

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM THE COURT OF COMMON PLEAS
WILLIAMSBURG COUNTY

Honorable George M. McFaddin, Jr., Circuit Court Judge

Case No. 2018-01093

JERRY L. PRESSLEY,

APPELLANT,

vs.

SOUTH CAROLINA DEPARTMENT
OF TRANSPORTATION,

RESPONDENT.

RECORD ON APPEAL

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RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

) IN THE COURT OF COMMON PLEAS
) THIRD JUDICIAL CIRCUIT
) C/A NO. 2016-CP-45-208

Jerry Pressley,

Plaintiff,

vs.

The South Carolina Department of
Transportation,

Defendant.

**ORDER GRANTING MOTION FOR
SUMMARY JUDGMENT**

This matter came before me as presiding judge for the Third Judicial Circuit on April 19, 2018 upon a motion for summary judgment filed by defendant South Carolina Department of Transportation (SCDOT). Present on behalf of plaintiff were his attorneys, Raymond C. Fischer and Jeffrey D. Morris. Present on behalf of SCDOT was its attorney, Joseph P. McLean. After review of the pleadings, SCDOT's motion for summary judgment and supporting affidavit, plaintiff's response to the motion and supporting affidavits, and after hearing argument of counsel the court concludes that there is no genuine issue as to any material fact and defendant is entitled to judgment as a matter of law.

FACTS

During the first week of October, 2015, Williamsburg County and many other counties in the state experienced an historic rain event. On October 6, 2015, at 5:30 a.m.,

plaintiff was travelling on Secondary Road 639 in Williamsburg County. He unexpectedly came upon a washout in the road that he could not see because of the darkness. He drove into the washout, and allegedly suffered bodily injury and property damage.

SCDOT owns and maintains Secondary Road 639. Plaintiff alleges that SCDOT was negligent because it had not taken steps to identify the washout and to erect warning signs or barricades to warn of the washout and to divert traffic away from it.

SCDOT moved for summary judgment based upon lack of actual or constructive notice of the washout and, in the alternative, immunity for presence of temporary or natural conditions on any public way due to weather conditions pursuant to S.C. Code of Laws §15-78-60(8).

In support of its motion, SCDOT filed an Affidavit of Richard A. Livingston, Jr., who was the resident maintenance engineer for SCDOT in Williamsburg County in October, 2015. Livingston states that during the historic rain event during the first week of October, 2015, Williamsburg County experienced record levels of rainfall and many creeks and rivers overflowed their banks causing flash flooding which washed away roads and bridges in many locations. He further states that at 7:44 a.m. on October 6, 2015, a call came in from the highway patrol advising SCDOT of the washout that plaintiff had driven into. He states that this was the first notice to SCDOT of this particular washout.

In response, plaintiff's submitted affidavits from Thomas Brown and Cathy Bennett, both of whom live in the vicinity of where the accident occurred. Both Brown

and Bennett state that on either October 4 or 5, they each called 911 to report water rushing over the road in the location where the washout occurred.

SUMMARY JUDGMENT

Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Fleming v. Rose*, 350 S.C. 488, 568 S.E.2d 857 (2002). In determining whether a genuine issue of fact exists, the evidence and all reasonable inferences drawn from it must be viewed in the light most favorable to the non-moving party. *Sauner v. Public Service Authority of SC*, 354 S.C. 397, 581 S.E.2d 161 (2003). The purpose of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder. *George v. Fabri*, 345 S.C. 440, 548 S.E.2d 868 (2001).

LAW / ANALYSIS

1. Notice

Plaintiff must prove SCDOT knew, or in the exercise of reasonable care should have known, of the washout. *Marsh v S.C. Dept. of Highways and Public Transportation*, 298 S.C. 420, 380 S.E. 2d 867 (Ct. App. 1989).

The only evidence of actual notice of the washout is the call to SCDOT from the highway patrol a little over 2 hour after the accident occurred. *See*, Affidavit of Richard a. Livingston, Jr. The affidavits of Thomas Brown and Cathy Bennett are evidence of actual notice to 911 only, which does not equate to notice to SCDOT. Thus, there is no competent evidence of actual notice.

