

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
COURT OF COMMON PLEAS

R. Knox McMahon, Circuit Court Judge
James B. Jackson Jr., Circuit Court Judge
Civil Action No. 2014-CP-38-01590
Appellate Case No. 2017-000093

RECEIVED
JUN 18 2018
SC Court of Appeals

Price Oulla and Bonnie Oulla, Appellants,

v.

Lisa Velazques; Harbison Community
Association, Inc.; Cody Sox; and, Patten
Seed Company d/b/a Super-Sod,

Of Whom Patten Seed Company d/b/a Super-Sod is the Respondent.

RECORD ON APPEAL

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBUG
IN THE COURT OF COMMON PLEAS
Price Oulla and Bonnie Oulla

JUDGMENT IN A CIVIL CASE

CASE NO. 2014- CP-38-01590
Lisa Velazques, Harbison Community Association, Inc.
Cody Sox and Patten Seed Company, d/b/a Super-
Sod

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: James B. Jackson, Jr., Special Circuit Judge	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION :

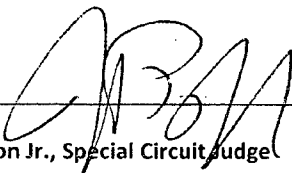
PLAINTIFF'S MOTION TO VACATE JUDGMENT PURSUANT TO RULE 60 SCRPC IS DENIED.

This order ☐ ends ☒ does not end the case

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address referenced in the order:		

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


James B. Jackson Jr., Special Circuit Judge

2097

July 10, 2017

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

William Applegate, Esq.

E. Raymond Moore, III, Esq.

Charles H. Williams, Esq.

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

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

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

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF ORANGEBURG

CIVIL ACTION NO: 2014-CP-38-01590

Price Oulla and Bonnie Oulla,

Plaintiffs,

v.

Lisa Velazques,
Harbison Community Association, Inc.,
Cody Sox, and
Patten Seed Company, d/b/a Super-Sod,

Defendants.

**ORDER DENYING PLAINTIFFS' MOTION
FOR RELIEF FROM JUDGMENT**

This matter came before the Court on the Plaintiffs' Motion for Relief from Judgment pursuant to Rule 60 SCRPC. After the Court granted Summary Judgment in favor of Patten Seed Company d/b/a/ Super-Sod ("Super-Sod"), Plaintiffs appealed. The Court of Appeals, by Order dated March 23, 2017, granted Plaintiffs leave to file a motion in this Court pursuant to Rule 60 SCRPC and held the appeal in abeyance for 90 days pending the resolution of Plaintiffs' Motion.

The Court held a hearing on the Motion on June 6, 2017. William Applegate, counsel for the Plaintiffs appeared and argued the Motion on behalf of the Plaintiffs. E. Raymond Moore, III and Charles H. Williams appeared and argued on behalf of Super-Sod. Having considered the arguments and submissions of counsel, for the reasons set forth below, Plaintiffs' Motion for Relief from Judgment is **DENIED**.

FACTUAL BACKGROUND

This case arose out of a rear end automobile collision that occurred outside of Orangeburg in the westbound lanes of I-26 near Exit 154 when Lisa Velazques struck Mr. Oulla's vehicle from the rear after he had slowed for traffic ahead on the interstate. The accident occurred in broad daylight and Ms. Velazques offered no explanation as to why she was unable to see traffic slowing ahead until it was too late to avoid the accident.

ABM #1

CLERK OF COURT
ORANGEBURG

That same morning, and long before the accident, Cody Sox, a Harbison Community Association ("Harbison") employee, picked up a load of sod at Super-Sod. Before traveling to Super-Sod, Sox verified that his trailer was adequate for the load. Sox directed Super-Sod's field worker where and how to load the pallets on the Harbison trailer. The load consisted of two pallets of centipede sod, wrapped with .7 mil stretch wrap. Sox did not have tie down straps with him, although he had intended to bring them with him. Super-Sod's sole involvement was that its employee loaded Harbison's trailer with two pallets of sod, according to Sox's instructions. After loading, Sox checked his tires and hitch; made sure the trailer looked balanced and verified the weight was balanced.

Super-Sod did not sell or offer to provide a tarp to cover the sod or tie down straps for Sox to use on the Harbison trailer. The sod appeared in a safe and stable condition to Sox after it was loaded. Sox knew that he was required to secure his own load. Sox testified that he had intended to bring tie down straps from Harbison's inventory, but because of a miscommunication with his co-worker, they forgot to bring them. Sox asked Super-Sod's employee if he had tie down straps and was told no. He did not request that Super-Sod tie down his load. Sox then made a decision to proceed without tying down the load.

The Harbison truck and trailer safely left the field where the sod was picked up, safely traveled down Highway 301 reaching up to 50 mph, and stopped at a gas/convenience/fast food store at the intersection of I-26 and Highway 301 where Sox and his co-worker purchased lunch. While there, Sox checked the load and noted that it was in the same condition in which it had been loaded. No sod had spilled. The sod had not shifted. The stretch wrap covering the pallets was intact. After leaving the convenience store, the Harbison truck and trailer were able to enter the



interstate safely, navigating around the tight clover leaf entrance ramp on to I-26 without losing any sod.

Once on the interstate, a tractor trailer suddenly veered into the Harbison truck and trailer's lane. Sox took sudden and evasive action running off the road and on to the shoulder. Due to the sudden evasive maneuver, Sox lost a portion of the sod from both pallets. Sox promptly pulled over and stopped on the shoulder of the interstate after losing the sod and called 911. Traffic continued to drive over the lost sod without incident. A fire engine eventually responded and blocked traffic in the right (slow) lane of the interstate so that the sod could be cleaned from the roadway.

Ms. Velazques admitted that she was at fault for the accident because she struck Plaintiffs at a high rate of speed. It was undisputed that Velazques was not looking at the road in front of her at the time her car rear-ended the Plaintiffs' vehicle. Further, the accident between Plaintiffs and Velazques did not occur either immediately in time after the sod fell off the trailer or near the fallen sod on the interstate.

PROCEDURAL BACKGROUND

Plaintiffs filed their Complaint on December 31, 2014. Super-Sod filed its Motion for Summary Judgment on May 6, 2016, and the parties argued the Motion before Judge McMahon the afternoon of June 29, 2016. The afternoon before the hearing, Plaintiffs filed a Motion to Amend the Complaint to add a cause of action for breach of implied warranty of merchantability and amending the existing negligence action to plead section 56-5-4100 created a legal duty.

