

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM JASPER COUNTY
C. Stephen Bennett, Special Referee

Case No. 2018-001955

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SC Court of Appeals

Richard L. Winslow and Charmayne Winslow, ... Respondents,

v.

Matthew W. Hudson, Waste Pro USA, Inc., and Waste Pro of South Carolina, Inc. Defendants,

Of which Matthew W. Hudson is the Appellant.

RESPONDENTS' RETURN TO WASTE PRO USA, INC., AND WASTE PRO OF SOUTH
CAROLINA'S MOTION TO INTERVENE AND TO STAY OR DISMISS APPEAL

Respondents Richard L. Winslow and Charmayne Winslow respond to Waste Pro USA, Inc., and Waste Pro of South Carolina's (collectively "Waste Pro") Motion to Intervene and to Stay or Dismiss Appeal filed on January 14, 2019.¹ For the reasons stated herein, the Court should deny the motion in its entirety and allow the appeal to proceed between Appellant and Respondents.

BACKGROUND

This action arises out of a car accident that occurred on November 4, 2015, when Appellant Matthew W. Hudson ("Appellant") hit the back of a car driven by Respondent Richard Winslow. (Exh. 1, Cmpl't. ¶¶ 10-11, 16). Appellant was driving a commercial garbage truck for his employer,

¹ This Return is intended solely to respond to Waste Pro's motion and is not to be used or interpreted in any manner related to the merits of this appeal.

Waste Pro. *Id.* Within weeks of the collision, Respondents sent a letter of legal representation to Waste Pro. (Exh. 2, Tr. p. 49 Ins. 212-25). On February 15, 2017, counsel for Respondents sent a settlement demand to the liability insurance carrier for Waste Pro and requested a response by March 10, 2017. (Exh. 3, Carr Aff. ¶ 5). There is no evidence that Waste Pro or its insurance carrier contacted Appellant to notify him of the potential claim. Waste Pro's attempt in its Motion to infer that it had no notice of this potential action is directly contradicted by the fact that Respondents' counsel sent it a notice of representation and sent its liability insurance carrier a settlement demand that went unanswered for almost eight months. After receiving no response from Waste Pro's insurance carrier, on March 20, 2017, Respondents filed a Complaint asserting a negligence cause of action against Appellant and Waste Pro. (Cmplt.).

Waste Pro is absolutely incorrect when it says that its only potential liability is vicarious. (Mot. pp. 2, 3 n.2, 5, 10 n. 3). The Complaint asserts vicarious **and** direct corporate liability against Waste Pro. *See, e.g.*, Exh. 1, Cmplt. ¶ 24 ("The Waste Pro Defendants herein are legally responsible . . . pursuant to the doctrine of respondeat superior."), ¶ 38 ("As the owners, operators, employers and providers of commercial vehicle and waste services in South Carolina, the Waste Pro Defendants owe certain duties of care to others using the highways."), ¶ 39.d., n. ("Each and all of the Defendants herein breached their duties . . . as follows: . . . d. Failing to properly, hire, train, monitor, and supervise a commercial truck operator with safe driving practices; . . . n. Violating one or more of the requirements for commercial truck operators under the Federal Motor Carrier Safety Regulations."). "[T]he two theories of vicarious liability and corporate liability can coexist in a lawsuit, and a finding of one does not necessarily preclude a finding of the other." *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 538, 773 S.E.2d 144, 146 (2015).

On April 6, 2017, Respondents served Appellant through the SCDMV pursuant to S.C. Code § 15-9-350, which permits service of process on the SCDMV for a nonresident who uses South Carolina roads. (Exh. 4, Aff. of Svc.). The SCDMV sent the Summons and Complaint by certified mail to Appellant's address listed on the accident report. It was returned to the SCDMV "marked 'Return to Sender Unclaimed Unable to Forward.'" *Id.* Under § 15-9-380, after returned service, the SCDMV sends the Summons and Complaint by open mail. The filing of an affidavit of the mailing has "the same force and legal effect as if such process has been personally served upon such defendant." § 15-9-380. Respondents complied with these statutory service requirements. Respondents did not serve Waste Pro in this action.

On August 10, 2017, after Appellant failed to file an answer or otherwise appear within thirty days of service, Respondents filed an affidavit of default as to Appellant. On August 30, 2017, the Honorable Carmen T. Mullen issued an Order of Default as to Appellant and Order of Reference to C. Stephen Bennett for a damages hearing and final judgment as to Appellant. On October 12, 2017, the Special Referee held a damages hearing. After hearing Respondents' testimony and considering the evidence submitted, the Special Referee entered a total judgment of \$1,960,444.66, including actual and punitive damages, against Appellant. (Exh. 5, Order of Judgment p. 8).

On November 2, 2017, the insurance adjuster for Waste Pro's insurer made its first contact with counsel for Respondents and its first offer of settlement. (Exh. 3, Exh. 1 to Carr Aff.). This is the first communication Liberty Mutual made regarding the claim, and it happened almost eight months after Respondents made a demand. *Id.* On January 19, 2018, Appellant filed a Rule 60(b), SCRCP, motion to vacate the default judgment. (Mot.).

On August 9, 2018, Waste Pro voluntarily filed an Answer. (Exh. 6, August 2018 Answer). Waste Pro asserted insufficiency of service of process as a defense and asked the Court to dismiss the action “with prejudice” based on the absence of service. *Id.* at ¶ 35. Respondents agreed with that defense and offered a consent order to dismiss Waste Pro without prejudice. (Exh. 2, Tr. of Hearing p. 14). Waste Pro refused a consent dismissal, leaving Respondents with no choice but to file a motion to dismiss Waste Pro without prejudice and to file a separate action against Waste Pro in which Respondents served Waste Pro to ensure a valid action was filed within the statute of limitations. The second action, Case No. 2018-CP-27-00442, asserts the vicarious and direct liability of Waste Pro. *See, e.g.*, Exh. 8, Cmplt. ¶ 14 (“ . . . the Defendants herein are jointly and severally liable for the tortious acts and omissions of Hudson . . . pursuant to the legal doctrine respondeat superior.”); ¶ 34 (“This collision was the fault of Defendants *and* their employee Hudson” (emphasis added)); ¶ 71.m-n. (including as the alleged acts of negligence “Negligent and inadequate training, hiring, monitoring, and supervision of a commercial vehicle operator; Violating one or more of the traffic statutes made and provided under the Code of Laws for South Carolina”).

On August 23, 2018, Respondents filed a declaratory judgment action in Federal Court to obtain payment of the judgment from Waste Pro or its liability insurance carrier under the MCS-90 endorsement. *Id.* The policy contains an “MCS-90” endorsement that provides the insurer must pay a final judgment entered against the insured motor carrier, even if there is no coverage under the policy of insurance to which it is attached.² An MCS-90 endorsement to the insurance policy provides minimum financial responsibility of \$1,000,000.00 that the insurer is required to pay as

² *See* 49 C.F.R. § 387.15, Illustration I.

part of a legislatively-enacted public policy to protect the public. 49 C.F.R. §§ 387.9, 387.15, Illustration I.

On September 6, 2018, the Special Referee held a hearing on Appellant's Rule 60(b) motion. (Exh. 2, Tr. of Hearing). On October 5, 2018, the Special Referee filed an Order denying the motion. (Order). Appellant filed a Notice of Appeal on October 31, 2018, and an initial brief on November 29, 2018. On January 1, 2018, Waste Pro filed the motion at issue. The Court should deny the motion in its entirety.

ARGUMENT

Waste Pro's entire motion is based on two incorrect premises—(1) that Respondents were required to sue Waste Pro and Appellant to recover and (2) that Waste Pro's liability to Respondents is solely vicarious. "Respondents were not required to sue both principal and agent to recover from the principal under respondeat superior. They had the choice to sue either the agent or principal or join both." *Austin v. Specialty Transp. Servs.*, 358 S.C. 298, 319, 594 S.E.2d 867, 878 (Ct. App. 2004) (citing *Lane v. Home Ins. Co.*, 190 S.C. 84, 91, 2 S.E.2d 30, 32 (1939)). "It is well-settled that a plaintiff has the sole right to determine which co-tortfeasor(s) she will sue." *Chester v. S.C. Dep't of Pub. Safety*, 388 S.C. 343, 345, 698 S.E.2d 559, 560 (2010). Respondents specifically allege Waste Pro's direct liability for negligent hiring, training, and supervision. "[A] plaintiff may claim that the employer was itself negligent in hiring, supervising, or training the employee, or that the employer acted negligently in entrusting its employee with a tool that created an unreasonable risk of harm to the public. . . . the employer's liability under such a theory does not rest on the negligence of another, but on the employer's own negligence. Stated differently, the employer's liability under this theory is not derivative, it is direct." *James v. Kelly Trucking Co.*, 377 S.C. 628, 631, 661 S.E.2d 329, 330-31 (2008) (internal citation

omitted). These two inaccuracies alone are sufficient for the Court to deny the motion to intervene and allow the parties to this appeal to proceed on the merits.

I. WASTE PRO HAS NO STANDING OR LEGAL BASIS TO INTERVENE IN THIS APPEAL

Waste Pro asks this Court to permit it to intervene as an appellant in this case because it essentially seeks to reverse the Order of the lower court. Under Rule 201(b), SCACR, “Only a party aggrieved by an order, judgment, sentence or decision may appeal.” (emphasis added). “An ‘aggrieved party’ as contemplated by this section is one who is injured in a legal sense, i.e., one who has been denied a personal or property right, or where a burden or obligation has been imposed.” *Way v. State*, 410 S.C. 377, 385, 764 S.E.2d 701, 706 (2014). Waste Pro is not aggrieved by the Order denying the motion to vacate the default judgment because it is not a judgment against Waste Pro. Further, as noted above, Respondents are not required to sue both Waste Pro and Appellant to recover.

Waste Pro cites to no legal basis for intervention in an appeal of an order entered against another party. Its argument for intervention is essentially that it would be bound by a decision in this appeal without entering a defense or that a decision affirming the Order on appeal *may* be inconsistent with a favorable result for Waste Pro in the second-filed action. (Mot. p. 8). Reading between the lines, Waste Pro wants to intervene solely for the purpose of having the appeal dismissed and not for any purpose related to the merits of the issues on appeal. This is an improper basis for intervention.

Waste Pro has an opportunity to defend all claims against it in the 2018 action. As its liability is not solely vicarious but also direct, Waste Pro’s fears about the effect of this appeal are unfounded and incorrect. There is no basis for intervention. Further, a ruling in Waste Pro’s favor is, in effect, a direction by the Court that a plaintiff is always required to sue joint tortfeasors in

cases of vicarious liability. This is contrary to the law. *See Austin*, 358 S.C. at 319, 594 S.E.2d at 878 (“Respondents were not required to sue both principal and agent to recover from the principal under respondeat superior. They had the choice to sue either the agent or principal or join both.”).

II. THERE IS NO BASIS TO STAY OR DISMISS THE APPEAL

Waste Pro’s argument for a stay or dismissal is based solely on *Frow v. De La Vega*, 82 U.S. 552 (1872). However, *Frow* and its progeny do not provide a basis for intervention or the stay or dismissal of this appeal. In *Frow*, the Supreme Court cautioned against entering a final default judgment against one defendant while the complaint is still pending against other defendants because “a final decree on the merits against the defaulting defendant alone, pending the continuance of the case, would be incongruous and illegal.” *Id.* at 554. In the more than 140 years since the *Frow* decision, its holding was substantially affected by the adoption of Rule 54, SCRCP,³ and hundreds of decisions interpreting the decision. In the Fourth Circuit, *Frow* applies “to situations of joint liability [] [and] to those where the liability is joint and/or several.” *United States use of Hudson v. Peerless Ins. Co.*, 374 F.2d 942 (4th Cir. 1967).

First, as explained above, the Complaints in both actions filed against Waste Pro assert vicarious liability **and** Waste Pro’s direct corporate liability. Therefore, this action is not one of sole joint liability. This alone is sufficient to deny the motion.

Second, if Waste Pro prevails as to vicarious liability, and in the event it paid for the judgment against Hudson, it could seek indemnity from him. *See People’s United Equipment Fin. Corp. v. Wright*, 2011 WL 2607155, *8 (E.D. Va. 2011) (finding *Frow* did not control in a case where default judgment was entered against one guarantor, based in part on the fact that “a paying

³ The South Carolina Rules of Civil Procedure are applicable in this action. Rule 54(b), SCRCP, is substantially the same as the Federal Rule.

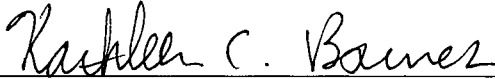
party may have a right of contribution and indemnity from nonpaying parties.” (internal quotation marks omitted)). Therefore, *Frow* does not provide for the relief Waste Pro seeks.

CONCLUSION

Intervention in an appeal is a rare and drastic remedy. There is no legal basis for intervention in this action. The Court should deny the motion and permit the appeal to proceed on the merits between Appellant and Respondents.

January 25, 2019

Respectfully submitted,



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EXHIBIT 1

STATE OF SOUTH CAROLINA)

COUNTY OF JASPER)

RICHARD L. WINSLOW and
CHARMAYNE WINSLOW,

Plaintiffs,

v.

MATTHEW W. HUDSON, and
WASTE PRO USA, INC., and
WASTE PRO OF SOUTH CAROLINA,
INC.,

Defendants.

IN THE COURT OF COMMON PLEAS

FOURTEENTH JUDICIAL CIRCUIT

C/A NO.: 2017-CP-27-_____

COMPLAINT

The Plaintiffs, complaining of the Defendants herein, would respectfully show this Court the following:

PARTIES AND JURISDICTION

1. Plaintiff, Richard L. Winslow (hereafter "Richard"), is a citizen and resident of Berkeley County, South Carolina.

2. Plaintiff, Charmayne Winslow (hereafter "Charmayne"), is a citizen and resident of Berkeley County, South Carolina.

3. Defendant, Matthew W. Hudson (hereafter "Defendant Hudson"), upon information and belief, is a citizen and resident of Chatham County, Georgia.

4. Upon information and belief, Defendant Waste Pro USA, Inc. (hereafter "Defendant Waste Pro USA"), is a foreign corporate entity which owns and operates as a large commercial and residential waste collection and recycling service provider all over the

United States. Upon information and belief, this Defendant transacts business, serves customers, and employs agents throughout South Carolina, including particularly in Jasper County, South Carolina.

5. Upon information and belief, Defendant Waste of South Carolina, Inc. (hereafter "Defendant Waste Pro of SC"), is a domestic corporate entity with its principal place of business located at 422 Industrial Park Road in Hardeeville, Jasper County, South Carolina. Upon information and belief, this Defendant owns property, transacts business, serves customers, and employs agents throughout South Carolina, including particularly in Jasper County, South Carolina.

6. Upon information and belief, the two corporate Defendants herein enjoy a close corporate relationship as parent, sister, subsidiary, franchisor, franchisee, affiliate, or some other similar mutually beneficial business connection such that they enjoy a sufficient amalgamation of interests and are to be treated as one and the same in this action.

7. Upon information and belief, each and all of the Defendants herein derive substantial revenue and profits from their business operations throughout the United States, including particularly in Jasper County, South Carolina.

8. At all times herein, Defendant Hudson was operating a large commercial garbage and sanitation truck, owned by his employers, Defendants Waste Pro USA, Inc. and Waste Pro of South Carolina, Inc., with express permission and consent.

9. At all times herein, Defendants Waste Pro provided their employee the heavy machinery, garbage and sanitation truck, Defendant Hudson, to serve as a means of use and convenience for their mutual financial benefit.

10. At all times herein, Defendant Hudson was operating a large commercial garbage truck owned by the Waste Pro Defendants, and Defendant Hudson was acting in the course and scope of his employment with the corporate Defendants herein.

11. The motor vehicle collision described herein occurred in Beaufort County, South Carolina along Highway 278 at approximately 7:40 a.m. on November 4, 2015.

12. This Court has jurisdiction over the parties and the subject matter herein, and venue is proper in the Jasper County Court of Common Pleas.

13. This action is timely brought, and all necessary and proper parties are correctly identified and properly joined herein.

14. All allegations raised herein below and above shall be incorporated as to each cause of action raised herein, and all allegations shall be deemed raised jointly against each and all of the Defendants.

FOR A FIRST CAUSE OF ACTION
(Negligence)

15. Plaintiffs reallege and incorporate the contents of the preceding paragraphs as if fully set forth verbatim.

16. On or about November 4, 2015, Richard was operating a Jeep vehicle owned by his fiancée, Charmayne, with her express permission and consent.

17. On this date, Richard was lawfully operating this Jeep vehicle along Highway 278 in Beaufort County, South Carolina.

18. Richard brought this vehicle to a full stop due traffic conditions ahead.

19. At all times herein, Richard was operating Charmayne's Jeep vehicle

lawfully, attentively, and with due regard for his safety and that of others.

20. On this same date and location, Defendant Hudson was travelling behind Richard in the same lane of travel along Highway 278.

21. Defendant Hudson was operating his employers' garbage and sanitation truck with their express permission and consent.

22. Defendant Hudson was not paying proper attention to the roadway ahead of him and caused his large commercial vehicle to crash into the rear of Richard and Charmayne's vehicle.

23. This collision caused Richard to collide with another vehicle ahead of him on the roadway who was also stopped at the red traffic signal.

24. The Waste Pro Defendants herein are legally responsible for the tortious conduct of their employee, Defendant Hudson, committed during the course and scope of his employment, pursuant to the doctrine of respondeat superior.

25. This collision was the fault of the Defendants, and Richard did not cause or contribute to the collision in any manner.

26. This collision caused Richard to experience personal injuries and other damages.

27. This collision caused damages to Charmayne's Jeep vehicle.

28. After the collision occurred, Defendant Hudson admitted he was driving while distracted because he was looking at his mobile electronic device.

29. Distracted driving while using mobile electronic devices is a public safety hazard that results in numerous unnecessary deaths and injuries on our roadways every

year, both locally and nationally.

30. This multi vehicle collision sequence occurred during daylight conditions along a flat and straight stretch of highway.

31. During this collision sequence, Richard injured his knee when it struck the dashboard or other areas within the vehicle.

32. After the collision, Richard was treated and diagnosed for injuries to his head, neck, back, shoulder, and knee areas.

33. The medical diagnoses provided to Richard following this collision by his treating healthcare professionals were correct, accurate, and proximately caused by this collision.

34. Because of this collision, Richard required surgeries to his knee and shoulder areas to treat internal abnormalities caused by the trauma from this event.

35. Richard was diagnosed with post-concussion syndrome due to this incident, and he continues to experience, dizziness and blackout episodes that he did not experience prior to this collision.

36. Richard continues to experience pain and limitations with his knee and shoulder due to this incident.

37. As a user of the highways of the State of South Carolina, Defendant Hudson owes certain duties of care to others using the highways.

38. As the owners, operators, employers, and providers of commercial vehicle and waste services in South Carolina, the Waste Pro Defendants owe certain duties of care to others using the highways.

39. Each and all of the Defendants herein breached their duties of ordinary care owed to Richard and Charmayne by their careless, negligent, grossly negligent, reckless, willful and wanton conduct and omissions as follows:

- a. Failing to keep a vehicle under proper control;
- b. Failing to keep a proper lookout on the roadway;
- c. Failing to yield the right of way;
- d. Failing to properly hire, train, monitor, and supervise a commercial truck operator with safe driving practices;
- e. Traveling too fast for conditions;
- f. Driving while distracted by reason of a mobile electronic device;
- g. Traveling in excess of the posted speed limit;
- h. Operating a motor vehicle without proper brakes, or if so properly equipped, in failing to properly apply such brakes;
- i. Failing to use that degree of care and caution which a reasonably prudent person or commercial truck owner/operator would have used under the circumstances;
- j. Failing to look and observe traffic and traffic conditions on or about the roadway at the time of the collision;
- k. Failing to take the proper precautions to insure the safety of those persons using the highway;
- l. Operating a motor vehicle with a reckless disregard for the rights of others using the highway;

- m. Causing a large commercial vehicle to collide with others lawfully on the highway;
- n. Violating one or more of the requirements for commercial truck operators under the Federal Motor Carrier Safety Regulations;
- o. Violating one or more of the traffic statutes made and provided under the Code of Laws for South Carolina; and,
- p. Such other and further acts of negligent, reckless and willful conduct as will be shown by the evidence produced at trial.

40. Defendants' conduct on this date and location demonstrated a substantial disregard for the safety of Richard and others.

41. There were no obstacles or conditions existing on the roadway at the location of the collision, which in anyway impaired Defendant Hudson's view and ability to observe and react to the conditions on the roadway in front of him.

42. As a direct and proximate result of the careless, negligent, grossly negligent, reckless, willful and wanton acts and omissions of each and all of the Defendants herein, Plaintiffs Richard Winslow and Charmayne Winslow have suffered injuries and other damages, including some or all of the following:

- a. Physical injuries;
- b. Medical expenses, including physicians, hospital, medicines, physical therapy expenses, rehabilitation expenses, and transportation expenses connected with medical treatment;
- c. Mental anguish and emotional distress;

- d. Fear and anxiety;
- e. Future damages resulting from permanent injuries;
- f. Permanent impairment of health;
- g. Vehicle repair and damage expenses;
- h. Vehicle loss of use and depreciation;
- i. Inconvenience and transportation expenses associated with medical visits and medical procedures;
- j. Out of pocket expenses;
- k. Pain and suffering;
- l. Loss of enjoyment of life;
- m. Loss of income and earning capacity;
- n. Loss of spousal consortium;
- o. Alteration of lifestyle; and,
- p. Such other damages as will be shown by the evidence at trial.

43. Plaintiffs are entitled to judgment against each and all of the Defendants herein, jointly and severally, for actual damages, for punitive damages, for the costs of this action, for pre-judgment interest on all special damages, for post-judgment interest, and for such other and further relief as this Court may deem just and appropriate.

WHEREFORE, Plaintiffs Richard Winslow and Charmayne Winslow, having raised their Complaint against these Defendants, Matthew W. Hudson, and Waste Pro USA, Inc., and Waste Pro of South Carolina, Inc., pray that this Court inquire into the matters set forth

herein and grant them judgment against these Defendants, jointly and severally, for actual damages, for punitive damages, for the costs of this action, for pre-judgment interest on all special damages, for post-judgment interest, and for such other and further relief as this Court deems just and appropriate.

Dated: March 16, 2017

Hilton Head Island, South Carolina

/s/ Patrick W. Carr
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Attorney for Plaintiffs

EXHIBIT 2

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

2 COUNTY OF JASPER) Case No. 2017-CP-27-115

3 RICHARD L. WINSLOW AND)

4 CHARMAINE WINSLOW,)

5 Plaintiffs,)

) HEARING

6 -vs-)

7 MATTHEW W. HUDSON AND)

8 WASTE PRO USA, INC. and)

9 WASTE PRO OF SOUTH)

CAROLINA, INC.,)

10 Defendants.)

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13 Given before Ansley Jones, Court Reporter and Notary

14 Public at the Jasper County Courthouse, 265 Russell St.,

15 Ridgeland, South Carolina, on Thursday, September 6,

16 2018, commencing at 3:00 o'clock p.m.

