extend any of the terms, conditions, agreements or limitations of such policy, other than as above stated."

STATEMENT REQUIRED BY STATUTE

No new policy or original premium notice of insurance covering liability arising out of the ownership, maintenance, or use of a motor vehicle may be issued or delivered unless it contains the following statement printed in boldface type, or unless the statement is attached to the front of or is enclosed with the policy or premium notice.

IMPORTANT NOTICE

In addition to the insurance coverage required by law to protect you against a loss caused by an uninsured motorist, if you have purchased liability insurance coverage that is higher than that required by law to protect you against liability arising out of the ownership, maintenance, or use of the motor vehicles covered by this policy, and you have not already purchased uninsured motorist insurance coverage equal to your liability insurance coverage:

- (1) your uninsured and underinsured motorist insurance coverage has increased to the limits of your liability coverage and this increase will cost you an extra premium charge; and
- (2) your total premium charge for your motor vehicle insurance coverage will increase if you do not notify your agent or insurer of your desire to reduce coverage within twenty days of the mailing of the policy or the premium notice, as the case may be;
- (3) If this is a new policy and you have already signed a written rejection of such higher limits in connection with it, paragraphs (1) and (2) of this notice do not apply.

After 20 days, the insurer is relieved of the obligation imposed by this subsection to attach or imprint the foregoing statement to any subsequently delivered renewal policy, extension certificate, other written statement of coverage continuation, or to any subsequently mailed premium notice.

South Carolina Code of Laws

Section 38-77-141, Act 154 of 1997.



Tel: 1-800-841-3000

Declarations Page

This is a description of your coverage
Please retain for your records

GOVERNMENT EMPLOYEES INSURANCE COMPANY
One GEICO Center
Macon, GA 31295-0001

Date Issued: November 7, 2012

Policy Number: [REDACTED]

Coverage Period:

12-16-12 through 06-16-13

12:01 a.m. local time at the address of the named insured

KEVIN DUKE AND SANDRA DUKE
[REDACTED]
LITTLE RIVER SC 29566-7855

Endorsement Effective: 12-16-12

Email Address: kduke1@sc.rr.com

Named Insured

Kevin Duke
Sandra Duke

Additional Drivers

None

<u>Vehicles</u>	<u>VIN</u>	<u>Vehicle Location</u>	<u>Finance Company/ Lienholder</u>
1 2005 BMW	530I	WBANA73505B816203 Little River SC 29566	
2 2005 Chev	Corvette	1G1YY34U555100107 Little River SC 29566	Wells Fargo Dealer Svcs
3 2000 BMW	323I	WBAAM3345YFP81435 Little River SC 29566	

<u>Coverages*</u>	<u>Limits and/or Deductibles</u>	<u>Vehicle 1</u>	<u>Vehicle 2</u>	<u>Vehicle 3</u>
Bodily Injury Liability				
Each Person/Each Occurrence	\$25,000/\$50,000	\$65.70	\$56.70	\$55.60
Property Damage Liability	\$25,000	\$41.80	\$36.10	\$37.40
Uninsured Motorists Bodily Injury				
Each Person/Each Occurrence	\$25,000/\$50,000	\$14.90	\$20.50	\$20.50
Property Damage	\$25,000	\$2.90	\$2.90	\$2.90
Underinsured Motorist Bodily Injury	\$25,000/\$50,000	\$19.10	\$28.30	\$28.30
Each Person/Each Occurrence				
Property Damage	\$25,000	\$1.20	\$1.20	\$1.20
Comprehensive	\$500 Ded	\$94.10	\$101.70	\$61.90
Collision	\$500 Ded	\$96.50	\$83.30	\$51.20

Six Month Premium Per Vehicle \$336.20 \$330.70 \$259.00

Total Six Month Premium \$925.90

*Coverage applies where a premium or \$0.00 is shown for a vehicle.

If you elect to pay your premium in installments, you may be subject to an additional fee for each installment. The fee amount will be shown on your billing statements and is subject to change.

Discounts

The total value of your discounts is	\$383.00
Multi-Car (Veh 1, 2, 3)	\$223.70
Anti-Lock Brakes (Veh 1, 2, 3)	\$11.90
Anti-Theft Device (Veh 1, 2, 3)	\$13.40
5 Year Good Driving (Veh 1, 2, 3).....	\$134.00

Contract Type: A30SC

Contract Amendments: ALL VEHICLES - A30SC A54SC

Unit Endorsements: A347 (VEH 1,2,3); U99 (VEH 2); UE316 (VEH 2)

Important Policy Information

- Please review the front and/or back of this page for your coverage and discount information.
- Your 2005 GMC has been replaced by the 2000 BMW.
- This adjustment is effective 11/7/2012.

GEICO

ONE GEICO PLAZA
Washington, D. C. 20076-0001
Telephone: 1-800-841-3000

**South Carolina
Family
Automobile
Insurance
Policy**

- Government Employees Insurance Company
- GEICO Casualty Company
- GEICO Indemnity Company



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Whenever, "he," "his," "him," "himself" appears in this policy, you may read "she," "her," "hers" or "herself."

AGREEMENT

We, the Company named in the declarations attached to this policy, make this agreement with **you**, the policyholder. Relying on the information **you** have furnished and the declarations attached to this policy and if **you** pay **your** premium when due, we will do the following:

SECTION I

Liability Coverages

Your Protection Against Claims From Others

Bodily Injury Liability
Property Damage Liability

DEFINITIONS

The words italicized in Section I of this policy are defined below.

1. **"Auto business"** means the business of selling, repairing, servicing, storing, transporting or parking of autos.
2. **"Bodily injury"** means bodily injury to a person, including resulting sickness, disease or death.
3. **"Farm auto"** means:
 - (a) a private passenger or station wagon type auto; or
 - (b) a motor vehicle with a pick-up body; or
 - (c) a delivery sedan or panel truck

which is principally garaged on a farm or ranch and which is not used for business, professional or commercial purposes other than:

 - (a) farming or ranching; or
 - (b) driving to and from work.
4. **"Insured"** means a person or organization described under PERSONS INSURED.
5. **"Non-owned auto"** means an automobile or **trailer** not owned by or furnished for the regular use of either **you** or a **relative**, other than a **temporary substitute auto**. An auto rented or leased for more than 30 days will be considered as furnished for regular use.
6. **"Owned auto"** means:
 - (a) a vehicle described in this policy for which a premium charge is shown for these coverages;
 - (b) a **trailer** owned by **you**;
 - (c) a **private passenger, farm** or **utility auto**, ownership of which **you** acquire during the policy period or for which **you** enter into a lease during

the policy period for a term of six months or more, if:

- (i) it replaces an **owned auto** as defined in (a) above; or
- (ii) we insure all **private passenger, farm** and **utility autos** owned or leased by **you** on the date of the acquisition, and **you** ask us to add it to the policy no more than 30 days later;

(d) a **temporary substitute auto**.

7. **"Private passenger auto"** means the following types of motor vehicles owned by or leased under a long term contract by an individual or individuals:

- (a) a motor vehicle of the private passenger type or station wagon type; or
- (b) a **utility auto**; or
- (c) a motor home

which is not used in the occupation, profession or business of the **insured** other than farming or ranching.

A motor vehicle is not considered owned by or leased under a long-term contract by an individual or individuals if the motor vehicle is owned by a partnership or corporation, unless the motor vehicle is owned by a farm family co-partnership or a farm family corporation and is garaged principally on a farm or ranch.

8. **"Relative"** means a person related to **you** who resides in **your** household.

9. **"Temporary substitute auto"** means an automobile or **trailer**, not owned by **you**, temporarily used with the permission of the owner. This vehicle must be used as a substitute for the **owned auto** or **trailer** when withdrawn from normal use because of its breakdown, repair, servicing, loss or destruction.

10. **"Trailer"** means a trailer designed to be towed by a **private passenger auto**, if not being used for business or commercial purposes with a vehicle other than a **private passenger, farm** or **utility auto**.

11. **"Utility auto"** means:

- (a) a motor vehicle with a pick-up body; or
- (b) van, delivery sedan or panel truck

which is not used for business, professional or commercial purposes other than:

- (i) farming or ranching; or
- (ii) driving to and from work.

12. **"War"** means armed conflict between nations, whether or not declared, civil war, insurrection, rebellion or revolution.

13. **"You"** means the policyholder named in the declarations and his or her spouse if a resident of the same household.

LOSSES WE WILL PAY FOR YOU UNDER SECTION I

Under Section I, we will pay damages which an **insured** becomes legally obligated to pay because of:

1. **bodily injury**, sustained by a person; and

2. damage to or destruction of property;

arising out of the ownership, maintenance or use of the **owned auto** or a **non - owned auto**.

We will defend any suit for damages payable under the terms of this policy. We may investigate and settle any claim or suit. Our duty to settle or defend ends when our limit of liability for this coverage has been exhausted.

ADDITIONAL PAYMENTS WE WILL MAKE UNDER THE LIABILITY COVERAGES

1. All investigative and legal costs incurred by us.

2. All court costs charged to an **insured** in a covered law suit.

3. All interest accruing after entry of judgment on that amount of a judgment which represents our limit of liability until we have paid, offered or deposited in court that part of the judgment not exceeding the limit of our liability.

4. Premiums for appeal bonds in a suit we appeal, or premiums for bonds to release attachments; but the face amount of these bonds may not exceed the applicable limit of our liability.