Both at the hearing before Judge McMahon and in their Memorandum in Opposition to the Motion for Summary Judgment, Plaintiffs argued section 56-5-4100 imposed a legal duty on Super-Sod to secure sod to its customers' vehicles and trailers and that the duty extended to



“members of the travelling public.” However, Plaintiffs did not argue that summary judgment was premature or otherwise improper because they had just filed a Motion to Amend, or that the proposed Amended Complaint contained an additional cause of action that might preclude summary judgment. Judge McMahon ultimately held that Super-Sod did not owe a duty to the Plaintiffs. In his Order, Judge McMahon specifically addressed the application of section 56-5-4100. After Judge McMahon’s ruling, Plaintiffs filed their Rule 59(e) Motion, which Judge McMahon denied, without a hearing by Order dated November 18, 2016.

While the Rule 59(e) motion was pending, the parties appeared before Judge Goodstein related to the Motion to Amend. Although Judge Goodstein heard argument from the Plaintiffs, she ruled that because judgment had been entered and because of the pending Rule 59(e) Motion, jurisdiction over the matter remained with Judge McMahon and that “the status of the Motion to Amend would be determined by his ruling.” Plaintiffs thereafter provided Judge McMahon with the Motion to Amend and significant briefing related to the Motion to Amend prior to his denial of their Rule 59(e) Motion. However, it was only after the judgment had been entered against them that the Plaintiffs attempted to raise the issues within their Motion to Amend.

After Judge McMahon denied Plaintiffs’ Rule 59(e) Motion, Plaintiffs appealed to the South Carolina Court of Appeals. Plaintiffs sought leave from the Court of Appeals to file this Rule 60 motion to vacate the order granting summary judgment. On March 23, 2017, the Court of Appeals issued an order granting Plaintiffs’ motion for leave to file the Rule 60 motion and holding the appeal in abeyance for ninety days so that this Court could address the motion.

LEGAL ANALYSIS

Because Plaintiffs have failed to set forth a valid basis to vacate the judgment under Rule 60, the Motion is denied. A court may vacate a judgment under Rule 60(b) only in narrow

circumstances. Rule 60(b), SCRCP. While the decision to grant or deny a Rule 60(b) motion lies within the discretion of the trial judge,¹ the criteria are narrow and provide only five bases, none of which the Plaintiffs have established here:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud, misrepresentation, or other misconduct of an adverse party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.

Rule 60(b), SCRCP. A party seeking to set aside a judgment has the burden of presenting evidence entitling him to the requested relief. Auto Owners Ins., Co. v. Rhodes, 385 S.C. 83, 682 S.E.2d 857 (Ct. App. 2009) aff'd in part, rev'd in part, 405 S.C. 584, 748 S.E.2d 781; McClurg v. Deaton, 380 S.C. 563, 671 S.E.2d 87 (Ct. App. 2008), aff'd 395 S.C. 85, 716 S.E.2d 887.

Plaintiffs have not established any “mistake, inadvertence, surprise or excusable neglect” in responding to the Motion for Summary Judgment or any other aspect of the case. Super-Sod’s Motion for Summary Judgment was filed after significant discovery and well in advance of the hearing. Plaintiffs briefed the issues and presented affidavits and other exhibits. Plaintiffs acknowledged communications in advance of the hearing with Super-Sod’s counsel that the proposed Motion to Amend would not result in a continuance of the June 29, 2016 hearing before Judge McMahon. Plaintiffs do not claim they mistakenly thought the Motion to Amend had been filed or mistakenly believed Super-Sod had consented to the Motion to Amend.

¹ See Raby Const., L.L.P. v. Orr, 358 S.C. 10, 18, 594 S.E.2d 478, 483 (2004) (“Whether to grant or deny a motion under Rule 60(b) lies within the sound discretion of the judge.”).



Plaintiffs make passing reference to “mistake and excusable neglect” by the Court’s “failure to issue a ruling” on the Motion to Amend. However, the “failure” was no failure at all, because the Motion to Amend was never properly raised before it. There is no requirement for the Court to consider a Motion to Amend prior to or at the same time when a hearing is held on a Motion for Summary Judgment. If the party moving to amend wants that motion heard, they must bring the matter to the attention of the Court. I find this was not properly done in this case when Judge McMahon heard the Motion for Summary Judgment. Judge McMahon did not make a mistake of law or mistakenly overlook an issue that was properly raised to him before judgment was entered. Rather, Plaintiffs did not raise their Motion to Amend before or during the hearing.

Further, Plaintiffs have not set forth any basis to vacate the judgment under subsections (2), (3), (4) or (5) of Rule 60 of the SCRCF.

Plaintiffs argue that this Court should consider their Rule 15 Motion to Amend under the rubric of a Rule 60 motion to vacate. However, such a procedure would be contrary to the long line of cases that hold a matter must first be raised in order to obtain post-judgment relief. A party cannot use a post-judgment notice to the court to raise an issue the party could have raised prior to judgment but did not. Hickman v. Hickman, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (1990) (“Rule 59(e) motions are not vehicles for bringing before the court theories or arguments that were not advanced earlier.”). Judge McMahon did not rule on the Motion to Amend in considering the Motion for Summary Judgment or the Rule 59(e) motion because this issue was not argued or otherwise presented to the court prior to the order granting Summary Judgment. Plaintiffs had ample time and opportunity to raise this issue prior to the court’s ruling granting Super-Sod’s Motion for Summary Judgment. However, Plaintiffs failed to do so until they filed their Rule



59(e) motion. Even the Rule 59(e) motion itself contained no more than a "passing reference" that they had filed the Motion to Amend.

Plaintiffs argue that they have a "good faith, colorable argument" to the lower court that the motion to amend the complaint should be granted. However, the procedural history of this case and the merits of the proposed amendment militate against granting the Rule 60 motion in order to grant the Motion to Amend. While Rule 15 provides that amendments should be "freely given when justice so requires and does not prejudice any other party," in this instance, given the age of the case, the extensive discovery that had been completed, the two scheduling orders that had been entered, the imminent trial, that Super-Sod had filed its Motion for Summary Judgment nearly two months prior to the hearing, the futility of the proposed amendment, and because of the prejudice to Super-Sod, the Court declines to grant the Plaintiffs' Motion for Relief from Judgment.