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25 Job No. CS3001053

1 APPEARANCES 2 3 For the Plaintiffs: Berry and Carr, P.C. 4 By: Patrick W. Carr, Esquire 5 2 Spanish Wells Road 6 Hilton Head Island, SC 29926 7 8 For the Defendant : Turner Padget Graham and Laney PA 9 By: David S. Cobb, Esquire 10 40 Calhoun Street, Suite 200 11 Charleston, SC 29401 12 13 Mcangus Goudelock and Courie, L.L.C. 14 By: Benjamin B. Davis, Esquire 15 735 Johnnie Dodds Blvd., Suite 200 16 Mount Pleasant, SC 29465 17 18 19 20 21 22 23 24 25	Page 2 Page 4 1 THE COURT: We've already had a hearing in this and 2 it's been open almost going on a year, so I got to move this. 3 MR. DAVIS: I understand. 4 THE COURT: We kind of talked a little bit before you 5 got here, Ben, and David said you go first if that's not a 6 problem. 7 MR. DAVIS: Not a problem. 8 THE COURT: And then, Patrick, are you going to reply 9 to him, then let David go, and then reply to him? 10 MR. CARR: I think that's appropriate. 11 THE COURT: okay. 12 MR. DAVIS: And I am here, as you know, on behalf of 13 defendants, Waste Pro USA and Waste Pro of South Carolina. 14 THE COURT: Right, and all I've got from you is your 15 motion. I don't have anything -- I didn't get anything else. 16 Is there anything else that you are going to submit? 17 MR. DAVIS: Nothing else that shouldn't already be 18 part of the record. I've got additional copies of the order 19 of reference. 20 THE COURT: I got that. 21 MR. DAVIS: Okay. And so really it's just an issue 22 of, do the Waste Pro defendants have appeared and answered 23 timely in this case, and subsequently we have filed this 24 motion seeking a withdrawal of the order of reference and 25 just simply want to state for the purposes of the record that
1 INDEX TO EXHIBITS: 2 (Plaintiff's Exhibits A-K were marked for ID) 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	Page 3 Page 5 1 given that, that motion is pending. And given the nature of 2 that motion without going in to details of that motion we 3 would simply hear to, appear to hear to enter a special 4 appearance, I suppose, to object to any further action 5 taken pursuant to the order of reference until that issue 6 can be decided. And that is effectively what I came here 7 to place on the record today. 8 The order of reference itself, we would take the 9 position that it is not, certainly wouldn't cover, and we 10 would need Judge Mullen to be the one to hear the motion that 11 we filed for the withdrawal of the order of reference, and 12 without going into why -- without arguing that motion itself 13 here today, which we would contend this was improper for you 14 to hear. We would simply state that we would object to any 15 further action taken under the reference until our motion 16 could be heard. 17 THE COURT: Let me look at the order of reference. 18 Ben, if you will please, pass it up. I know I got it, I just 19 can't find it. 20 MR. DAVIS: Sure. 21 THE COURT: All right. Ben, let me ask you this. So 22 you don't think I have jurisdiction, because -- 23 MR. DAVIS: I don't -- well the order of reference 24 itself gives, as I read it, gives you jurisdiction to preside 25 over a hearing on plaintiff's damages, to take testimony, to

Page 6 1 make finding the fact conclusive, and to enter a final 2 judgement with respect to the default entered against 3 defendant Hudson. It makes no mention of either of my 4 clients, and so I would say that -- if that answers your 5 question. 6 THE COURT: Now the other issue it looks like would be 7 the answer of Waste Pro was filed before this was entered? 8 MR. DAVIS: Yes. No, it was after. However, of 9 course, the -- Waste Pro -- my clients were parties to the 10 case at that time. They had not been served at that time, 11 but, you know, to the extent that we had not been served, we 12 of course were not deprived of this order of reference at 13 that time, at the time that it was entered. We were not 14 provided an opportunity to be heard on it, we didn't 15 consent to it. 16 And, so again, for that reason, I think at this point 17 I'm probably getting in to some of the argument that would go 18 toward my motion to withdrawal that order of reference, but 19 for the purposes of today, you're correct in that the basis 20 for my objection is the validity of the order of reference is 21 being questioned by our motion to withdrawal. 22 THE COURT: I'm a little bit confused. I'm not 23 arguing, I'm just asking, all right. You, you're saying 24 Waste Pro was given an answer before this order of default? 25 MR. DAVIS: No, I am not.	Page 8 1 THE COURT: Did you just say they weren't a part of 2 this right here? 3 MR. DAVIS: We were a parties to the case at this 4 time, as you'll note, but name -- 5 THE COURT: Name not addressed in this order. 6 MR. DAVIS: Not addressed in this order. 7 THE COURT: I got you. 8 MR. DAVIS: And we're not given an opportunity to be 9 heard on this issue, on this order of reference. 10 THE COURT: Okay. And if I rule, go ahead and rule on 11 what's pending between David and Patrick, now, your next 12 move would be to try to vacate the order? 13 MR. DAVIS: Well, I suppose that my motion has been 14 filed, is seeking to do that already. 15 THE COURT: Right. 16 MR. DAVIS: And so I've raised that issue via the 17 motion that I filed, that I forwarded to you, and that is 18 what I would plan to address with Judge Mullen. That motion 19 is pending, it is set for a hearing, in fact, I believe it is 20 set for a hearing in front of Judge McIntosh, but I'm 21 relatively sure that it needs to be heard by Judge Mullen 22 since it deals with per order of reference. 23 THE COURT: But a hearing has been set? 24 MR. DAVIS: A hearing has been set for October 11, I 25 believe.
Page 7 1 THE COURT: That's not right? 2 MR. DAVIS: That's correct. This order of default, 3 and order of reference is dated August 30, 2017. 4 THE COURT: Right. 5 MR. DAVIS: Waste Pro did not answer until August, or 6 did not appear in this case until August 9, 2018, and would 7 we have entered those appearances timely, you know, Waste Pro 8 was never entered with process in this case. 9 THE COURT: So you just filed an answer last month? 10 MR. DAVIS: Correct. 11 THE COURT: Okay. Because your position is you were 12 never served until you got a copy of the default order, I 13 guess. 14 MR. DAVIS: Correct, and in fact we still, we were not 15 served, but we've waived, you know, that issue by 16 voluntarily appearing. So, we have now entered timely 17 answers -- 18 MR. CARR: Counsel, that's not correct. 19 THE COURT: All right. Okay. I'll let you, go ahead. 20 MR. DAVIS: We have not been served. Waste Pro has 21 not been served with process in this case that is before you 22 today. However, we have entered answers and they are timely. 23 I don't believe there is any issue with the timeliness of 24 those answers, and there is no default issue as it 25 concerns Waste Pro USA or Waste Pro of South Carolina.	Page 9 1 THE COURT: Yeah. Okay. I'm just thinking out loud. 2 Okay. All right. So you really -- how do you think this 3 hearing should not proceed as it pertains to these two? 4 MR. DAVIS: Well -- 5 THE COURT: I don't get that. 6 MR. DAVIS: I understand. 7 THE COURT: Okay. 8 MR. DAVIS: And, essentially the sequencing here was 9 as following; David Cobb's client, former employee, Defendant 10 Hudson was served, plaintiffs then moved to place him in 11 default, sought this order, default in order of reference. 12 THE COURT: Right. 13 MR. DAVIS: Again, all the while my clients were 14 parties to this case, but not served at this time. So we 15 were not provided with notice of this order of reference, we 16 were not allowed the opportunity to consent, we do not 17 consent to it, and at some point I'm getting into the grounds 18 of the motion that I have pending -- 19 THE COURT: I got you. 20 MR. DAVIS: That I contend needs to be heard by a 21 circuit court judge. I will contend that my clients are not 22 subject to this order of reference, the Waste Pro clients. 23 MR. CARR: We agree with that. 24 THE COURT: Or the order of default? 25 MR. DAVIS: Correct. Or the order of -- this is an

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Page 10 1 order of default against Defendant Hudson. 2 THE COURT: Yeah. 3 MR. DAVIS: And I'm happy to tell you that while, 4 procedurally on the face of it, it may seem -- but, Hudson 5 of course is a formal employee, and the allegations and the 6 plaintiff's complaint -- 7 THE COURT: Right. 8 MR. DAVIS: Have anything to do with vicariously 9 liability for my clients, and so I don't -- a component of 10 the motion that I have filed will seek to address 11 clarification as to the -- basically I have filed answers, 12 and I have asserted defenses on the merits of the case. My 13 defendants have answered timely, and those -- they deserved 14 to be heard on adjudication on the merits, and the sequencing 15 here is such that this default judgement, and we take the 16 position of default itself was entered prematurely and would 17 be inconsistent and incongruous in judgement that would be -- 18 effectively if it stands, would potentially impact the 19 Waste Pro defendants who have answered timely and have 20 defenses on the merits. 21 THE COURT: But there's no agreement that the order 22 that I signed on October 12, 2017, only holds Matthew Hudson 23 as having a judgement against him for the amount that is 24 awarded in the judgement. It doesn't have Waste Pro in it 25 anywhere.	Page 12 1 be done about that, and I don't know if I do anything today 2 if it's going to affect that or not, but Patrick, let me let 3 you, if you were going to reply to what he says, I'll be 4 glad to listen to you. 5 MR. CARR: Thank you, Judge. Briefly, in reply, our 6 position is as council stated, the order of reference and 7 the order of judgement, or the default judgement that is at 8 issue in the case make it clear that those items are 9 affected only as to Defendant Hudson. The Waste Pro 10 defendants, admittedly, were not proper parties to the 11 action at that time. They had not been served with process 12 at that time, and so, Mr. Davis, while I appreciate his 13 arguments, his clients, Waste Pro, have no standing before 14 you today, because they're not subject to the order of 15 judgement. The only person that has standing to contest 16 the order of judgement is Mr. Cobb, and Mr. Hudson, who he 17 represents. They filed their motion, and that's what's 18 before you today. The issue of this, to use his phrase, " 19 behind the scenes" insurance contract could have been 20 easily resolved if the insurance carrier at issue had made 21 a motion to intervene, which is their right to do, and for 22 whatever reason they have declined to do so. To make it 23 even more clear, Your Honor -- 24 THE COURT: Yes. 25 MR. CARR: When Waste Pro filed their answer in this
Page 11 1 MR. DAVIS: You are correct, and I've argued that it 2 does have Waste Pro in it anywhere, and if -- yes, I would 3 agree with that. 4 THE COURT: This is a mess, isn't it? 5 MR. DAVIS: It's a mess, but behind the scenes, 6 however, is an insurance contract, for which the Waste Pro 7 defendants named here, while not obligated on the face of the 8 judgement, could potentially be obligated -- 9 THE COURT: Behind it. 10 MR. DAVIS: Right. 11 THE COURT: I'm just going to listen to it and try to 12 decide something here. I don't know. I mean, you know, it's 13 not crystal clear to me as for as -- I'm not too sure you 14 don't have the right to go before a circuit judge no matter 15 what I do here today. I'm not -- I mean, I'm not making that 16 ruling, I'm just saying from right now, from what I hear, 17 that's what it looks like. 18 MR. DAVIS: I would agree, and just simply wanted to 19 ensure, if for no other reason, the right to bring this 20 issue, as a component, into an entire default judgement 21 issue -- 22 THE COURT: I understand. You've done a good job. I 23 understand what your position is. 24 MR. DAVIS: Okay. 25 THE COURT: I got that. I don't know exactly what can	Page 13 1 matter, which was August 9, this was the day before a 2 mediation that was held at their insistence. A mediation 3 that was held with a promise that we cancel the hearing 4 before Your Honor that was scheduled back in July, and their 5 good faith pledge to come to mediation with me with a full 6 authority and a representative of said insurance carrier 7 who had full authority to settle the case up to the limits. 8 Those turned out to be gross misrepresentations. 9 MR. DAVIS: We obviously take issue with those 10 statements that -- 11 MR. CARR: Well -- 12 MR. DAVIS: And I will say that -- 13 MR. CARR: Bring that point further home, a pledge 14 from counsel was obtained that a representative of Liberty 15 Mutual would be in the room with a million dollars of policy 16 limits authority, and without the need to make phone calls 17 and check with others, and with a full and meaningful desire 18 to settle a case involving a nearly two million dollar 19 default judgement. After two and half of mediation that 20 representative of Liberty Mutual was seen making phone calls 21 to others who were not present at mediation, he was 22 quarantined away from Mr. Davis and his Waste Pro clients and 23 the mediator was telling us that he didn't understand the 24 facts of law of the case, and there was no chance of a 25 successful mediation today. He made one offer of \$75,000.

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Page 14 1 THE COURT: Who was your mediator? 2 MR. CARR: Nick Felix. Now, to continue, in their 3 answer that they filed on August 9, they did in fact contest 4 service and lack of jurisdiction based on the fact that 5 they had not been served. I then reached out to Attorney 6 Davis and told him we agree with those defenses, your 7 clients have not been served and we're willing to dismiss 8 them. He declined the invitation to prepare a consent 9 order dismissing his clients. Now, in response to that, we 10 filed in this action, 27115, a motion dated August 28, 11 2018, before Mr. Davis's motion filed yesterday, to dismiss 12 the Waste Pro defendants from the case that resulted in 13 that default judgement against Hudson, because they are not 14 proper parties to the case, they are not necessary parties 15 to the case. 16 Now, if Mr. Davis would like to consent to have you 17 here on both of these standing motions that were just filed 18 in the last two weeks, we're happy to do that. If his 19 position is that a circuit court judge needs to hear, 20 that's fine too, but you can't hear one without the other, 21 because our motion was filed first, and more importantly to 22 cure the problem that he raised of lack of personal 23 jurisdiction and improper service over the Waste Pro 24 defense, we filed a separate action. There is now a file 25 title, "Richard Winslow and Charmayne Winslow V. Waste Pro	Page 16 1 be your next thing your going to get up with, I don't know, 2 but I see that point as well, but you're saying you got 3 another action. My only thing is -- is staring at me in 4 face is -- are you through? 5 MR. CARR: NO. I just, I want to make copies of these 6 exhibits of these other files as going into the record. 7 THE COURT: Any objection to what he's referencing 8 being filed? A part of the record in any way? 9 MR. DAVIS: I'm not going to object to him creating 10 the record. I'll praise reference to facts that he, or to 11 statements that he's made about pledges that I have 12 personally made in attachment in that regard, on my 13 personal word, which I can't say I've ever had a lawyer do, 14 but with respect to the, again, the purpose of my appearing 15 hear today, to the extent that plaintiffs council would 16 love to say that the Waste Pro parties are not interesting 17 Parties, well they absolutely are. They're named in the 18 original complaint, and although he's now gone and filed a 19 duplicate lawsuit against him, they remain parties in the 20 case that was filed, and that were here on the date, 21 CP-27-07115. 22 THE COURT: Right. 23 MR. DAVIS: So, I think it's the McClure case, they 24 are real parties of interest. They have a vested stake in 25 the outcome, certainly, and whether that be via the
Page 15 1 USA and Waste Pro of South Carolina, Inc". Mr. Davis knows 2 this, it was filed August 23. It was sent to him. He 3 hasn't agreed to accept service of it, so it's been sent out 4 for service in the normal course, against his clients. He 5 just told you that he felt like the reason that he was 6 entitled to this setting aside the order of reference is 7 because his clients, Waste Pro, deserve an opportunity to 8 hear this case on its merits. Well they're getting exactly 9 that, we've invited that, we've welcomed that. We filed the 10 new action against them, and it's being served as we speak. 11 So, they're not afraid of this what so ever, and they had 12 no business or no standing before you today, because as he 13 points out, they were not subject to or bound by the 14 default judgement with the order of reference in the first 15 place. 16 THE COURT: And the insurance obviously goes with the 17 vehicle, so if you got judgement against the driver of that 18 vehicle, then the insurance is subject to come into play 19 to defend the and indemnify him. And the only thing you'd 20 have against Waste Pro in my -- and I'm just thinking like 21 the plaintiff's lawyer now, but you'd only have something 22 against Waste Pro if it was some kind of negligent hiring on 23 this guy, if he had a record DUI 40 miles long. I mean, 24 that would be my -- or under responding superior is probably 25 what you would say, Ben, and I recognize that. That might	Page 17 1 operation, and again, I would contend that this is an 2 argument that we have the right to be heard before a 3 Circuit court judge, but, and so without getting into the 4 details of that argument, we would just note that for the 5 reason that we contest the order itself, we are stating our 6 objection to any jurisdiction that, with all do respect, 7 that -- 8 THE COURT: That I have. 9 MR. DAVIS: That you have. 10 THE COURT: I don't take owner to that. Your client 11 would be standing in a bad wave if Liberty Mutual wasn't 12 sitting in the wings letting it take it up the fence is what 13 you're saying. Is that right? That's right. 14 MR. DAVIS: Certainly. I'm having a hard time finding 15 -- 16 THE COURT: I'm thinking about that from a stand point 17 of, I don't think I have a right to do anything regarding 18 Waste Pro at this point. 19 MR. DAVIS: Correct. I would agree with that. 20 THE COURT: Nothing. I don't think I've got a right 21 to -- but I do have a right to David's motion that he's got 22 to withdrawal the default as to Mr. Hudson, because that's 23 the pending motion her now. Right? 24 MR. CARR: Correct. 25 THE COURT: And you said you had a motion but I don't

Page 18 1 I know what that is. What is that? That's something between 2 ya'll two, right? 3 MR. DAVIS: I'm not going to consent that, that motion 4 be heard here today. 5 THE COURT: That's, now that's asking you? 6 MR. DAVIS: So he's referring to a motion that he's 7 filed pursuant to rule 41 to dismiss the Waste Pro defendants 8 from the current, original action. 9 THE COURT: I'm not going to fool with that. You 10 don't have to argue that, I'm not going to mess with anything 11 involving Waste Pro today, okay? I don't think that's 12 proper, but I will hear, I understand what your saying, and I 13 understand your objection to me going forward as far as 14 hearing this of, and I do ask that the court reporter make 15 a note of it, and I keep it under -- I'll take it for what 16 it's worth, but I don't think I can do that. I don't 17 think I've got jurisdiction on it, on your client, because 18 the order that is set forth for me only applies to his 19 client, and so whatever errors for me is going to have to 20 taken up at another time, another place. That concludes you 21 and you, I think. 22 MR. DAVIS: Yes. 23 THE COURT: All right. Now, you are going to sit here 24 and you want to listen to the rest of this, which is fine. 25 MR. DAVIS: I'm here. If that's okay I'll sit in.	Page 20 1 various attachments. I have one other thing that I'm going 2 to put on the record, and it's fairly lengthy, and I'll try 3 not to read it too fast when I do it, but as far as persons 4 of argument today, I want to track pretty much what's in the 5 written motion. 6 THE COURT: Okay, and just so I'm clear of where 7 you're going this, you're saying that it wasn't good service 8 on Hudson? 9 MR. COBB: Well, what I'm saying is that the default 10 judgement should be vacated against him because he meets 11 the requirements of rule 60B -- 12 THE COURT: Okay. 13 MR. COBB: -- that requires the court to set aside or 14 vacate the default judgement. That is the basis for it, and 15 there are a number of reasons why. I don't think anybody 16 would dispute. Number one is, Mr. Hudson has never received 17 notice of the lawsuit until I contacted him to tell him 18 that there was nearly, you know, there was this \$1.9 19 million judgement against him, which by telephone I could 20 tell, had a pretty strong reaction to, because he had no 21 idea there was a lawsuit. He had no idea that there was 22 anything, and I think that is paramount to the argument. 23 One is Fairness and fundamental fairness, and justice, and 24 sort of all these terms that we want use, but he never knew 25 that there was a lawsuit at any point of time until I
Page 19 1 THE COURT: Yeah. Absolutely. Certainly. 2 MR. CARR: This is your answer to your action 115, 3 your letter yesterday, the motion to dismiss. 4 THE COURT: State what you are handing up, Patrick, if 5 you don't mind. 6 MR. CARR: Yes, Your Honor. We handed up the new 7 civil action that was recently filed on August of 2018 8 against the Waste Pro defendants only, by reason that their 9 contestant service in the original action. 10 THE COURT: Okay. 11 MR. CARR: We also made a copy of their copy, answer, 12 in the original 115 action, that is before you today. A copy 13 of Mr. Davis's letter, yesterday, objecting to this 14 proceeding, and a copy of our motion to dismiss the Waste 15 Pro defendants from the default judgement action against 16 us. 17 THE COURT: All of that, I'm going to put in my file 18 here. A copy of it in my file, but I'm not going to put 19 something in that, because that's got to do with you. That 20 doesn't have to do with David. All right? 21 MR. CARR: Fair enough. 22 THE COURT: Okay. Thank you for sharing, sir. 23 MR. COBB: On behalf of Mr. Hudson and his motion to 24 vacate the default judgement, I'm going to rely on the 25 memorandum that we filed on January 19, 2018, along with the	Page 21 1 contacted him after the default judgement had been entered. 2 and then sent to the insurance company. He was served, 3 reportedly, by the service through the Department of Motor 4 Vehicles, and in a nutshell, what it was, the address that 5 the Department of Motor Vehicles was given, was the address 6 at the time that the accident that's on the accident 7 report. The accident was November 4, 2015, and I think 8 it's important factually to understand is by the time the 9 lawsuit was filed, several years later, Mr. Hudson had 10 moved from that address, and I don't think that necessarily 11 an uncommon thing. 12 THE COURT: When was he served? Or when or -- excuse 13 me -- the date of the wreck was November 4, 2015? 14 MR. COBB: November 4, 2015 -- 15 THE COURT: All right. 16 MR. COBB: -- was the date of the accident. The 17 lawsuit was filed March 20, 2017. 18 THE COURT: All right. 19 MR. COBB: So -- 20 THE COURT: So two years later? 21 MR. COBB: yes, sir. 22 THE COURT: All right. 23 MR. COBB: And by that time he had moved. What's also 24 significant is that the address that he was living at, at 25 the time the lawsuit was filed was a Georgia address, he's

Page 22 1 always been a Georgia resident, but the address he was 2 living at, at the time the lawsuit was filed, a year and 3 a half later, was the address that was on his Georgia 4 drivers license, you know, he had gone through the steps 5 when he had changed the addresses, that he had changed his 6 drivers license to reflect where he was living. So, had 7 anyone simply looked at the Georgia Department of Motor 8 Vehicle records, they would have the address for him to 9 serve him at the time the lawsuit was filed, okay? So, at 10 no point in time did Mr. Hudson get a copies of the 11 lawsuit, never got copies of any of the default issues, 12 never got copies of the damages, he never got copies of 13 anything, until I contacted him after the default 14 judgement. The cases that we cite for you are some of the 15 legal issues, Ms. Cousar V. MR Carries One, Inc. Is a 16 federal court decision in 2016 dealing with the same issue 17 of what do you do in a situation with a default when 18 someone is served through the Department of Motor Vehicles 19 under the non resident motor statute, and does not have 20 notice, and is not provided any indication that there is a 21 lawsuit, and Judge Herlong, now this is was a set aside an 22 entry default, so it's a different standard, but for 23 purposes of our argument and for purposes of your ruling, 24 I think it's pretty much the same thing because its good 25 cause versus excusable neglect, which, that's pretty much	Page 24 1 especially when he wasn't hiding, he wasn't avoiding 2 anything. He simply was going about his normal day to day 3 activities having no knowledge that a lawsuit had been filed, 4 or that there was somebody trying to attempt service on him. 5 No process server linked to him, nothing, he didn't run from 6 anybody, and that sort of thing. And that sort of 7 too with the McClure case. 8 And I'm certainly, you know, I think Patrick takes 9 offense, and I'm certainly not trying to impute his 10 character, you know, just Pat and I worked together for a 11 number of years and we've fought like brothers, but that's -- 12 there's no source there, but nothing -- I'm certainly not 13 saying that what he did is in any way characteristic of what 14 that lawyer did in that case, but it still deals with the 15 idea of, in this case he named, and chose to name as 16 defendants the employers, the Waste Pro, yet never served 17 them, never gave them notice of anything. And so, there was 18 noone who had any other knowledge that a lawsuit had been 19 filed, that was also while this service on Hudson was going 20 through the non resident motorist statute, but there was 21 somehow somebody else should have had notice that there was a 22 lawsuit, whether it was the employer or the insurance 23 company, whatever, because nobody knew, because they also had 24 not been served or provided copies of the litigation. 25 So, it's you know, you got one lone person out there
Page 23 1 the same thing, and Judge Herlong found good cause to set 2 aside the entry default or the basis of the defendant of 3 that who properly wants discovery in the default issue, 4 and that it's unclear who ultimately bared responsibility 5 for the DMV having an improper mailing address on file for 6 the defendant, and for mishandling of service. That is as 7 close, if not on point here. There is no indication that 8 the Department of Motor Vehicles did anything other than 9 take the address they were given, which was again the 10 address on the accident report, which was his valid address 11 at the time of the accident. Sent him to that address, it 12 comes back undelivered, addressee not there, unknown, but 13 did nothing else. And all they had to do, all anyone had to 14 do was simply look on the Georgia DMV to find, well, 15 where's he living now? And that didn't happen. So, that's 16 Coosaw which clearly says you should vacate the default 17 judgement. 18 And then this second case is Cox, C-O-X verus 19 Sprung 's, S-P-R-U-N-G-S Transport, which is also a 20 federal court decision, which also deals with the non 21 resident motorist statute indicating that there is some 22 requirement that the defendant actually receive notice of 23 the litigation. And so, again I'd like -- I don't want to 24 rehash everything that's put in the written memo, but here 25 Mr. Hudson deserved to have some notice of the lawsuit,	Page 25 1 who's being sued and who's being chased for service, but 2 nobody else knows that, hey we need to find him, we need to 3 get into contact with him, we need to make sure everything is 4 done. And I think that's also important on the excusable 5 neglect part because I think a reading, you can read the 6 rules that say on service and notice, and all these things, 7 that a party is entitled to the notes, and by the plaintiff, 8 the plaintiffs deliberately picking to include the Waste Pro 9 entities as defendants in the case, and the complaint. 10 They are parties to the lawsuit, and the obligation then 11 becomes they get notice of the default. They get notice of 12 the damages hearings. They get notice of all these things. 13 The rules are very specific that a party is entitled. It 14 doesn't say a party that has been served, it says a party, 15 and a defendant is a party to a lawsuit. So, that also I 16 think supports the argument that Hudson's entitled to the 17 relief. 18 THE COURT: But that would go in as Waste Pro, right? 19 MR. COBB: But I also, I think Hudson could take 20 advantage of that, because again, at the time of this 21 accident he was an employee. 22 THE COURT: Your reasoning is that if the employer 23 heard that, he'd try to get a hold of his employee? 24 MR. COBB: Yeah, and I'm not exactly sure in the time 25 line when Mr. Hudson separated from Waste Pro, but certainly