5. Premiums for bail bonds paid by an **insured** due to traffic law violations arising out of the use of an insured auto, not to exceed \$250 per bail bond.

6. Costs incurred by any **insured** for first aid to others at the time of an accident involving an insured auto.

7. Loss of earnings up to \$50 a day, but not other income, if we request an **insured** to attend hearings and trials.

8. All reasonable costs incurred by an **insured** at our request.

EXCLUSIONS

When Section I Does Not Apply

We will not defend any suit for damage if one or more of the exclusions listed below applies. We do not provide liability coverage, under Exclusions 1, 2, 3 and 8, in excess of the minimum limits of liability required by South Carolina law. We do not provide any liability coverage for the remaining Exclusions.

1. **Bodily injury** to any **insured** or any **relative** of an **insured** residing in his household is not covered.

2. Section I does not apply to any vehicle used to carry passengers or goods for hire. However, a vehicle used in an ordinary car pool on a ride sharing or cost sharing basis is covered.

3. **Bodily injury** or property damage caused intentionally by or at the direction of an **insured** is not covered.

4. We do not cover **bodily injury** or property damage that is insured under a nuclear liability policy.

5. **Bodily injury** or property damage arising from the operation of farm machinery is not covered.

6. **Bodily injury** to an employee of an **insured** arising out of and in the course of employment by an **insured** is not covered.

However, **bodily injury** of a domestic employee of the **insured** is covered unless benefits are payable or are required to be provided under a workers' or workmen's compensation law.

7. We do not cover **bodily injury** to a fellow employee of an **insured** if the fellow employee's **bodily injury** arises from the use of an auto while in the course of employment and if workers' compensation or other similar coverage is available. We will defend **you** if suit is brought by a fellow employee against **you** alleging use, ownership or maintenance of an auto by **you**.

8. We do not cover an **owned auto** while used by a person (other than **you** or a **relative**) when he is employed or otherwise engaged in the **auto business**.

9. A **non - owned auto** while maintained or used by any person is not covered while such person is employed or otherwise engaged in (1) any **auto business** if the accident arises out of that business; (2) any other business or occupation of any **insured** if the accident arises out of that business or occupation, except a **private passenger auto** used by **you** or **your** chauffeur or domestic servant while engaged in such other business.

10. We do not cover damage to:

- (a) property owned, operated or transported by an **insured**; or
- (b) property rented to or in charge of an **insured** other than a residence or private garage.

11. We do not cover an auto acquired by **you** during the policy term, if **you** have purchased other liability insurance for it.

12. We do not cover:

- (a) the United States of America or any of its agencies;
- (b) any person, including **you**, if protection is afforded under the provisions of the Federal Tort Claims Act.

PERSONS INSURED

Who Is Covered

Section I applies to the following as **insureds** with regard to an **owned auto**:

1. **you** and **your relatives**;
2. any other person driving the auto with **your** permission and within the actual scope of **your** permission;
3. any other person or organization for his or its liability because of acts or omissions of an **insured** under 1. or 2. above.

Section I applies to the following with regard to a **non - owned auto**:

1. (a) **you**;
- (b) **your relatives** when driving a **private passenger auto, farm auto or utility auto** or towing a **trailer**.

Such operation by **you** or **your relatives** must be with the permission, or reasonably believed to be with the permission, of the owner and within the scope of that permission;

2. any other person or organization, not owning or hiring the auto, regarding his or its liability because of acts or omissions of an **insured** under 1. above.

The limits of liability stated in the declarations are our maximum obligations regardless of the number of **insureds** involved in the occurrence.

FINANCIAL RESPONSIBILITY LAWS

When this policy is certified as proof of financial responsibility for the future under the provisions of a motor vehicle financial responsibility law, this liability insurance will comply with the provisions of that law. The **insured** agrees to reimburse us for payments made by us

which we would not have had to make except for this agreement.

OUT OF STATE INSURANCE

When the policy applies to the operation of a motor vehicle outside of **your** state, we agree to increase **your** coverages to the extent required of out-of-state motorists by local law. This additional coverage will be reduced to the extent that **you** are protected by another insurance policy. No person can be paid more than once for any item of loss.

LIMITS OF LIABILITY

Regardless of the number of autos or **trailers** to which this policy applies; and regardless of the number of **owned autos** or **non - owned autos** involved in the occurrence, the most we will pay for damages resulting from any one occurrence is the bodily injury limit of liability, or property damage limit of liability, as appropriate, assigned to the **owned auto** or **non - owned auto** involved in the occurrence.

1. The limit of bodily injury liability stated in the declarations as applicable to "each person" is the limit of our liability for all damages, including damages for care and loss of services, because of **bodily injury** sustained by one person as the result of one occurrence.

2. The limit of such liability stated in the declarations as applicable to "each occurrence" is, subject to the above provision respecting each person, the total limit of our liability for all such damages, including damages for care and loss of services, because of **bodily injury** sustained by two or more persons as the result of any one occurrence.

3. The limit of property damage liability stated in the declarations as applicable to "each occurrence" is the total limit of our liability for all damages because of injury to or destruction of the property of one or more persons or organizations, including the loss of use of the property as the result of any one occurrence.

OTHER INSURANCE

If the **insured** has other insurance against a loss covered by Section I of this policy, we will not owe more than our pro-rata share of the total coverage available.

Any insurance we provide for losses arising out of the ownership, maintenance or use of a vehicle **you** do not own shall be excess over any other valid and collectible insurance.

CONDITIONS

The following conditions apply to Section I:

1. NOTICE

As soon as possible after an occurrence, written notice must be given us or our authorized agent stating:

- (a) the identity of the **insured** ;
- (b) the time, place and details of the occurrence,
- (c) the names and addresses of the injured, and of any witnesses; and
- (d) the names of the owners and the description and location of any damaged property.

If a claim or suit is brought against an **insured** , he must promptly send us each demand, notice, summons or other process received.

2. TWO OR MORE AUTOS

If this policy covers two or more autos, the limit of coverage applies separately to each. An auto and an attached **trailer** are considered to be one auto.

3. ASSISTANCE AND COOPERATION OF THE INSURED

The **insured** will cooperate and assist us, if requested:

- (a) in the investigation of the occurrence;
- (b) in making settlements;
- (c) in the conduct of suits;
- (d) in enforcing any right of contribution or indemnity against any legally responsible person or organization because of **bodily injury** or property damage;
- (e) at trials and hearings;
- (f) in securing and giving evidence; and
- (g) by obtaining the attendance of witnesses.

Only at his own cost will the **insured** make a payment, assume any obligation or incur any cost other than for first aid to others.

4. ACTION AGAINST US

No suit will lie against us:

- (a) unless the **insured** has fully complied with all the policy's terms and conditions, and
- (b) until the amount of the **insured's** obligation to pay has been finally determined, either:
 - (i) by a final judgment against the **insured** after actual trial; or
 - (ii) by written agreement of the **insured** , the claimant and us.

A person or organization or the legal representative of either, who secures a judgment or written agreement, may then sue to recover up to the policy limits.

No person or organization, including the **insured** , has a right under this policy to make us a defendant in an action to determine the **insured's** liability.

Bankruptcy or insolvency of the **insured** or his estate will not relieve us of our obligations.

5. SUBROGATION

When payment is made under this policy, we will be subrogated to all the **insured's** rights of recovery against others. The **insured** will help us to enforce these rights. The **insured** will do nothing after loss to prejudice these rights.

This means we will have the right to sue for or otherwise recover the loss from anyone else who may be held responsible.

SECTION II

Auto Medical Payments

Protection For You And Your Passengers For Medical Expenses

DEFINITIONS

The definitions of terms shown under Section I apply to this Coverage. In addition, under this Coverage, **occupying** means in or upon or entering into or alighting from.

PAYMENTS WE WILL MAKE

Under this Coverage, we will pay all reasonable expenses actually incurred by an **insured** within one year from the date of accident for necessary medical, surgical, x-ray, dental services, prosthetic devices, ambulance, hospital, professional nursing and funeral services. The one year limit does not apply to funeral services.

This Coverage applies to:

1. **you** and each **relative** who sustains **bodily injury** caused by accident:

- (a) while **occupying** the **owned auto** ; or
- (b) while **occupying** a **non - owned auto** if **you** or **your relative** reasonably believe **you** have the owner's permission to use the auto and the use is within the scope of that permission; or
- (c) when struck as a pedestrian by an auto or **trailer**

2. any other person who sustains **bodily injury** caused by accident while **occupying** the **owned auto** while being used by **you**, a resident of **your** household, or other persons with **your** permission.

EXCLUSIONS

When Section II Does Not Apply

1. There is no coverage for **bodily injury** sustained by any occupant of an **owned auto** used to carry passengers

or goods for hire. However, a vehicle used in an ordinary car pool on a ride sharing or cost sharing basis is covered.

2. There is no coverage for an **insured** while **occupying** a vehicle located for use as a residence or premises.

3. **You** and **your relatives** are not covered for **bodily injury** sustained while **occupying** or when struck by:

- (a) a farm-type tractor or other equipment designed for use principally off public roads, while not upon public roads; or
- (b) a vehicle operated on rails or crawler-treads.

4. There is no coverage for persons employed in the **auto business**, if the accident arises out of that business and if benefits are required to be provided under a workers' compensation law.