Plaintiffs waited eighteen months to file the Motion to Amend and proposed Amended Complaint. The original Scheduling Order in the case had already been amended to push back the trial date from June 15, 2016 to October 10, 2016. Super-Sod's Motion for Summary Judgment, outlining deficiencies in the Plaintiffs' theories of recovery, had been filed for two months before Plaintiffs' filed their Motion to Amend. Numerous depositions had been taken, including the depositions of Super-Sod's management and employees. Experts had already been identified by all parties and the parties were preparing for an imminent trial. Defending against a new warranty theory with less than three months to prepare a defense would have been extremely prejudicial. Further, the stretch wrap that surrounded the sod had been destroyed and no photographs, testing, or other data related to the stretch wrap was available. It is hard to conceive of a more prejudicial position to allow such an amendment.

Despite the liberal standard of Rule 15, where a motion to amend asserts a futile cause of action, denial is proper. Jennings v. Jennings, 389 S.C. 190, 697 S.E.2d 671 (Ct. App. 2010). Here the proposed amendment is futile. First, the implied warranty statute that the Plaintiffs sought to add to their complaint did not impose a legal duty on Super-Sod. In fact, the circuit court already held that Super-Sod owed no duty to Plaintiff.

Further, the claim for breach of implied warranty of merchantability cannot succeed because there was no “implied warranty” that unsecured cargo will not come loose during transport. Super-Sod routinely allows for customers to pick up product from Super-Sod’s field(s). In this case, defendant Harbison and its employee, Sox, picked up the sod from Super-Sod’s farm in Orangeburg. Sox testified that he intended to bring tie down straps to secure the sod but simply “forgot.” It is undisputed that Super-Sod does not sell or offer to customers tie down straps to secure the sod.

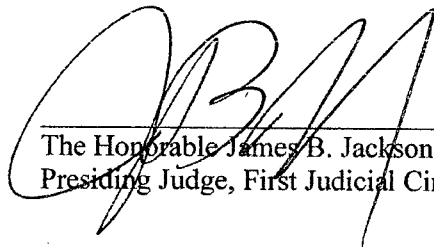
Plaintiff attempts to assert in its Motion to Amend that Super-Sod impliedly warranted that the sod was merchantable, “including that it was adequately contained and packaged.” However, Comment 10 of the implied warranty of merchantability statute states that the “adequately contained [and] packaged” language “applies only where the nature of the goods and of the transaction require a certain type of container, package or label.” (emphasis added). As Judge McMahon’s Order explained, Super-Sod is not required to secure its product to the freight trucks of its customers. See MSJ Order (“South Carolina statutory law does not impose a duty on a loader of goods to ‘tie them down’ or ensure that they are tied down.”); cf., Staubes v. City of Folly Beach, 339 S.C. 406, 414–15, 529 S.E.2d 543 (2000) (holding that it would be futile for plaintiff to amend its complaint to add a negligence claim because the trial court already granted summary judgment on any negligence claim). The sod purchaser, Harbison, and its employee Sox, knew

that Super-Sod had not sold or given him tie down straps, because, as Sox testified, he asked for them and Super-Sod told him they were not available. Harbison and Sox did not rely on Super-Sod to strap the sod to the trailer. Sox intended to bring its own straps but simply forgot. There can be no "warranty" implied for load securement when it is specifically not part of the sale. There was no "warranty" that the sod would withstand the sudden and evasive maneuver that Sox took to avoid a collision. Thus, even if timely, the proposed amendment would be futile and the Court would deny the Plaintiffs' Motion for Relief from Judgment on that basis as well.

CONCLUSION

For the foregoing reasons, Plaintiffs' Motion to Vacate the Judgment pursuant to Rule 60, SCRCF is **DENIED**.

SO ORDERED.


The Honorable James B. Jackson, Jr.
Presiding Judge, First Judicial Circuit

Orangeburg, South Carolina
July 10, 2017



ATTEST: TRUE COPY

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

Price Oulla and Bonnie Oulla,

Plaintiffs,

v.

Lisa Velazques, Harbison Community
Association, Inc., Cody Sox, and Patten Seed
Company, d/b/a Super-Sod,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 2014-CP-38-01590

CLERK OF COURT

ORANGEBURG COUNTY, SOUTH CAROLINA

**ORDER GRANTING PATTEN SEED
COMPANY D/B/A SUPER SOD'S MOTION
FOR SUMMARY JUDGMENT**

This matter came before the Court on June 29, 2016 on Defendant Patten Seed Company, d/b/a Super Sod's ("Super Sod") Motion for Summary Judgment. At the hearing Super Sod was represented by Charles Williams, II, E. Raymond Moore, III, and Rogers E. Harrell, III. Plaintiff was represented by William Applegate and David Lail. Defendant Harbison Community Association ("Harbison") also appeared and separately argued its own Motion for Summary Judgment. Harbison was represented by Curtis Dowling and Matthew Gerrald. Defendant Lisa Velazques was represented by Mitch Griffith who opposed the Motion.

After consideration of the Motion, the arguments of counsel, the various memoranda and exhibits submitted by all parties, and after a review of the record, for the reasons set forth below, the Court hereby **GRANTS** Super Sod's Motion for Summary Judgment.

BACKGROUND FACTS

This case arises out of an automobile collision that occurred outside of Orangeburg, South Carolina, in the westbound lanes of Interstate 26 near Exit 154 when Defendant Lisa Velazques struck the Plaintiff's vehicle from the rear after he had slowed for traffic ahead. Although the Plaintiff was unable to remember the accident, Ms. Velazques testified that she did not see traffic had slowed in front of her until it was too late. Velazques offered no other explanation as to why she was unable to avoid the accident.

Super Sod is a seller of seed, sod, compost and nursery products farmed at locations around the southeast. It has a sod farm in Orangeburg. Super Sod delivers sod to its customers, but also sells sod to customers who pick it up after it has been harvested from one of Super Sod's fields.