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Page 26 1 in today's world, if the employer knew there was a lawsuit, 2 and the employee, whether he is current or former, was also 3 included in the lawsuit, there would be efforts to locate 4 that individual, and to make sure that person also knew 5 about the lawsuit and was participating in the lawsuit. 6 And I can tell you from experience that we've chased a lot 7 of people in a lot of different places. Those are things 8 that happen. 9 You know, and I just want to point out to you 10 though, the only thing that I really -- besides what's 11 written in the documents, I want to highlight in the 12 motion, I want to highlight is, Judge Herd in the McChure in 13 2008 had a very strong opinion about what should be done, and 14 she is still a part of our Supreme Court. And again, I 15 highlight, Rule 5 says, "Unless otherwise ordered by the 16 court because of numerous defendants or other reasons, all 17 written orders, all written motions, all written notices, 18 and other similar papers shall be served upon each of the 19 parties of record". 20 Then, with regards to the meritorious defense 21 argument, we've listed in the memo that fault is not the only 22 issue. There can be a meritorious defense as to approximate 23 cause, there can be a meritorious defense as to damages. In 24 this case there certainly is a meritorious defense as is 25 disputed in the damages claim, because the only thing that	Page 28 1 the address that was on the accident report. All right? 2 THE COURT: Okay. 3 MR. COBB: The address that he lived at, at the time 4 the lawsuit was filed is the address that he lives at now, 5 which is on his drivers license. The, you know, if you 6 look at paragraph nine of his affidavit. 7 THE COURT: Yeah. I'm trying to read it now. 8 MR. COBB: All right. This is Mr. Hudson, "I possess 9 a Georgia drivers license when the accident happened. My 10 current drivers license was issued by the state of Georgia 11 on February 15, 2017, and has the 1388 North Pinetree 12 Boulevard, Lot 22, Thomasville, Georgia address. That 13 address would have been where I lived on March 22, 2017." 14 So, at the time the lawsuit was filed, that's what the 15 Georgia drivers license reflected. 16 THE COURT: How many did he have between the wreck and 17 that time? How many addresses? 18 MR. COBB: Well, if you look on the first page of his 19 affidavit, it goes through, I tried to go backwards with 20 him. His current address -- 21 THE COURT: Okay, I'm sorry. Okay. I got you. 22 MR. COBB: Starting on paragraph three through eight. 23 THE COURT: But did all of these that you're talking 24 about that are on the first page, was that -- he had changed 25 his license to that every time?
Page 27 1 was presented to you, and ultimately that you were awarded a 2 damage on, that there was some belief that Mr. Hudson was on 3 his cell phone at the time of the accident. Mr. Hudson's 4 affidavit is very clear, I wasn't. That establishes a 5 meritorious defense to that punitive damages claim, because 6 that -- if factually is correct or if the fact finder 7 ultimately concludes that is correct, that would negate any 8 other finding in the order for the punitive damage award. 9 Because otherwise, you know, I get the idea that in 10 general terms, violation of statute is having some 11 recklessness and so forth, but given the lack of severity of 12 this impact, this was not a high speed crash or somebody was 13 a DUI, or something like that, this was simply an unfortunate 14 incident between two vehicles. 15 THE COURT: Before you go any further, let me ask you 16 this. So, what you're saying factually is, is that Mr. 17 Hudson only had two addresses during the whole period of time 18 of this? 19 MR. COBB: Well, he had a couple, but at the point of 20 time that's relevant to this discussion, the address that 21 they attempted to serve him on, he laid it out, we did a 22 chronology with him, in his affidavit. The chronology that 23 plays out, if you want to go to his affidavit, the address 24 that he was -- that the plaintiffs attempt to serve him for 25 the lawsuit through the Department of Motor Vehicles, was	Page 29 1 MR. COBB: I don't think so, but it doesn't matter. 2 THE COURT: Okay. 3 MR. COBB: Because again, it goes back to, at the time 4 the -- of the accident, the address that was used to find him 5 a year and a half later, he had moved from that address, 6 but at the time the lawsuit was filed, his address at that 7 point in time, when anyone could have found him by service, 8 and delivered the paperwork to him personally -- 9 THE COURT: Right. 10 MR. COBB: -- that address was the address where he 11 lived, was reflected on his drivers license at that point in 12 time. 13 THE COURT: So what you're saying is, your position is 14 whether between the time of the wreck and the time of filing 15 the lawsuit, whether he moved one time or 50 times, it 16 doesn't matter, you're saying the key in this event is the 17 time of the filing? 18 MR. COBB: Yes. Correct. At the point in time the 19 lawsuit was filed, and at the point in time the paperwork 20 came back from the South Carolina Department of Motor 21 Vehicles that said undeliverable or addressee unknown, or 22 whatever. I'm not sure exactly what the nomenclature was. 23 But whatever it was that said we can't deliver this. If 24 anyone at that point in time tried to find Mr. Hudson, had 25 simply looked on the Georgia DMV for his address at that

Page 30 1 point in time it would have been the address on his drivers 2 license at that point in time of March 2017, would have been 3 where and lived, and someone could have gone there and handed 4 him the paperwork. Okay? 5 THE COURT: Okay. 6 MR. COBB: The DMV did not do that, and the attorneys 7 did not do that. All right. So, you know, and just on the 8 meritorious defense, one other last little point on the 9 meritorious defense is, you know, with regards to damages, 10 and obviously I have not met the Winslow's before today, and 11 I understand they have their medical claims and those are 12 the things that if we get a chance to move forward with 13 actually deciding the case on the merits, we'll get to look 14 at it, but the other thing that I just want to point out to 15 you, is that Mr. Hudson's affidavit indicated that addition 16 to him not having a cell phone or mobile device at the time 17 that the accident was that, Richard Winslow did converse 18 with Mr. Hudson after the accident, did not say anything to 19 him about being in any type of injury, and that Mr. Winslow 20 did drive away from the scene after the law enforcement 21 folks finishing up their work. So, with regards to damages 22 and meritorious defense -- I'm sorry -- in the proximate 23 cause issue I think we've got a meritorious defense. It 24 doesn't have to be a slam dunk, but it certainly -- we have 25 arguments and we have meritorious defense on that issue.	Page 32 1 I -- there are a couple things that I saw, and I didn't want 2 to actually talk about, and I can either do that when I 3 finish, or once he gives his presentation, and responds 4 back, but in addition to what I talked about on the merits 5 is why the default judgement should be vacated. 6 I also want to add in there that the service issues, with 7 regards to the non resident motorists statute violates. 8 There is an argument, and we would like to make that argument 9 that violates the privileges and immunities clause and the 10 due process clause of the United States Constitution. And I 11 am going to read, if you don't mind, a couple pages of this 12 stuff. And that will form the basis of the argument on these 13 issues. 14 Article four, section two of the United States 15 Constitution, provides in relevant part that the citizens of 16 each state shall be entitled to all privileges and immunities 17 of citizens in the several states. In the case of Toomer 18 versus Witsell, the Supreme Court of the United States noted 19 that the clause was designed to ensure that a citizen of 20 state A who ventures into state B, the same privileges which 21 the citizens of state B enjoy. For the case law shows that 22 the privileges and immunities clause bars a state from 23 penalizing the citizens of other states by subjecting them to 24 heavier taxation, simply because they are citizens or by 25 discrimination against other citizens of other states in
Page 31 1 The other thing, and Mr. Davis pointed out and reminded me, 2 is that the other driver involved in this multi car 3 accident, in a recorded statement, says that, that driver 4 felt two impacts. So, there is some issue on liability 5 that would also be part of the trial of the case on the 6 merits, and would certainly provide a meritorious defense. 7 MR. CARR: We object to that argument. That is not in 8 the record. I don't believe there is any recorded statement 9 from this individual, an affidavit from this individual. 10 If there is, we would like to see it. We have spoken with 11 her numerous times and that is not what she recites to my 12 office. 13 MR. COBB: And to the extent, you request, we will be 14 happy to provide that to you. 15 MR. CARR: Well, it's not a proper basis for argument 16 if it's not entered in this record today. 17 MR. COBB: Then with regards to the other issues, I 18 mean, the timing, and trying to get this, the default 19 judgement lifted, and so forth, I don't think it's any kind 20 of question. A couple things that I want to add to it, and 21 then I want to, I need to just kind of go over where I'm 22 going is, I want to make some, for the record some 23 constitutional arguments, and then secondly respond briefly 24 to the documents that Patrick provided to them a bit ago, 25 because I haven't had a chance to fully look at them, but	Page 33 1 pursuit of other livelihoods in competition of local 2 citizens. The clause bars discrimination against citizens 3 of other states where there is no substantial reason for 4 the discrimination, beyond the fact that they are citizens 5 of other states. Unless they inquire, each case must be 6 concerned with whether such reasons do exist, of whether the 7 degree of discrimination bares a close relation to them. 8 A non resident, who operates a motor vehicle in South 9 Carolina statutory deemed to have a point of the driver of 10 the Department of Motor Vehicles, as is, is true, and lawful 11 attorney for receive of service the process for any accident 12 or collusion. The non-resident may be involved in pursuant 13 to South Carolina code section 15-9-350. The plaintiff need 14 only to serve the process upon the directory of the 15 Department of Motor Vehicles by depositing with him the copy 16 of the service and the appropriate fee. The directory of 17 the Department of Motor Vehicles, in turn, mails a copy 18 of the notice of service and a copy of the summons and 19 complaint to the non-resident via certified mail. When the 20 address given to the DMV is correct, service process 21 functions as intended. 22 The issue arises, however, when the address is either 23 incorrect or mail can not be otherwise completed. Section 24 15-9-3, outlines the procedure for this situation, however, 25 the statute provides no answer other than to simply try again

Page 34 1 by open mail, a even less reliable method then required the 2 first time. A logical alternative to the statute would be to 3 permit service to publication. Once the certified mail has 4 been returned undeliverable, even if service by publication 5 is seen as last resort it is an alternative method. 6 Attempting service by two different methods is better than 7 attempting service twice being the same effective method, and 8 provides a greater chance that defendants will actually 9 receive notice and service under section 15-9-380. 10 To hold a defendant at fault when the service has 11 been made through the statute is to allow the rules of civil 12 procedure in South Carolina, specifically prohibit any other 13 scenarios. Rule 4D8, provides the service pursuant that this 14 paragraph should not be the basis for this entry at fault or 15 default judgement by a fault, unless the record contains a 16 return receipt showing the acceptance by the defendant. If 17 delivery process is refused or returned, undelivered service 18 shall be made unless otherwise provided by the rules. 19 Thus non resident motorists are deemed to be properly 20 served in South Carolina where South Carolina residents are 21 given added protection. At present the only way to avoid 22 this unequal status is to become a resident for both 23 businesses and individuals this involves paying taxes to the 24 state in some from or another. 25 Finally, the new process clause is applied to the	Page 36 1 mail there, and thus would not be made aware of the lawsuit. 2 Where a person is believed to reside at an address, but 3 certified mail is returned undeliverable under no affording 4 address available the only conclusion we draw is the person 5 no longer receives mail at that address and our statute 6 offers no resolution to this problem other than just trying 7 again. Even when the facts presented indicated likelihood of 8 failure. This does not and can not measure up to the 9 required standards of due process." So, I appreciate you 10 allowing me to say that. 11 THE COURT: No, I'm fine. And now, let me ask you, 12 what is that you read from there? 13 MR. COBB: This was another memo that I did not have 14 time to incorporate and do it as a supplemental thing, but 15 I'm more than happy to put that in writing and get that to 16 you. 17 THE COURT: Please. 18 MR. COBB: By the first part of next week. 19 THE COURT: That will be fine, please. 20 MR. COBB: But that again goes back to the whole issue 21 here, is there is no way there can be a credible argument 22 made that Mr. Hudson did anything wrong, other than simply 23 be a resident in the state of Georgia when that got sent 24 and also, we can argue liability issues later. But as far 25 as once the lawsuit was filed, he didn't run from service,
Page 35 1 states of the 14 Amendment prescribes states from depriving 2 any person of life, liberty, or property without due process 3 of law. Default judgements entered for the failure, after 4 proper service, to answer within the time allowed does not -- 5 default judgements under that scenario do not violate due 6 process, however, when it's obviously the method of service, 7 we will not or can not provide adequate notice to the 8 defendant, that it can not be a proper method of service. 9 In the case of Mullane versus Central Hanover Bank 10 and Trust Company 339US3061950, the US Supreme Court said, 11 "Personal service has not in all circumstances been regarded 12 as indispensable to the process due to residents, and it has 13 more often been held unnecessary as to non-residents. An 14 elementary and fundamental requirement of new process in any 15 proceeding which, it is to be a court of finality, is notice 16 reasonably calculated, under all circumstances to apprise 17 parties of the defendants of the action and afford them an 18 opportunity to present their objections. 19 South Carolina Courts have found that it's rules 20 governing the service of process serve at least two purposes, 21 one to confer personal jurisdiction on the court, and 22 secondly, to assure the defendant of reasonable notice of the 23 action. The basis for default judgement obtained in this 24 case comes from notices mailed to the same address, despite 25 plaintiffs knowledge that the defendant would not receive	Page 37 1 he didn't avoid service, he didn't scoff at service. Simply 2 was never ever in his realm, it was never in his sphere for 3 him to have any response to, and so, I think when you look 4 at the standards for relief under 60B, particularly the 5 federal cases that I cited to you, this is the case that 6 screams vacate the default judgement against Mr. Hudson, and 7 let him and/or Waste pro, to the extent, whatever, that gets 8 worked out later on, but let the case and the claims be 9 decided on their merits, and let them be decided that way as 10 opposed to some technical reading of some statue that does 11 not provide notice and an opportunity for Mr. Hudson to 12 appear, and, you know, now face this tremendous voluntary 13 judgement against him without having any knowledge that 14 there was in fact a lawsuit. I did answer the question, but 15 I also have a couple things that I wanted to point out that 16 I just read from Patrick, and I'll let him speak, and then 17 I'll -- 18 THE COURT: Do you want to go now, or you want to let 19 him finish what he's doing? 20 MR. CARR: I'll do whatever the court requires. 21 THE COURT: Let me let you go ahead if you will, 22 David. Let me ask you before you get started; I've not read 23 this McClure case that I'm aware of. I've looked as some of 24 this when I got it, and I read your affidavit, I think I read 25 Mr. Hudson's at the time that I got, and I scanned the cases

Page 38 1 to be honest, because I didn't know exactly, you know, what 2 you were going to kind of pick out and argue. Is anything in 3 this case, this McClure case or anywhere in South Carolina 4 law that says that using a non-resident motor service alone 5 is not good enough? 6 MR. COBB: Well -- 7 THE COURT: And there may not be one. I don't know, I 8 mean, you know, because I don't know whether or not the South 9 Carolina Supreme Court be having to talk down their own 10 statute or the legislature statute if there was a case like 11 that. 12 MR. COBB: The statute obviously is there, and speaks 13 for itself, and it is what it is. 14 THE COURT: Right. 15 MR. COBB: What it becomes is, is there a factual 16 basis in the looking back at any default, or any judgement, 17 when service is attempted under the non-resident statute, is 18 there factual basis under an analysis of rule of 55C or rule 19 60 to either set aside the entry default or to vacate the 20 default judgement. And I think that's what McClure gets to, 21 that's what the Culver case get to, that's the argument here 22 is, okay, there may have been, the non-residents statute. 23 There may have been, you know, even if you believe there was 24 service attempted and it was proper under the non-resident 25 motorist statute, that's not the answer on the issue of, does	Page 40 1 as a fair reading, there was some concern that he was 2 playing games with accepting service, and that factually 3 is not correct here. 4 THE COURT: No games here. 5 MR. COBB: But, there was at least an attempt after 6 the initial response came back undeliverable, of hiring a 7 private investigator, of locating a second address for him, 8 and then having the mail sent to that second address, which 9 was not done in this situation. So, factually there is a 10 little bit of a difference, and I think there might be, 11 that, you know, one of the interesting things of just 12 knowing the various parties, the party in the McClure case is 13 a well known personal injury lawyer in Greenville, Mr. Moore 14 and, you know, I think you could make an argument that he 15 had some concerns about whether or not the first attempt 16 through the DMV actually was correct. 17 The other thing that I wanted to point out was the, 18 you know, there also was more conversation between the 19 plaintiff's counsel and the plaintiff's folks in the file 20 that occurred here. I apologize, I thought I had my marked 21 up filed here and I do not. 22 THE COURT: Tell me again, while you're looking, tell 23 me again, how did you all find this guy? 24 MR. COBB: I found him. 25 THE COURT: You did?
Page 39 1 the default judgement get vacated under 60B, the 60B is, was 2 there excusable neglect, and here, you know -- 3 THE COURT: So, you got a 60, I understand you got a 4 Rule 60 argument, and you got a constitutional argument. I 5 understand that, and you did a good job at setting that out, 6 all right, but is there any case, and I'm just curious, is 7 there any case that says that if it comes back returned 8 non-deliverable, you have to do anything else? Is there any 9 South Carolina case on point that says that? 10 MR. COBB: Well, there's something in the McClure case 11 if I can -- 12 THE COURT: And there may be in there, I just, I 13 didn't pick that up. 14 MR. COBB: Let me find this one -- 15 THE COURT: If you look on page 90, and it gets into 16 the facts about being returned for insufficient address. 17 Look on the first -- it goes down and says, "Copy of -- 18 MR. COBB: Yes, sir. 19 THE COURT: That's facts, I mean, that's not 20 procedural. 21 MR. COBB: Well, and that's, I was trying to get to 22 something else, and then I was going to hopefully come back 23 to the fact that, in the McClure case that you just talked 24 about, there were a number of attempts to serve him at a 25 number of different places, and there was some, I think,	Page 41 1 MR. COBB: Yeah. 2 THE COURT: How did you find him? 3 MR. COBB: I called a process server, and said, "Here 4 is all the information we have, can you find him?" And they 5 called me back very shortly, and said, "Here he is." I mean, 6 it was not an extensive search. And that's what they did. 7 They accessed the Georgia DMV records, had the address, found 8 a phone number, called him, and he answered. I mean, I'll 9 tell you, just, I mean, whether factually it matters or not, 10 when I called him he answered on the second or third ring. 11 THE COURT: When you found him was he at the last 12 address shown on his affidavit? Is that right? 13 MR. COBB: Yeah. The affidavit tracks his residency, 14 because I believe he has moved from that 2017 address. He 15 is, I think, Thomasville, Georgia, I think, is where he is. 16 Yeah, at the time that he signed the affidavit, he 17 2017, there was an address, the address in paragraph three 18 in his affidavit is Moultrie, Georgia, but, I mean, for what 19 it's worth, I've got his cell phone number, and the four or 20 five times I've contacted him over the phone on this 21 thing, I have no had any difficulty getting a response from 22 him, but that's the attorney client privilege, and given 23 the, I'm just being funny, because I was listening to the 24 Supreme Court stuff on the way down here, and I've got some 25 of that stuff, but one other thing that I just kind of want

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1 to clean up a little bit is at some point in time there was
 2 another lawsuit filed, and this is just something that I
 3 want to make a couple of comments about what plaintiffs have
 4 as far as argument thing, and one of the packages that
 5 Patrick sent me, or handed me today, was this 2018-CP-27-13,
 6 which is the Winslow versus Hudson, Waste Pro, Liberty Mutual
 7 lawsuit, which is essentially a bad faith claim, and various
 8 things, and Hudson is named as a defendant in the case only
 9 to the extent that there is some declaratory judgement
 10 provision as one of the causes of action, and I'm not
 11 Hudson's lawyer in that case. So, I think this is one that
 12 has been moved to federal court, right? So, I'm not sure,
 13 but I'm not hired to represent him on that case.
 14 And all of that stuff, but other than that I -- in
 15 the affidavit that Patrick signed there was some reference
 16 about my affidavit, with regards to some concern about how
 17 you calculated the damages for Mrs. Winslow, and the amount
 18 is not much, it's \$1,500, but the point I was making in my
 19 affidavit was the \$500 for the punitive damages, there was no
 20 itemization of, you know, you can do the math, but where the
 21 number of where the peridium came from, because that number,
 22 you do 500, your order was \$500 for her laws of use two
 23 weeks.
 24 THE COURT: Fourteen days at \$35 a day.
 25 MR. COBB: Okay. I didn't see that in the order.