As for constructive notice, SCDOT knew that roads in the county were being washed out by flood waters in many locations. *See*, Affidavit of Richard a. Livingston, Jr. Where a recurring condition is of such a nature as to amount to a continual condition, when coupled with other factors, the recurring condition may be sufficient to create a jury issue as to constructive notice. *Fickling v City of Charleston*, 372 S.C. 597, 643 S.E.2d 110 (Ct. App. 2007). *See also*, *Major v City of Hartsville*, 410 S.C. 1, 763 S.E.2d 348 (S.C. 2014) (ruts in unpaved road repeatedly made by automobile tires in same location); *Henderson v. St. Francis Cmty Hosp.*, 303 S.C. 177, 399 S.E.2d 327 (Ct. App. 1992)(debris from trees created regular maintenance problem); *Pinckney v Winn-Dixie Stores, Inc.*, 311 S.C. 1, 426 S.E. 2d 327 (Ct. App. 1992) (hazard created by recurring condition of fallen leaves). In this case, however, the historic rain and flood event was not a recurring condition and, therefore, does not create a jury issue as to constructive notice.

The court also notes that in his affidavit plaintiff states Brown told him the road had been washed out for over a day before the accident. However, this statement is hearsay and therefore is not competent evidence of constructive notice. Additionally, it conflicts with what Brown says in his Affidavit, which is that water was “rushing over the road.”

2. Presence of temporary or natural conditions on road due to weather conditions

The S.C. Tort Claims Act at S.C. Code of Laws §15-78-60(8) provides SCDOT is not liable for a loss resulting from:

snow or ice conditions or temporary or natural conditions on any public way or other public place due to weather conditions unless the snow or ice thereon is affirmatively caused by a negligent act of the employee

(emphasis added).

While the statute specifically mentions snow and ice, it also contemplates other “temporary or natural conditions...due to weather conditions.” The Tort Claims Act must be construed liberally in favor of limiting the liability of the State S.C. Code of Laws §15-78-20(f). In this case, the water that caused the washout was a temporary natural condition due to weather. The court finds to logical reason to limit the limitations on and exceptions to liability of the state under §15-78-60(8) to snow and ice only.

CONCLUSION

There is no evidence of actual or constructive notice to SCDOT of the subject washout. Further SCDOT is immune from liability under §15-78-60(8) of the Tort Claims Act. Accordingly, SCDOT is entitled to summary judgment, **AND IT IS SO ORDERED.**

END OF DOCUMENT

E-SIGNATURE TO FOLLOW



Williamsburg Common Pleas

Case Caption: Jerry L Pressley VS South Carolina South Carolina Department Of
Transportation
Case Number: 2016CP4500208
Type: Order/Summary Judgment

So Ordered

S/George M. McFaddin, Jr., #2759

Electronically signed on 2018-05-30 09:25:07 page 6 of 6

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6. SCDOT did not take steps to immediately identify the washout, nor did they cordon off the hazzard for the safety of the motoring public who might use that road.

7. A portion of S.C. Highway 527 coincidently had a wash out that was cordoned off to warn the public. S-45-639, appeared to be a viable detour around the Highway 527 washout.

8. The Plaintiff, who works for International Paper Company in Georgetown, was traveling on Highway 527 toward his home in Kingstree on October 6, 2016, at approximately 5:30 a.m. Seeing the barricade on Highway 527, Plaintiff turned onto S-45-639 where he unexpectedly came upon the washout. Because of the darkness, he did not see the washout in time to stop his vehicle.

9. Plaintiff's truck struck the washout, causing him serious bodily injury and causing total loss to his vehicle. Plaintiff was transported to a hospital for treatment of his injuries. Plaintiff has continued to receive ongoing medical treatment for his injuries.

10. Plaintiff's injuries included his arms, especially the right arm, hands, back, and legs. Further, plaintiff suffered cognitive and neurologic injuries, all of which are receiving ongoing treatment. Plaintiff has been unable to return to work.

11. After the Plaintiff was injured, SCDOT erected barriers on both sides of the washout hazzard.

**SOLE CAUSE OF ACTION
NEGLIGENCE AND GROSS NEGLIGENCE**

The Plaintiff realleges the allegations of paragraphs 1-11, above and further alleges as follows:

12. SCDOT, by law, has a duty to maintain the primary and secondary road system of South Carolina. That duty includes removing, maintaining and/or cordoning off particularly dangerous hazzards in and on the roadways.

13. SCDOT owed the aforesaid duty to all operators of motor vehicles, including the Plaintiff, upon the state secondary roads.