Defendant Harbison's employees, Cody Sox and his co-worker, Corey Branham, picked up a load of sod consisting of two pallets on the morning of the accident. Sox directed Super Sod's field worker, Melvin Kears, where and how to load the pallets on the Harbison trailer. Kears complied with their instructions. The pallets were each wrapped in plastic .7 mil stretch wrap. Sox testified that he instructed Kears to load the pallets over the trailer's two axles. Kears complied with Sox's instructions. After loading, Sox checked his tires and hitch; made sure the trailer looked balanced and verified the weight was balanced. According to Sox, there were no loose materials on the trailer after the loading was completed and the sod appeared in a safe and stable condition to Sox.

Before traveling to Super Sod, Sox had verified that his trailer was adequate for the load. Sox acknowledged that he knew that he was required to secure his load. Sox testified that he had intended to bring tie down straps from Harbison's inventory, but, because of a miscommunication with his co-worker, they forgot to bring them. Sox then made a decision to proceed without tying down the load. It is undisputed that Super Sod did not sell or offer to give away a tarp to cover the sod or tie down straps for Sox to use on the Harbison trailer, and Super Sod does not provide or offer for sale any such tarps or tie down straps to its customers.

The Harbison truck and trailer safely left the field where they had picked up the sod. They safely traveled down Highway 301 reaching up to 50 mph and stopped at a gas/convenience/fast food store at the intersection of I-26 and Highway 301 where Sox and Branham purchased lunch. While there, Sox re-checked the load and noted that it was in the same condition in which it had

been loaded. No sod had spilled. The sod had not shifted. The stretch wrap covering the pallets was intact.

After leaving the convenience store, the Harbison truck and trailer were able to enter the interstate safely, navigating around the clover leaf entrance ramp on to I-26 without losing any sod. The Harbison trailer did not lose any portion of its load until Sox and Branham were forced to take evasive action only *after* merging on to I-26 west from Highway 301. Sox estimated he had traveled 3/10 of a mile on the interstate before the incident occurred. Sox testified that a tractor trailer veered into the Harbison truck and trailer's lane. The encroachment was so sudden that it caused Sox's companion, Branham, to utter an explicative. Sox drove off the road and on to the shoulder. Sox lost a portion of the sod from both pallets, but the pallets themselves were unmoved.

Sox promptly pulled over and stopped on the shoulder to call 911. While Sox and Branham waited, traffic continued to drive over and around the lost sod without incident. A fire engine eventually responded and blocked traffic in the right (slow) lane so that the sod could be cleaned from the roadway. While the exact time between when Sox lost the load and when the cleanup was finished is uncertain, Sox testified that before they learned that an accident had occurred behind them, the cleanup had been completed and the fire engine had moved out of the roadway and on to the shoulder. Based on the 911 call records, it appears at least 17 minutes passed between Sox's initial call and the first call regarding the Velazques/Oulla collision.

The interstate traffic behind the loss of sod was able to slow to a safe speed for over 15 minutes before the collision. While the distance between the collision and the spot where the Harbison trailer lost a portion of its load is not known with precision, the collision occurred far enough away that it was neither seen nor heard from where the sod had been lost. Velazques caused the accident when she struck Oulla at a high rate of speed. In her deposition, Velazques admitted fault for the accident.

There is no allegation much less any evidence of a relationship between Super Sod and the Plaintiff.

ANALYSIS

I. Summary Judgment Standard

Summary judgment is proper if, viewing the evidence and inferences to be drawn therefrom in a light most favorable to the nonmoving party, the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. Rule 56(c) SCRPC; *Johnson v. Robert E. Lee Academy, Inc.*, 401 S.C. 500, 737 S.E.2d 512, (Ct. App 2012). “The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder.” *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). Accordingly, “when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted.” *Miller v. Blumenthal Mills, Inc.*, 365 S.C. 204, 220, 616 S.E.2d 722, 729 (Ct. App. 2005). The Supreme Court has established that “[t]he plain language of Rule 56(c) mandates the entry of summary judgment ... against a party who fails to make a showing sufficient to establish the existence of an element essential to the party’s case, and on which that party will bear the burden of proof.” *Hanson v. Scalise Builders of S.C.*, 374 S.C. 352, 357-58, 650 S.E.2d 68, 71 (2007) (internal citations omitted).

II. Super Sod had no Legal Duty to the Plaintiff

Plaintiffs have pled a single cause of action against Super Sod, sounding in negligence.¹ (Compl. ¶¶ 26-31). To recover in negligence, the plaintiff must establish three elements: (1) that

¹ Although Plaintiffs also pled a cause of action for Loss of Consortium against all four defendants (Compl. ¶¶ 39-40), “a loss of consortium claim cannot arise if no tort is committed against the impaired spouse.” *Creighton v. Coligny Plaza Ltd. Partnership*, 334 S.C. 96, 119, 512 S.E.2d 510, 522 (Ct. App. 1998). Thus, because Mr. Oulla’s claims against Super Sod fails

the defendant owed the plaintiff a duty of care; (2) that by some act or omission, the defendant breached that duty; and (3) that as a proximate result of the breach, the plaintiff suffered damage.” *Underwood v. Coponen*, 367 S.C. 214, 217, 625 S.E.2d 236, 238 (2006); *Staples v. Duell*, 329 S.C. 503, 506, 494 S.E.2d 639, 641 (Ct. App. 1997). Here, Plaintiffs’ claim against Super Sod fails all three requisite elements: Super Sod had no legal duty to the Plaintiffs; Super Sod breached no duty; and Super Sod’s conduct is not a proximate legal cause of the Plaintiff’s injuries.

As an initial matter, “[t]he court must determine, as a matter of law, whether the law recognizes a particular duty. If there is no duty, then the defendant in a negligence action is entitled to a judgment as a matter of law.” *Simmons v. Tuomey Reg’l Med. Ctr.*, 341 S.C. 32, 39, 533 S.E.2d 312, 316 (2000). “Whether the law recognizes a particular duty is an issue of law to be determined by the court.” *Johnson*, 401 S.C. at 504, 737 S.E.2d at 513-14 (citing *Ellis v. Niles*, 324 S.C. 223, 227, 479 S.E.2d 47, 49 (1996)). “An affirmative legal duty exists only if created by statute, contract, relationship, status, property interest, or some other special circumstance.” *Id.* (citing *Hendricks v. Clemson Univ.*, 353 S.C. 449, 456, 578 S.E.2d 711, 714 (3002). Thus, in the absence of a legal duty, summary judgment is appropriate.