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1 THE COURT: It probably wasn't, but I did it right
 2 here.
 3 MR. COBB: That's what I was, I didn't know whether it
 4 was ten days at \$40 or \$50 a day, or if it was 14 --
 5 THE COURT: No.
 6 MR. COBB: So, that was the reference in the affidavit
 7 to that.
 8 THE COURT: That's how I got, just so you all know,
 9 that's how I came up with that.
 10 MR. COBB: Other than that --
 11 THE COURT: I have one question, and just curious,
 12 because generally it appears that, you know, until the case
 13 kind of catches on fire from the insurance company nobody
 14 gets worried about it, but when did Liberty Mutual get
 15 involved, did they get involved to try to find this guy and
 16 talk to him, and take a statement from him or anything like
 17 that? It doesn't have anything to do the ruling, I'm just
 18 curious as to when they got involved.
 19 MR. COBB: I don't know the answer to that question,
 20 because --
 21 THE COURT: Right.
 22 MR. COBB: I don't know the various things that
 23 happened pre-suit.
 24 THE COURT: Right.
 25 MR. COBB: You know, I will be, just so you will know,

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1 I have a folder in my normal file called "Claim File" as you
 2 can see, there is nothing in it.
 3 MR. COBB: I was hired to address the default issue.
 4 THE COURT: I got you.
 5 MR. COBB: With Mr. Hudson, to find him, to try to
 6 figure out how the default got rendered, and so, I don't know
 7 the answer to those questions. I know that there was some,
 8 and I'm sure Patrick will allude too, there was some limited
 9 discussions between a claim rep and Patrick at some point
 10 during 2017.
 11 THE COURT: Right.
 12 MR. COBB: And so forth, but the other thing that, and
 13 I guess I'll put Ben on spot maybe, but Waste Pro is a, with
 14 Liberty, their arrangement with Liberty is not like it would
 15 be if you and I had a personal policy insurance with
 16 Liberty. They, as a commercial entity, they have a lot more
 17 say so on things, so, you know --
 18 THE COURT: Does Waste Pro pay the first part of the
 19 indemnity?
 20 MR. DAVIS: Yes.
 21 THE COURT: That's standard to keep the rates down.
 22 MR. COBB: But as far as, you know, as far as the
 23 driver, Mr. Hudson, and the issues, I mean, right now as
 24 everyone is talking about, the judgement is against him, and
 25 he lives in a trailer park, and, you know, this is not a

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1 situation where you would have a typical personal policy
 2 where it's, all right, what's the default, you got a
 3 judgement? Here is the \$25,000 minimum limits, you know,
 4 that's all you can get, you know, they're, so, you know --
 5 THE COURT: Unless it's next to Six Flags over
 6 Thomasville, Georgia, you are not interested no trailer, are
 7 you? I didn't think so. Anything else? What else you want
 8 to present? You've talked about it and you've told us --
 9 MR. COBB: I'll stand on the memo, the exhibits, and
 10 all of those things, and then the constitutional argument,
 11 and then anything else we want to discuss.
 12 THE COURT: And paper wise, you will get me the memo?
 13 MR. COBB: I will put in a format to you.
 14 THE COURT: Okay, that's fine. Thank you. All right.
 15 Go ahead.
 16 MR. CARR: Thank you, Your Honor.
 17 THE COURT: Now, you are going to respond to him, and
 18 you are going to say it's good service, there's a statute,
 19 and you all followed the statute to the T, I'm sure that's
 20 what your argument is going to be. Go ahead.
 21 MR. CARR: That's exactly right. That's an
 22 oversimplification of it, Your Honor, however, I did not
 23 hear Mr. Cobb say, nor do I think anyone could say that
 24 service was improper. I didn't hear that, and it's raising
 25 the memo, the statute is there. Their argument, as I hear

Page 46 1 it, while I appreciate it, and I would make the same points 2 if I were on that side of the court room, it is legislative 3 argument, not a judicial argument, and by that I mean, if 4 there is something wrong with the non-resident motor statute 5 and it's not fair, then it needs to be changed 6 legislatively, because our courts have said, and I'll quote 7 to you from the McClure case where this was discussed ad 8 nauseam, "Our Courts have held, have long held, that in order 9 to establish that service is properly effective, the 10 plaintiff may only show compliance with the civil rules of 11 service of process." That's McClure head note 11. 12 "When these rules are followed it is a presumption of proper 13 service." Again, McClure head note 11. 14 There is no dispute or evidence on record in this 15 case, but that the service of process on Mr. Hudson was 16 followed according to the non-resident motor statute, and was 17 therefore effective properly under that statute. Now, I'm 18 happy to talk about the public policy behind that statute, 19 because I would argue contrary to what Mr. Cobb suggests, 20 which is that the statute is remedial in nature, and 21 necessary in nature to protect injury victims who have been 22 harmed by out of state wrong doers, who may move, and may not 23 be located, and if look at Mr. Hudson's affidavit, he is 24 precisely the type of non-resident motorist that this statute 25 was designed to protect injury victims of, because he had	Page 48 1 address that he gives as his most current address, forgive 2 me, find the service card on it, 71980 Avenue, Moultrie, 3 Georgia, this new lawsuit, the declaratory judgement action 4 that was filed in January of this year was attempt to 5 service on him by certified mail at that address. 6 Mr. Cobb was asked to accept service, he declined to 7 do that, I understand why, so we sent it to him at his 8 current address and he refused acceptance of it, just like 9 what happened when we filed the first tort action against 10 him. So with all respect, I think this statement in his 11 affidavit that he's done nothing to avoid our evade service 12 is not accurate, because he certainly knew we were filing a 13 declaratory judgement action with regard to the coverage 14 dispute, and the underlying action, and it's being served on 15 you at your current address, and he wouldn't sign for it. 16 So, that behavior is the type of behavior that -- 17 THE COURT: But you're not saying he evaded service of 18 the Summons and Complaint? 19 MR. CARR: No, no I'm not. 20 THE COURT: Because the only way you tried to serve 21 him was through the DMV? 22 MR. CARR: That's correct. 23 THE COURT: And they sent it to him certified mail, it 24 came back, then they sent it open mail? 25 MR. CARR: That is correct.
Page 47 1 five addresses according to his affidavit. Five different 2 addresses in Georgia over a two year time frame. Okay, now, 3 if you look at the case that was cited in my affidavit, this 4 is a Richmond County case, it is not a Supreme Court case. 5 It is a circuit court order by Judge Clifton Newman, the 6 case is Jenny Lawston versus Joseph Martin, 2015-CP-40-4879. 7 Nearly identical circumstances, service under the 8 non-resident motor statute, and the guy never got it. 9 Certified mail receipt wasn't claimed for, or signed for, 10 and they did the open mail affidavit through the DMV and 11 went on their way, and the Judge there pointed out something 12 very important, which is that this business of "People need 13 to do more and protect their rights when they have notice of 14 civil legal claims" is a two-way street, and all Mr. Hudson 15 had to do if he wanted to claim the ordinance he is now, he 16 could have had a forwarding order with the US Postal 17 Service, he could have done any number of things that are 18 easily achievable to little to no cost or time through the 19 local post office to make sure each move he makes, they are 20 forwarding mail to that address, and he didn't do that. 21 That's why it came back unclaimed and undeliverable. Now, 22 to make it even further of point on that, Mr. Cobb correctly 23 points out there was a separate lawsuit filed where Mr. 24 Hudson was named as a party, this is Exhibit two to my 25 affidavit that was filed and part of the record here, the	Page 49 1 THE COURT: Which is what they always do. 2 MR. CARR: That's exactly right. 3 THE COURT: Okay. 4 MR. CARR: Now, to further drill down on that point, 5 if the defending parties and their insurance carriers 6 involved in this action were so concerned about that, they 7 could have been in touch with Mr. Hudson. If they had any 8 reasonable action in response to plaintiff settlement demand 9 letter of \$950,000 in February of 2017, they most certainly 10 would have been calling Mr. Hudson and Waste Pro, and say, 11 Hey, guess what, we've got a large demand against you, you 12 know, it's triggering our million dollar policy limits, 13 potentially, and it involves over \$250,000 of medial bills, 14 permanent head injuries, permanent shoulder injuries, 15 permanent knee injuries, all these things that fell on Mr. 16 Winslow. How is it conversely agreeable for Liberty Mutual 17 not to put him on notice of it? 18 You heard Mr. Cobb say, and Mr. Hudson confirmed in 19 his affidavit, his first notice of it wasn't until Mr. Cobb 20 called him sometime in December of 2017 after the judgement 21 had already been entered and where it took him to serve him 22 on it. So, maybe, if Liberty Mutual and Waste Pro, in 23 response to our letter of representation, which by the way, 24 was delivered to them within a week of the wrecks occurrence, 25 November 2015, they certainly knew about it. Maybe if they

Page 50 1 had put Mr. Hudson on notice of it then we wouldn't be in 2 this circumstance. And certainly any and all of the 3 defending parties in this case, we are now in a situation in 4 our civil court system in Jasper County and Beaufort County, 5 and every 14 circuit county, we have electronic filing. 6 Every file with a public record, and that insurance adjuster, 7 and Mr. Hudson, and anybody at Waste Pro who was the least 8 bit concerned about Richard and Charmayne Winslow, and their 9 claims of damages, or the least bit concerned about these 10 people may file a lawsuit if we don't settle the claims 11 timely like they've asked to, they could have checked online 12 filings, and believe me that is free of charge and it is a 13 matter of seconds you can accomplish it, and I get calls from 14 the insurance adjusters all the time to do just that. 15 "Patrick, I notice you weren't pleased with my settlement 16 offering in this case, or my lack of timely response to you, 17 I noticed you filed a lawsuit against my policy holder here, 18 and I saw on the online filing today in Jasper County, can we 19 please try to settle it?" 20 I just had that very conversation this morning with 21 an adjuster with Selective Insurance Company, in the case of 22 Earl White, and, you know, if anybody at Waste Pro or Liberty 23 Mutual or if Mr. Hudson had called me up and had that 24 conversation upon the filing in this action, it would have 25 been a welcome thing, and nothing would have been	Page 52 1 knew that she was addressing the claim, and never 2 communicated to her about the filing of any lawsuit, that's 3 not true. I told her when we sent the settlement demand 4 letter, if we don't hear from you by this date, we are 5 filing a lawsuit. 6 THE COURT: That was in your letter? 7 MR. CARR: Yes, it was, and there's no evidence that 8 she's replied to me, or she was adjusting the claim, because 9 she never made an offer until eight or nine months later. So 10 I have extraordinary concerns about the veracity of her 11 affidavit, but not withstanding that, going back to this 12 service issues, I would -- 13 THE COURT: And, excuse me, her affidavit was 14 submitted by you? 15 MR. CARR: Mr. Cobb. 16 THE COURT: That's the adjuster? 17 MR. COBB: That was the adjuster who had the initial 18 contact with Mr. Carr, and I'm sure if she were here today, 19 she would probably say a few things in response, but that's 20 for another day. 21 THE COURT: Okay. And you all, hold on a second, you 22 all tried to mediate this after I went into judgement, is 23 that right? 24 MR. COBB: I think we can discuss that off the record. 25 THE COURT: Okay.
Page 51 1 misrepresented to them what so ever. With all respect the 2 circumstances of the McClure case are totally 3 distinguishable here. We didn't go about sneakily filing 4 two different lawsuits and then acknowledge a settlement 5 offer of \$35,000 from the adjuster, make a demand of \$170, 6 and lead that adjuster to believe there was an on going 7 settlement negotiation, that's absolutely not what happened 8 here. There was zero offer from her, she had everything she 9 needed to evaluate the case in February of 2017, and her 10 first offer was made in November. Almost nine months later, 11 at least eight months later, and when she was asked to 12 explain herself, or her companies dilatory response and the 13 reasons behind that, she couldn't provide an answer. You'll 14 see in the affidavit that I supplied, receding the history. 15 Ms. Perez's affidavit suggests that she tried to call me on 16 October 8, 2017, well that's a Sunday, and I don't think 17 she's telling the truth there, if she is she is incredibly, 18 incredibly out of bounds, because I don't keep office hours 19 on Sunday, but more importantly if she really needed to 20 reach me, and she was concerned about a million dollar claim 21 with and time limit and settlement demand put on there, 22 she'd call my cell phone, she could email me. That 23 information is readily available on my website, its on the 24 back of the **1:30:54, the phone book, it isn't hard to find 25 me. So, this issue that she raises in paragraph five, I	Page 53 1 MR. COBB: After we handle this. 2 THE COURT: That's fine, that's fine. 3 MR. COBB: Clearly, he has a version, I was not there, 4 but there is a second version. 5 THE COURT: Okay. 6 MR. COBB: And the two versions -- 7 THE COURT: All right. Well, we wouldn't be sitting 8 here, and I really don't need to know about all that, I'm 9 just curious, you know, kind of, procedurally, kind of, cart 10 before the horse type thing, anything else, though, Patrick, 11 as far as -- 12 MR. CARR: Yes. 13 THE COURT: Okay. 14 MR. CARR: Unfortunately, I'm just getting started. 15 THE COURT: Go ahead. 16 MR. CARR: I'll quote, "Rule 60B requires a more 17 particularized showing of the states inexcusably neglect, 18 surprise newly discovered evidence, or other misconduct of an 19 adverse party." The different standards under the two rules, 20 referring to 55C and 60B, underscore the clear intent to make 21 it more difficult for a party to avoid a default once the 22 Court has entered the judgement, which carries greater 23 finality, and occurs later than, the clerks entry of default. 24 Now, that's important, because the cases there, cited by Mr. 25 Hudson and his attorney, McClure and Cox, those are were Rule

Page 54 1 SSC standard cases, they were not Rule 60B, totally 2 distinguishable, and more importantly, particularly in 3 McClure there was a showing of a meritorious defense. That 4 defendant submitted an affidavit saying, this wreck was not 5 my fault, and they found that was a meritorious defense, that 6 gave good cause for -- they vacated the entry of default, 7 not the final default order of judgement, which is where we 8 are here. 9 Surely, if Mr. Hudson, I know Mr. Cobb very well, 10 he is an extremely skilled lawyer, if Mr. Hudson were to 11 distinguish, contest our argument that this wreck, where he 12 crashed into the rear of Mr. Winslow, and pushed him into 13 the vehicle in front of him, it was not his fault, that 14 would appear in his affidavit, and it does not. There is no 15 showing of a meritorious defense in this action, Your Honor. 16 That is the moving parties sole burden, they must show 17 evidence of a meritorious defense, and the 18 arguments that they do present were expressly rejected in 19 the clerk, that being, well, we just think the damages are 20 too much, that was not sufficient, and the clerk, you had a 21 \$170,000 demand, I guess a \$35,000 offer, and they had a 22 \$8,000 default judgement. The court said, "The difference 23 in evaluations is not a meritorious defense." But more 24 importantly, if it were in this case, that Prima facie 25 Showing can not be made through inadmissible means, and by	Page 56 1 reach a jury or have merit, because I know of no rule of 2 evidence or scientific study that says that you must leave 3 the scene in an ambulance in order to be hurt, or you must 4 recognize the full measure of your injuries immediately upon 5 the occurrence. He was in the emergency room within hours of 6 this. He went to the emergency that evening. 7 MR. WINSLOW: Morning. 8 MR. CARR: Morning, thank you. And was diagnosed with 9 a concussion, and a knee injury, and a neck injury, and a 10 shoulder injury. All of that was before the court at the 11 time the default judgement was entered, and that's why the 12 damages awarded were what they were. I further praise 13 reference, Your Honor, to Cook versus Federal Insurance, 14 Citation 263 South Carolina 575. This case is the only one 15 I could find that's more analogous to our situation here. 16 You raised the perfect question, is there any case where the 17 South Carolina Supreme Court has ruled on this issue of 18 vacating the default judgement, or 60B, where the sole wings 19 service were through the non-resident motor statute. I don't 20 find it, if its there I don't find it. 21 THE COURT: Okay. 22 MR. CARR: This case is under the predecessor rule. 23 It's a 1975 case, prior to the adoption of the rules of civil 24 procedure, but the language of the statute, almost identical 25 in terms of service on non-resident motor. The court
Page 55 1 that I mean, Mr. Cobb, with all respect, is a civil legal 2 advocate, he's not a physician, and he's not going to be 3 Permitted to present testimony or evidence in this case, and 4 as to the value of Richard and Charmayne damages, and so, 5 his belief that the damages were not so great, is his 6 opinion, it's not evidence it's not a fair meritorious 7 defense. The same holds true for Mr. Hudson. Mr. Hudson is 8 not a physician or a scientist, or any sort of forensic 9 expert that we not of. Certainly, if he were, that would 10 appear in his affidavit. If there were evidence in the 11 record before you that Richard Winslow's medical documents 12 by a medical expert, they were in fact not caused by this 13 wreck, then they would have showed you a meritorious defense, 14 getting grounds for the relief that they seek. It's not 15 here. They're just saying they don't like the amount that 16 was awarded, well too bad, they weren't here, Your Honor was 17 here. You heard Richard and Charmayne talk about what 18 happened to them, the fact that he's got Post Concussion 19 Syndrome permanently now, he's still going to the doctor for 20 it, still being treated for it, it ruined his wedding, which 21 was ten days after this, you know, this business of, he 22 appeared to be okay to me, the driver, Mr. Hudson, and he 23 drove away from the scene, well if that were a meritorious 24 defense, I would submit to you, probably ninety percent of 25 the personal injury cases in our court system would never	Page 57 1 declined to vacate the default judgement there. And I'll 2 quote to you why, they make reference to the Amger Second 3 Automobile (ph) section 867, 868, quote, "It's no absolute 4 requirement to give invalid service that the defendant 5 actually receive the notice, in order to vest jurisdiction in 6 the courts, provided the plaintiff has acted in good faith 7 and stated correctly the last known address of the non- 8 resident defendant." That is precisely what was done in this 9 case. 10 Going further, other jurisdictions have held that 11 plaintiff is entitled to rely upon information furnished to 12 the investigative officer. We were entitled to rely on the 13 address he gave to the police, which appeared on the wreck 14 report, and its where he was served. And the Wisconsin court 15 noted that actual notice in every case was not required for 16 valid service. The court held, that the only requirement was 17 that plaintiff comply with the statute at good faith, which 18 was done in this case. 19 That is precisely what was done here. The conduct 20 that is at issue in the McClure case with all respect is not 21 present here. There was no ongoing negotiations with the 22 carrier. There was no effort to miss -- in fact in the 23 McClure you'll notice, the lawyer told the adjuster, I'm 24 going to file a suit and I'm going to send you copy of the 25 pleadings. He told her that, and apparently he didn't do it.

15 (Pages 54 - 57)

Page 58 1 That is completely the opposite of what happened here. There 2 was no pledge made to the insurer here that they would 3 receive a courtesy copy of any pleadings. They didn't ask 4 for it, they weren't promised it. Its totally an opposite to 5 the McClure case. 6 And, you know, I'll make reference to the plain 7 language of the non resident motorist statute, no where in 8 there does it say that we have to demonstrate that the 9 defendant actually receive or sign for the summons. 10 THE COURT: 15 -- 11 MR. CARR: It's 15,9,350,360, and 370, 350 is the one 12 at issue here. There is nowhere in there, from what I see, 13 where it says, you must demonstrate that they actually 14 received it, and that they actually signed for it. In fact, 15 it says just the opposite, and again, the reason for that as 16 our Courts have recognized, our legislature recognized and 17 reports that it could create a undoing burden and unfair 18 interference with access to civil judicially, for injury 19 victims who are harmed by out of state motors, who may move, 20 and that's what we have here. 21 And I would like conclude with saying, I don't think 22 that simply contesting the value of plaintiff's damages is a 23 meritorious defense. If the issue is proximate cause, they 24 weren't caused by this wreck, that's an opinion, requires 25 expert testimony foundation, it's not present. The only	Page 60 1 it doesn't impact the actual damages award. There's no 2 defense as to that on the record, and if you will indulge me 3 for a moment, I want to review my scattered exhibits here to 4 make sure that I've submitted everything, but I think I've 5 covered. I'll answer any question, Your Honor. That's all 6 I have. 7 THE COURT: I don't have any questions. Ben, did you 8 want to talk? 9 MR. COBB: I just got a couple things that I want to 10 respond. One is, everything that has been discussed with 11 regards to interactions between the insurance company and 12 Mr. Carr, or, that doesn't matter for purposes of today's 13 motion. Today's motion is getting back to, has the 14 defendant, Mr. Hudson, proved that he is entitled to relief 15 under the Rule 60B, 60B1, mistake inadvertent surprise, or 16 inexcusable neglect, and I lost count, but Patrick said at 17 least three or four times, if he were here, if he had 18 participated, well the if is because he had no knowledge of 19 the lawsuit, and had no knowledge of the hearings, had no 20 knowledge of the default. The, and so, you know, I don't 21 think there is a greater example of excusable neglect than 22 when you have no notes, and the idea that somehow, Mr. 23 Hudson, every week has to go online to South Carolina 24 Judicial system to find out whether or not somebody has 25 filed a lawsuit against him, and if he doesn't do anything
Page 59 1 thing that's in the record before you today is a personal 2 opinion from the lawyer who is hired to represent the 3 defendant, and the defendant himself, neither of which are 4 admissible as evidence, and they don't meet the standard of a 5 Prima facia showing of a meritorious defense. 6 With regard to the argument on punitive to damages, 7 we acknowledge that there are two versions of that story that 8 you can not make meet, and if Mr. Hudson or his 9 representatives had been at the damages hearing, perhaps a 10 different result would have occurred. I don't know. You 11 have to demonstrate clear and convincing evidence of wreck 12 less conduct. I would tell you that the circumstances of the 13 crash would certainly lead you to believe he had to have been 14 distracted by something, because it's broad daylight, and 15 it's early morning traffic on 278, and he apparently he went 16 without ever hitting his brakes, because he pushed him into 17 the car in front of him. 18 THE COURT: Is this the Waste Pro out there by Snake 19 Road? 20 MR. CARR: Yeah. 21 THE COURT: Okay. 22 MR. CARR: And so, you know, if The Court is inclined 23 to say that, because Mr. Hudson now claims he was not on his 24 cell phone, that could contribute to the circumstances of the 25 track sequence, fine, vacate the punitive to damages award,	Page 61 1 that he is no exercising or partaking himself, but that's a 2 stretch, because lawyers don't even do that. The only thing 3 that I just want to kind of talk about too, is the exhibit 4 that Patrick gave to you, and argued that somehow Mr. 5 Hudson's records can be viewed and how he how refused this 6 declaratory judgement lawsuit, well if you actually read the 7 UPS tracking form, and I think do so in a fairly objective, 8 this is Exhibit two -- 9 THE COURT: I don't think I've got that. Did I get 10 that? 11 MR. CARR: It's with the Court Reporter over there. 12 THE COURT: You've got it over there? 13 MR. COBB: The representation was that somehow Mr. 14 Hudson refused to accept service. That Mr. Hudson ignored 15 this, whatever. The first, unless I'm wrong, the first two 16 pages are the only thing that show the tracking, and 17 basically, there was a package sent to UPS, and UPS stuck a 18 sticker on his residence saying you've got a package, and at 19 no point in time did he go and pick the package up. I don't 20 read anywhere in here where it says UPS went to his house to 21 hand him a lawsuit, and he said, "No, I'm not taking it." 22 All you have on this thing is, if you look at February 17, 23 notice left, no authorized recipient available. February 24 17, 2018 in transit to next facility, February 22 available 25 for pick-up, Moultrie, Georgia, March 7, 2018 returned to

Page 62 1 center, your item could no be delivered on March 7, 2018 at 2 10:24 a.m. in Moultrie, Georgia. It was held for the 3 required number of days before being returned to the center. 4 So, again, there's no evidence that anybody ever went and 5 had a face to face conversation with Mr. Hudson and they 6 said that here is a lawsuit, will you please accept service 7 of this lawsuit. 8 THE COURT: This -- hold on a second. This UPS 9 tracking stuff is regarding the -- 10 MR. COBB: The DJ action. 11 THE COURT: The DJ. 12 MR. COBB: Yes, sir. The argument that Mr. Carr made 13 earlier this shows some willful disdain by Mr. Hudson for 14 the legal process and the legal system, but yeah, I think 15 it's more of an example of nobody ever handed him anything, 16 and then finally just because sometimes, it's funny, I 17 didn't think, there's a little bit of humor, having 18 moved recently, the forwarding address, stuff at the Post 19 Office, it doesn't last forever, and I don't think that's a 20 requirement of anybody, okay, well I believe you now, so let 21 me forward my address in case somebody a year and half later 22 wants to sue me over something, the Post Office will send 23 you the paperwork. So, anyway, thank you for your time, and 24 I'm happy to provide any other -- 25 THE COURT: No more. We don't have any evidence of	Page 64 1 you know, he's entitles for his day in court just as the 2 Winslow's are entitled their day. Thank you. 3 THE COURT: All right. I want to thank the lawyers in 4 this. I appreciated it again, thank you. Ben, I'm sorry you 5 had to come down for purposes of this, but it's good to see 6 you again. 7 MR. DAVIS: Nice to see you. 8 THE COURT: David, good to see you. 9 (Deposition concluded at 4:45 o'clock p.m.) 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25
Page 63 1 any type of filing of any forming letter by Mr. Hudson, do 2 we? That we know of. There is not anything? 3 MR. COBB: I will ask him, but I doubt he did it, 4 because 95% of America doesn't do it. 5 THE COURT: Right, but we don't have it here today? 6 MR. COBB: No, sir. 7 THE COURT: For purposes of this hearing. 8 MR. COBB: But I don't think that there is a 9 requirement, and I also don't think that's a basis to say he 10 did not -- he is not entitled to excusable relief, because he 11 didn't send some forwarding address, when the service was 12 attempted on him for a year and half after the accident, 13 because that, having recently done it, you get 60 days and 14 that's it. So had he done it when he left, you know, it still 15 wouldn't have gotten there. All it took, you know, and I got 16 back to, and these things all stand on their own, but, you 17 know, one things that you see in the McClure case was once 18 the first letter came back, there was an effort by the 19 attorney to hire the private investigator to locate an 20 address. Had that been done a year and a half ago, the 21 private investigator was going to find the drivers license 22 number, and there would have been a lawsuit served on Mr. 23 Hudson in early 2017, April of 2017. All this would probably 24 be resolved either by verdict or by something by September 25 2018 given the fact the Jasper docket been set a year. So,	Page 65 1 STATE OF SOUTH CAROLINA) 2 : C-E-R-T-I-F-I-C-A-T-E 3 COUNTY OF BEAUFORT) 4 5 I, Ansley Jones, Court Reporter and Notary Public, certify 6 that I did appear at 3:00 o'clock p.m. on , Thursday, 7 September 6, 2018 at the Jasper County Courthouse, 265 8 Russell St., Ridgeland , South Carolina; the pages constitute 9 a true and accurate transcript of the testimony given at that 10 time and place. 11 I further certify that I am not of counsel or kin to any of 12 the parties to this cause of action, nor am I interested in 13 any manner in its outcome. 14 IN WITNESS WHEREOF, I have hereunto set my hand and seal 15 this the Tuesday, 25 of September, 2018. 16 17 18 19 20 Notary Public for South Carolina 21 My Commission Expires: August 11, 2028 22 23 24 25

17 (Pages 62 - 65)

1 STATE OF SOUTH CAROLINA)
2 : C-E-R-T-I-F-I-C-A-T-E
3 COUNTY OF BEAUFORT)
4

5 I, Ansley Jones, Court Reporter and Notary Public, certify
6 that I did appear at 3:00 o'clock p.m. on , Thursday,
7 September 6, 2018 at the Jasper County Courthouse, 265
8 Russell St., Ridgeland , South Carolina; the pages constitute
9 a true and accurate transcript of the testimony given at that
10 time and place.