14. SCDOT had the duty to repair, warn of, or cordon off the washout on S-45-639, on or before October 6, 2015.

15. SCDOT was on notice that several washouts had occurred in the immediate area.

16. SCDOT breached its duty, imposed by law, in one or more of the following particulars:

- a. by failing to patrol the roads in the area to discover such hazzards;
- b. by failing to erect warning signs of the subject washout; and
- c. by failing to erect barriers to divert traffic away from the subject washout.

17. The acts and omission of SCDOT were grossly negligent in that a deadly hazzard was allowed to go un-repaired or unguarded.

18. As a result of SCDOT's gross negligence, Plaintiff suffered damages, by way of physical injury, medical bills, lost wages and property damage.

WHEREFORE, Plaintiff prays for a judgment against the South Carolina Department of Transportation for compensatory and consequential damages.

*****SIGNATURES NEXT PAGE*****

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STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

) IN THE COURT OF COMMON PLEAS
) THIRD JUDICIAL CIRCUIT
) C/A NO. 2016-CP-45-208

Jerry Pressley,

Plaintiff,

vs.

The South Carolina Department of
Transportation,

Defendant.

ANSWER

Defendant, by and through undersigned counsel, hereby answers the Complaint of plaintiff as follows:

FOR A FIRST DEFENSE

1. Admits, upon information and belief, the allegations contained in paragraph 1.
2. Admits the allegations contained in paragraph 2.
3. Admits only so much of paragraph 3 as may be construed to allege that SCDOT has a responsibility to maintain certain roads and highways in South Carolina in a reasonably safe condition; except as so admitted, however, the remaining allegations of paragraph 3 are denied.
4. Admits the allegations contained in paragraph 4.
5. Admits only so much of paragraph 5 as alleges that a portion of the road had washed out due to heavy rains and flooding; except as so admitted, however, SCDOT lacks knowledge sufficient to form a belief as to the truth of the remaining allegations of paragraph 5 and, therefore,

denies the same.

6. In response to paragraph 6, SCDOT admits it was notified of the washout by law enforcement after plaintiff drove into it; further answering paragraph 6, SCDOT admits it cordoned off the washout after plaintiff drove into it; except as so admitted, however, SCDOT denies the remaining allegations contained in paragraph 6.

7. Lacks knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 7 and, therefore, denies the same.

8. Lacks knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 8 and, therefore, denies the same.

9. Lacks knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 9 and, therefore, denies the same.

10. Lacks knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 10 and, therefore, denies the same.

11. Admits only so much of paragraph 11 as may be construed to allege that SCDOT erected barriers around the washout as soon as possible with resources and manpower available after it received notice of it from law enforcement; except as so admitted, however, SCDOT denies the remaining allegations contained in paragraph

12. Admits only so much of paragraph 12 as may be construed to allege that SCDOT has a duty to maintain certain roads and highways in this state in a reasonably safe condition; except as so admitted, however, the remaining allegations of paragraph 12 are denied.

13. Admits only so much of paragraph 13 as may be construed to allege that SCDOT owes a duty to all operators of motor vehicles, including the plaintiff, to keep certain roads and highway in this state in a reasonably safe condition; except as so admitted, however, the remaining allegations of paragraph 13 are denied.

14. Admits only so much of paragraph 14 as may be construed to allege that SCDOT has a duty to maintain certain roads and highways in this state in a reasonably safe condition; except as so admitted, however, the remaining allegations of paragraph 14 are denied.

15. Admits only so much of paragraph 15 as may be construed to allege that SCDOT had notice of a large number of road washouts caused by the unprecedented rainfall and flooding; except as so admitted, however, the remaining allegations of paragraph 15 are denied.

16. Denies the allegations contained in paragraph 16.

17. Denies the allegations contained in paragraph 17.

18. Denies the allegations contained in paragraph 18.

FOR A SECOND DEFENSE

19. Any injuries or damages sustained by the plaintiff as set forth in the Complaint were due to and caused by his own negligence, carelessness, gross negligence, recklessness, willfulness, and wantonness in one or more of the following particulars:

- a. In failing to keep a proper lookout for the open and obvious road washout;

- b. In failing to observe an open and obvious hazard on the road;
- c. In driving at an excessive rate of speed for the conditions existing at the time of the accident;
- d. In driving at an excessive rate of speed in violation of the South Carolina Code of Laws;
- e. In failing to exercise that degree of care and caution which would be exercised by a prudent and careful individual under the circumstances existing at the time of the accident.