Here, Super Sod had no relationship to the Plaintiff. There is no contract alleged by the Plaintiff. There is no “relationship, status or special circumstance” to support a duty. Further, South Carolina statutory law does not impose a duty on a loader of goods to “tie them down” or ensure that they are tied down. Thus, Super Sod had no legal duty to the Plaintiff, and Super Sod is entitled to summary judgment.

as a matter of law, the Loss of Consortium cause of action must be dismissed as to Super Sod as well.



Plaintiff contends that both South Carolina statutory law and South Carolina common law impose a duty on Super Sod. Plaintiffs rely on Sections 56-5-4100 and 4110 of the South Carolina Code. However, those statutes do not impose a duty on a product seller or loader; rather, those sections address the responsibility of a vehicle *operator* to secure a load. Section 56-5-4110 provides:

No person shall *operate* on any highway any vehicle with any load unless such load and any covering thereon is securely fastened so as to prevent such covering or load from becoming loose, detached or in any manner a hazard to other users of the highway.

S.C. Code Ann. § 56-5-4110 (Thompson-West Rev. 2006) (emphasis added). The previous section provides, in pertinent part:

(A) No vehicle may be *driven or moved* on any public highway unless the vehicle is so constructed or loaded as to prevent any of its load from dropping, sifting, leaking, or otherwise escaping from the vehicle, except that sand, salt, or other chemicals may be dropped for the purpose of securing traction, and water or other substance may be sprinkled on a roadway in the cleaning or maintaining of the roadway by the public authority having jurisdiction.

(B) Trucks, trailers, or other vehicles when loaded with rock, gravel, stone, or other similar substances which could blow, leak, sift, or drop must not be driven or moved on any highway unless the height of the load against all four walls does not extend above a horizontal line six inches below their tops when loaded at the loading point; or, if the load is not level, unless the height of the sides of the load against all four walls does not extend above a horizontal line six inches below their tops, and the highest point of the load does not extend above their tops, when loaded at the loading point; or, if not so loaded, unless the load is securely covered by tarpaulin or some other suitable covering; or unless it is otherwise constructed so as to prevent any of its load from dropping, sifting, leaking, blowing, or otherwise escaping from the vehicle. This subsection also includes the transportation of garbage or waste materials to locations for refuse in this State.

(C) The loader of the vehicle and the driver of the vehicle, in addition to complying with the other provisions of this section, shall sweep or otherwise remove any loose gravel or similar material from the running boards, fenders, bumpers, or other similar exterior portions of the vehicle before it is moved on a public highway.



S.C. Code Ann. § 56-5-4100 (Thompson-West Rev. 2006) (emphasis added) (subsections D-F omitted).

It is undisputed that Super Sod was not *operating* the Harbison truck and trailer and that Super Sod loaded the truck and trailer as directed by the Harbison employees. The load was not “loose gravel or similar material” within the contemplation of subsection (C) of 56-5-4100. Plaintiffs argue that subsection (C) bootstraps the requirements of an operator on to a loader by virtue of the language: “in addition to complying with the other provisions of this section.” However, it is clear that the quoted language refers to the “driver’s” obligations contained in the other sub paragraphs. The quoted language does not impose upon a vehicle loader the statutory duties of a driver. Rather, subsection (C) simply makes a loader responsible to sweep or remove “loose gravel or similar material from the running boards, fenders, bumpers, or other similar exterior portions of the vehicle.” The evidence is undisputed here that there was no “loose material” on the trailer or that any loose material from the loading caused or contributed to the Plaintiff’s accident.

Any contrary interpretation contravenes the “plain and ordinary” meaning of the statute, which the Court is bound to follow. *Tiller v. Pacesetter Corp.*, 355 S.C. 361, 373, 585 S.E. 2d 292, 298 (2005). Further, an expansive reading of the statute to impose liability on a loader would be in derogation of the common law and therefore the Court is not persuaded by the Plaintiffs’ argument that these statutory provisions impose a concomitant duty on a loader in addition to an operator of a vehicle to secure the load. *Grier v. AMISUB of South Carolina, Inc.*, 397 S.C. 532, 725 S.E. 2d 693 (2012) (stating: “statutes in derogation of the common laws are to be strictly construed....Under this rule a Statute restricting the common law will ‘not be extended beyond the clear intent of the legislature’”). Because South Carolina law imposes the statutory duty to secure cargo on the operator — not the loader — the Plaintiff cannot establish



that Super Sod owed a duty to him or that Super Sod breached any duty. Therefore, Super Sod is entitled to judgment as a matter of law.

Plaintiffs further argue that Super Sod had "assumed" a duty to the Plaintiffs because it loaded the sod. However, the Plaintiffs' argument fails for a number of reasons. First, Plaintiffs have not shown that Super Sod "undertook" to do anything with regard to the securing of the sod to the trailer. Rather, as the record makes clear, Sox asked if Super Sod had equipment that he could use to tie down his load. It is undisputed that Kears, Super Sod's field worker, told Sox that he did not. Sox had intended to bring straps from Harbison, but because of a miscommunication, he forgot to bring them. After the sod was loaded, and after Kears told him that Super Sod did not have straps with which to tie down his load, Sox made the decision to proceed without them. While Plaintiffs also point to the stretch wrap that Kears used to wrap the sod pallets, it cannot reasonably be said that wrapping the sod is an "undertaking" within the contemplation of Section 56-5-4110's requirement to "securely fasten[] [the load] so as to prevent such covering or load from becoming loose [or] detached." Simply put, there has been no "undertaking" with respect to fastening the load to the trailer as the statute requires the operator to do.

Secondly, Super Sod undertook no duty, much less a duty to secure the load, with respect to the Plaintiff. Rather, Super Sod undertook a duty, if at all, to Harbison to place the sod on its trailer where Sox requested that the sod be placed. Under South Carolina law, one does not assume or undertake a duty to the public or community at large, as suggested by Plaintiffs. The Restatement (Second) of Torts explains:

One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if



- (a) his failure to exercise such care increases the risk of such harm, or
- (b) the harm is suffered because of the other's reliance upon the undertaking.

Restatement (Second) of Torts § 323 (emphasis added).

South Carolina has adopted Section 323 and therefore one may incur liability if one undertakes an obligation to "another." See *Johnson v. Robert E. Lee Academy, Inc.*, 401 S.C. 500, 737 S.E.2d 512, (Ct. App 2012). However, this "undertaking" does not extend to other unidentified third parties, such as Plaintiff in this case.