11 I further certify that I am not of counsel or kin to any of
12 the parties to this cause of action, nor am I interested in
13 any manner in its outcome.

14 IN WITNESS WHEREOF, I have hereunto set my hand and seal
15 this the Tuesday, 25 of September, 2018.

16
17
18 ANSLEY JONES ®
19

20 Notary Public for South Carolina

21 My Commission Expires: August 11, 2028
22
23
24
25

EXHIBIT 3

STATE OF SOUTH CAROLINA

COUNTY OF JASPER

RICHARD L. WINSLOW and
CHARMAYNE WINSLOW,

Plaintiffs,

v.

MATTHEW W. HUDSON and WASTE
PRO USA, INC., and WASTE PRO OF
SOUTH CAROLINA, INC.,

Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CASE NO.: 2017-CP-27-00115

AFFIDAVIT OF PATRICK W. CARR

Personally appeared before me, Patrick W. Carr, upon being duly sworn, deposes and states the following:

1. I am a United States citizen, of sound mind and body, and otherwise fully competent to make this statement under oath.
2. All of the information contained within this Affidavit is based upon my own personal knowledge, and also my nearly twenty years of experience as a civil legal trial lawyer, having tried more than 100 personal injury case jury trials throughout South Carolina.
3. I am a member of the South Carolina Bar in good standing, and I have been so since 1998.
4. I represent the Plaintiffs in this action, and I am compelled to respond to other affidavits presented in this action.
5. The affidavit of Nicole Perez in this matter indicates that she contacted me on or before March 6, 2017; that is not true. If she left a message with a staff member at my firm, I was not aware. My cell phone number and email address are easily

located on my firm website and published widely. If Ms. Perez wanted to discuss settlement in this matter with me in response to my February 15, 2017 settlement demand letter, she could have easily done so prior to her first email contact with me dated November 2, 2017 (copy attached as Exhibit 1).

6. The terms of Plaintiffs' settlement demand letter in this matter dated February 15, 2017 make clear that the settlement demand of \$950,000 would be forever withdrawn if not accepted by March 10, 2017, and that such was a compromise beneath the full value of the damages claimed and caused due to this commercial vehicle crash.
7. A lawsuit was filed in March 2017 as promised when Liberty Mutual and its insureds failed to respond to this settlement demand letter.
8. The rule in my office is that once a lawsuit is filed due to an insurance carrier's failure to negotiate promptly or reasonably in respond to a settlement demand letter, then no phone calls to an insurance carrier will be returned, but only phone calls from a lawyer or law firm will be returned.
9. This rule is due in part to the content of the *McClurg* case, as I refuse to suffer the criticism directed at the lawyers involved in that action, who apparently filed a separate lawsuit and hid that fact from the insurance company while still negotiating with them; such was not the circumstance here.
10. There was no ongoing settlement negotiation with Liberty Mutual nor Defendant Hudson in this matter following the February 15, 2017 settlement demand letter, because no offer of settlement was ever made by Liberty Mutual until after entry of default, order of reference, default damages hearing, and entry of default judgment had already occurred as of October 13, 2017.

11. The first settlement offer made by Nicole Perez in this matter was transmitted to me by email dated November 2, 2017 (copy attached Exhibit 1). I responded promptly to that email message and advised Ms. Perez that Plaintiff's previous settlement demand was withdrawn per the terms of the earlier settlement demand letter, and that a new demand would be forthcoming, which included the default judgment entered against Hudson in this matter.
12. Neither Ms. Perez nor anyone at Liberty Mutual has ever provided me with explanation of why they felt it was appropriate to respond to a settlement demand package involving multiple permanent injuries and over \$203,000 in medical expenses, with an offer of settlement that was presented approximately eight months after the Plaintiff's settlement demand was made.
13. Ms. Perez' affidavit in this matter indicates she attempted to contact me on October 8, 2017, which is a Sunday. I find her statement to be without merit or incredibly unreasonable given normal business hours for most law firms. If she had simply called my cell phone or sent me an email she could have reached me easily.
14. Neither Ms. Perez nor anyone at Liberty Mutual ever asked me for courtesy copies of any pleadings in this matter, nor was such promised to be provided.
15. Neither Ms. Perez nor anyone at Liberty Mutual ever asked me if a lawsuit had been filed in this matter prior to the default judgment already being entered. If they had asked, then they would have been told the truth. If they had read the content of my settlement demand letter, then they would know what was to occur.
16. Nobody from my law firm ever misrepresented to Ms. Perez nor anyone at Liberty Mutual any fact relating to the existence of a lawsuit, or its timing of filing, or its service, or any other matter.

17. The suggestion raised by the defense in this matter that I or any member of my law firm was acting inappropriately in this matter at any time is offensive and without merit. There is simply no second secret lawsuit filed in this matter as recited in the *McClurg* case, nor was there any ongoing settlement negotiation between my law firm and Liberty Mutual prior to the entry of the default judgment.
18. I also take issue with the content of the affidavit of Defendant Matthew Hudson in this action.
19. The Summons and Complaint in this action were properly served on Defendant Hudson through the South Carolina Department of Motor Vehicles pursuant to the nonresident motorist statute, and such was the finding of the Court at the time of entry of default, and also the finding of the Special Referee at the default damages hearing.
20. Our courts have long held that in order to establish that service has been properly effected, the plaintiff need only show compliance with the civil rules on service of process (See *McClurg* and others). That was done in this case.
21. The notice of damages hearing was properly sent to Defendant Hudson by first class mail pursuant to Rule 55(c), SCRPC, and such was the finding of the Special Referee at the default damages hearing in this matter.
22. It is important to note that Defendant Hudson indicates his current address is 719 Eighth Avenue SE in Moultrie, GA 31768; however, when a subsequent lawsuit was filed against Hudson and others in this matter by reason of the insurance company's failure to pay a judgment as required by the plain language of their policy and the MCS-90 endorsement, Defendant Hudson refused to sign or accept service of

process by certified mail in that action (see Exhibit 2 attached), and his retained defense counsel likewise refused to accept service on his behalf.

23. This is precisely the type of conduct that serves as the basis for the nonresident motorist statute in South Carolina, and the public policy behind protecting motor vehicle crash victims who are harmed by out of state motorists, by allowing substituted statutory service through the SCDMV, such that an injured plaintiff should not be required to hunt and search for out of state defendants who have harmed them, and who make no effort to respond to the harms they have caused, and who move frequently without notice or efforts to notify others of same.
24. The relief sought here by Defendant Hudson are analogous to those arguments that were rejected in the matter of *Austin v. Martin* (Case No. 2015-CP-40-4879) (see Order attached as Exhibit 3), wherein the Court refused relief from default by a nonresident motorist Defendant who failed to take any reasonable efforts to ensure receipt and delivery of his mail while moving or changing addresses, or to have his mail forwarded, or to notify senders of mail of his new addresses (all well known, cheap, and simple measures available through the U.S. Postal Service), under circumstances where he knew or should have known of claims pending against him.
25. The relief sought by Hudson here should be refused for the same reasons outlined by the Honorable Clifton Newman in the *Austin v. Martin* case (see Order attached as Exhibit 3).
26. Under South Carolina law, Plaintiff counsel has no duty to inform an insurance carrier, or legal counsel, of the filing of a Complaint against a Defendant (See *White Oak Manor LLC v. Lexington Ins. Co.*, 407 S.C. 1 (2014); Rule 4, SCRCP).

27. The affidavit of Defendant Matthew Hudson does not amount to a meritorious defense in this matter; unless Mr. Hudson is a physician or has training or expertise in medicine (which is obviously not the case), his lay person opinions regarding Mr. Winslow's medical condition following this crash would not be admissible evidence in this action, and it is undisputed that Mr. Winslow went to the emergency room on the same date of this crash and was diagnosed with multiple injuries to include a head injury that ultimately was diagnosed as a concussion and was later confirmed by multiple physicians to manifest as post-concussion syndrome.
28. The opinions of Defendant Hudson and his paid legal advocate, attorney David Cobb, do not amount to a meritorious defense in this action; if there is any South Carolina case precedent providing for such, I am unaware of it.
29. All of this information regarding Mr. Winslow's injuries and the severity and permanency of same was demonstrated with voluminous medical records and bills presented to Liberty Mutual in February and March 2017, and such was also presented at the time of the default damages hearing that resulted in the default judgment at issue.
30. There is no dispute that this was a rear end crash caused by a large commercial garbage truck weighing in excess of 30,000 pounds that caused a double impact to the Winslow vehicle as it was pushed into another vehicle stopped ahead on the roadway. There is no content in the affidavits submitted by the Defendant and his lawyer that suggests Mr. Hudson was not responsible for causing this rear end crash event, and hence no meritorious defense exists.
31. The reason the action was filed in Jasper County, South Carolina is because that is the principal place of business of Defendant Matthew Hudson's employer,

Defendant Waste Pro of South Carolina, Inc., as indicated by records maintained by the South Carolina Secretary of State. The suggestion that venue would be a meritorious defense in this action is also without merit.

32. I am troubled by Paragraph 5 of attorney David Cobb's affidavit in this action. I have known David Cobb for more than twenty years, and I have great respect and admiration for him as a civil legal advocate and in all other respects. However, this content is false and misleading. The Order of Judgment in this action dated October 13, 2017 in Paragraph 20 clearly explains the basis for the actual damages awarded to Plaintiff Charmayne Winslow in this action, and I am unable to reconcile attorney Cobb's affidavit with the evidence in this action and the content of the default judgment.

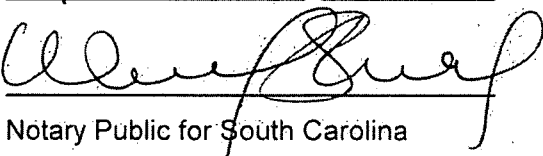
FURTHER AFFIANT SAYETH NOT.


 Patrick W. Carr, Esquire
 SC Bar No. 15585; Fed. I.D. No. 07190
 BERRY & CARR, P.C.
 2 Spanish Wells Road
 Hilton Head Island, SC 29926
 Phone: (843) 686-5432
 Facsimile: (843) 785-6173
 E-mail: patrick@hiltonheadlawyers.com
 Attorneys for Plaintiffs

Dated: September 5, 2018

Hilton Head Island, South Carolina

Sworn to before me this 5 day of
September 2018



Notary Public for South Carolina

My Commission Expires: 1.26.2027

Patrick Carr

From: Patrick Carr
Sent: Thursday, November 02, 2017 12:54 PM
To: Perez, Nicole
Cc: Bradi Whitmire
Subject: RE: AB505-382519-01 / DOL: 11/04/2015 / Claimant: Richard Winslow

Ms. Perez,

I am sorry I have missed your calls but I have tried to return the messages provided to me. The offer you state is rejected summarily. It seems we have a very different understanding of the magnitude of exposure here, and also the law in SC applicable to causation/aggravation of pre-existing condition.

My client has over \$203,000 in medical expenses incurred, plus permanent impairments to several body parts. With respect, we find the conduct and evaluation here by Liberty Mutual to be in bad faith.

Please note our concern that a detailed settlement demand package was sent to you on February 15, 2017, requesting a response on or before March 10, 2017. Today on November 2, 2017 is the first offer of settlement presented by Liberty Mutual. Is it common practice at Liberty Mutual to provide such delayed responses to personal injury claims in the commercial auto claims setting? What should our office do differently with Liberty Mutual in the future to allow for reasonable and prompt responses to settlement demands for our injured clients so that we do not lose credibility with them due to recalcitrant and delay tactics by the carrier responsible for the claims?

My office is preparing an updated settlement demand letter to you. I expect to have it ready within the next ten days. I will look forward to your prompt response to same, and I also look forward to detailed response to the questions posed above.

Thank you.

Patrick Carr

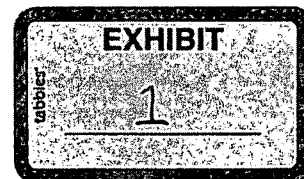
PATRICK W. CARR
 ATTORNEY AT LAW
 CERTIFIED CIRCUIT COURT MEDIATOR
 CELL PHONE: 843.816.2731
PATRICK@HILTONHEADLAWYERS.COM


BERRY & CARR
 PURSUING JUSTICE • IMPROVING LIVES

WWW.HILTONHEADLAWYERS.COM
 FACSIMILE: 843.785.6173

MAIN OFFICE
 2 SPANISH WELLS ROAD
 HILTON HEAD ISLAND, SC 29926
 OFFICE: 843.686.5432
 COURTHOUSE OFFICE
 1917 LOVEJOY STREET
 BEAUFORT, SC 29902
 OFFICE: 843.524.9445
 LITIGATION AND MEDIATION CENTER
 1 CORPUS CHRISTI PLACE, #113
 HILTON HEAD ISLAND, SC 29928
 OFFICE: 843.686.5432

From: Perez, Nicole [mailto:NICOLE.PEREZ@LibertyMutual.com]
Sent: Thursday, November 02, 2017 8:38 AM
To: Patrick Carr <patrick@hiltonheadlawyers.com>
Subject: AB505-382519-01 / DOL: 11/04/2015 / Claimant: Richard Winslow
Importance: High



Hi Mr. Carr,

I was hoping to speak to you regarding settlement on your client Richard Winslow. We have evaluated the file and based on the review of the records, we do not agree with all the surgeries he received however are considering an aggravation to an existing condition. With that being said, we are extending an offer on this file for \$48,880.41

Please contact me to discuss this file.

Thank you,

NICOLE B. PEREZ | CLAIMS SPECIALIST II

Liberty Mutual and Helmsman Management Services

National Insurance Claims

Auto and General Liability – Lawrenceville, GA

(P) 470-539-5746 (F) 888-325-8171

Nicole.Perez@LibertyMutual.com

Mailing address: P.O. Box 7214, London, KY 40744-7214

EXHIBIT 4



**S. C. DEPARTMENT OF
MOTOR VEHICLES**

OFFICE OF GENERAL COUNSEL

P.O. Box 1498, Blythewood, S.C. 29016: (803) 896-9900, Fax : (803) 896-9901

April 6, 2017

Matthew Hudson
5013 Ogeechee Rd. Apt. 19
Savannah, GA 31405-2505

Re: *Richard L. Winslow and Charmayne Winslow v. Matthew W. Hudson and Waste Pro USA, Inc. and Waster Pro of South Carolina: Case No.: 2017-CP-27-00115, DMV 17-149*

Dear Mr. Hudson:

In accordance with the provisions of Section 15-9-350 of the Code of Laws of South Carolina (1976), this office has received the enclosed Summons and Complaint in the above-entitled action. Under South Carolina law, this has the same legal effect as if you had been served with these documents personally.

Section 15-9-350 of the 1976 Code of Laws of South Carolina, as amended, provides that:

"The acceptance by a nonresident of the rights and privileges conferred by the laws in force in this State permitting the operation of motor vehicles, as evidenced by the operation of a motor vehicle by such nonresident on the public highways, the streets of any incorporated municipality or the public roads of this State or anywhere within this State, or the operation by such nonresident of a motor vehicle on any such public highways, streets, or public roads or anywhere within this State other than as so permitted or regulated shall be deemed equivalent to the appointment by such nonresident of the Director of the Department of Motor Vehicles or of his successor in office to be his true and lawful attorney upon whom may be served all summons or other lawful process in any action or proceeding against him growing out of any accident or collision in which such nonresident may be involved by reason of the operation by him, for him or under his control or direction, express or implied, of a motor vehicle on such public highways, Streets, or public roads or anywhere within this State. Such acceptance or operation shall be a signification of his agreement that any such process against him shall be of the same legal force and validity as if served on him personally."

Sincerely,

Wanda R. Ealy, Paralegal Assistant
Office of General Counsel

For: Director, South Carolina Department of Motor Vehicles

Enclosure

cc: Patrick W. Carr, Esquire
2 Spanish Wells Rd.
Hilton Head Island, SC 29926



**S. C. DEPARTMENT OF
MOTOR VEHICLES**

OFFICE OF GENERAL COUNSEL

P.O. Box 1498, Blythewood, S.C. 29016: (803) 896-9900. Fax: 896-9901

May 11, 2017

Patrick W. Carr, Esquire
2 Spanish Wells Rd.
Hilton Head Island, SC 29926

**Re: Richard L. Winslow and Charmayne Winslow v. Matthew W. Hudson and Waste Pro
USA, Inc. and Waste Pro of South Carolina: Case No.: 2017-CP-27-00115, DMV 17-149**

Dear Mr. Carr:

The notice of service and copy of the Summons and Complaint in the above-entitled action were sent certified mail on April 6, 2017 to defendant Matthew W. Hudson and returned to this office marked "Return to Sender Unclaimed Unable To Forward."

In accordance with the provisions of Section 15-9-380 of the 1976 Code of Laws, as amended, I am today sending notice of service and a copy of the Summons and Complaint to defendant Matthew W. Hudson by open mail. Enclosed are the Affidavit of the mailing, the original envelope, and the unsigned return receipt card for filing by you with the Clerk of Court.

If you have any questions, please contact me at 803-896-9900.

Sincerely,

Wanda R. Ealy
Paralegal Assistant
For: Director, South Carolina Department of Motor Vehicles

Enclosures

/wre

ELECTRONICALLY FILED - 2017 Jun 26 2:49 PM - JASPER - COMMON PLEAS - CASE#2017CP2700115

[illegible]

AFFIDAVIT

PERSONALLY appeared before me, Wanda R. Ealy, who, first being duly sworn, deposes and says that:

This Affidavit is made in compliance with Section 15-9-380 of the Code of Laws of South Carolina;

That she is the designated representative of the Director of the South Carolina Department of Motor Vehicles;

That on April 3, 2017 in accordance with the provisions of Sections 15-9-350 or 15-9-360 of the 1976 Code of Laws of South Carolina, the Summons and Complaint in an action styled Richard L. Winslow and Charmayne Winslow v. Matthew W. Hudson and Waste Pro USA, Inc. and Waste Pro of South Carolina: Case No.: 2017-CP-27-00115 received by the South Carolina Department of Motor Vehicles;

That on April 6, 2017 a copy of the Summons and Complaint was sent to Defendant Matthew W. Hudson by certified mail, at the address furnished by Plaintiff's attorney that is 5013 Ogeechee Rd. Apt. 19 Savannah, GA 31405-2505. That said copy of the Summons and Complaint was returned to the South Carolina Department of Motor Vehicles by the Post Office Department marked "Return To Sender Unclaimed Unable To Forward," and is attached hereto;

That a copy of the Summons and Complaint was sent to Matthew W. Hudson by open mail to the same address with sufficient postage attached thereto.

Wanda R. Ealy
Wanda R. Ealy, Paralegal Assistant
For: Director, S.C. Department of Motor Vehicles

Sworn to and subscribed before me this
11th day of May 2017

11th day of May 2017
[Signature]

 Notary Public of South Carolina
 My Commission Expires: May 9, 2023

EXHIBIT 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS)

COUNTY OF JASPER)

FOURTEENTH JUDICIAL CIRCUIT)

RICHARD L. WINSLOW and)
CHARMAYNE WINSLOW,)

C/A NO.: 2017-CP-27-00115)

Plaintiffs,)

ORDER OF JUDGMENT)

v.)

MATTHEW W. HUDSON and WASTE)
PRO USA, INC. and WASTE PRO OF)
SOUTH CAROLINA, INC.,)

Defendants.)

A default damages hearing in this action was conducted before the undersigned as Special Referee following an Order of Default and Order of Reference signed by the Honorable Carmen T. Mullen on August 30, 2017. The hearing noticed for 10:00 a.m. on October 12, 2017 was commenced October 12, 2017 at 10:20 a.m. at Bennett Law Firm, P.A. located at 1130 3rd Avenue, Ridgeland, South Carolina. Present at the hearing were the Plaintiffs, Richard Winslow and Charmayne Winslow, and Patrick W. Carr as counsel for Plaintiffs. No other parties or attorneys were present. Proper notice of the default damages hearing was provided to the Defendant Matthew W. Hudson by regular mail at his last known address from Plaintiffs' counsel as required by the South Carolina Rules of Civil Procedure.

At the hearing, Plaintiff introduced and submitted Exhibits marked #1 through #12, and all of those Exhibits were entered into the record without objection. All Exhibits entered into evidence at the time of hearing are specifically incorporated into and made a part of this Order. From the record before me, including specifically Exhibits #1 through #7, it appears that Defendant Matthew W. Hudson is properly in default, by reason of service

upon him through the Director of the South Carolina Department of Motor Vehicles, according to the applicable statutes, and by reason of Defendant Hudson failing to answer the Complaint or otherwise appear in this action. This Order shall be effective as to Defendant Matthew W. Hudson.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Summons and Complaint in this matter, filed March 20, 2017, were properly served on Defendant Matthew W. Hudson as a non-resident motorist, through the Director of the South Carolina Department of Motor Vehicles on April 6, 2017 and May 11, 2017. Defendant Hudson has failed to answer, move, appear or otherwise respond timely respond to Plaintiffs' Complaint.

2. The Defendant Matthew W. Hudson is in default however he was provided proper notice of the default damages hearing pursuant to the South Carolina Rules of Civil Procedure.

3. All allegations contained within Plaintiffs' Complaint in this action are deemed admitted and conclusively established against Defendant Hudson who is in default and subject to this Order, including the facts giving rise to Plaintiffs' injuries and damages and Plaintiffs' entitlement to relief from the defaulting Defendant.

4. I have received testimony under oath and reviewed Exhibits from Plaintiffs Richard L. Winslow and Charmayne Winslow.

5. Plaintiff Richard L. Winslow has a date of birth of April 7, 1956, and at the time of this hearing he was a 61-year-old male with a statutory life expectancy in South Carolina of no less than 19.85 years pursuant to S.C. Code Section 19-1-150.

6. Plaintiffs Richard L. Winslow and Charmayne Winslow are residents of Berkeley County, South Carolina.

CKB

7. Plaintiff Richard L. Winslow was involved in a motor vehicle crash caused by Defendant Matthew W. Hudson along Highway 278 in Jasper County, S.C. on November 4, 2015.

8. Plaintiff Richard L. Winslow did nothing to cause or contribute to this collision, and the force of the initial rear end impact caused by Hudson's sanitation truck violently caused the Winslow vehicle to crash into the rear of the vehicle ahead of his on the roadway, resulting a in a second collision and further injuries to the Plaintiff.

9. Defendant Matthew W. Hudson admitted to Plaintiff Richard L. Winslow at the scene of the crash that this incident was entirely his fault, and Defendant Hudson further admitted the crash occurred because he was looking at his cellular telephone rather than the roadway ahead.

10. Defendant Matthew W. Hudson's admission of distracted driving by choosing to look at a mobile electronic device while operating a large commercial sanitation truck is clear and convincing evidence of conduct that amounts to gross negligence, recklessness, a conscious disregard for safety, and negligence per se, thereby making it appropriate for consideration of punitive damages against the at fault driver in this action.