Each of the above acts contributed to the cause of plaintiff's injuries and damages, and the above mentioned negligent, reckless, willful, and wanton acts and omissions on the part of the plaintiff were greater than any negligent, reckless, willful, or wanton acts and omissions on the part of the defendant in causing plaintiff's injuries and damages, and, therefore, plaintiff's claims should be barred under the doctrine of comparative negligence and the defendant pleads the comparative negligence of the plaintiff as a bar to this action; alternatively, if the negligent, reckless, willful, and wanton acts and omissions on the part of the plaintiff were less than the negligent, reckless, willful, and wanton acts and omissions on the part of the defendant, then plaintiff's recovery should be reduced in proportion to the extent of his own negligence in causing his own injuries.

FOR A THIRD DEFENSE

20. This defendant's liability is governed by the South Carolina Tort Claims Act, S.C. Code of Laws §15-78-10, *et. seq.*, and defendant pleads all the applicable privileges and immunities thereunder, including, but not limited to, the following:

- a. Lack of actual or constructive notice of any defect, danger, or condition which caused or contributed to the damages claimed by plaintiff pursuant to §15-78-60 (15);
- b. Discretionary immunity pursuant to §15-78-60 (5);
- c. Immunity from absence, condition, or malfunction of any sign, signal, warning device, or illumination device, unless not corrected after actual or constructive notice pursuant to §15-78-60 (15);
- d. Immunity from liability arising from a failure to place any signs, signals, or warning devices when the failure is due to a discretionary act of the governmental entity pursuant to §15-78-60 (15);
- e. Presence of temporary or natural conditions on any public way due to weather conditions pursuant to §15-78-60 (8);
- f. Any other defenses which may be identified as investigation and discovery may reveal.

FOR A FOURTH DEFENSE

- 21. Defendant pleads the public duty rule.

FOR A FIFTH DEFENSE

22. The October, 2015, flooding was a 1,000 year flood event. The washout of the road was an unusual, extraordinary, sudden, and unexpected manifestation of the forces of nature which could not have been reasonably anticipated, guarded against, or resisted. Therefore, defendant is insulated from liability for personal injury or property damage caused by an act of God, i.e. a natural cause.

WHEREFORE, having fully answered the Complaint, Defendant prays that it be dismissed with prejudice and with costs of defense.

CLARKE, JOHNSON, PETERSON & MCLEAN, PA

S/ Joseph P. McLean

JOSEPH P. MCLEAN

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Attorney for Defendant.

Florence, S.C.
June 28, 2016

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	THIRD JUDICIAL CIRCUIT
COUNTY OF WILLIAMSBURG)	C/A NO. 2016-CP-45-208
)	
Jerry Pressley,)	
)	
Plaintiff,)	
)	
vs.)	MOTION FOR SUMMARY
)	JUDGMENT
)	
The South Carolina Department of)	
Transportation,)	
)	
Defendant.)	
)	

TO: PLAINTIFF ABOVE-NAMED AND, ESQUIRE, HIS ATTORNEYS:

PLEASE TAKE NOTICE that defendant, by and through undersigned counsel, will move before the presiding judge of the Third Judicial Circuit, on the tenth day after service hereof, at the Williamsburg County Courthouse, or at such other time and place as instructed by the court, for an order granting it summary judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure on the following grounds:

1. Lack of actual or constructive notice. *See*, S.C. Code of Laws §15-78-60(15).
2. Presence of temporary or natural conditions on any public way due to weather conditions. *See* S.C. Code of Laws §15-78-60 (8).

This motion is supported by the Affidavit of Richard A. Livingston, Jr., filed herewith as well as all discovery done in this case.

[E- SIGNATURE TO FOLOW ON PAGE 2]

CLARKE, JOHNSON, PETERSON & MCLEAN, PA

s/ *Joseph P. McLean*

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February 19, 2018

Further, Plaintiff, in his affidavit says there was a barricade across S.C. 527; that Pepper Hill Road was not barricaded; and Pepper Hill Road was the route a reasonable person might take.

Defendant's second ground for summary judgment relies on an exception in §15-78-60(8), relating to weather related conditions. This exception however specifically address snow and ice conditions, not present here.¹ Plaintiff contends that this exception does not even apply to the washout on Pepper Hill Road.