The Supreme Court has specifically declined to extend liability beyond those to whom the undertaking was made. In *Miller v. City of Camden*, 329 S.C. 310, 494 S.E.2d 813 (1997), a case relied upon by the Plaintiffs in their assertion of a duty against Super Sod, the Supreme Court wrote: "We *decline* to adopt the expanded liability of Restatement 2d of Torts 324A (1965). This section imposes a duty on 'one who undertakes . . . to render services to another which he should recognize as necessary for the protection of a third person.'" *Id.* at n.2 (emphasis added). Thus, although the Court held a duty might exist to those parties downstream from a dam that was monitored by the defendant, the duty found in that case would not extend to the community at large.

More recently in *Johnson*, the Court of Appeals again dealt with this very issue when a school employee sued an accounting firm alleging that it was negligent in its "undertaking" to investigate an alleged misappropriation of funds. In affirming summary judgment to the accounting firm, the Court, relying on Section 323, held that the relationship between the plaintiff and the accounting firm "does not fit within the parameters set forth in Section 323(a). Section 323(a) contemplates a party relying on the rendering of services to another for another's protection. Even assuming [accountant] acted voluntarily, he assisted the [police department] in its investigation. He did not render service to [plaintiff]; he assisted authorities." *Johnson*, 401



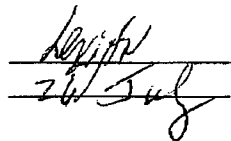
S.C. at 505, 737 S.E.2d at 514. The Court of Appeals specifically acknowledged that it was "[c]ognizant of Restatement (Second) of Torts section 324A, *although that section has not been adopted by our courts . . .*" *Id.* at n. 5 (emphasis added).

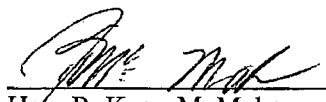
South Carolina has not adopted the Plaintiffs' position and the expansive undertaking liability of Restatement (Second) of Torts § 324A, under which a party undertaking a duty may be liable to someone beyond the party to whom the obligation is undertaken. Both the Supreme Court and the Court of Appeals have made clear that South Carolina does not follow this expansive view. This Court is constrained to follow the decisions of the Supreme Court and Court of Appeals. *Cf. Daniels v. City of Goose Creek*, 314 S.C. 494, 431 S.E. 2d 516 (Ct. App. 1993). Therefore, the Court finds that, as a matter of law, Super Sod did not have a legal duty to the Plaintiffs in this matter and thus summary judgment is appropriate.

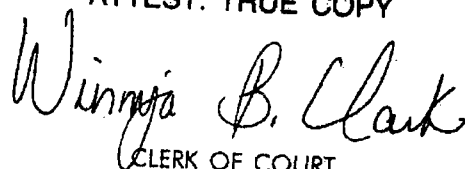
CONCLUSION

As set forth above, Defendant Super Sod did not have a legal duty to the Plaintiffs. Therefore, Defendant Patten Seed Company d/b/a Super Sod's Motion for Summary Judgment is hereby **GRANTED**.

SO ORDERED.

 , South Carolina
26 July 2016


Hon. R. Knox McMahon
Presiding Judge, 1st Judicial Circuit

ATTEST: TRUE COPY

CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

Price Oulla and Bonnie Oulla,

Plaintiffs,

vs.

Lisa Velazques, Harbison Community
Association, Inc., Cody Sox, and Patten
Seed Company, d/b/a Super-Sod,

Defendants.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT
CASE NO. 2014-CP-38-1590

ORDER

FILED FOR CLERK
CLERK OF COURT
ORANGEBURG, SC
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This matter came before me on Plaintiffs' Motion to Amend Complaint. The hearing on Plaintiff's Motion to Amend was held on August 23, 2016 in Orangeburg.

PROCEDURAL BACKGROUND

Plaintiff's original complaint was filed on December 31, 2014. On May 10, 2016 Defendant Patten Seed Company d/b/a Super Sod ("Super Sod") served its Motion for Summary Judgment and it was subsequently scheduled for a hearing on June 29, 2016. On June 21, 2016, Plaintiffs requested consent from counsel to amend its complaint to add an additional cause of action for breach of implied warranty of merchantability. Defendant indicated a willingness to consent but did not confirm consent to the amendment. On June 29, 2016, Plaintiff filed its Motion to Amend Complaint. Subsequent to filing the Motion to Amend, the parties argued Defendant's Motion for Summary Judgment before the Honorable R. Knox McMahon who held the motion under advisement. Judge McMahon was not informed that the motion to amend has been filed. The hearing on Plaintiff's Motion to Amend was then set for hearing on August 23, 2016 in Orangeburg. On August 2, 2016, Judge McMahon's grant of summary judgment was entered in favor of Defendant Super Sod and on August 12, 2016, Plaintiffs filed their Motion to

Alter or Amend Order Granting Defendant's Motion for Summary Judgment which remains under advisement.

MOTION TO AMEND COMPLAINT

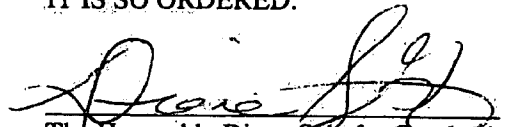
Present for the Plaintiffs were William Applegate and David Lail. Present for Defendant Super Sod Patten Seed Company d/b/a Super-Sod were E. Raymond Moore, III and Charles Williams. Based on the arguments and submissions of counsel, the Court finds that the matter of Plaintiffs' Motion to Amend lies with the Honorable R. Knox McMahon because he presided over Defendant's Motion for Summary Judgment and has Plaintiffs' Motion to Alter or Amend Order Granting Defendant's Motion for Summary Judgment before him at this time.

Plaintiffs seek to amend the complaint to add a cause of action for breach of implied warranty of merchantability. Defendant opposed the motion on the grounds that judgment had been entered in this case, that Plaintiffs' Motion to Alter or Amend Order Granting Defendant's Motion for Summary Judgment is currently before the Honorable R. Knox McMahon, and the amendment at this late date would be prejudicial. Because Plaintiffs' Motion to Alter or Amend Order Granting Defendant's Motion for Summary Judgment is pending before Judge McMahon, jurisdiction remains with Judge McMahon. Judge McMahon's order will address the motion to amend. Irrespective of how Judge McMahon decides Plaintiffs' Motion to Alter or Amend Order Granting Defendant's Motion for Summary Judgment, the status of the motion to amend will be determined by his ruling. Therefore this Judge refrains from hearing the motion to amend. The court finds that this is a more appropriate way to proceed regarding the issues involving the motion to amend.