5. There is no coverage for **bodily injury** sustained due to **war**.

6. The United States of America or any of its agencies are not covered as an **insured**, a third party beneficiary, or otherwise.

LIMIT OF LIABILITY

The limit of liability for medical payments stated in the declarations as applying to "each person" is the limit we will pay for all costs incurred by or on behalf of each person who sustains **bodily injury** in one accident. This applies regardless of the number of persons insured or the number of autos or **trailers** to which this policy applies.

OTHER INSURANCE

If the **insured** has other medical payments insurance against a loss covered by Section II of this policy, we will not owe more than our pro rata share of the total coverage available.

Any insurance we provide to a person who sustains **bodily injury** while **occupying** a vehicle **you** do not own shall be excess over any other valid and collectible insurance.

CONDITIONS

The following conditions apply to this Coverage:

1. NOTICE

As soon as possible after an accident, written notice must be given us or our authorized agent stating:

- (a) the identity of the **insured**;
- (b) the time, place and details of the accident; and
- (c) the names and addresses of the injured, and of any witnesses.

2. TWO OR MORE AUTOS

If this policy covers two or more autos, the limit of coverage applies separately to each. An auto and an attached **trailer** are considered to be one auto.

3. ACTION AGAINST US

Suit will not lie against us unless the **insured** has fully complied with all the policy terms.

4. MEDICAL REPORTS - PROOF AND PAYMENT OF CLAIMS

As soon as possible, the injured person or his representative will furnish us with written proof of claim, under oath if required. After each request from us, he will give us written authority to obtain medical reports and copies of records.

The injured person will submit to an examination by doctors chosen by us and at our expense as we may reasonably require.

We may pay either the injured person, the doctor or other persons or organizations rendering medical services. These payments are made without regard to fault or legal liability of the **insured**.

5. SUBROGATION

When payment is made under this policy, we will be subrogated to all the **insured's** rights of recovery against others. The **insured** will help us to enforce these rights. The **insured** will do nothing after loss to prejudice these rights.

This means we will have the right to sue for or otherwise recover the loss from anyone else who may be held responsible.

SECTION III

Physical Damage Coverages

Your Protection For **Loss** Or Damage To **Your** Car

DEFINITIONS

The definitions of the terms "**auto business**", "**farm auto**", "**private passenger auto**", "**relative**", "**temporary substitute auto**", "**utility auto**", "**you**" and "**war**" under Section I apply to Section III also. Under this Section, the following special definitions apply:

1. "**Actual cash value**" is the replacement cost of the auto or property less **depreciation** or **betterment**.
2. "**Betterment**" is improvement of the auto or property to a value greater than its pre-loss condition.
3. "**Collision**" means **loss** caused by upset of the covered auto or its collision with another object, including an attached vehicle.
4. "**Depreciation**" means a decrease or loss in value to the auto or property because of use, disuse, physical wear and tear, age, outdatedness or other causes.

5. **"Insured"** means:

(a) regarding the **owned auto**:

- (i) **you** and **your relatives**;
- (ii) a person or organization maintaining, using or having custody of the auto with **your** permission, if his use is within the scope of that permission.

(b) regarding a **non - owned auto**; **you** and **your relatives**, using the auto, if the actual operation or use is with the permission or reasonably believed to be with the permission of the owner and within the scope of that permission.

6. **"Loss"** means direct and accidental loss of or damage to:

- (a) the auto, including its equipment; or
- (b) other insured property.

7. **"Non - owned auto"** means a **private passenger auto**, **farm auto** or **utility auto** or **trailer** not owned by or furnished for the regular use of either **you** or **your relatives**, except a **temporary substitute auto**. **You** or **your relative** must be using the auto or trailer within the scope of permission given by its owner. An auto rented or leased for more than 30 days will be considered as furnished for regular use.

8. **"Owned auto"** means:

- (a) any vehicle described in this policy for which a specific premium charge indicates there is coverage;
- (b) a **private passenger**, **farm** or **utility auto** or a **trailer**, ownership of which is acquired by **you** during the policy period or for which **you** enter into a lease during the policy period for a term of six months or more; if
 - (i) it replaces an **owned auto** as described in (a) above, or
 - (ii) we insure all **private passenger**, **farm**, **utility autos** and **trailers** owned or leased by **you** on the date of such acquisition and **you** request us to add it to the policy within 30 days afterward;

(c) **temporary substitute auto**.

9. **"Trailer"** means a trailer designed for use with a **private passenger auto** and not used as a home, office, store, display or passenger trailer.

LOSSES WE WILL PAY FOR YOU

Comprehensive (Excluding **Collision**)

1. We will pay for each **loss**, less the applicable deductible, caused other than by **collision**, to the **owned** or **non-owned auto**. This includes breakage of glass and **loss** caused by:

(a) missiles;	(j) windstorm;
(b) falling objects;	(k) hail;
(c) fire;	(l) water;
(d) lightning;	(m) flood;
(e) theft;	(n) malicious mischief;
(f) larceny;	(o) vandalism;
(g) explosion;	(p) riot; or
(h) earthquake;	(q) civil commotion.
(i) colliding with a bird or animal;	

No deductible will apply to **loss** caused by fire, lightning, smoke, smudge or damage sustained while the vehicle is being transported on any conveyance.

At the option of the **insured**, breakage of glass caused by **collision** may be paid under the Collision coverage, if included in the policy. No deductible will apply to **loss** to the safety glass of an **owned** or **non-owned auto**.

2. We will pay, up to \$200 per occurrence, less any deductible shown in the declarations, for **loss** to personal effects due to:

(a) fire;	(e) falling objects;
(b) lightning;	(f) earthquake; or
(c) flood;	(g) explosion.
(d) theft of the entire automobile;	

The property must be owned by **you** or a **relative**, and must be in or upon an **owned auto**.

No deductible will apply due to **loss** by fire or lightning.

3. **Losses** arising out of a single occurrence shall be subject to no more than one deductible.

Collision

1. We will pay for **collision loss** to the **owned** or **non-owned auto** for the amount of each **loss** less the applicable deductible. No deductible will apply to **loss** to the safety glass of an **owned** or **non-owned auto**.

2. We will pay up to \$200 per occurrence, less the applicable deductible, for **loss** to personal effects due to a **collision**. The property must be owned by **you** or a **relative**, and must be in or upon an **owned auto**.

3. **Losses** arising out of a single occurrence shall be subject to no more than one deductible.

ADDITIONAL PAYMENTS WE WILL MAKE UNDER
THE PHYSICAL DAMAGE COVERAGES

1. We will reimburse the **insured** for transportation expenses incurred during the period beginning 48 hours after a theft of the entire auto covered by Comprehensive coverage under this policy has been reported to us and the police. Reimbursement ends when the auto is returned to use or we pay for the **loss**.

Reimbursement will not exceed \$15 per day nor \$450 per **loss**.

2. We will pay general average and salvage charges for which the **insured** becomes legally liable when the auto is being transported.

3. We will pay for **loss** to any of the following equipment (including **loss** to accessories and antennas):

- (a) car phone;
- (b) citizen's band radio;
- (c) two-way mobile radio;
- (d) scanning monitor receiver; or
- (e) device designed for the recording and/or reproduction of sound.

We will pay only if the equipment at the time of **loss**:

- (a) is permanently installed in or upon an **owned auto**; and
- (b) that auto is insured under the appropriate coverage.

EXCLUSIONS

When The Physical Damage Coverages Do Not Apply

1. An auto used to carry passengers or goods for hire is not covered. However, a vehicle used in an ordinary car pool on a ride sharing or cost sharing basis is covered.

2. **Loss** due to **war** is not covered.

3. We do not cover **loss** to a **non - owned auto** when used by the **insured** in the **auto business**.

4. There is no coverage for **loss** caused by and limited to wear and tear, freezing, mechanical or electrical breakdown or failure, unless that damage results from a covered theft.

5. Tires, when they alone are damaged by **collision**, are not covered.

6. **Loss** due to radioactivity is not covered.

7. **Loss** to any tape, wire, record disc or other medium for use with a device designed for the recording and/or reproduction of sound is not covered.

8. We do not cover **loss** to any radar or laser detector.

9. We do not cover **trailers** when used for business or commercial purposes with vehicles other than **private passenger, farm or utility autos**.

LIMIT OF LIABILITY

The limit of our liability for **loss**:

1. is the **actual cash value** of the property at the time of the **loss**;

2. will not exceed the cost to repair or replace the property, or any of its parts, with other of like kind and quality and will not include compensation for any diminution in the property's value that is claimed to result from the **loss**;

3. to personal effects arising out of one occurrence is \$200;

4. to a **trailer** not owned by **you** is \$500;

5. for custom options is limited to the **actual cash value** of equipment, furnishings or finishings (including paint) installed in or upon the vehicle only by the auto factory or an authorized auto dealer and included in the purchase price of the vehicle.

Actual cash value of property will be determined at the time of the **loss** and will include an adjustment for **depreciation/betterment** and for the physical condition of the property.

OTHER INSURANCE

If the **insured** has other insurance against a **loss** covered by Section III, we will not owe more than our pro-rata share of the total coverage available.

Any insurance we provide for a vehicle **you** do not own shall be excess over any other valid and collectible insurance.