11. Based upon the pleadings, evidence, and testimony presented to me, I find and conclude that Plaintiff Richard L. Winslow suffered severe and permanent injuries to his head, right shoulder, and right knee as a direct and proximate result of the incident described in the Complaint.

12. Based upon the evidence and testimony presented to me, I find and conclude that Plaintiff Richard L. Winslow is right hand dominant, and he was in good health prior to the subject motor vehicle crash of November 4, 2015.

13. Based upon the evidence and testimony presented to me, I find and conclude

that this incident occurred approximately ten days prior to Richard L. Winslow's wedding date, and the injuries caused to Richard in this crash diminished his experiences with his spouse Charmayne on their wedding date and honeymoon.

14. Based upon the evidence and testimony presented to me, I find and conclude that the subject incident caused Plaintiff Richard L. Winslow to undergo invasive and prolonged medical treatments, surgeries and therapies, including a surgery to repair a rotator cuff tear in the right shoulder, and a surgery to provide a total knee replacement on the right knee, and significant pre-operative and post-operative physical therapy courses related to same.

15. Based upon the evidence and testimony presented to me, I find and conclude that the subject incident caused Plaintiff Richard L. Winslow to experience severe post-concussion syndrome.

16. Based upon the evidence and testimony presented to me, I find and conclude that the subject incident has caused and will continue to cause Plaintiff Richard L. Winslow to experience substantial physical pain and suffering, alteration of lifestyle, mental anguish, loss of enjoyment of life, and a large (approx. 9" inch) surgical scar on his right knee/leg.

17. Based upon the evidence and testimony presented to me, I find and conclude that the subject incident has caused Plaintiff Richard L. Winslow to experience weight gain due to restriction from normal physical and recreational activities, and also experience fear and anxiety over his ability to earn a living and continue operating his business due to his physical problems.

18. Based upon the evidence and testimony presented to me, I find and conclude that the subject incident has caused Plaintiff Richard L. Winslow to experience ongoing problems associated with his post-concussion syndrome, including dizziness, headaches,

blackout episodes, and related sensory problems.

19. Based upon the evidence and testimony presented to me, I find and conclude that the subject incident caused Plaintiff Richard L. Winslow to incur reasonable and necessary medical expenses totaling Two Hundred Three Thousand Seven Hundred Twenty-Two and 33/100 Dollars (\$203,722.33).

20. Based upon the evidence and testimony presented to me, I find and conclude that the subject incident caused Plaintiff Charmayne Winslow to suffer damage to her Jeep Cherokee vehicle, and because of the refusal by representative of the defending parties to accept responsibility for all of the vehicle damages caused by this incident, Plaintiff Charmayne Winslow suffered actual damages totaling One Thousand Five Hundred Dollars (\$1,500.00), comprised of a One Thousand Dollar (\$1,000) out of pocket deductible expense plus two weeks of loss of use of her vehicle which is reasonably valued at Five Hundred Dollars (\$500.00).

21. Based upon the evidence and testimony presented to me, I find and conclude that the total economic damages suffered by Plaintiff Richard L. Winslow to be no less than Two Hundred Three Thousand Seven Hundred Twenty-Two and 33/100 Dollars (\$203,722.33), and Plaintiff Richard L. Winslow is entitled to judgment against the defaulting Defendant for same.

22. Based upon the testimony and evidence presented to me, I further find and conclude that Plaintiff Richard Winslow has suffered and will continue to suffer on an ongoing basis certain material non-economic damages, to include physical pain and suffering, loss of enjoyment of life, scarring and disfigurement, and mental anguish, all as a direct and proximate result of the events described in the Complaint.

23. Based upon the testimony and evidence presented to me, I find and conclude

that Plaintiff Richard L. Winslow's past and future physical pain and suffering is reasonably valued at no less than Two Hundred Fifty Thousand Dollars (\$250,000.00).

24. Based upon the testimony and evidence presented to me, I find and conclude that Plaintiff Richard L. Winslow's past and future mental anguish is reasonably valued at no less than Two Hundred Fifty Thousand Dollars (\$250,000.00).

25. Based upon the testimony and evidence presented to me, I find and conclude that Plaintiff Richard L. Winslow's past and future alteration of lifestyle and loss of enjoyment of life are reasonably valued at no less than Two Hundred Fifty Thousand Dollars (\$250,000.00).

26. Based upon the testimony and evidence presented to me, I find and conclude that Plaintiff Richard L. Winslow's past and future scarring and disfigurement on his right knee/leg are reasonably valued at no less than Twenty-Five Thousand Dollars (\$25,000.00).

27. Based upon the testimony and evidence presented to me, I find and conclude that Plaintiff Richard L. Winslow's total non-economic damages are fairly and reasonably evaluated at no less than Seven Hundred Seventy-Five Thousand Dollars (\$775,000), all past and future, and Plaintiff Richard Winslow is entitled to judgment against the defaulting Defendant for same.

28. I find and conclude that Plaintiff Richard L. Winslow is entitled to judgment against the Defendant, Matthew W. Hudson, for total actual damages in the amount of Nine Hundred Seventy-Eight Thousand Seven Hundred Twenty-Two and 33/100 Dollars (\$978,722.33).

29. I find and conclude that Plaintiff Charmayne Winslow is entitled to judgment against the Defendant, Matthew W. Hudson, for total actual damages in the amount of One

Thousand Five Hundred Dollars (\$1,500.00).

30. Plaintiffs have also sought punitive damages in this matter based upon the allegations of their Complaint. I find and conclude that the Plaintiffs' entitlement to punitive damages in this matter is admitted by Defendant Hudson by reason of his failure to timely respond to the Complaint. I further find and conclude that there is clear and convincing evidence of gross negligence, negligence per se and reckless conduct by Defendant Hudson by reason of his admission to Plaintiff Richard L. Winslow that he caused a three vehicle collision during daylight conditions along a straight and flat stretch of highway by choosing to look at his mobile electronic device while operating a large commercial sanitation vehicle.

31. There is no question that distracted driving and mobile electronic device usage by motorists are pervasive threats to community safety and health, as Plaintiffs have appropriately alleged in their Complaint, and therefore, an appropriate award of punitive damages is warranted in this matter to deter the wrongdoer and others from committing like offenses in the future.

32. With consideration of the judicial precedent in South Carolina and the United States regarding punitive damages, including specifically *BMW v. Gore*, *Gamble v. Stevenson*, and similar guideposts, I find and conclude that an award of punitive damages equal to the actual damages is appropriate in this matter.

33. Further, I find and conclude that an award of punitive damages equal to the actual damages awarded is consistent with, and indicated by, the legislature of South Carolina according to the prescription on punitive damages adopted under S.C. Code Section 15-32-530(A).

34. I find and conclude that Plaintiffs are entitled to an award of punitive

damages against the defaulting Defendant in the amount of Nine Hundred Eighty Thousand Two Hundred Twenty-Two and 33/100 Dollars (\$980,222.33), with said amount being divided as Nine Hundred Seventy-Eight Thousand Seven Hundred Twenty-Two and 33/100 Dollars (\$978,722.33) in punitive damages in favor of Plaintiff Richard L. Winslow, plus One Thousand Five Hundred Dollars (\$1,500.00) in punitive damages in favor of Plaintiff Charmayne Winslow.

35. Therefore, the total default judgment entered in favor of Plaintiffs in this matter is One Million Nine Hundred Sixty Thousand Four Hundred Forty-Four and 66/100 Dollars (\$1,960,444.66), against the Defendant Matthew W. Hudson, with said amount being a judgment equal to One Million Nine Hundred Fifty-Seven Thousand Four Hundred Forty-Four and 66/100 Dollars (\$1,957,444.66) in favor of Plaintiff Richard L. Winslow, plus Three Thousand Dollars (\$3,000.00) in favor of Plaintiff Charmayne Winslow.

Wherefore, Plaintiff Richard L. Winslow is hereby granted judgment against the Defendant Matthew W. Hudson in the total amount of One Million Nine Hundred Fifty-Seven Thousand Four Hundred Forty-Four and 66/100 Dollars (\$1,957,444.66), and Plaintiff Charmayne Winslow is hereby granted judgment against the Defendant Matthew W. Hudson in the total amount of Three Thousand Dollars (\$3,000.00).

AND IT IS SO ORDERED.

October 12, 2017

Ridgeland, South Carolina

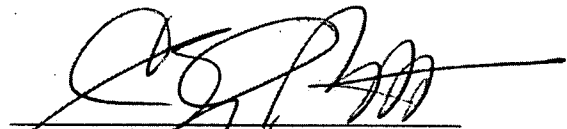

Honorable C. Stephen Bennett
Presiding Special Referee

EXHIBIT 6

STATE OF SOUTH CAROLINA
COUNTY OF JASPER

RICHARD L. WINSLOW AND
CHARMAYNE WINSLOW,

Plaintiffs,

vs.

MATTHEW W. HUDSON AND WASTE
PRO USA, INC. AND WASTE PRO OF
SOUTH CAROLINA, INC., AND
LIBERTY MUTUAL FIRE INSURANCE
CO., AND LIBERTY MUTUAL
INSURANCE GROUP, INC.,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2017-CP-27-00115

**DEFENDANTS WASTE PRO USA,
INC. AND WASTE PRO OF SOUTH
CAROLINA, INC.'S ANSWER TO
PLAINTIFFS' COMPLAINT
(Jury Trial Demanded)**

Defendants, Waste Pro USA, Inc. and Waste Pro of South Carolina, Inc., answer the
Complaint and respectfully assert the following:

FOR A FIRST DEFENSE

1. Defendants lack sufficient knowledge and information to form a belief as to the allegations set forth in Paragraphs 1 through 3 of the Complaint.
2. Answering Paragraph 4, Defendants admit that Waste Pro USA, Inc. is a foreign corporate entity. All remaining allegations are denied.
3. Answering Paragraph 5, Defendants admit that Waste Pro of South Carolina, Inc. is a domestic corporate entity with its principal place of business located in Jasper County, South Carolina, and that it transacts business, serves customers, and employs agents in Jasper County, South Carolina. All remaining allegations are denied.

4. Answering Paragraph 6, Defendants admit that they have a parent-subsiary relationship. All remaining allegations are denied.

5. Answering Paragraph 7, Defendants admit that they derive revenue from business operations in Jasper County, South Carolina. All remaining allegations are denied.

6. Answering Paragraph 8, Defendants admit that Hudson was operating a commercial truck, owned by his employer, Defendant Waste Pro of South Carolina, Inc., with express permission and consent. All remaining allegations are denied.

7. Answering Paragraph 9, Defendants admit that Waste Pro of South Carolina, Inc. provided its employee, Defendant Hudson, the truck. All remaining allegations are denied.

8. Answering Paragraph 10, Defendants admit that Defendant Hudson was operating a commercial truck owned by Waste Pro of South Carolina, Inc. and Defendant Hudson was acting in the course and scope of his employment. All remaining allegations are denied.

9. The Defendants admit the allegations contained in Paragraph 11 of the Complaint.

10. Defendants deny the allegations contained in Paragraph 12 of the Complaint.

11. Paragraphs 13 and 14 set forth conclusions of law to which no response is required.

12. Answering Paragraph 15, Defendants repeat and reassert each preceding paragraph as if set forth herein verbatim.

13. Defendants lack sufficient knowledge and information to form a belief as to the allegations set forth in Paragraphs 16 through 19 of the Complaint.

14. The Defendants admit the allegations contained in Paragraph 20 of the Complaint.

15. Answering Paragraph 21, Defendants admit that Defendant Hudson was operating his employer's truck with its expressed permission and consent. All remaining allegations are denied.

16. Answering Paragraphs 22 and 23, Defendants admit that a collision between Hudson's truck and Plaintiff's vehicle occurred. All remaining allegations are denied.

17. Defendants deny the allegations contained in Paragraphs 24 through 28 of the Complaint.

18. Answering Paragraph 29, Defendants deny that Defendant Hudson was driving distracted and/or driving while using a mobile electronic device, and therefore, Paragraph 29 is denied in its entirety.

19. Defendants admit the allegations contained in Paragraph 30 of the Complaint.

20. Defendants deny the allegations contained in Paragraphs 31 through 36 of the Complaint.

21. Paragraph 37 and 38 set forth conclusions of law to which no response is required.

22. Defendants deny the allegations contained in Paragraph 39, including subparts (a) through (p), of the Complaint.

23. Defendants deny the allegations contained in Paragraph 40 of the Complaint.

24. Defendants lack sufficient knowledge and information to form a belief as to the allegations set forth in Paragraph 41 of the Complaint.

25. Defendants deny the allegations contained in Paragraph 42, including subparts (a) through (p), of the Complaint.

26. Defendants deny the allegations contained in Paragraph 43 of the Complaint.

27. Defendants deny each and every allegation of the Complaint not otherwise expressly admitted, modified, or explained herein.

FOR A SECOND DEFENSE
(Comparative Negligence)

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

FOR A THIRD DEFENSE
(Failure to Mitigate Damages)

29. Plaintiffs have failed to mitigate their damages and have incurred damages that were unnecessary or unreasonable in amount. Plaintiffs are, therefore, barred in whole or part from recovery in this case.

FOR A FOURTH DEFENSE
(Punitive Damages Award Unconstitutional)

30. Defendants would show the claim of the Plaintiffs for punitive damages cannot be had because any award of punitive damages under South Carolina law without bifurcation of the trial so that any punitive damage issues are tried only after and if liability on the merits of this action has been found will violate Defendants' due process rights guaranteed by the United States

Constitution and the South Carolina Constitution, and would violate the common law and public policy of the State of South Carolina.

31. Defendants would show the claim of the Plaintiffs for punitive damages cannot be had because an award of punitive damages under South Carolina law without being subject to a predetermined limit on the amount of punitive damages that a jury might impose would violate Defendants' due process rights guaranteed by United States Constitution and the South Carolina Constitution, and would violate the common law of the State of South Carolina.

32. Defendants allege the claim of the Plaintiffs for punitive damages cannot be had because an award of punitive damages under South Carolina law by a jury that is not:

(a) Provided with sufficiently clear standards for determining the appropriateness of a punitive damage award or the size of such award;

(b) Provided with adequate instructions as to the limits of punitive damage awards as determined by the principles underlying such an award;

(c) Instructed that awarding punitive damages on individually discriminatory characteristics of Defendants is improper;

(d) Instructed to consider punitive damages under a standard for determining the amount that is neither vague, arbitrary, nor capricious and that defines with reasonable clarity the actions of Defendants upon which an award of punitive damages may be based; and

(e) Subjected to judicial review at both the trial and appellate court level under objective standards for determining appropriateness and reasonableness; would violate Defendants' equal protection and due process rights as guaranteed by the United States Constitution and the South Carolina Constitution and would also violate the laws of the State of South Carolina.

FOR A FIFTH DEFENSE
(Bifurcation Requested – S.C. Code Ann. § 15-32-520)

33. Pursuant to S.C. Code Ann§ 15-32-520, the Defendants hereby request trial bifurcation on the issues of actual damages and punitive damages.

FOR A SIXTH DEFENSE
(Lack of Personal Jurisdiction)

34. Defendants assert that this Court lacks personal jurisdiction for the matters alleged in the Plaintiffs' Complaint, and accordingly, the Plaintiffs' Complaint should be dismissed with prejudice pursuant to Rule 12(b)(2), *SCRPC*

FOR A SEVENTH DEFENSE
(Insufficiency of Service of Process)

35. Defendants assert that Plaintiffs have made no attempt to serve and have failed to serve either Waste Pro USA or Waste Pro of South Carolina with process in this case, and accordingly, the Plaintiffs' Complaint should be dismissed with prejudice pursuant to Rule 12(b)(4) and (5), *SCRPC*.

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

(Signature Page to Follow)

MCANGUS GOUDELOCK & COURIE, L.L.C.

s/ Benjamin B. Davis

Benjamin B. Davis

Bar No: 74955

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ATTORNEYS FOR DEFENDANTS, WASTE
PRO USA, INC. and WASTE PRO OF SOUTH
CAROLINA, INC.

August 9, 2018

EXHIBIT 7

STATE OF SOUTH CAROLINA

COUNTY OF JASPER

RICHARD L. WINSLOW and
CHARMAYNE WINSLOW,

Plaintiffs,

v.

MATTHEW W. HUDSON, and WASTE
PRO USA, INC., and WASTE PRO OF
SOUTH CAROLINA, INC., and
LIBERTY MUTUAL FIRE INSURANCE
CO., and LIBERTY MUTUAL
INSURANCE GROUP, INC.,

Defendants.

IN THE COURT OF COMMON PLEAS

FOURTEENTH JUDICIAL CIRCUIT

C/A NO.: 2018-CP-27-_____

COMPLAINT
(Jury Trial Requested)

COMES NOW, Plaintiffs Richard L. Winslow and Charmayne Winslow, complaining of the Defendants named above, would respectfully show unto this Court the following:

PARTIES, JURISDICTION, FACTUAL BACKGROUND

1. Plaintiff, Richard Lawrence Winslow (hereafter "Richard"), is a citizen and resident of Berkeley County, South Carolina.
2. Plaintiff, Charmayne Winslow (hereafter "Charmayne") is a citizen and resident of Berkeley County, South Carolina.
3. Defendant, Matthew W. Hudson (hereafter "Hudson"), upon information and belief, is a citizen and resident of Chatham County, Georgia.
4. Upon information and belief, Defendant Waste Pro USA, Inc. (hereafter "Waste Pro USA" or "Waste Pro"), is a foreign corporate entity which owns and operates as a large commercial waste collection and recycling service provider all over the

United States. Upon information and belief, this Defendant transacts business, serves customers, and employs agents throughout South Carolina, including particularly in Jasper County, South Carolina.

5. Upon information and belief, Defendant Waste Pro of South Carolina, Inc. (hereafter "Waste Pro of SC" or also "Waste Pro"), is a domestic corporate entity with its principal place of business located at 422 Industrial Park Road in Hardeeville, Jasper County, South Carolina. Upon information and belief, this Defendant owns property, transacts business, serves customers, and employs agents throughout South Carolina, including particularly in Jasper County, South Carolina.
6. At all times herein, Defendant Hudson was employed by the Waste Pro Defendants as a commercial vehicle operator. The liabilities described herein in favor of Plaintiffs arise in part specifically from the acts and omissions of Defendant Hudson committed while acting in the course and scope of his employment with the Waste Pro Defendants.
7. Upon information and belief, Defendants Waste Pro USA, Inc. and Waste Pro of South Carolina, Inc. enjoy a parent, sister, subsidiary, affiliate or other close corporate relationship for their mutual benefit. These Defendants shall be collectively referred to herein as "Waste Pro," and they have a sufficient amalgamation of interests with respect to the events described herein such that they should be treated as one and the same in this action, with all allegations and claims raised against any entity with the name "Waste Pro" being raised and alleged against all Waste Pro Defendant entities.

8. The Waste Pro Defendants are jointly and severally liable for the tortious conduct of their agent and employee, Defendant Hudson herein, pursuant to the legal principle of respondeat superior.
9. That Defendant Liberty Mutual Fire Insurance Co. (hereafter "LM Fire" or "Liberty Mutual") is upon information and belief a foreign corporate entity conducting business as an insurance company with its corporate headquarters located in Boston, Massachusetts. This Defendant actively markets, sells, and enters into insurance contracts and otherwise transacts business within the State of South Carolina. This Defendant also responds to insurance claims made by its policy holders and third party injury claimants in South Carolina and is subject to the jurisdiction of this Court by virtue of South Carolina long arm statute S.C. Code Ann. § 36-2-803 because it regularly conducts business in the County of Jasper, State of South Carolina.
10. That Defendant Liberty Mutual Insurance Group, Inc. (hereafter "LM Group" or also "Liberty Mutual") is upon information and belief a foreign corporate entity conducting business as an insurance company with its corporate headquarters located in Boston, Massachusetts. This Defendant actively markets, sells, and enters into insurance contracts and otherwise transacts business within the State of South Carolina. This Defendant also responds to insurance claims made by its policy holders and third party injury claimants in South Carolina and is subject to the jurisdiction of this Court by virtue of South Carolina long arm statute S.C. Code Ann. § 36-2-803 because it regularly conducts business in the County of Jasper, State of South Carolina.

11. Upon information and belief, Defendants Liberty Mutual Insurance Group, Inc. and Liberty Mutual Fire Insurance Co. enjoy a parent, sister, subsidiary, affiliate or other close corporate relationship for their mutual benefit. These Defendants shall be collectively referred to herein as "Liberty Mutual" or "LM," and they have a sufficient amalgamation of interests with respect to the events described herein such that they should be treated as one and the same in this action, with all allegations and claims raised against any entity with the name "Liberty Mutual" being raised and alleged against all Liberty Mutual Defendant entities.
12. Upon information and belief, Liberty Mutual is one of the largest insurance companies in the world, and their total assets at the end of quarter three year 2017 exceeded \$141 Billion Dollars, and their total equity at the end of quarter three year 2017 exceeded \$20 Billion Dollars.
13. Upon information and belief, Liberty Mutual enjoys substantial financial success and wealth, with revenues in year 2017 exceeding \$31 Billion Dollars.
14. Upon information and belief, each and all of the Defendants herein derive substantial revenue and profits from their business operations in Jasper County, South Carolina.
15. Upon information and belief, Defendants Liberty Mutual Fire, Liberty Mutual Group actively sell and market insurance products and services within South Carolina, including particularly in Jasper County.
16. Upon information and belief, Defendants Liberty Mutual Fire, Liberty Mutual Group derive substantial revenues and profits from the sale and issuance of insurance policies within South Carolina, including particularly Jasper County.

17. Upon information and belief, Defendants Liberty Mutual Fire, Liberty Mutual Group are and were at all times herein actively engaged in the processes of evaluating, adjusting, defending, and responding to claims for commercial motor vehicle insurance policy benefits made by injury victims against their policy holders, including specifically claims made by Plaintiffs herein against Defendants Matthew W. Hudson, Waste Pro USA, Inc., and Waste Pro of South Carolina, Inc., herein.
18. At all times herein and including particularly on November 4, 2015, Defendant Matthew W. Hudson was operating a commercial garbage and sanitation truck, owned by his employers, Waste Pro USA, Inc. and Waste Pro of South Carolina, Inc., with their express permission and consent.
19. At all times herein, Defendants Waste Pro provided their employee the heavy machinery, garbage and sanitation truck, Defendant Hudson, to serve as a means of use and convenience for their mutual financial benefit.
20. Defendants Liberty Mutual Fire, Liberty Mutual Group named herein participated in the marketing, selling, issuance, and claims evaluation and response activities with regard to a policy of commercial motor vehicle insurance issued to the Defendants Waste Pro USA and Waste Pro South Carolina in the State of South Carolina, and as such, each and all of the Defendants herein enjoy a sufficient amalgamation of interests with respect to Defendant's commercial motor vehicle insurance policy and the claims and conduct relating to same such that all Defendants herein are to be treated as one and the same throughout this civil

action, with all factual allegations and causes of action being raised collectively and jointly against all of them.

21. On November 4, 2015, Plaintiff Richard Winslow was severely injured in a motor vehicle crash caused by Defendant Matthew W. Hudson while operating a large commercial vehicle owned by Waste Pro in Jasper County, South Carolina.
22. This crash was solely the fault of Defendant Hudson and his employer Waste Pro, as Defendant Hudson admitted to Plaintiff Richard Winslow the crash occurred because he was distracted by looking at his cellular telephone or mobile electronic device.
23. Distracted driving due to cellular telephone or mobile electronic device usage is a pervasive societal threat and insult to community health and safety that results in numerous needless injuries and deaths on the roadways and highways in South Carolina each year.
24. Also as a consequence of this crash, Plaintiff Charmayne Winslow suffered damages and other consequential losses relating to her Jeep Cherokee vehicle that was severely damaged in this crash and was being operated by her then fiancée, Plaintiff Richard Winslow.
25. Plaintiff Richard Winslow suffered serious permanent injuries to his head, shoulder, and knee areas as a result of this wreck, and he incurred medical bills of over Two Hundred Thousand Dollars (\$200,000).
26. As a direct and proximate result of this motor vehicle crash, Plaintiff Richard Winslow also suffered physical pain and suffering, mental anguish, loss of enjoyment of life, scarring and disfigurement, and permanent impairment of

health, all of which are material elements of harm recoverable in a negligence action in South Carolina.