CONCLUSION

For the foregoing reasons, the Court refrains from hearing the Plaintiffs' Motion to Amend Complaint filed June 29, 2016 which is included in the Motion to Alter or Amend pending before Judge McMahon.

IT IS SO ORDERED.


The Honorable Diane Schafer Goodstein

 South Carolina
September 16, 2016

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

Price Oulla and Bonnie Oulla,

Plaintiffs,

v.

Lisa Velazques,
Harbison Community Association, Inc.,
Cody Sox, and
Patten Seed Company, d/b/a Super-Sod,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2014-CP-38-01590

CONSENT SCHEDULING ORDER

PURSUANT TO RULE 16 of the South Carolina Rules of Civil Procedure, and with the written consent of all parties involved, by and through their undersigned counsel, the following parties' first request for a Scheduling Order is hereby adopted as follows:

1. Mediation to be conducted on or before April 15, 2016. All persons necessary to settle all claims shall personally attend mediation.
2. Trial not before June 15, 2016.

The deadlines contained herein, except for the "trial not before" date, may be extended by consent of all the parties without leave of Court. If the parties do not consent, a Motion to Amend shall be filed and the deadlines may be extended by the Court for good cause shown.

AND IT IS SO ORDERED.

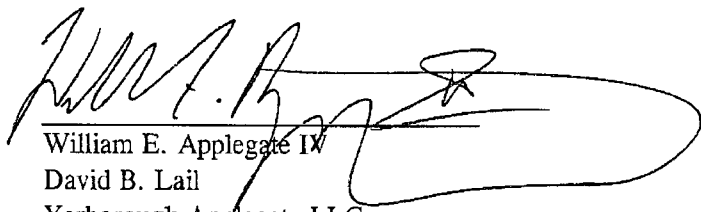
January 21, 2016
Orangeburg, South Carolina

Edgar W. Dickson
Edgar W. Dickson
Chief Administrative Judge

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ORANGEBURG, SC

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CLERK OF COURT
ORANGEBURG COUNTY, SC

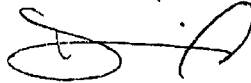
WE SO MOVE AND CONSENT:

A large, stylized handwritten signature in black ink, appearing to read 'W.E. Applegate IV', is written over a horizontal line.

William E. Applegate IV
David B. Lail
Yarborough Applegate LLC
291 East Bay Street, Floor 2
Charleston, SC 29401
Attorneys for Plaintiffs

WE CONSENT:

E. Mitchell Griffith with permission by
E. Mitchell Griffith
Griffith Sadler & Sharp, PA
PO Drawer 570
Beaufort, SC 29901


DAVID LAIL

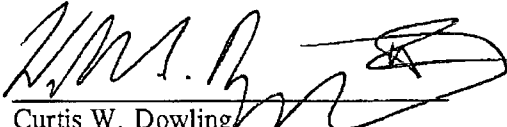
and

Mark B. Tinsley, Esquire
Gooding and Gooding, PA
P.O. Box 1000
Allendale, SC 29810
Attorneys for Defendant Velazquez

WE CONSENT:


E. Raymond Moore, III, Esquire
MURPHY & GRANTLAND, P.A.
4406-B Forest Drive
Post Office Box 6648
Columbia, South Carolina 29260
(803) 782-4100, ext. 1235
(803) 782-4140 (facsimile)
Email: ermooore@murphygrantland.com
*Attorneys for Defendant Patten Seed Company,
d/b/a Super-Sod*

WE CONSENT:

 with permission, for

Curtis W. Dowling
Barnes Alford Stork & Johnson LLP
PO Box 8448
Columbia, SC 29202
*Attorneys for Defendants Cody Sox and
Harbison Community Association, Inc.*

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

Price Oulla and Bonnie Oulla,

Plaintiffs,

v.

Lisa Velazques,
Harbison Community Association, Inc.,
Cody Sox, and
Patten Seed Company, d/b/a Super-Sod,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2014-CP-38-01590

CONSENT SCHEDULING ORDER

FILED FOR RECORD
JAN 10 2 12
CLERK OF COURT

PURSUANT TO RULE 16 of the South Carolina Rules of Civil Procedure, and with the written consent of all parties involved, by and through their undersigned counsel, the following parties' second request for a Scheduling Order is hereby adopted as follows:

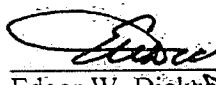
1. Mediation to be conducted on or before July 15, 2016. All persons necessary to settle all claims shall personally attend mediation.

2. Trial not before October 10, 2016.

The deadlines contained herein, except for the "trial not before" date, may be extended by consent of all the parties without leave of Court. If the parties do not consent, a Motion to Amend shall be filed and the deadlines may be extended by the Court for good cause shown.

AND IT IS SO ORDERED.

June 1, 2016
Orangenburg, South Carolina


Edgar W. Dickson
Chief Administrative Judge

ORANGEBURG, SOUTH CAROLINA
CLERK OF COURT
ATTEST: TRUE COPY

WE SO MOVE AND CONSENT:

Antes W. Dawling for and with permission of

William E. Applegate IV

David B. Lail

Yarborough Applegate LLC

291 East Bay Street, Floor 2

Charleston, SC 29401

Attorneys for Plaintiffs

WE CONSENT:

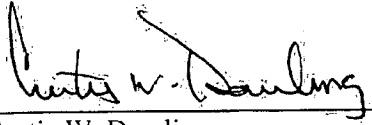
Ante W. Bowling For and with permission of
E. Mitchell Griffith, Esquire
600 Monson Street
Post Office Box 570
Beaufort, SC 29901
Attorneys for Defendant Velazquez

WE CONSENT:

Antony W. Downing for and with permission of

E. Raymond Moore, II, Esquire
MURPHY & GRANTLAND, P.A.
4406-B Forest Drive
Post Office Box 6648
Columbia, South Carolina 29260
(803) 782-4100, ext. 1235
(803) 782-4140 (facsimile)
Email: ermoore@murphygrantland.com
*Attorneys for Defendant Patten Seed Company,
d/b/a Super-Sod*

WE CONSENT:



Curtis W. Dowling
Barnes Alford Stork & Johnson LLP
PO Box 8448
Columbia, SC 29202
*Attorneys for Defendants Cody Sox and
Harbison Community Association, Inc.*

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

PRICE OULLA and BONNIE OULLA,

Plaintiff(s)

vs.