CONDITIONS

The following conditions apply only to the Physical Damage Coverages:

1. NOTICE

As soon as possible after a **loss**, written notice must be given us or our authorized agent stating:

- (a) the identity of the **insured**;
- (b) a description of the auto or **trailer**;
- (c) the time, place and details of the **loss**; and
- (d) the names and addresses of any witnesses.

In case of theft, the **insured** must promptly notify the police.

2. TWO OR MORE AUTOS

If this policy covers two or more autos or **trailers**, the limit of coverage and any deductibles apply separately to each.

3. ASSISTANCE AND COOPERATION OF THE **INSURED**

The **insured** will cooperate and assist us, if requested:

- (a) in the investigation of the **loss**;
- (b) in making settlements;
- (c) in the conduct of suits;
- (d) in enforcing any right of subrogation against any legally responsible person or organization;
- (e) at trials and hearings;
- (f) in securing and giving evidence; and
- (g) by obtaining the attendance of witnesses.

4. ACTION AGAINST US

Suit will not lie against us unless the policy terms have been complied with and until 30 days after proof of loss is filed and the amount of **loss** is determined.

5. **INSURED'S** DUTIES IN EVENT OF **LOSS**

In the event of **loss** the **insured** will:

- (a) Protect the auto, whether or not the **loss** is covered by this policy. Further **loss** due to the **insured's** failure to protect the auto will not be covered. Reasonable expenses incurred for this protection will be paid by us.
- (b) File with us, within 91 days after **loss**, his sworn proof of loss including all information we may reasonably require.
- (c) At our request, the **insured** will exhibit the damaged property.

6. APPRAISAL

If we and the **insured** do not agree on the amount of **loss**, either may, within 60 days after proof of loss is filed, demand an appraisal of the **loss**. In that event, we and the **insured** will each select a competent appraiser. The appraisers will select a competent and disinterested umpire. The appraisers will state separately the **actual cash value** and the amount of the **loss**. If they fail to agree, they will submit the dispute to the umpire. An award in writing of any two will determine the amount of **loss**. We and the **insured** will each pay his chosen appraiser and will bear equally the other expenses of the appraisal and umpire.

We will not waive our rights by any of our acts relating to appraisal.

7. PAYMENT OF **LOSS**

We may at our option:

- (a) pay for the **loss**; or
- (b) repair or replace the damaged or stolen property.

At any time before the **loss** is paid or the property replaced, we may return any stolen property to **you** or to the address shown in the declarations at our expense with payment for covered damage. We may take all or part of the property at the agreed or appraised value, but there will be no abandonment to us. We may settle claims for **loss** either with the **insured** or the owner of the property.

8. NO BENEFIT TO BAILEE

This insurance does not apply directly or indirectly to the benefit of a carrier or other bailee for hire liable for the **loss** of the auto.

9. SUBROGATION

When payment is made under this policy, we will be subrogated to all the **insured's** rights of recovery against others. The **insured** will help us to enforce these rights. The **insured** will do nothing after **loss** to prejudice these rights.

This means we will have the right to sue for or otherwise recover the **loss** from anyone else who may be held responsible.

SECTION IV

Uninsured Motorists Coverage

Protection For **You, Your Relatives And Your Passengers** For Injuries And **Property Damage** Caused By Uninsured Motorists

DEFINITIONS

The definitions of terms for Section I apply to Section IV, except for the following special definitions:

1. "**Insured**" means:

- (a) **you** and **your relatives** who reside in **your** household;
- (b) any person using an **insured motor vehicle** with **your** permission;
- (c) any person **occupying** an **insured motor vehicle** with **your** permission;
- (d) any person who is entitled to recover damages under a wrongful death statute of any state because of the death of an **insured** under (a), (b) or (c) above.

If there is more than one **insured**, our limits of liability will not be increased.

2. "**Insured motor vehicle**" is a **motor vehicle** described in the policy and to which the liability coverage of the policy applies.

3. "**Motor vehicle**" is a self-propelled vehicle designed for use on a highway and includes **trailers** and semi-trailers designed for use with these vehicles. The term **motor vehicle** does not include traction engines, road rollers, farm tractors, tractor cranes, power shovels, well drillers or any vehicle propelled by electric power from overhead wires but not operated on rails.

4. "**Property damage**" means damage or destruction of an **insured's** property.

5. "**Uninsured motor vehicle**" is a **motor vehicle** of which:

- (a) there is no applicable bodily injury liability and property damage liability insurance with limits complying with the financial responsibility requirements of the State of South Carolina; or
- (b) the insurance carrier successfully denies coverage; or
- (c) the insurance carrier is declared insolvent, or is in delinquency proceedings, suspension or receivership, or is proven unable fully to respond to a judgment; and
- (d) there is no bond or deposit of cash or securities in lieu of bodily injury and property damage liability insurance.
- (e) the owner of the **motor vehicle** has not qualified as a self-insurer in accordance with the applicable provisions of law.

The term **uninsured motor vehicle** includes a **motor vehicle** which causes **bodily injury** or **property damage** to an **insured** and the owner or operator of which is unknown provided that:

- (a) the **insured** or someone in his behalf reports the accident to some appropriate police authority within a reasonable time after its occurrence;
- (b) the injury or damage was caused by physical contact with the unknown vehicle, or the accident was witnessed by someone other than the owner or operator of the insured vehicle and that witness submits a signed affidavit attesting to the truth of the facts of the accident;
- (c) the **insured** was not negligent in failing to determine the identity of the other vehicle and its driver at the time of the accident;
- (d) the **insured** or someone for him files with us within 30 days or as soon as practical thereafter, a written statement that he has a cause of action for damages against an unidentified person; and

- (e) the **insured** or someone for him makes available, at our request, the **motor vehicle occupied** by the **insured**, at the time of the accident.

The term **uninsured motor vehicle** does not include a **motor vehicle** owned by the United States of America or any governmental unit or agency.

LOSSES WE PAY

Under this coverage we will pay damages for **bodily injury** and **property damage** caused by accident which the **insured** is legally entitled to recover from the owner or operator of an **uninsured motor vehicle** arising out of the ownership, maintenance or use of that **motor vehicle**.

EXCLUSIONS

When This Coverage Does Not Apply

1. This coverage does not apply to **bodily injury** or **property damage** to an **insured** if he or his legal representative has made a settlement or has been awarded a judgment without our prior written consent.
2. There is no coverage for **bodily injury** or **property damage** to an **insured** while **occupying** or through being struck by an **uninsured motor vehicle** owned by an **insured** or a **relative**.
3. This coverage will not benefit directly or indirectly any workmen's compensation insurer, self insurer, disability benefits insurer or property insurer.
4. There is no coverage for **property damage** to the first \$200 of the amount of damage to the property of each **insured** as the result of any one accident.
5. There is no coverage for **property damage** if the **insured** has been compensated by insurance or otherwise.

LIMITS OF LIABILITY

Regardless of the number of **insured motor vehicles**; **insureds**, claims made or **motor vehicles** involved in the accident, the most we will pay for damages resulting from any one accident is the limit on the **insured motor vehicle** involved in the accident.

1. The limit of bodily injury liability for Uninsured Motorists coverage stated in the declarations as applicable to "each person" is the limit of our liability for all damages, including those for care or loss of services, due to **bodily injury** sustained by one person as the result of any one accident.
2. The limit of bodily injury liability stated in the declarations as applicable to "each accident" is, subject to the above provision respecting each person, the total limit of our liability for all such damages because of **bodily injury** sustained by two or more persons as the result of any one accident.

3. The limit of property damage liability stated in the declarations as applicable to "each accident" is our total limit of liability for all damages to the property of one or more **insureds** as the result of any one accident.

4. Any amount payable under this insurance shall be reduced by all sums:

- (a) paid or payable under any Uninsured Motorists coverage applicable on the vehicle involved in the accident;
- (b) paid or payable by or for anyone who is legally responsible, including all sums paid under the policy's liability insurance.

5. If separate policies with us are in effect for **you** or any person in **your** household, they may not be combined to increase the limit of our liability for a loss.

6. Any amount paid under this insurance will reduce any amount an **insured** may be paid under the policy's liability insurance.

OTHER INSURANCE

When an **insured occupies a motor vehicle** not described in this policy, this insurance is excess over any other similar insurance available to the **insured** for **bodily injury** and the insurance which applies to the occupied auto is primary.

If none of an **insured's motor vehicles** is involved in the accident, coverage is available to the extent of coverage on any one **insured motor vehicle**. Coverage on any other vehicles shall not be added to that coverage.

Except as provided above, if the **insured** has other similar bodily injury insurance available to him and applicable to the accident, the damages for **bodily injury** will be deemed not to exceed the higher of the applicable limits of liability of this insurance and the other insurance. If the **insured** has other insurance against a loss covered by the Uninsured Motorists provisions of this policy, we will not be liable for more than our pro-rata share of the total coverage available.

With respect to **property damage**, this insurance shall be excess over other valid and collectible insurance applicable to the damaged property.

We will not be liable for a greater proportion of any loss under this coverage than its limit of liability bears to the sum of the applicable limits of liability and this and all such other insurance.

TRUST AGREEMENT

When we make a payment under this coverage:

1. We will be entitled to repayment of that amount out of any settlement or judgment the **insured** recovers from any person or organization legally responsible for the **bodily injury**.
2. The **insured** will hold in trust for our benefit all rights of recovery which he may have against any person or organization responsible for these damages. He will do whatever is necessary to secure all rights of recovery and will do nothing after the loss to prejudice these rights.
3. At our written request, the **insured**, in his own name, will take, through a designated representative, appropriate actions necessary to recover payment for damages from the legally responsible person or organization. The **insured** will pay us out of the recovery for our expenses, costs and attorneys' fees.
4. The **insured** will execute and furnish us with any needed documents to secure his and our rights and obligations.