It is uncontested that an unusually severe weather event occurred before and during the time of plaintiff's accident. Georgetown and Williamsburg counties experience an unusual amount of rainfall, causing flooding which resulted in road closures and washouts. In fact, SCDOT had erected barricades across adjacent roads, causing commuters to detour down the very road (Pepper Hill Road) where plaintiff crashed his truck on the way to work. Plaintiff would offer that SCDOT's detour barricades were a direct and proximate cause of Plaintiff's crash and injuries. (Exhibit "C", Affidavit of Jerry Pressley).

When deciding a case under Rule 56, SCR Civ. P., the court must apply these criteria. "In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party." *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006). *Evening Post Pub. Co. v. Berkeley Cty. Sch. Dist.*, 392 S.C. 76, 81-82, 708 S.E.2d 745, 748 (2011). Here, the Plaintiff has produced credible evidence that SCDOT was on notice, whether actual or constructive. Notice is an issue of fact.

¹In fact, the exception uses the words "snow" and "ice" twice.
"(8) snow or ice conditions or temporary or natural conditions on any public way or other public place due to weather conditions unless the snow or ice thereon is affirmatively caused by a negligent act of the employee:" §15-78-60(8).

Further, the exception cited by the Defendant must be read giving the words their plain meaning. “The cardinal rule of statutory construction is to ascertain and effectuate legislative intent.” *Hodges v. Rainey*, 341 S.C. 79, 85 (2000). As such, a court must abide by the plain meaning of the words of a statute. *Id.* When interpreting the plain meaning of a statute, courts should not resort to subtle or forced construction to limit or expand the statute's operation. *Grazia v. S.C. State Plastering, LLC*, 390 S.C. 562, 569 (2010). “Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.” *Hodges*, 341 S.C. at 85. “ ‘What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature.’ ” *Id.* Here, the exception cited by Defendant specifies “ice or snow.” It should not be read to expand the intended meaning of the legislature.

CONCLUSION

This Court should deny both grounds of defendant's motion for summary judgment.

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1 THE COURT: Now to Number 16, S.C.D.O.T., John (sic) Pressley
2 and S.C.D.O.T. Mr. Carl Fischer and Mr. McLean.

3 MR. MCLEAN: Good morning.

4 THE COURT: How are y'all today?

5 MR. FISCHER: Fine, Your Honor.

6 THE COURT: Who goes first?

7 MR. MCLEAN: Your Honor, this is my Motion. I'm Joe McLean
8 from Florence and I represent the Department of Transportation
9 in this matter. This is my -- this is a Motion for Summary
10 Judgment.

11 MR. FISCHER: Your Honor, if I could just for housekeeping?

12 THE COURT: Yes, sir.

13 MR. FISCHER: We had filed -- E-filed our Response and the
14 Affidavit, and I messed up on E-filing and I think Laura had
15 posted them this morning. But just in the event that Your Honor
16 has not received copies of it ---

17 THE COURT: Yes, sir.

18 MR. FISCHER: --- I'd like to hand it to you, and then Mr.
19 McLean has received it, so.

20 MR. MCLEAN: Correct, sir.

21 THE COURT: All right, that's fine.

22 MR. FISCHER: If I could just hand these up. I didn't mean
23 to interrupt him but I ---

24 THE COURT: That's all right. Folks, as you can see things
25 are piling up there so, uh, tell me what you've got, sir.

1 an Affidavit from Mr. Richard Livingston who is the resident
2 maintenance engineer for the Department of Transportation here
3 in Williamsburg County. He mentions in his Affidavit the
4 historic rain event that the Department of Transportation was
5 dealing with that week, and states that during the rain event
6 the phones at the D.O.T. headquarters were manned 24 hours a day
7 and the crews were out on the roads and the personnel and assets
8 were deployed as needed and as available.

9 He also states that the first notice to D.O.T. of this
10 washout that Mr. Pressley drove into was at 7:44 A.M. on the
11 morning of October sixth, 2015. Again, the accident happened at
12 5:30 A.M., so D.O.T. received no notice of the, uh, washout
13 until after the accident had occurred. There's simply no
14 evidence of, uh, of how long the washout had existed and there's
15 certainly no evidence of any actual notice to D.O.T. from any
16 source at all.