27. At the time of this motor vehicle collision, Defendants Matthew W. Hudson, Waste Pro USA, Inc., and Waste Pro of South Carolina, Inc. were all insured under a commercial motor vehicle insurance policy (with policy number AS2-621-093780-094) that was sold, offered, written, issued, and otherwise provided to the Waste Pro Defendants by the Liberty Mutual Defendants.
28. The subject commercial motor vehicle insurance policy or business auto policy provided to and by the Defendants herein was supported by good and valid consideration, and was in effect at the time of the events described herein.
29. The subject commercial motor vehicle insurance policy provided to the Waste Pro Defendants by the Liberty Mutual Defendants is and was governed at all times by the laws of the State of South Carolina.
30. Defendant Hudson herein qualifies as an insured under the subject insurance policy by policy definition found on page 99 of same, and also by operation of common law.
31. The subject insurance policy provides coverage limits for third party injury claimants of up to One Million Dollars (\$1,000,000) for any single occurrence, and this policy contains an important public policy endorsement entitled "ENDORSEMENT FOR MOTOR CARRIERS POLICIES OF INSURANCE FOR PUBLIC LIABILITY UNDER SECTION 29 AND 30 OF THE MOTOR CARRIER ACT OF 1980" which provides certain mandatory minimum coverage amounts for

the benefit of bodily injury victims and property damage victims such as Plaintiffs herein.

32. The subject endorsement, also known as the MCS-90 policy provision, was included in the subject commercial motor vehicle insurance policy and was in effect at all times relevant herein, and such was known or should have been known by the Liberty Mutual Defendants herein.
33. The subject MCS-90 policy endorsement provides in part the following important provisions: "It is understood and agreed that no condition, provision, stipulation, or limitation contained in the policy, this endorsement, or any other endorsement thereon, or violation thereof, shall relieve that company from liability or from the payment of any final judgment within the limits of liability herein described..." and also: "It is further understood and agreed that, upon the failure of the company to pay any final judgment recovered against the insured as provided herein, the judgment creditor may maintain an action in any court of competent jurisdiction against the company to compel such payment."
34. This MCS-90 endorsement within the subject insurance policy issued by the Liberty Mutual Defendants in coverage of Defendants Waste Pro and Hudson is in support of a strong public policy favoring injury victims who suffer harm at the hands of commercial motor vehicle operators, and it creates a third party beneficiary relationship in favor of bodily injury claimants and property damage claimants such as Plaintiffs herein as they are the intended beneficiaries of this mandated minimum coverage limit which may not be excluded, denied, or

avoided by the insurance company issuing the policy such as Liberty Mutual here.

35. This MCS-90 endorsement within the subject insurance policy issued by the Liberty Mutual Defendants in coverage of Defendants Waste Pro and Hudson is in support of a strong public policy favoring injury victims who suffer harm at the hands of commercial motor vehicle operators, and by giving a direct cause of action by a judgment creditor against the insurance company issuing the policy, it further creates a duty of good faith and fair dealing where it is incumbent on the commercial motor vehicle insurance company and their claims adjusting department to act at all times in good faith when responding to any claims presented against the policy for bodily injury or property damage, and also to act at all times in good faith when responding to claims with respect to any judgment entered against any insured under this policy.
36. Plaintiff Richard Winslow, though his counsel, provided a settlement demand letter and voluminous accompanying materials in support of same to claims adjuster Nicole Perez at Liberty Mutual's claims center located in London, Kentucky on February 15, 2017.
37. This settlement demand letter was properly addressed to Nicole Perez, who was the adjuster assigned to evaluate and respond to Plaintiffs' claims on behalf of the Liberty Mutual Defendants, and it was affixed with sufficient postage such that it reached adjuster Perez timely.

38. This settlement demand letter made clear that Liberty Mutual was being provided a singular time limited period in which to fairly settle the Winslow claims for the protection of their insured and in order to avoid litigation.
39. This settlement demand letter sent to Liberty Mutual outlined in detail the numerous injuries suffered by Richard Winslow, the severity and permanency of same, and the more than \$171,000 in medical expense incurred and uncovered by counsel to that point in time.
40. This settlement demand letter also urged Liberty Mutual to give due consideration and earnest appraisal of Richard Winslow's noneconomic harms such as physical pain and suffering, mental anguish, fear and anxiety, loss of enjoyment of life, and permanent physical impairment, as well as consideration of the prospect that punitive damages would be awarded against Liberty Mutual's insured in this matter due to the reckless nature of the conduct involved.
41. This settlement demand letter clearly advised Liberty Mutual of the likelihood that Winslow's damages likely exceeded their available liability insurance policy coverage limits, yet provided Liberty Mutual with ample opportunity to pay a compromise proposal of \$950,000 and forever protect their insured from excess exposure by tendering this amount on or before March 10, 2017.
42. This settlement demand letter clearly advised Liberty Mutual that a civil lawsuit would be filed against their insured if they did not respond to the Winslow settlement proposal by March 10, 2017.
43. Liberty Mutual did not request, nor did Plaintiffs or their counsel ever agree to provide, any courtesy copy of any civil legal filings relating to this matter.

44. Justice delayed is justice denied.
45. A bodily injury claimant or property damage claimant who is harmed through the fault of another in a motor vehicle crash should never have to wait an inordinate amount of time in order to receive fair compensation for all of their harms and losses.
46. Defendant Liberty Mutual and its adjuster Nicole Perez did not ask for any extension of time in which to investigate or evaluate the Winslow claims presented against their insured in response to the settlement demand letter in February 2017.
47. Defendants Liberty Mutual did not respond to Plaintiff's demand before the stated deadline of March 10, 2017, and as a result, Plaintiffs filed suit in The Court of Common Pleas, Fourteenth Judicial Circuit, Jasper County, South Carolina against Defendants Matthew W. Hudson, Waste Pro USA, Inc., and Waste Pro of South Carolina, Inc. (hereafter referred to as Civil Action No. 2017-CP-27-00115) on March 20, 2017.
48. An insurance company should never ignore or allow to pass without response a time limit settlement demand that is made against their policy or their insured.
49. Liberty Mutual did this in this matter, and it routinely does this when responding to bodily injury and property damage claimants who are harmed in motor vehicle crashes.
50. The Liberty Mutual Defendants routinely and systematically deny, delay, minimize, and make unmeritorious responses to claimants when they make

claims for third party insurance coverage benefits under commercial motor vehicle insurance policies.

51. By reason of the severity of the subject motor vehicle collision and the resulting harms and losses caused to Plaintiffs from same, any reasonable evaluation of Plaintiff's damages claims would have reached the conclusion that the fair value of the Winslow claims could well exceed all available liability coverage limits in this instance.
52. Plaintiffs submitted to Defendants a reasonable and proper liability coverage settlement demand in the amount of \$950,000,000 under the subject commercial motor vehicle insurance policy issued by the Liberty Mutual Defendants to Defendants Waste Pro and Hudson.
53. Plaintiffs offered to provide a full policy release and release of any and all claims stemming from the subject motor vehicle crash in exchange for tender of \$950,000.00 from the subject commercial automobile insurance policy, which was in effect at the time of this crash, and which demand for compromise settlement is within the stated policy coverage limits.
54. An insurance company should never put their own financial interests ahead of those of their policy holders or insureds.
55. Liberty Mutual did this in this matter, and it routinely does this when responding to bodily injury and property damage claimants who are harmed in motor vehicle crashes.

56. An insurance company should never make unreasonably delayed nor unreasonably low settlement offers when responding to claims presented by bodily injury or property damage claimants.
57. Liberty Mutual did this in this matter, and it routinely does this when responding to bodily injury and property damage claimants who are harmed in motor vehicle crashes.
58. An insurance company should never assign claims adjusters or claims handlers to respond to or evaluate bodily injury and property damage claims against their policy holders who do not have ample authority or experience to respond to the level of claim presented, or who don't have ample authority to take prompt action to protect their insured from excess exposure.
59. Liberty Mutual did this in this matter, and it routinely does this when responding to bodily injury and property damage claimants who are harmed in motor vehicle crashes.
60. An insurance company should never invite litigation against their policy holders when such can be avoided with reasonable care and action.
61. Liberty Mutual did this in this matter, and it routinely does this when responding to bodily injury and property damage claimants who are harmed in motor vehicle crashes.
62. An insurance company should never fail to recognize and consider important public policy provisions and endorsements within their commercial motor vehicle policies that are designed for the benefit and protection of the injured public.

63. Liberty Mutual did this in this matter, and it routinely does this when responding to bodily injury and property damage claimants who are harmed in motor vehicle crashes.
64. An insurance company should never fail to give adequate consideration, evaluation, and appraisal of all legally recoverable elements of damages available to an injury victim in a negligence action.
65. Liberty Mutual did this in this matter, and it routinely does this when responding to bodily injury and property damage claimants who are harmed in motor vehicle crashes.
66. At all times herein, Plaintiffs acted in good faith, with honesty in fact, and with proper motive and intent to claim and receive third party motor vehicle insurance coverage benefits that were due to them from Defendants herein.
67. In response to Plaintiffs' claims for payment under this policy, the Defendants herein refused and failed to make a good faith offer.
68. The subject civil lawsuit filed by the Winslows against Defendants Hudson and Waste Pro in Jasper County, South Carolina was properly served on Defendant Hudson pursuant to the nonresident motorist statute, through his statutorily appointed agent for service of process, the Director of the South Carolina Department of Motor Vehicles.
69. Defendant Hudson failed to respond to Plaintiffs' Complaint, and as a consequence of same, the matter went into default and resulted in the appointment of a Special Referee and Order of Reference to conduct a hearing to consider Plaintiffs' damages and enter a final judgment.

70. The circuit court appointed C. Stephen Bennett, Esquire as Special Referee in this matter, pursuant to the appropriate court rule and by reason that Jasper County, South Carolina does not have a sitting Master in Equity Judge.
71. Special Referee Bennett is a member of the South Carolina Bar in good standing, with a wealth of experience, skill, and ethical fitness when dealing with civil litigation matters.
72. Proper notice of the Plaintiffs' default damages hearing before Special Referee Bennett was provided to Defendant Hudson in compliance with court rules at his last known address, but he did not appear at the hearing.
73. On or about October 12, 2017, following a lengthy hearing and detailed findings of fact and conclusions of law by the Court appointed Special Referee, the Court entered a default judgment against Defendant Hudson, who is and was an insured under Liberty Mutual's subject commercial motor vehicle insurance policy, in the amount of \$1,957,444.66 in favor of Plaintiff Richard Winslow, plus \$3,000.00 in favor of Plaintiff Charmayne Winslow, for a total judgment in the amount of \$1,960,444.66.
74. The aforementioned default judgment against Hudson was comprised of actual damages in favor of Plaintiff Richard Winslow of \$978,722.33, plus actual damages in favor of Plaintiff Charmayne Winslow in the amount of \$1,500.
75. These amounts of actual damages awarded to Plaintiffs Winslow against Liberty Mutual's insured were fair, just, and reasonable in light of the harms and losses they suffered at the hands of Hudson and Waste Pro.

76. The amounts of actual damages awarded to Plaintiffs Winslow by the Special Referee could and would likely be exceeded if this matter were carried to a jury trial.
77. The aforementioned default judgment against Hudson also included punitive damages awards in favor of the Winslows equal to the actual damages awards.
78. The amounts of punitive damages awarded to Plaintiffs Winslow against Liberty Mutual's insured were fair, just, and reasonable in light of the facts of this incident, the pervasive societal harm and risk to public health presented by mobile electronic devices and distracted driving, the statutory and Constitutional guideposts relating to punitive damages awards, and the harm they suffered at the hands of Defendants Hudson and Waste Pro.
79. The aforementioned default judgment in favor of the Winslows against Defendant Hudson constitutes a final judgment against Liberty Mutual's insured as defined and expressed under the aforementioned MCS-90 policy endorsement.
80. At the time of entry of the default judgment against Defendant Hudson in October 2017, Liberty Mutual had still not made any responsive settlement offer to the settlement demand letter from February 2017, a delay of approximately eight months.
81. On Thursday, November 2, 2017, Liberty Mutual adjuster Nicole Perez made the first and only settlement offer to the Winslows in this matter, by email addressed to Plaintiffs' counsel.
82. The only settlement offer presented by Liberty Mutual to the Winslows was \$48,880.41.

83. This offer of settlement was tendered in bad faith, both by reason of its grossly inadequate amount and its inordinate delay in time for presentation.
84. When Liberty Mutual adjuster Nicole Perez was asked by Plaintiffs' counsel if she truly believed this settlement offer was fair and reasonable, she could not and would not provide an affirmative response.
85. When Liberty Mutual adjuster Nicole Perez was asked why in a serious commercial motor vehicle claims situation the liability carrier did not respond to a February 2017 settlement demand letter until November 2017, she could not and would not provide any justification or excuse for same.
86. Also during email communications with adjuster Perez and Winslows' counsel after presentation of the default judgment entered, Perez admitted she did not have ample authority to respond to a demand for payment in the amount of the default judgment entered, nor did she have understanding of the purpose and meaning behind the MCS-90 policy endorsement previously described herein.
87. Adjuster Perez never had authority to meet or adequately respond to the initial Winslow settlement demand of \$950,000.
88. This is further evidence of the bad faith conduct by Defendants Liberty Mutual.
89. The bad faith claims handling practices of Liberty Mutual in this matter have brought excess exposure and financial risk to their insureds.
90. Defendant Hudson does not have ample assets or financial means to pay or satisfy the judgment entered in favor of the Winslows in this matter, and he will suffer continuing dramatic financial harm if this judgment is enrolled against him in the future.

91. Defendants Waste Pro do have ample assets and financial means to satisfy the claims made by the Winslows and the judgment entered in their favor, but they would rather not suffer that expense and have their insurance company settle the claims in order to protect them from such exposure.
92. A civil default judgment in a negligence action is a judicial determination of liability and damages owing to the Plaintiffs against the Defendants.
93. When an insurance company is presented with any civil judgment against any insured that exceeds the available liability policy limits, and that insurance company is given the opportunity to fully satisfy the judgment for a lesser amount of payment that is within their policy limits, that insurance company should take advantage of that opportunity for the benefit and protection of its insured.
94. Liberty Mutual was given just this type of opportunity in this matter, but they failed to take advantage of yet another compromise settlement proposal presented to them by the Winslows and their counsel.
95. An insurance company should never fail to provide or delay in providing to a bodily injury claimant or their counsel a certified copy of the applicable insurance policy in place from which benefits may become due from a motor vehicle crash.
96. Liberty Mutual did this in this matter, and it routinely does this when responding to bodily injury and property damage claimants who are harmed in motor vehicle crashes.
97. Plaintiffs' counsel routinely requests copies of applicable insurance policies from Liberty Mutual when notifying of representation in a claim, and Liberty Mutual routinely and systematically fails or refuses to provide same.

98. The first time Plaintiffs and their counsel were provided a copy of the subject Liberty Mutual commercial motor vehicle insurance policy was by email transmission from Liberty Mutual's locally retained counsel on November 30, 2017.
99. Upon reviewing the coverage limits and policy provisions of the subject Liberty Mutual commercial motor vehicle policy, Plaintiffs' counsel sent another settlement demand letter to Liberty Mutual, this time through their retained local counsel, on December 5, 2017.
100. This December 2017 settlement demand letter pointed out to Liberty Mutual and their counsel the applicable policy definitions and MCS-90 endorsement language, and also summarized the fact that statutorily mandated minimum coverages have been interpreted by our courts to be as much for the benefit of the injured public as for the protection of policy holders.
101. This December 2017 settlement demand letter pointed out the direct action available to Plaintiffs Winslow against Liberty Mutual should they fail to respond to their claims for payment of the final judgment under the subject policy.
102. This December 2017 settlement demand letter gave Liberty Mutual the opportunity to fully and forever protect its insured with a complete satisfaction of judgment and release of all claims and all parties if they tendered the available liability policy limits of \$1,000,000 on or before December 20, 2017, with said amount being within the available policy limits under the applicable Liberty Mutual policy and much less than the amount of the civil judgment entered against its insured.

103. Liberty Mutual and its counsel did not request any extension of time in which to respond to the December 5, 2017 Winslow settlement demand letter, and ample time was provided to them to protect their insureds and extinguish the exposure created in this matter.
104. Liberty Mutual failed to meet this renewed compromise proposal from the Winslows and their counsel to fully satisfy the final judgment entered herein against its insured Hudson.
105. On December 20, 2017 Liberty Mutual Claims Team Manager Neil Coughlin sent a letter to counsel for the Winslows acknowledging the default judgment entered against Defendant Hudson and the opportunity to satisfy same by tendering the available \$1,000,000 policy limit, but declined to do so with a nefarious claim that "our investigation into these issues remains incomplete at this time."
106. It is important to note that Mr. Coughlin had never communicated with counsel for Winslows regarding this matter at any point prior to December 20, 2017, and neither he nor anyone else within Liberty Mutual's organization requested additional information nor additional time from counsel for the Winslows in order to further or complete their investigation.
107. Liberty Mutual has repeatedly and systematically failed and refused to pay the final judgment entered against its insured herein, in violation of their implied duties of good faith and fair dealing with Plaintiffs, and in violation of the MCS-90 policy endorsement contained in their policy.

108. Liberty Mutual is a company of epic size and financial resources, and the only way to deter this type of conduct suffered by the Winslows at the hands of Liberty Mutual is through a substantial punitive damages award.
109. All allegations stated herein above and below shall be specifically restated and incorporated as to each cause of action raised herein, and as to each Defendant named herein.
110. This action is timely brought, and all necessary and indispensable parties are correctly joined and identified herein.
111. Venue for this action is proper in the Jasper County Court of Common Pleas.

FOR A FIRST CAUSE OF ACTION

(Bad Faith Insurance Practices)

112. Each and all of the Liberty Mutual Defendants herein owe all claimants, including specifically Plaintiffs Richard Winslow and Charmayne Winslow, a duty of good faith and fair dealing in the settlement of liability claims, and such is implicit under common law and expressly provided through the MCS-90 endorsement in their contract of commercial motor vehicle insurance offered and sold to the Waste Pro Defendants herein.
113. Each and all of the Liberty Mutual Defendants herein owe claimants, including specifically Plaintiffs herein, a duty to timely and reasonably respond claimants in processing, evaluation, investigating, and paying all claims presented under their commercial motor vehicle liability insurance policy in good faith, with due care,

and with adherence to applicable state law and case precedent, and with honesty in fact.

114. Each and all of the Liberty Mutual Defendants herein owe claimants, including specifically Plaintiffs herein, a duty to refrain from doing anything that may unjustly impair or prevent bodily injury victims and property damage victims and civil judgment creditors from receiving all legally cognizable damages to which they are entitled under the subject commercial motor vehicle insurance policy issued to Waste Pro.
115. Each and all of the Liberty Mutual Defendants herein owe claimants and their policy holders, including specifically Plaintiffs and Defendants herein, to promptly tender all third party liability coverage benefits not legitimately in dispute.
116. Each and all of the Liberty Mutual Defendants herein owe claimants, including specifically Plaintiffs herein, a duty to refrain from forcing injury victims and third party coverage insureds from entering into unnecessary litigation.
117. Each and all of the Liberty Mutual Defendants herein owe claimants, including specifically Plaintiffs herein, a duty to refrain from raising unmeritorious denials and defenses to coverage benefits due during the claims process and during the civil judgment collection process.
118. Each and all of the Liberty Mutual Defendants herein owe claimants and judgment creditors, including specifically Plaintiffs herein, a duty to promptly pay any final civil judgment entered against their insured when requested to do so.
119. Each and all of the Liberty Mutual Defendants herein owe claimants and judgment creditors, including specifically Plaintiffs herein, a duty to honor,

understand, and abide by all of the policy provisions and endorsements contained within their commercial motor vehicle policy, including specifically the aforementioned MCS-90 endorsement.

120. Each and all of the Liberty Mutual Defendants herein owe claimants and judgment creditors, including specifically Plaintiffs herein, a duty to honor, understand, and abide by the public policy and social contract that is created by mandatory minimum coverage amounts within their commercial motor vehicle insurance policies.
121. Each and all of the Liberty Mutual Defendants herein have acted in bad faith, and without due care, and with recklessness and deliberate wrongful conduct, with respect to Plaintiffs' claims for liability coverage benefits due to them, as judgment creditors and otherwise, under the subject commercial motor vehicle insurance policy issued by the Liberty Mutual Defendants to the Defendants Waste Pro and Hudson herein.
122. Each and all of the Liberty Mutual Defendants herein have violated the implied covenants of good faith and fair dealing implicit in the policy of commercial motor vehicle insurance referenced herein.
123. Each and all of the Liberty Mutual Defendants herein have acted wrongfully, unreasonably, and in bad faith, in many particulars, including but not limited to, by failing and refusing to make diligent and prompt investigation into Plaintiffs' claims, by failing to reasonably settle Plaintiffs' claims, by failing to recognize and abide by a time limit demand for settlement, by failing to give adequate measure and consideration for all of the harms and losses suffered by Plaintiffs as a result

of the subject motor vehicle collision, by failing to promptly and reasonably pay benefits due to Plaintiffs, by failing to acknowledge and follow clear commercial motor vehicle insurance policy rules and precedent, by failing to pay a final civil judgment entered against their insured when requested to do so, by failing to extinguish excess civil liability exposure to their insured when given ample opportunity to do so, by raising and relying upon unmeritorious defenses and denials in response to Plaintiffs' claims, by failing to adopt and implement and follow proper claims handling policies and procedures, by continuing to raise improper and unmeritorious defenses and denials of Plaintiffs' claims, by forcing Plaintiffs and their insured into unnecessary litigation, and in such other respects to be shown by the evidence at trial in this case.

124. Each and all of the Liberty Mutual Defendants herein have acted in bad faith and in unreasonable manner with respect to Plaintiffs' claims for third party coverage benefits due under the subject commercial motor vehicle policy of insurance, and as such, Plaintiffs are informed and believe that they are entitled to recover attorney fees and costs, pursuant to S.C. Code Section 38-59-40 and all other applicable law.
125. As a direct and proximate result of the bad faith insurance practices, conduct and omissions committed by the Liberty Mutual Defendants herein, Plaintiffs have suffered actual and consequential damages.
126. The damages suffered by Plaintiffs herein include, but are not limited to, denial of third party coverage liability benefits due, delay, attorney fees and costs, annoyance, inconvenience, loss of interest, economic losses, costs of enrolling

and pursuing and civil judgment, additional litigation expenses, and other actual and consequential damages to be shown by the evidence at trial.

127. There is no meaningful or effective way to curb this type of bad faith behavior and prevent the Liberty Mutual Defendants from victimizing other claimants and other civil judgment creditors in the future without a substantial punitive damages award in this action.
128. If every claimant or every civil judgment creditor, particularly in a commercial motor vehicle policy involving the MCS-90 endorsement, were required to file a lawsuit or otherwise engage in litigation to receive liability insurance policy benefits due, such would only serve to benefit insurance carriers in general and serve to the financial detriment of claimants, judgment creditors, and policy holders such as Plaintiffs and Defendants Waste Pro and Hudson herein.
129. Each and all of the Liberty Mutual Defendants herein enjoy substantial financial prosperity and are capable of responding to and paying a substantial punitive damages award.
130. Plaintiffs are entitled to judgment against each and all of the Liberty Mutual Defendants herein, jointly and severally, for actual damages, for punitive damages, for attorney fees and costs, for pre judgment interest, for post judgment interest, and for such other and further relief as this Court deems just and proper.