CONDITIONS

1. PROOF OF CLAIM

As soon as possible, the **insured** or other person making claim must give us written proof of claim, under oath if required. This will include details of the nature and extent of **bodily injury**, treatment, and other facts which may affect the amount payable. Proof of claim must be made on forms furnished by us unless we have not furnished these forms within 15 days after receiving notice of claim.

The injured person will submit to examination by doctors chosen by us as often as we may reasonably require. In the event of the **insured's** incapacity or death, his legal representative must, at our request, authorize us to obtain medical reports and copies of records.

The **insured** or other person making a claim for damage to property shall file a proof of loss in sworn statement form with us within 60 days after the loss occurs (unless we extend the time in writing). This statement must show: the interest of the **insured** and all others in the property, any liens or other claims on the property, the actual cash value at time of loss, and description and amounts of all other insurance on the property. If we ask, the **insured** must show us the damaged property.

2. ASSISTANCE AND COOPERATION OF THE **INSURED**

After we receive notice of a claim, we may require the **insured** to take any action necessary to preserve his recovery rights against any allegedly legally responsible person or organization.

3. NOTICE OF LEGAL ACTION

If the **insured** or his legal representative files suit before we make a settlement under this coverage, he must immediately provide us with a copy of the pleadings served in the manner provided by law.

4. PAYMENT OF LOSS

Any amount due is payable to the **insured** or his authorized representative.

5. ACTION AGAINST US

Suit will not lie against us unless the **insured** or his legal representative has fully complied with all of the policy terms.

SECTION V

General Conditions

These Conditions Apply To All Coverages In This Policy

1. TERRITORY

This policy applies only to accidents, occurrences or losses during the policy period within the United States of America, its territories or possessions, or Canada or when the auto is being transported between ports thereof.

2. PREMIUM

When you dispose of, acquire ownership of, or replace a **private passenger, farm or utility auto**, any necessary premium adjustment will be made as of the date of the change and in accordance with our manuals.

3. CHANGES

The terms and provisions of this policy cannot be waived or changed, except by an endorsement issued to form a part of this policy.

We may revise this policy during its term to provide more coverage without an increase in premium. If we do so, **your** policy will automatically include the broader coverage when effective in **your** state.

The premium for each auto is based on the information we have in **your** file. **You** agree:

- (a) that we may adjust **your** policy premiums during the policy term if any of this information on which the premiums are based is incorrect, incomplete or changed.
- (b) that **you** will cooperate with us in determining if this information is correct and complete.
- (c) that **you** will notify us of any changes in this information.

Any calculation or recalculation of **your** premium or changes in **your** coverage will be based on the rules, rates and forms on file, if required, for our use in **your** state.

4. ASSIGNMENT

Your rights and duties under this policy may not be assigned without our written consent.

If **you** die, this policy will cover:

- (a) **your** surviving spouse;
- (b) the executor or administrator of **your** estate, but only while operating an **owned auto** and while acting within the scope of his duties;
- (c) any person having proper temporary custody of and operating the **owned auto**, as an **insured**, until the appointment and qualification of the executor or administrator of **your** estate; and
- (d) under the Medical Payments coverage, a person who was a **relative** at the time of **your** death.

5. POLICY PERIOD

Unless otherwise cancelled, this policy will expire as shown in the declarations. But, it may be continued by our offer to renew and **your** acceptance by payment of the required renewal premium prior to the expiration date. Each period will begin and expire at 12:01 A.M. local time at **your** address stated in the declarations.

6. CANCELLATION BY THE **INSURED**

You may cancel this policy by providing notice to us stating when, after the notice, cancellation will be effective.

If this policy is cancelled, **you** may be entitled to a premium refund. The premium refund, if any, will be computed according to our manuals.

7. CANCELLATION BY US

We may cancel this policy by mailing to **you**, at the address shown in this policy, written notice stating when the cancellation will be effective. We will mail this notice at least 15 days prior to the effective date of that cancellation.

The mailing or delivery of this notice will be sufficient proof of notice. The policy will cease to be in effect as of the date and hour stated in the notice.

If this policy is canceled, **you** may be entitled to a premium refund. The premium refund, if any, will be computed according to our manuals. Payment or tender of unearned premium is not a condition of cancellation.

8. CANCELLATION BY US IS LIMITED

After this policy has been in effect for 90 days or, if the policy is a renewal policy, we will not cancel except for any of the following reasons:

- (a) **You** do not pay the initial premium on other than a renewal policy or any additional premium for this policy or fail to pay any premium installment when due to us.
- (b) **You** or any other operator who either resides in **your** household or customarily operates a motor vehicle insured under this policy has had his driver's license suspended or revoked during the policy period or, if it is a renewal policy, during its policy period or the 90 days preceding the last anniversary of the effective date.
- (c) **You** become a non-resident of South Carolina and register **your** South Carolina motor vehicle in another state.

We may increase **your** deductible to \$250 under Section III - Physical Damage Coverages.

9. RENEWAL

We will not refuse to renew this policy unless written notice of our refusal to renew is mailed to **you**, at the address shown in this policy, at least 15 days prior to the expiration date. The mailing or delivery of this by us will be sufficient proof of notice. This policy will expire without notice if any of the following conditions exist:

- a) **You** do not pay any premium as we require to renew this policy.
- b) **You** have informed us or our agent that **you** wish the policy to be canceled or not renewed.
- c) **You** do not accept our offer to renew or **you** refuse to provide us with renewal classification and rating information as we may require.

We may increase **your** deductible to \$250 under Section III - Physical Damage Coverages.

10. OTHER INSURANCE

If other insurance is obtained on **your** insured auto, any similar insurance afforded under this policy for that auto will terminate on the effective date of the other insurance.

If **you** relinquish possession of a leased vehicle or if **you** sell or relinquish ownership of an **owned auto**, any coverage provided by this policy for that vehicle will terminate on the day **you** do so.

11. DIVIDEND PROVISION

You are entitled to share in a distribution of the surplus of the Company as determined by its Board of Directors from time to time.

12. DECLARATIONS

By accepting this policy, **you** agree that:

- (a) the statements in **your** application and in the declarations are **your** agreements and representations;
- (b) this policy is issued in reliance upon the truth of these representations; and
- (c) this policy, along with the application and declaration sheet, embodies all agreements relating to this insurance. The terms of this policy cannot be changed orally.

13. FRAUD AND MISREPRESENTATION

Coverage is not provided to any person who knowingly conceals or misrepresents any material fact or circumstance relating to this insurance:

- (a) at the time of application; or
- (b) at any time during the policy period; or
- (c) in connection with the presentation or settlement of a claim.

14. EXAMINATION UNDER OATH

The **insured** or any other person seeking coverage under this policy must submit to examination under oath by any person named by us when and as often as we may require.

15. TERMS OF POLICY CONFORMED TO STATUTES

Any terms of this policy in conflict with the laws of South Carolina are amended to conform to those statutes.

SECTION VI - AMENDMENTS AND ENDORSEMENTS

1. SPECIAL ENDORSEMENT UNITED STATES
GOVERNMENT EMPLOYEES

A. Under the Property Damage coverage of Section I. we provide coverage to United States Government employees, civilian or military, using

1. Motor vehicles owned or leased by the United States Government or any of its agencies, or
2. Rented motor vehicles used for United States Government business,

when such use is with the permission of the United States Government. Subject to the limits described in paragraph B. below, we will pay sums **you** are legally obligated to pay for damage to these vehicles.

B. The following limits apply to this coverage:

1. A \$100 deductible applies to each occurrence.
2. For vehicles described in A. 1. above, our liability shall not exceed the lesser of the following:

- a. the **actual cash value** of the property at the time of the occurrence; or
- b. the cost to repair or replace the property, or any of its parts with other of like kind and quality; or
- c. two months basic pay of the **insured**; or
- d. the limit of Property Damage liability coverage stated in the declarations.

3. For vehicles described in A. 2. above, our liability shall not exceed the lesser of the following:

- a. the **actual cash value** of the property at the time of the occurrence; or
- b. the cost to repair or replace the property, or any of its parts with other of like kind and quality; or
- c. the limit of Property Damage liability coverage stated in the declarations.

This insurance is excess over other valid and collectible insurance.



W. C. E. Robinson
Secretary

GOVERNMENT EMPLOYEES INSURANCE COMPANY
GEICO GENERAL INSURANCE COMPANY
GEICO INDEMNITY COMPANY
HOME OFFICE - 5260 Western Avenue
Chevy Chase, Maryland 20815-3799



O. M. Nicely
President





GOVERNMENT EMPLOYEES INSURANCE COMPANY

Policy Number: 4148-10-37-42

Automobile Policy Amendment South Carolina

Your policy is amended as follows:

SECTION I- LIABILITY COVERAGES

DEFINITIONS

The following definitions are revised as follows:

3. **Farm auto** means a truck type vehicle with a gross vehicle weight of 15,000 pounds or less, not used for commercial purposes other than farming.
5. **Non-owned auto** means a **private passenger, farm, or utility auto or trailer** not owned by or furnished for the regular use of the either **you** or **your relatives**, except a **temporary substitute auto**. **You** or **your relatives** must be using the **non-owned auto or trailer** within the scope of permission given by its owner. A **non-owned auto** rented or leased for more than 30 days will be considered as furnished for regular use.
8. **Relative** means a person who continuously lives in **your** household, and is related to **you** by blood, marriage, or adoption (including a ward or foster child).
11. **Utility auto** means a vehicle, other than a **farm auto**, with a gross vehicle weight of 15,000 pounds or less of the pick-up body, van or panel truck type not used for commercial purposes.
13. **You** and **your** mean the policyholder named in the declarations or his or her spouse if a resident of the same household.