17 Plaintiff has submitted two Affidavits in opposition. One
18 is from Mr. Thomas Brown and one is from Ms. Kathy Bennett. Both
19 of those Affidavits state that water -- they observed water
20 flowing over the road which is very different from a washout,
21 and they also state that they called 911 to report water flowing
22 over the road. The notice to 911 is not notice to S.C.D.O.T.

23 Uh, Plaintiff has submitted an Affidavit in opposition to
24 our Motion for Summary Judgment in which he states he was told
25 by Mr. Brown, the previous individual who submitted an Affidavit

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF WILLIAMSBURG) THIRD JUDICIAL CIRCUIT
C/A NO. 2016-CP-45-208

Jerry Pressley,)
Plaintiff,)

vs.)

The South Carolina Department of)
Transportation,)
Defendant.)

**AFFIDAVIT OF
RICHARD A. LIVINGSTON, JR.**

PERSONALLY APPEARED BEFORE ME, Richard A. Livingston, Jr., who, being
duly sworn, deposes and says:

1. My name is Richard A. Livingston, Jr. I am employed by the South
Carolina Department of Transportation (SCDOT) as Resident Maintenance Engineer for
Williamsburg County. I was employed in that position on October 6, 2015.

2. From October 1 through October 5, 2015, Williamsburg County experienced
record levels of rainfall. Many creeks and rivers overflowed their banks, causing flash
flooding which washed away roads and bridges in many locations.

3. During the historic rain event of October, 2015, the telephones at the SCDOT
maintenance office in Williamsburg County were answered 24 hours a day. Further,
SCDOT personnel and assets were deployed as needed and as available.

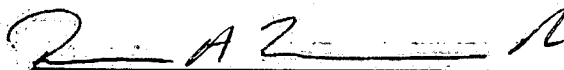
4. At 7:44 A.M. on October 6, 2015, a call came in from the Highway Patrol advising SCDOT there was a washout on Pepper Hill Road.

5. The SCDOT sign crew responded to the call about the washout on Pepper Hill Road. The washout was at mile point 1.42, which is approximately where Birch Creek flows under Pepper Hill Road.

6. The SCDOT sign crew erected barricades at the location, and placed road closed signs and detour signs to redirect traffic.

7. I have reviewed the Daily Work Request records for Pepper Hill Road for the year 2015. There is no record of any call coming in from Williamsburg County E-911 on October 4 or 5, 2015, about water rushing over Pepper Hill Road.

8. I have reviewed the Complaint in this action, and it alleges that the subject accident occurred on October 6, 2015, at approximately 5:30 A.M. SCDOT did not have notice of the washout until the call from Highway Patrol on October 6, 2015, at 7:44 A.M.



Richard A. Livingston, Jr.

Sworn to and subscribed before me
this 14th day of February, 2018.

Irene K Disher

Print Name: Irene K Disher

Notary Public for South Carolina

My commission expires: 10-16-2025

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	THIRD JUDICIAL CIRCUIT
WILLIAMSBURG COUNTY)	C/A NO.: 2016 CP 45-00208
JERRY PRESSLEY,)	
)	
PLAINTIFF,)	
)	
VS.)	AFFIDAVIT OF THOMAS BROWN
)	
THE SOUTH CAROLINA)	
DEPARTMENT OF TRANSPORTATION,)	
)	
DEFENDANT.)	

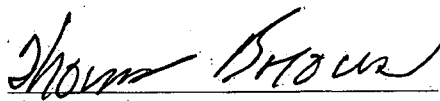
The Affiant, Thomas Brown, first being duly sworn, deposes and says as follows:

1. My name is Thomas Brown. I reside at 164 Pepper Hill Road, Andrews, SC 29510. My home is located approximately 200 yards from where Birch Creek crosses Pepper Hill Road in Williamsburg County.
2. During the heavy rains of October 4, 5 and 6, 2015, I noticed water in Birch Creek rushing over the bridge/culvert where it crosses Pepper Hill Road. The water appeared fairly deep and dangerous to cross.
3. On October 4th or 5th, I called 911 to report the water rushing over the road.
4. In the early morning hours of October 6, 2015, I was awakened by a loud crash. I thought to myself that someone had crashed into the wash out at Birch Creek culvert. I went to the scene and sure enough that is what happened. A man named Jerry Pressley was driving his pickup truck to work in Georgetown. He didn't see the washout in the darkness.
5. Mr. Pressley was hurt pretty badly from what I could see. I called 911 and waited

with him until EMS and Highway Patrol arrived. Also, his truck looked to me to be heavily damaged.