FOR A SECOND CAUSE OF ACTION

(Negligence)

131. Each and all of the Liberty Mutual Defendants herein owe certain duties at law to the Plaintiffs by reason of the implied duty of good faith inherent in every contract of insurance, by common law, by voluntary undertaking, and pursuant to the terms of the MCS-90 endorsement contained in the subject commercial motor vehicle insurance policy.
132. Each and all of the Liberty Mutual Defendants herein have breached their duties of due care owed to Plaintiffs by their careless, negligent, grossly negligent, reckless, willful, and wanton conduct and omissions committed with respect to Plaintiffs' claims for third party coverage benefits and/or civil judgment payments due to them under the terms of the MCS-90 endorsement expressed in the subject commercial motor vehicle insurance policy.
133. The breaches of duty and negligent conduct of the Liberty Mutual Defendants are previously stated and summarized in all of the preceding Paragraphs above.
134. As a direct and proximate result of the carelessness, negligence, gross negligence, recklessness and wanton conduct performed by each and all of the Liberty Mutual Defendants herein, Plaintiffs have suffered damages as previously set forth herein.
135. Plaintiffs are entitled to judgment against each and all of the Liberty Mutual Defendants herein, jointly and severally, for actual damages, for punitive damages, for attorney fees and costs, for pre judgment interest, for post

judgment interest, and for such other and further relief as this Court deems just and proper.

FOR A THIRD CAUSE OF ACTION

(Breach of Contract Accompanied by Fraudulent Act)

136. At the time of the events described herein, the Waste Pro Defendants herein had in existence a valid contract of commercial motor vehicle insurance in the State of South Carolina issued by the Liberty Mutual Defendants, under which Defendant Hudson was defined as an insured, and under which Plaintiffs were intended third party beneficiaries, particularly with respect to any final civil judgment.
137. When a legislative initiative or federal motor carrier policy provision creates a certain mandatory level of insurance coverage available for the protection of or benefit to bodily injury or property damage claimants, or for the protection of or benefit to civil judgment creditors, an implied contract at law exists between the company writing or issuing said policy of insurance (herein the Liberty Mutual Defendants) and the foreseeable claimants or judgment creditors owed benefits from said policy (herein the Plaintiffs).
138. By their conduct and omissions outlined herein, the Liberty Mutual Defendants herein have unjustly breached this contract with their insureds and with Plaintiffs as intended third party beneficiaries, without legal justification or excuse.
139. The conduct of the Liberty Mutual Defendants herein in breaching the subject commercial motor vehicle insurance contract with Plaintiffs as intended third

party beneficiaries under the MCS-90 endorsement is accompanied by and born out of bad faith, fraudulent intent, fraudulent acts, and dishonesty on the part of the Liberty Mutual Defendants herein.

140. The fraudulent intent and fraudulent acts committed by the Liberty Mutual Defendants are largely summarized in the preceding Paragraphs, but it includes the failure to honor and abide by the obligation under its insurance policy terms to pay a final civil judgment against their insured up to the stated coverage limits of \$1,000,000 when requested to do so by a civil judgment creditor, and the raising of such spurious claims as needing to complete further investigation, all of which were known to Defendants to be wholly without merit.
141. The fraudulent intent and acts committed by the Liberty Mutual Defendants herein also include, but are not limited to, failing to timely process, evaluate, and respond to good faith settlement demands against their insurance policy, failing to provide or assign claims adjusters with amply authority and experience to respond to bodily injury and property damage claims, failing to timely provide copies of insurance policies upon request from claimants' counsel, failing to give ample consideration and evaluation of all legally recoverable items of damages available to claimants in negligence action, failing to give adequate consideration and evaluation of punitive damages claims and exposure, failing to extinguish excess liability against an insured when provided ample opportunity to do so, and such other acts to be shown by the evidence at trial.
142. As a direct and proximate result of the breach of contract and breach of contract accompanied by fraudulent acts performed by each and all of the Liberty Mutual

Defendants herein, Plaintiffs have suffered damages as previously set forth herein.

143. Plaintiffs are entitled to judgment against each and all of the Liberty Mutual Defendants herein, jointly and severally, for actual damages, for punitive damages, for attorney fees and costs, for pre judgment interest, for post judgment interest, and for such other and further relief as this Court deems just and proper.

FOR A FOURTH CAUSE OF ACTION

(Declaratory Relief under S.C. Code Section 15-53-10 et. seq.)

144. In addition to the claims for bad faith insurance practices, negligence, breach of contract, and breach of contract accompanied by fraudulent acts against the Liberty Mutual Defendants herein, Plaintiffs bring this action for declaratory relief against each and all of the Defendants, pursuant to the Uniform Declaratory Judgments Act under South Carolina Code Section 15-53-10 et. seq., and all other applicable law.
145. As recited above, the policy of commercial motor vehicle insurance provided by the Liberty Mutual Defendants to Defendants Waste Pro and Hudson included liability coverage benefits of \$1,000,000 per incident, as confirmed on the insurance policy issued to Defendants and declaration pages provided by Defendants herein.
146. As recited above, the policy of commercial motor vehicle insurance provided by the Liberty Mutual Defendants to Defendants Waste Pro and Hudson included a common important public policy provision known as the MCS-90 endorsement,

which provides that such coverage may not be avoided or denied for any reason as to any final civil judgment creditor against any insured.

147. As recited above, the MCS-90 endorsement contained within the subject commercial motor vehicle policy of insurance specifically creates a private right of cause of action in favor of any final civil judgment creditor (Plaintiffs herein) against the company (the Liberty Mutual Defendants herein) when a civil judgment payment up to the policy limits of \$1,000,000 has been requested but refused for payment by the insurer. The policy provisions do not state or limit whether such private right or cause of action is for breach of contract, or for fraud, or for bad faith insurance practices, or for declaratory relief, nor all of the above.
148. Because the Liberty Mutual Defendants herein have wrongfully denied and refused payment to Plaintiffs for the available liability policy limits of up to \$1,000,000 as requested by Plaintiffs to satisfy a final civil judgment against their insured that exceeds this amount, Plaintiffs are informed and believe that this Court must review the policy and its terms and endorsements in their entirety, consistent with applicable law, and render a decision that the subject commercial motor vehicle insurance policy issued by the Liberty Mutual Defendants to the Defendants Waste Pro and Hudson indeed provides unavoidable coverage for the Plaintiffs' claims, as final civil judgment creditors, for benefits of no less than the stated policy limit of \$1,000,000.
149. In addition to the declaratory relief sought herein, Plaintiffs are entitled to receive their attorney fees, costs, and other relief from the Liberty Mutual Defendants

herein by forcing them to pursue this action against their wishes, pursuant to S.C. Code Section 15-53-100, and 15-53-120, and all other applicable law.

WHEREFORE, having raised their Complaint against the Defendants, Matthew W. Hudson, Waste Pro USA, Inc., Waste Pro of South Carolina, Inc., Liberty Mutual Fire Company, and Liberty Mutual Group, Inc., Plaintiffs pray this Court inquire into all matters set forth herein, and grant them judgment against each and all of these Defendants, jointly and severally, for actual damages, for punitive damages, for attorney fees and costs, for pre judgment interest, for post judgment interest, for declaratory relief, and for such other and further relief as this Court deems just and proper.

Dated: January 10, 2018

Hilton Head Island, South Carolina

/s/ Patrick W. Carr
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ELECTRONICALLY FILED - 2018 Jan 11 9:59 AM - JASPER - COMMON PLEAS - CASE#2018CP2700013

EXHIBIT 8

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF JASPER	)	FOURTEENTH JUDICIAL CIRCUIT
	)	
RICHARD WINSLOW and	)	C/A NO.: 2018-CP-27-_____
CHARMAYNE WINSLOW,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	COMPLAINT
	)	
WASTE PRO USA, INC., and WASTE	)	
PRO OF SOUTH CAROLINA, INC.,	)	
	)	
Defendants.	)	

The Plaintiffs, complaining of the Defendants herein, would respectfully show this Court the following:

PARTIES, JURISDICTION, FACTUAL BACKGROUND

1. Plaintiff, Richard Winslow (hereafter "Richard"), is a citizen and resident of Berkeley County, South Carolina.
2. Plaintiff, Charmayne Winslow (hereafter "Charmayne"), is a citizen and resident of Berkeley County, South Carolina.
3. Upon information and belief, Defendant Waste Pro USA, Inc. (hereafter "Defendant Waste Pro USA"), is a domestic corporate entity which owns property, maintains agents and employees, and otherwise transacts business in Jasper County, South Carolina.
4. Upon information and belief, Defendant Waste Pro of South Carolina, Inc. (hereafter "Defendant Waste Pro of SC"), is a domestic corporate entity which owns property, maintains agents and employees, and otherwise transacts business in Jasper

County, South Carolina.

5. Upon information and belief, Defendant Waste Pro of SC maintains its principal place of business in Jasper County, South Carolina.

6. Upon information and belief, each and all of the Defendants herein are collectively and actively engaged in the business of owning, operating, controlling, supervising, and otherwise conducting a waste collection and recycling business throughout the southeastern portion of the United States, while operating numerous large commercial trucks in connection with same.

7. Upon information and belief, each and all of the Defendants herein own and operate more than 75 locations in Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Tennessee, North Carolina, and South Carolina.

8. Upon information and belief, each and all of the Defendants herein profess to operate a successful and responsible corporate operation, with using statements on their website such as: "Waste Pro has a commitment to caring."

9. Upon information and belief, each and all of the Defendants herein profess to honor a culture of dependability, doing the right thing, and being connected to their customers, communities, regulators, and each other.

10. Upon information and belief, each and all of the Defendants herein are connected by way of a parent, subsidiary, affiliate, sister, or other close corporate relationship such that they enjoy a mutually beneficial financial relationship and are joined with respect to the issues involved in this action and have an amalgamation of interests such that they are to be treated as one and the same for all causes of action raised herein.

11. Upon information and belief, each and all of the Defendants herein derive substantial revenue and profits from their business operations in Jasper County, South Carolina.

12. At all times herein, Defendants employed a commercial vehicle operator known as Matthew W. Hudson, and this individual was operating a commercial garbage and sanitation truck, owned by his employer, Waste Pro of South Carolina, Inc., with express permission and consent.

13. At all times herein, Defendants Waste Pro provided their employee the heavy machinery, garbage and sanitation truck, Defendant Hudson, to serve as a means of use and convenience for their mutual financial benefit.

14. At all times herein, Matthew W. Hudson was acting within the course and scope of his employment with the Defendants herein, and the Defendants herein are jointly and severally liable for the tortious acts and omission of Hudson as described herein pursuant to the legal doctrine respondeat superior.

15. The motor vehicle collision described herein occurred in Beaufort County, South Carolina on November 4, 2015.

16. On the aforementioned date and location, Defendants' driver and employee, Hudson, caused a three-vehicle pile-up rear end collision along Highway 278 during the morning hours in Beaufort County, South Carolina.

17. On the aforementioned date and location, Hudson was operating a large commercial truck owned by the Defendants herein, while acting in the course and scope of his employment with these Defendants, and with the garbage truck he was operating

weighing in excess of 33,000 pounds.

18. The collision described herein was solely the fault of Defendants' employee and driver, Matthew W. Hudson.

19. A previous civil action was filed and pursued with respect to damages caused to Plaintiffs by Matthew W. Hudson, specifically civil action number 2017-CP-27-00115, with said action resulting in a judicial determination that Plaintiffs are entitled to damages of no less than One Million Nine Hundred Sixty Thousand Four Hundred Forty-Four and 66/100 Dollars (\$1,960,444.66) stemming from the subject motor vehicle collision.

20. The Defendants herein have repeatedly failed and refused to accept responsibility for the damages, harms, losses, and other ill effects caused to Plaintiffs by the unsafe driving conduct of their employee, Matthew W. Hudson, even to the point of filing a responsive pleading in the aforementioned civil action (2017-CP-27-00115) wherein they blame Plaintiffs for causing their own damages and cite that Plaintiffs have failed to mitigate their damages.

21. This action is necessitated by the conduct of the Defendants herein and their representatives in failing and refusing to pay a legal judgment against their employee, Matthew W. Hudson, in the amount of One Million Nine Hundred Sixty Thousand Four Hundred Forty-Four and 66/100 Dollars (\$1,960,444.66).

22. This Court has jurisdiction over the parties and the subject matter herein, and venue is proper in the Jasper County Court of Common Pleas.

23. This action is timely brought, and all necessary and proper parties are correctly identified and joined herein.

24. All allegations set forth herein above and below shall be fully incorporated and restated as to each and every party and cause of action raised herein..

FOR A FIRST CAUSE OF ACTION
(Negligence)

25. Plaintiffs reallege and incorporate the contents of the preceding paragraphs as if fully set forth verbatim.

26. On or about November 4, 2015, Richard was lawfully operating a red Jeep vehicle owned by his then fiancé and now spouse, Charmayne, along Highway 278 in Beaufort County, South Carolina.

27. Richard brought this red Jeep vehicle to a full stop due to traffic conditions ahead, and Richard made his braking and stopping maneuver in a completely safe, slow, and normal manner.

28. The brake lights on this red Jeep vehicle were fully operational and functional on this date and at all times leading up to the subject collision.

29. On this same date and location, Matthew W. Hudson, while operating a large commercial sanitation truck owned by and provided to him by his employer, the Waste Pro Defendants herein, was traveling behind Richard in the same lane of travel along Highway 278.

30. At all times herein, Matthew W. Hudson was operating his employers' garbage and sanitation truck with their express permission and consent.

31. Defendant Hudson was not paying proper attention to the roadway ahead of him and caused his large commercial sanitation vehicle to crash into the rear of the red Jeep vehicle owned by Charmayne and operated by Richard.

32. This collision caused the vehicle operated by Richard to be pushed forward several feet and collide with the rear of another vehicle ahead of him on the roadway.

33. This crash sequence caused by Defendants' employee Hudson resulted in a secondary impact and whiplash forces against Richard's body within the vehicle he was operating.

34. This collision was the fault of Defendants and their employee Hudson, and Richard did not cause or contribute to the collision in any manner.

35. This collision and crash sequence occurred during daylight conditions along a flat, straight stretch of highway.

36. If Defendants' employee Hudson were paying proper attention to the roadway ahead and keeping his large commercial sanitation truck under proper control, this collision would not have occurred.

37. After the crash occurred, Defendants' employee Hudson apologized to Richard for causing this collision, and he admitted to Richard that the crash occurred because he was distracted by reason of looking at his mobile telephone or similar mobile electronic device.

38. This collision caused Richard and Charmayne to experience personal injuries and other damages.

39. At all times herein, Richard was operating Charmayne's vehicle lawfully, with the right of way, and with due regard for the safety of himself and others.

40. After the collision occurred, Matthew W. Hudson admitted he chose to look at his mobile electronic device rather than the roadway ahead in the moments leading up to

the crash.

41. After the collision, Richard was treated and diagnosed for injuries to his head, right shoulder, and right knee areas.

42. More specifically, Richard went to the emergency room on the date of this crash, and he was diagnosed with a cerebral contusion, a right shoulder contusion, and a right knee contusion.

43. In addition, Richard continued to experience blackout episodes, dizziness, vision changes, mood swings, memory problems, fatigue, and other symptoms consistent with post-concussion syndrome, and Richard never experienced any of these problems prior to the subject motor vehicle crash.

44. Numerous physicians who have treated and evaluated Richard after this crash have concluded that Richard suffers from post-concussion syndrome as a direct and proximate result of this crash.

45. In addition, Richard had a prior injury to his right shoulder which had healed with treatment prior to this motor vehicle crash.

46. After the subject crash, Richard sought treatment and evaluation of his right shoulder pain with an expert orthopedic surgeon, who ordered an MRI study of his right shoulder which revealed a full tear in the anterior supraspinatus tendon (a right shoulder rotator cuff tear).

47. This was a new injury in Richard's right shoulder that did not exist prior to the subject motor vehicle crash.

48. The orthopedic surgeon who treated and evaluated Richard after this wreck

concluded that Richard's right shoulder rotator cuff tear was directly and proximately caused by the subject motor vehicle crash.

49. As a result of his right shoulder rotator cuff tear, Richard underwent a surgical procedure on his right shoulder on May 3, 2016, and he required post-operative physical therapy after this procedure.

50. In addition, Richard had some pre-existing arthritis and pain in his right knee that predated the subject motor vehicle crash.

51. Richard's right knee struck the dash and under steering wheel area within the red Jeep vehicle during this crash sequence.

52. The trauma to Richard's right knee during this crash sequence aggravated the pre-existing arthritis, pain, and physical limitations in Richard's right knee.

53. The trauma to Richard's right knee during this crash sequence aggravated the pre-existing arthritis in Richard's right knee to the point where he required a total knee replacement surgery.

54. Because of the subject wreck, Richard underwent a total knee replacement surgical procedure, while under general anesthesia, at Summerville Trident Medical Center in the spring of 2016.

55. After the knee operation Richard endured, he suffered substantial physical limitations, was forced to use a walker, a cane, crutches, and a knee immobilizer for a period of time, and required a course of post-operative physical therapy.

56. Richard was never recommended to have a total knee replacement surgical procedure on his right knee prior to the subject crash.

57. The diagnoses provided to Richard by his treating healthcare providers were all correct, accurate, genuine, medically indicated, and founded upon a reasonable degree of medical certainty to a most probable standard.

58. Because of this collision, Richard has incurred past medical expenses in excess of Two Hundred Three Thousand Dollars (\$203,000), with additional expenses most probably to occur in the future.

59. All of the medical charges submitted on Richard's behalf following this crash for treatment and diagnosis of his collision related injuries are reasonable and customary within the medical community in South Carolina.

60. After the surgical procedures performed on Richard's right knee and right shoulder following this motor vehicle crash, Richard continues to experience pain and physical limitations in these areas of his body to a degree and manner that he would not experience if this crash had not occurred.

61. This motor vehicle crash caused Richard to experience physical pain and suffering.

62. This motor vehicle crash caused Richard to experience fear and anxiety.

63. This motor vehicle crash caused Richard to experience emotional distress and mental anguish.

64. This motor vehicle crash caused Richard to experience loss of enjoyment of life.

65. This motor vehicle crash caused Richard to experience loss of income and loss of earning capacity.

66. This motor vehicle crash caused Richard to experience permanent impairment of health.

67. This motor vehicle crash cause Richard to experience scarring and disfigurement associated with his surgical procedures.

68. This motor vehicle crash caused Charmayne to experience, damage, loss of use, depreciation, and other damages associated with her Jeep vehicle.

69. The injuries to Richard's head, knee, and shoulder areas from this traffic collision are most likely to cause future deterioration, worsening, and other adverse health consequences for Richard.

70. As users of the highways of the State of South Carolina, Richard and Charmayne are owed certain duties of ordinary care by others using the highways.

71. Defendants herein, by and through the acts and omissions of their employee driver, Matthew W. Hudson, breached the duties of ordinary care owed to Richard and Charmayne, by such careless, negligent, grossly negligent, reckless, willful and wanton conduct and omissions as follows:

- a. Failing to keep a vehicle under proper control;
- b. Failing to keep a proper lookout on the roadway;
- c. Failing to yield the right of way;
- d. Traveling too fast for conditions;
- e. Driving while distracted by reason of a mobile electronic device;
- f. Traveling in excess of the posted speed limit;
- g. Operating a motor vehicle without proper brakes, or if so properly

- equipped, in failing to properly apply such brakes;
- h. Failing to use that degree of care and caution which a reasonably prudent person would have used under the circumstances;
- i. Failing to look and observe traffic and traffic conditions on or about the roadway at the time of the collision;
- j. Failing to take the proper precautions to insure the safety of those persons using the highway;
- k. Operating a motor vehicle with a reckless disregard for the rights of others using the highway;
- l. Causing a large commercial sanitation vehicle to collide with others lawfully on the highway;
- m. Negligent and inadequate training, hiring, monitoring, and supervision of a commercial vehicle operator;
- n. Violating one or more of the traffic statutes made and provided under the Code of Laws for South Carolina; and,
- o. Such other and further acts of negligent, reckless and willful conduct as will be shown by the evidence produced at trial.

72. Matthew W. Hudson's driving conduct showed a substantial disregard for the safety of Richard on the aforementioned date and location.

73. There were no obstacles or conditions existing on the roadway at the location of the collision, which in anyway impaired Matthew W. Hudson's view and ability to observe and react to the conditions on the roadway in front of him.

74. As a direct and proximate result of the careless, negligent, grossly negligent, reckless, willful and wanton acts and omissions of each and all of the Defendants herein, by and through the conduct of their employee driver, Matthew W. Hudson, both Plaintiffs, Richard Winslow and Charmayne Winslow, have suffered injuries and other damages, including some or all of the following:

- a. Physical injuries;
- b. Medical expenses, including physicians, hospital, medicines, physical therapy expenses, rehabilitation expenses, and transportation expenses connected with medical treatment;
- c. Mental anguish and emotional distress;
- d. Future damages resulting from permanent injuries;
- e. Permanent impairment of health;
- f. Vehicle repair and damage expenses;
- g. Vehicle loss of use and depreciation;
- h. Fear and Anxiety;
- i. Out of pocket expenses;
- j. Pain, past, present and future;
- k. Suffering, past, present and future;
- l. Loss of enjoyment of life;
- m. Loss of income and earning capacity;
- n. Scarring and disfigurement;
- o. Alteration of lifestyle and reduction in quality of life; and,

p. Such other damages as will be shown by the evidence at trial.

75. Distracted driving and mobile electronic device usage constitute a menace to society that presents a tremendous threat to public health and safety.

76. Distracted driving and mobile electronic device usage cause numerous unnecessary tragic deaths and injuries in our state and in our country each year.

77. A motor vehicle operator is more likely to be involved in a crash while distracted by reason of a mobile electronic device than they are if they are operating a motor vehicle while under the influence of alcohol.

78. The Defendants herein enjoy substantial wealth and financial successes, and they are able to respond to an award of punitive damages, and the only way to prevent or deter similar conduct by these Defendants and their drivers in the future is by the imposition of a substantial punitive damages award.

79. Plaintiffs, Richard Winslow and Charmayne Winslow, are entitled to judgment against each and all of the Defendants herein, jointly and severally, for actual damages, for punitive damages, for the costs of this action, for pre-judgment interest on all special damages, for post-judgment interest, and for such other and further relief as this Honorable Court may deem just.

WHEREFORE, Plaintiffs, Richard Winslow and Charmayne Winslow, having raised their Complaint against these Defendants, Waste Pro USA, Inc. and Waste Pro of South Carolina, Inc., pray that this Court inquire into the matters set forth herein and grant them judgment against these Defendants, jointly and severally, for actual damages, for punitive

p. Such other damages as will be shown by the evidence at trial.

75. Distracted driving and mobile electronic device usage constitute a menace to society that presents a tremendous threat to public health and safety.

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78. The Defendants herein enjoy substantial wealth and financial successes, and they are able to respond to an award of punitive damages, and the only way to prevent or deter similar conduct by these Defendants and their drivers in the future is by the imposition of a substantial punitive damages award.

79. Plaintiffs, Richard Winslow and Charmayne Winslow, are entitled to judgment against each and all of the Defendants herein, jointly and severally, for actual damages, for punitive damages, for the costs of this action, for pre-judgment interest on all special damages, for post-judgment interest, and for such other and further relief as this Honorable Court may deem just.

WHEREFORE, Plaintiffs, Richard Winslow and Charmayne Winslow, having raised their Complaint against these Defendants, Waste Pro USA, Inc. and Waste Pro of South Carolina, Inc., pray that this Court inquire into the matters set forth herein and grant them judgment against these Defendants, jointly and severally, for actual damages, for punitive

damages, for the costs of this action, for pre-judgment interest on all special damages, for post-judgment interest, and for such other and further relief as this Court deems just.

Dated: August 23, 2018

Hilton Head Island, South Carolina

//s// Patrick W. Carr
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM JASPER COUNTY
C. Stephen Bennett, Special Referee

Case No. 2018-001955

RECEIVED
JAN 28 2019
SC Court of Appeals

Richard L. Winslow and Charmayne Winslow, ... Respondents,

v.

Matthew W. Hudson, Waste Pro USA, Inc., and Waste Pro of South Carolina, Inc. Defendants,

Of which Matthew W. Hudson is the Appellant.

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing *Respondents' Return to Waste Pro USA, Inc., and Waste Pro of South Carolina's Motion to Intervene and to Stay or Dismiss Appeal* has been served upon the following counsel of record by mailing one copy by United States Mail, addressed as shown below on January 25, 2019.

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January 26, 2019


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