ADDITIONAL PAYMENTS WE WILL MAKE UNDER THE LIABILITY COVERAGES

Item 3. is revised as follows:

3. Interest calculated on that part of a judgment that is within our limit of liability and accruing:
 - (a) Before the judgment, where owed by law, and until we pay, offer to pay, or deposit in court the amount due under this coverage;
 - (b) After the judgment, and until we pay, offer to pay, or deposit in court, the amount due under this coverage.

After item 5. the following sentence is added.

We will upon request by an **insured**, provide reimbursement for the following items:

Items 6., 7., and 8. are renumbered as follows:

- (a) Costs incurred by any **insured** for first aid to others at the time of an accident involving an **owned auto or non-owned auto**.
- (b) Loss of earnings up to \$50 a day, but not other income, if we request an **insured** to attend hearings and trials.
- (c) All reasonable costs incurred by an **insured** at our request.

EXCLUSIONS

The first paragraph is changed to read:

We will not defend any claim or suit for damages if one or more of the exclusions listed below applies. We do not provide liability coverage under Exclusions 1,2,3,8, and 18 in excess of the minimum limits of liability required by South Carolina law. We do not provide any liability coverage for the remaining Exclusions.

Exclusion 2. is revised as follows:

2. Section I does not apply to **bodily injury** or property damage arising out of the ownership, maintenance, or use of an **owned or non-owned auto** while being used to carry persons or property for compensation or a fee, including but not limited to the delivery of food or any other products. However, this exclusion will not apply to shared-expense car pools.

The following exclusions are added:

13. **Bodily injury** or property damage that results from nuclear exposure or explosion including resulting fire, radiation or contamination is not covered.
14. **Bodily injury** or property damage that results from bio-chemical attack or exposure to bio-chemical agents is not covered.
15. We do not cover **bodily injury** or property damage caused by an auto driven in or preparing for any racing, speed or demolition contest or stunting activity of any nature, whether or not prearranged or organized.



16. We do not cover any liability assumed under any contract or agreement.
17. We do not cover punitive or exemplary damages recovered or potentially recoverable from any **insured** arising from the use or abuse of alcohol, medication or drugs.
18. We do not cover any liability arising out of the use of an **owned** or **non-owned auto** in connection with the commission of or attempt to commit a felony by an **insured**.

LIMITS OF LIABILITY

Items 1. & 2. of Limits of Liability are revised as follows:

1. The limit of bodily injury liability stated in the declarations as applicable to "each person" is the limit of our liability for all damages, including but not limited to, damages for care and loss of services, loss of consortium, bystander claims, and claims for mental anguish, because of **bodily injury** sustained by one person as the result of one occurrence.
2. The limit of such liability stated in the declarations as applicable to "each occurrence" is, subject to the above provision respecting each person, the total limit of our liability for all such damages, including but not limited to, damages for care and loss of services, loss of consortium, bystander claims, and claims for mental anguish, because of **bodily injury** sustained by two or more persons as the result of any one occurrence.

CONDITIONS

Condition 5. SUBROGATION is replaced as follows:

5. If we make payment under Section I-Liability Coverages of the policy, and the person to or for whom payment was made has a right to recover damages from another, we shall be subrogated to that right. That person shall do whatever is necessary to enable us to exercise our rights and shall do nothing after loss or bodily injury to prejudice them.
If we make payment under this policy to or for whom payment is made recovers damages from another, that person shall hold in trust for us the proceeds of the recovery, and shall reimburse us to the extent of our payment.

SECTION II - AUTO MEDICAL PAYMENTS

PAYMENTS WE WILL MAKE

The following paragraphs are added:

Expenses are reasonable only if they are consistent with the usual fees charged by the majority of similar medical providers in the geographical area in which the expenses are incurred for the specific medical service.

Services are necessary only if the services are rendered by a licensed medical provider within the scope of the provider's practice and license and are essential.

We have the right to make or obtain a utilization review of the medical expenses and services to determine if they are reasonable and necessary for the **bodily injury** sustained.

EXCLUSIONS

Exclusion 1. is revised as follows:

1. There is no coverage for **bodily injury** sustained by any occupant of an **owned auto** used to carry persons or property for compensation or a fee, including but not the delivery of food or any other products. However, this exclusion will not apply to shared-expense car pools.

The following exclusions are added:

7. There is no coverage for **bodily injury** or property damage that results from nuclear exposure or explosion including resulting fire, radiation or contamination.
8. There is no coverage for **bodily injury** or property damage that results from bio-chemical attack or exposure to bio-chemical agents.
9. We do not cover **bodily injury** caused by an auto driven in or preparing for any racing, speed or demolition contest or stunting activity of any nature, whether or not prearranged or organized.
10. There is no coverage for **bodily injury** sustained while **occupying** any motorized vehicle which is not defined as an **owned** or **non-owned auto** under this policy.
11. There is no coverage for **bodily injury** occurring during the course of employment if workers' compensation benefits are required or available.
12. There is no coverage for **bodily injury** sustained while **occupying** an **owned** or **non-owned auto** being used in connection with the commission or the attempt to commit a felony by an **insured**.

The following provision is added:

NON-DUPLICATION

No person for whom medical expenses are payable under the Medical Payments coverage shall be paid more than once for the same medical expense under this or similar vehicle insurance, including any no fault benefits required by law.

LIMITS OF LIABILITY

The following sentence is added:

An auto and attached **trailer** are considered one auto.

CONDITIONS

Condition 2. TWO OR MORE AUTOS, is deleted.

Condition 5. SUBROGATION, is replaced as follows:

5. If we make a payment under Section II-Auto Medical Payments of this policy, and the person to or for whom payment was made has a right to recover damages from another, we shall be subrogated to that right. That person shall do whatever is necessary to enable us to exercise our rights and shall do nothing after loss or bodily injury to prejudice them.

If we make payment under this policy and the person to or for whom payment is made recovers damages from another, that person shall hold in trust for us the proceeds of the recovery and shall reimburse us to the extent of our payment, costs, and fees.

SECTION III - PHYSICAL DAMAGE COVERAGES

DEFINITIONS

Definition 9. **Trailer**, is revised as follows:

9. **Trailer** means a trailer of the flatbed variety designed for use with a **private passenger auto** and not used as a home, residence, office, store, display or passenger trailer. **Trailer** does not mean a trailer with built in sleeping facility designed for recreational or camping use.

The following definition is added:

10. **Custom parts or equipment** means paint, equipment, devices, accessories, enhancements, and changes, other than those which are original manufacturer installed, which:

- (a) Are permanently installed or attached; or
- (b) Alter the appearance or performance of a vehicle.

This includes any electronic equipment, antennas, and other devices used exclusively to send or receive audio, visual, or data signals, or to play back recorded media, other than those which are original manufacturer installed, that are permanently installed in the **owned auto** or a newly acquired vehicle using bolts or brackets, including slide-out brackets.

ADDITIONAL PAYMENTS WE WILL MAKE UNDER THE PHYSICAL DAMAGE COVERAGES

The second paragraph under 1. is revised as follows:

Reimbursement will not exceed \$25 per day, or \$750 per loss.

Item 3. is deleted.

EXCLUSIONS

When Section III does not apply

Exclusion 1. is revised as follows:

1. An auto used to carry person or property for compensation or a fee, including but not limited to the delivery of food or any other products is not covered. However, a vehicle used in an ordinary car pool on a ride sharing or cost sharing basis is covered.

The following exclusions are added:

- 10. There is no coverage for **loss** that results from nuclear exposure or explosion including resulting fire, radiation or contamination.
- 11. There is no coverage for **loss** that results from bio-chemical attack or exposure to bio-chemical agents.
- 12. We do not cover any physical damage to an auto being driven in or preparing for any racing, speed or demolition contest or stunting activity of any nature, whether or not prearranged or organized.
- 13. We do not cover **loss** for **custom parts or equipment** unless the existence of those **custom parts or equipment** has been previously reported to us and an endorsement to the policy has been added.
- 14. There is no coverage for any liability assumed under any contract or agreement.
- 15. There is no coverage for **loss** or damage resulting from:
 - (a) The acquisition of a stolen vehicle;
 - (b) Any governmental, legal or other action to return a vehicle to its legal, equitable, or beneficial owner, or anyone claiming an ownership interest in the vehicle;
 - (c) Any confiscation, seizure or impoundment of a vehicle by governmental authorities; or
 - (d) The sale of an **owned auto**.
- 16. There is no coverage for the destruction, impoundment, confiscation or seizure of a vehicle by governmental or civil authorities due to its use by **you, a relative** or a permissive user of the vehicle in illegal activity.