- 6. There were no warning signs or barricades put up to stop traffic until after Mr. Pressley had the accident. In fact, I think it took another day or two to put up barricades; maybe as late as October 8, 2015. A relative of ours, who lives further up the road, made a hand-made sign warning of the washout.
- 7. Later, on the 6th or 7th of October, an 18 wheeler was coming down Pepper Hill Road. I saw him and stopped him before he got to the washout. He had to back up his rig for about one-fourth mile to get it turned around

FURTHER AFFIANT SAITH NOT.



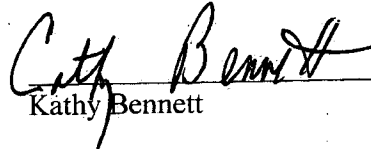
 Thomas Brown

Sworn to and subscribed before me
 this 17th day of February, 2017.

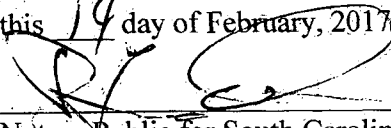


Notary Public for South Carolina
 My commission expires: May 27, 2025

FURTHER AFFIANT SAITH NOT.


Kathy Bennett

Sworn to and subscribed before me
this 14 day of February, 2017.


Notary Public for South Carolina
My commission expires: May 27, 2025

STATE OF SOUTH CAROLINA)
 WILLIAMSBURG COUNTY)
 JERRY PRESSLEY,)
)
 PLAINTIFF,)
)
 VS.)
)
 THE SOUTH CAROLINA)
 DEPARTMENT OF TRANSPORTATION,)
)
 DEFENDANT.)

IN THE COURT OF COMMON PLEAS
 THIRD JUDICIAL CIRCUIT
 C/A NO.: 2016 CP 45-00208

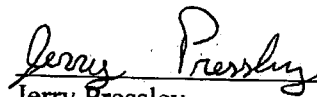
AFFIDAVIT OF JERRY PRESSLEY

The Affiant, Jerry Pressley, first being duly sworn, deposes and says as follows:

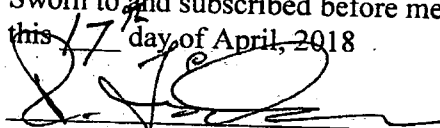
1. My name is Jerry Pressley and I am the Plaintiff in this case.
2. I live in Kingtree but work in Georgetown at International Paper Company. My usual route of travel is on S.C. Highway 527, also called Thurgood Marshall Highway, from Kingtree to Andrews and I then take U.S. 521 to Georgetown.
3. I was on my way to work on the early morning of October 6, 2015, traveling S.C. 527 when I came to a barricade across the road. The barricade said the road was closed. I then turned around, turned right on S-45-638, left on Pepper Hill Road which bypasses SC 527 over to Morrisville Road. There were no barricades on Pepper Hill Road, which seemed to be clear and passable.
4. Birch Creek crosses Pepper Hill Road through a narrow bridge. As I crossed the creek, my truck suddenly came to an abrupt stop as my front wheels dropped off the edge of a washout. My truck was damaged and I was injured. I was taken to the hospital for my injuries.

5. The first person on the scene was a Mr. Brown who lives close by. He told me the road had been washed out for over a day or so and that he had called 911 to report it the day before my accident.
6. A few days later I revisited the scene and saw that a barricade had been erected. The washout seemed to be about four feet wide. I visited with Mr. Brown to get his name and contact information.
7. There was no ice or snow involved, only rain.

FURTHER AFFIANT SAITH NOT.


Jerry Pressley

Sworn to and subscribed before me
this 17th day of April, 2018


Notary Public for South Carolina
My commission expires: May 27, 2025

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM WILLIAMSBURG COUNTY
Court of Common Pleas

George M. McFaddin, Jr., Circuit Court Judge

Case No. 2016CP45-208

Jerry Pressley,

Appellant,

v.

The South Carolina
Department of Transportation,

Respondent.

NOTICE OF APPEAL

Jerry Pressley appeals the Order Granting Summary Judgment of the Honorable George M. McFaddin, Jr. dated May 30, 2018. Appellant received written notice of entry of this order May 30, 2018.

May 31, 2018

s/Raymond C. Fischer
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843-669-2401

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SC Court of Appeals

CERTIFICATE OF COUNSEL

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

Georgetown, SC
October 14, 2018



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