LIMIT OF LIABILITY

Item 2. is revised as follows:

2. Will not exceed the prevailing competitive price to repair or replace the property at the time of loss, or any of its parts, including parts from non-original equipment manufactures, with other of like kind and quality and will not include compensation for any diminution in the property's value that is claimed to result from the **loss**. Although **you** have the right to choose any repair facility or location, the limit of liability for repair or replacement of such property will not exceed the prevailing competitive price, which is the price we can secure from a competent and conveniently located repair facility. At **your** request, we will identify a repair facility that will perform the repairs at the prevailing competitive price.

The first paragraph of item 5. is replaced with the following:

5. For **custom parts or equipment** is limited to the **actual cash value** of the **custom parts or equipment**, not to exceed the **actual cash value** of the vehicle.

CONDITIONS

Condition 4., ACTION AGAINST US, the following paragraph is added:

If we retain salvage, we have no duty to preserve or otherwise retain the salvage for any purpose, including as evidence for any civil or criminal proceeding. If **you** ask us immediately after a **loss** to preserve the salvage for inspection, we will do so for a period not to exceed 30 days. **You** may purchase the salvage from us if **you** wish.

Condition 9. SUBROGATION, is revised as follows:

9. If we make a payment under Section III-Physical Damage Coverages of this policy, and the person to or for whom payment was made has a right to recover damages from another, we shall be subrogated to that right. That person shall do whatever is necessary to enable us to exercise our rights and shall do nothing after loss or bodily injury to prejudice them.

If we make payment under this policy and the person to or for whom payment is made recovers damages from another, that person shall hold in trust for us the proceeds of the recovery and shall reimburse us to the extent of our payment, costs, and fees.

The following condition is added:

10. ASSIGNMENT

With respect to Section III-Physical Damage Coverages, an Assignment of interest under this policy will not bind us without our consent. Any nonconforming assignment shall be void and invalid. Moreover, the assignee of a nonconforming assignment shall acquire no rights under this contract and we shall not recognize any such assignment.

SECTION IV - UNINSURED MOTORISTS COVERAGE

EXCLUSIONS

The following exclusions are added:

6. **Bodily injury** or **property damage** that results from nuclear exposure or explosion including resulting fire, radiation or contamination is not covered.
7. **Bodily injury** or **property damage** that results from bio-chemical attack or exposure to bio-chemical agents is not covered.
8. This coverage does not apply to any liability assumed under any contract or agreement.
9. This coverage does not apply to damage caused by an **insured's** participation in or preparation for any racing, speed or demolition contest or stunting activity of any kind, whether or not prearranged or organized.
10. There is no coverage for **bodily injury** to any other person while **occupying** an **owned auto** without **your** consent or operating an **owned auto** without a reasonable belief that person has **your** permission to do so.

LIMITS OF LIABILITY

Paragraphs 1. & 2. are revised as follows:

1. The limit of liability for Uninsured Motorists Coverage stated in the declarations for "each person" is the limit of our liability for all damages, including but not limited to, damages for care or loss of services, loss of consortium, bystander claims, and claims for mental anguish, because of **bodily injury** sustained by one person as the result of one occurrence.
2. The limit of such liability stated in the declarations as applicable to "each accident" is, subject to the above provision respecting each person, the total limit of our liability for all such damages, including but not limited to, damages for care and loss of services, loss of consortium, bystander claims, and claims for mental anguish, because of **bodily injury** sustained by two or more persons as the result of any one occurrence.

SECTION V - GENERAL CONDITIONS

The second paragraph of 10. Other Insurance is deleted.

The following conditions are added:

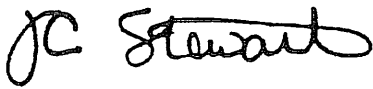
16. DISPOSAL OF VEHICLE

If **you** relinquish possession of a leased vehicle or if **you** sell or relinquish ownership of an **owned auto**, any coverage provided by this policy for that vehicle will terminate on the date **you** do so.

17. CHOICE OF LAW

The policy and any amendment(s) and endorsement(s) are to be interpreted pursuant to the laws of the state of South Carolina.

We affirm this amendment.



J. C. Stewart
Secretary



O. M. Nicely
President





Policy Number: 4148-10-37-42

Automobile Policy Amendment

PROTECTION AGAINST UNDERINSURED MOTORIST COVERAGE AMENDMENT SOUTH CAROLINA

We agree with **you** as follows:

DEFINITIONS

The following definitions apply to this amendment:

1. **"Insured"** means:

- a) **you**;
- b) **your relatives** who reside in **your** household;
- c) any person using an **insured motor vehicle** with **your** permission;
- d) any person **occupying** an **insured motor vehicle** with **your** permission;
- e) any person who is entitled to recover damages under a wrongful death statute of any state because of the death of an **insured** under a), b), c), d) or e) above.

If there is more than one **insured**, our limits of liability will not be increased.

2. **"Insured motor vehicle"** is a **motor vehicle** described in the policy and to which the liability coverage of the policy applies.
3. **"Motor vehicle"** is a self-propelled vehicle designed for use on a highway and includes trailers and semi-trailers designed for use with these vehicles.

The term **motor vehicle** does not include: (a) traction engines; (b) road rollers; (c) farm tractors, tractor cranes; (e) power shovels; (f) well drillers; or (g) any vehicle propelled by electric power from overhead wires but not operated on rails.

4. **"Property damage"** means damage or destruction of an **insured's** property.
5. **"Underinsured motor vehicle"** means a motor vehicle on which there is bodily injury liability insurance or a bond applicable at the time of the accident in an amount of at least the minimum required by law, but the amount of the insurance or bond:
- a) is less than the amount of the **insured's** damages; or
 - b) has been reduced by payments to persons other than an **insured** injured in the accident to an

amount which is less than the amount of the **insured's** damages.

This term does not include any **motor vehicle**:

- a) which is an **uninsured motor vehicle** as defined in the Uninsured Motorists Coverage of this policy;
- b) owned by any governmental unit or agency;
- c) owned or operated by a self-insurer under any applicable motor vehicle law unless the applicable self-insurance is less than the **insured's** damages;
- d) owned by or furnished for **your** regular use or that of any **relative**; and
- e) while located for use as a residence or premises.

LOSSES WE PAY

Under this Coverage we will pay damages for **bodily injury** and **property damage** caused by an accident which the **insured** is legally entitled to recover from the owner or operator of an **underinsured motor vehicle** arising out of the ownership, maintenance or use of that **motor vehicle**.

POLICY PERIOD - TERRITORY

This amendment applies only to accidents which occur on and after the effective date hereof, during the policy period and within the United States of America or Canada.

EXCLUSIONS

When This Coverage Does Not Apply

- 1. This coverage does not apply to **bodily injury** or **property damage** to an **insured** if he or his legal representative has been awarded a judgment without our prior written consent.
- 2. This coverage does not apply to **bodily injury** or **property damage** to an **insured** while **occupying** or through being struck by an **uninsured motor vehicle** owned by an **insured** or a **relative**.
- 3. This coverage will not benefit directly or indirectly any workmen's compensation insurer, self-insurer, disability benefits insurer or property insurer.

4. There is no coverage for **property damage** if the **insured** has been compensated by insurance or otherwise.
5. **Bodily injury** or **property damage** that results from nuclear exposure or explosion including resulting fire, radiation or contamination is not covered.
6. **Bodily injury** or **property damage** that results from bio-chemical attack or exposure to bio-chemical agents is not covered.

CONDITIONS

1. None of the Insuring Agreements, Exclusions, Conditions or other provisions of the policy apply to this amendment except under Section V - General Conditions; 3. "Changes"; 4. "Assignment"; 6. "Cancellation By The Insured"; 7. "Cancellation By Us"; 8. "Cancellation By Us Is Limited"; and 9. "Renewal."

2. PROOF OF CLAIM

As soon as possible, the **insured** or other person making claim must give us written proof of claim, under oath if required. This will include details of the nature and extent of **bodily injury** treatment, and other facts which may affect the amount payable. Proof of claim must be made on forms furnished by us unless we have not furnished these forms within 15 days after receiving notice of claim.

The injured person will submit to examination by doctors chosen by us as often as we may reasonably require. In the event of the **insured's** incapacity or death, his legal representative must, at our request, authorize us to obtain medical reports and copies of records.

The **insured** or other person making a claim for damage to property shall file a proof of loss in sworn statement form with us within 60 days after the loss occurs (unless we extend the time in writing). This statement must show: (a) the interest of the **insured**; (b) all others in the property; (c) any liens or other claims on the property; (d) the actual cash value at time of loss; and (e) description and amounts of all other insurance on the property. If we ask, the **insured** must show us the damaged property.

3. ASSISTANCE AND COOPERATION OF THE **INSURED**

After we receive notice of a claim, we may require the **insured** to take any action necessary to preserve his recovery rights against any allegedly legally responsible person or organization.

4. NOTICE OF LEGAL ACTION

If the **insured** or his legal representative files suit before we make a settlement under this coverage, he must immediately provide us with a copy of the pleadings.

We have the right to appear and defend in the name of the underinsured motorist in any action that may affect our liability. We have twenty (20) days after service of process on us to make this appearance. The evidence of service upon us shall not become part of the record.

5. LIMIT OF LIABILITY

The limit of liability as shown in the Declarations for this coverage is our maximum limit of liability for all damages resulting from any one accident. This is the most we will pay regardless of the number of:

1. **Insureds**;
2. Claims made;
3. **Motor vehicles** or premiums shown in the Declarations; or
4. **Motor vehicles** involved in the accident.

In addition to this limit, we will make an additional amount available to **you** or **your relative** if such person sustains **bodily injury** or **property damage** in an accident involving the **insured motor vehicle**. The additional amount is equal to the sum of that part of the limit on each additional **insured motor vehicle** shown in the Declarations that does not exceed the minimum limits specified by the South Carolina Motor Vehicle Financial Responsibility Act. This additional amount is the most we will pay over the stated limit of liability regardless of the number of:

1. **Insureds**;
2. Claims made; or
3. **Motor vehicles** involved in the accident.

However, no one will be entitled to receive duplicate payments for the same elements of loss.

Any amounts otherwise payable for damages which the **insured** is legally entitled to recover from the owner or operator of an **underinsured motor vehicle** because of **bodily injury** or **property damage** caused by an accident shall be reduced by all sums:

1. Paid because of the **bodily injury** or **property damage** by or on behalf of persons or organizations who may be legally responsible. This includes all sums paid under Section I of this policy;
2. Paid or payable because of the **bodily injury** or

property damage under any applicable Uninsured Motorist Coverage. This includes all sums paid under Section IV of this policy;

3. Paid or payable because of the **bodily injury** under any of the following or similar law:
 - a. workers' compensation law; or
 - b. disability benefits law;
4. Paid or payable because of the **bodily injury** or **property damage** under any Underinsured Motorist Coverage applicable to a vehicle (other than the **insured motor vehicle**) which the **insured** was **occupying** at the time of the accident; and
5. Paid because of the **property damage** under Section III of this policy or any similar coverage under any other policy.

Any payment under this coverage will reduce any amount that person is entitled to recover for the same damages under Section I of this policy.

6. OTHER INSURANCE

When an **insured occupies a motor vehicle** not described in this policy, this insurance is excess over any other similar insurance available to the **insured** for **bodily injury**. The insurance which applies to the occupied auto is primary.

If none of an **insured's motor vehicles** is involved in the accident, coverage is available to the extent of coverage on any one **insured motor vehicle**. Coverage on any other vehicle shall not be added to that coverage.

Except as provided above, if the **insured** has other similar **bodily injury** insurance available to him and applicable to the accident, the damages for **bodily injury** will be deemed not to exceed the higher of the applicable limits of liability of this insurance and the other insurance. If the **insured** has other insurance against a loss covered by the Uninsured Motorists provisions of this policy, we will not be liable for more than our pro rata share of the total coverage available.

With respect to **property damage**, this insurance shall be excess over other valid and collectible insurance applicable to the damaged property.

We will not be liable for a greater proportion of any loss under this coverage than its limit of liability bears to the sum of the applicable limits of liability of this and all such other insurance.

7. PAYMENT OF LOSS BY US

Any amount due is payable to the **insured** or his authorized representative.

8. ACTION AGAINST US

Suit will not lie against us unless the **insured** or his legal representative has fully complied with all the terms of this amendment.

9. CONFORMITY WITH SOUTH CAROLINA STATUTES

Any terms of this amendment in conflict with the laws of South Carolina are amended to conform with those laws.

THE COMPANY affirms this amendment.



W. C. E. Robinson
Secretary

GOVERNMENT EMPLOYEES INSURANCE COMPANY
GEICO GENERAL INSURANCE COMPANY



O. M. Nicely
President

GOVERNMENT EMPLOYEES INSURANCE COMPANY
Certificate of Insurance

One GEICO Center
Macon, GA 31295-0001

Named Insured and Address:
KEVIN DUKE AND SANDRA DUKE
[REDACTED]
LITTLE RIVER SC 29566-7855

Date of Certificate: 11-02-12
Policy Number: [REDACTED]
Policy Period: 12-16-12 to 06-16-13
(12:01 A.M. Local Time) (12:01 A.M. Local Time)

Name and Address:

COASTAL CAROLINA HONDA
3774 HIGHWAY 17 SOUTH
NEW BERN NC 28562

(This Certificate of Insurance does not amend, extend, or alter the coverage afforded by this policy.)

During the term of coverages provided, the Company and the insured shall be bound by the provisions of the policy (or policies) of insurance in current use by the Company in the state

This is to certify that the captioned policy includes the limits specified herein for each person and for each occurrence under the Bodily Injury Liability Coverage, the limits specified herein for each occurrence under the Property Damage Liability Coverage; and limits specified herein for each person and for each occurrence for Bodily Injury under the Uninsured Motorists Coverage.

Description of Vehicle: 05 CHEV 1G1YY34U555100107

Description of Vehicle:

COVERAGE	LIMITS OF COVERAGE	LIMITS OF COVERAGE
Bodily Injury Liability	\$25 M and \$50 M (Each Person) (Each Occurrence)	\$ M and \$ M (Each Person) (Each Occurrence)
Property Damage Liability	\$25M (Each Occurrence)	\$ (Each Occurrence)
Uninsured Motorists (Bodily Injury)	\$25 M and \$50 M (Each Person) (Each Occurrence)	\$ M and \$ M (Each Person) (Each Occurrence)

INTERESTED PARTY

We agree to provide you with written notice of termination in the event this policy becomes cancelled. Notice provided may be more than ten (10) days, but not less than ten (10) days.

GOVERNMENT EMPLOYEES INSURANCE COMPANY

ENDORSEMENT

LOSS PAYABLE CLAUSE

The Policy Number and Effective Date need be completed only when this endorsement is issued subsequent to preparation of the policy

Policy Number: [REDACTED]

Effective Date: 06-16-12

Any covered **loss** under the Physical Damage Coverages of the policy will be paid jointly to the **insured** and the Lienholder in the Declarations. We may settle a claim at our option by separate payment to the **insured** and the Lienholder. The Lienholder's interest will not be protected:

1. When fraud, misrepresentation, material omission, or intentional damage has knowingly been committed by or at the direction of any **insured**; or
2. In any case of conversion, embezzlement, secretion, or intentional damage to the vehicle(s) by or at the direction of any **insured**, or any owner of the vehicle(s); or
3. For any **loss** or damage caused by, or reasonably expected to result from, a criminal act or omission of any **insured** or any owner of the vehicle(s). This applies regardless of whether any **insured**, or any owner of the vehicle(s) is actually charged with, or convicted of a crime. For the purpose of this clause, criminal acts or omissions do not include traffic violations.

The Lienholder has no greater rights under the provisions of the policy than any **insured**.

The Lienholder must notify us if they become aware of any increased hazard or change of ownership of the vehicle(s) or they will lose all rights under this policy.

If any **insured** fails to file with us a Proof of Loss within 91 days after the **loss**, the Lienholder must do so within the following 60 days.

Whenever we pay the Lienholder, we shall be subrogated to the Lienholder's rights of recovery to the extent of our payment to the Lienholder. If the policy is in effect as to the Lienholder but has been canceled as to any **insured**, the Lienholder must assign the loan to us to the extent of our payment, if we ask.

We will notify the Lienholder at least 10 days and not less than the notice period required by law before we cancel their interest in the policy.

This endorsement forms a part of **your** policy. It is effective at 12:01 A.M. local time at **your** address on the effective date shown above.

WAL-MART SURVEILLANCE VIDEO

December 21, 2012

FILED WITH THE COURT

WALMART PARKING LOT VIEW

Looking Back Towards the Front Entrance

1. 4:52 Ms. Harrelson exits vehicle
2. 5:02 Ms. Harrelson walks with shopping cart to end of the lot.
3. 5:10 Kevin pulls up behind Mr. Harrelson and flashes his lights.
4. 5:13 Mr. Harrelson vehicle has no blinker on revealing his intentions
5. 5:22 Kevin flashes his lights again and pulls up to the vehicle.
6. 5:30 Mr. Harrelson pulls into a parking space on the right.
7. 5:40 Ms. Harrelson approaches Kevin and confronts him.
8. 5:42 Ms. Harrelson continues to confront Kevin.
9. 5:45 Mr. Harrelson comes from behind Kevin's vehicle and approaches his window.
10. 5:53 Mr. Harrelson leans down and verbally assaults Kevin.
11. 5:57 Kevin exits his vehicle.
12. 5:58 Kevin begins to defend himself.
12. 6:15 Altercation ends.
13. 6:17 Kevin returns to his vehicle.
14. 6:55 Kevin drives out of view.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Benjamin H. Culbertson, Circuit Court Judge

CASE NO. 2016-CP-26-798

South Carolina Farm Bureau Mutual Insurance Company Respondent

vs.

Michael David Harrelson, Devora Harrelson, Kevin Duke
and Government Employees Insurance Company Defendants

OF WHOM:

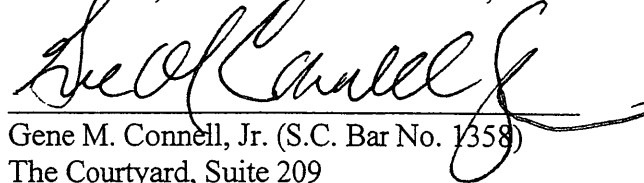
Michael David Harrelson and Devora Harrelson are Appellants
and

Government Employees Insurance Company is Respondent

CERTIFICATE OF COUNSEL

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

KELAHER, CONNELL & CONNOR, P.C.



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Harrelson and Devora Harrelson

October 16, 2017