LISA VELAZQUES, HARBISON COMMUNITY
ASSOCIATION, INC., CODY SOX, AND PATTEN
SEED COMPANY d/b/a SUPER-SOD,

Defendant(s)

Submitted By: DAVID B. LAIL, ESQUIRE

Address: Yarborough Applegate LLC

291 East Bay Street, Floor 2

Charleston, SC 29401

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2014-CP - 38- 1590

SC Bar #: 81074

Telephone #: 843-972-0150

Fax #: 843-277-6691

Other:

E-mail: dlail@yarboroughapplegate.com

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

DOCKETING INFORMATION (Check all that apply)

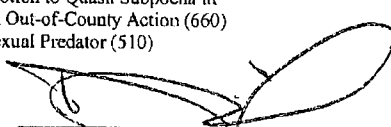
**If Action is Judgment/Settlement do not complete*

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

NATURE OF ACTION (Check One Box Below)

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

Submitting Party Signature:



ATTEST: TRUE COPY

Winnie B. Clark

CLERK OF COURT

Date: 12-30-2014 ORANGEBURG COUNTY, SC

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

FOR MANDATED ADR COUNTIES ONLY

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

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

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

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

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

STATE OF SOUTH CAROLINA)

COUNTY OF ORANGEBURG)

Price Oulla and Bonnie Oulla,)

Plaintiffs,)

vs.)

Lisa Velazques, Harbison Community)
Association, Inc., Cody Sox, and Patten)
Seed Company, d/b/a Super-Sod,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT
CASE NO. 2014-CP-38- 1590

SUMMONS
(Jury Trial Demanded)

2014 DEC 31 P 0:30
FILED FOR RECORD
VICTOR B. CLARK
CLERK OF COURT
ORANGEBURG, SC

TO DEFENDANTS:

YOU ARE HEREBY SUMMONED AND REQUIRED to Answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer thereto on the subscribers at their office located at 291 East Bay Street, Floor 2, Charleston, SC 29401, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief sought therein.

SIGNATURE PAGE TO FOLLOW

ATTEST: TRUE COPY

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CLERK OF COURT
ORANGEBURG COUNTY, SC

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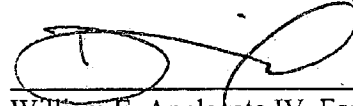
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ATTORNEYS FOR THE PLAINTIFF

12-30, 2014
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)
Price Oulla and Bonnie Oulla,)
Plaintiffs,)
vs.)
Lisa Velazques, Harbison Community)
Association, Inc., Cody Sox, and Patten)
Seed Company, d/b/a Super-Sod,)
Defendants.)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT
CASE NO. 2014-CP-38- 1590

COMPLAINT
(Jury Trial Demanded)

FILED FOR RECORD
WILLIAM CLARK
CLERK OF COURT
ORANGEBURG, SC
2014 DEC 31 P 0330

The Plaintiffs, Price Oulla and Bonnie Oulla, and the undersigned attorneys, complaining of the Defendants, jointly and severally, allege the following:

PARTIES, JURISDICTION, AND VENUE

1. The incidents that are the subject of this action occurred in Orangeburg County, South Carolina on July 22, 2014.
2. Plaintiffs Price Oulla and Bonnie Oulla are citizens and residents of Charleston County, South Carolina.
3. Upon information and belief, Defendant Lisa Velazques (hereinafter "Velazques") is a resident and citizen of Charleston County, South Carolina and was operating a motor vehicle on the highways of Orangeburg County, South Carolina on July 22, 2014 when she collided into the rear of Plaintiff Price Oulla's vehicle.
4. Upon information and belief, Defendant Patten Seed Company, d/b/a Super-Sod (hereinafter "Super-Sod") is a Georgia corporation that owns and operates a sod and seed company located on Five Chop Road in Orangeburg County, South Carolina.

ATTEST: TRUE COPY

Wingja B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

5. Upon information and belief, Defendant Cody Sox is a citizen and resident of Lexington County, South Carolina.

6. Upon information and belief, Defendant Harbison Community Association, Inc. (hereinafter "Harbison") is a South Carolina corporation organized and existing under the laws of South Carolina and conducts business in Orangeburg County, South Carolina. Harbison was procuring sod from Defendant Super-Sod's Orangeburg County location on the date the incidents that are the subject of this action occurred.

7. Upon information and belief, Defendant Cody Sox was acting as an employee, agent, servant, and/or legal representative of Defendant Harbison and was at all times acting in the course and scope of his employment, agency and business with Defendant Harbison on the date the incidents that are the subject of this action occurred.

8. At all times relevant to the Complaint, Defendants Super-Sod and Harbison were, and continue to be, responsible for the acts and/or omissions of their employees, agents, and/or servants.

9. Defendants Super-Sod and Harbison had the right and/or power to direct and control their employees, agents, and/or servants while doing business for a fee and/or profit, and they are personally, jointly and severally liable for the acts and/or omissions committed herein.

10. This Court has personal and subject matter jurisdiction over this case and venue is proper in this Court.

FACTS

11. On July 22, 2014, Defendant Sox, driving a pick-up truck with a trailer in tow for Defendant Harbison, travelled to Defendant Super-Sod's business located on Five Chop Road in Orangeburg County, South Carolina to obtain a load of sod for Defendant Harbison.

12. Upon information and belief, Defendants Super-Sod and Sox loaded two pallets of sod onto the trailer and did not secure or attach the load to the trailer.

13. After the pallet loads of sod were placed on the trailer, Sox left Super-Sod on Five Chop Road and eventually merged onto Interstate 26 ("I-26"), and headed westbound through Orangeburg County towing an unsecured load.

14. While Defendant Sox was pulling the trailer for Defendant Harbison on I-26, the unsecured and unattached load of sod spilled onto the roadway creating a hazard to other drivers.

15. Upon information and belief, the spilled load of unsecured sod obstructed travel on I-26 in Orangeburg County causing a traffic jam.

16. Plaintiff Price Oulla was also travelling westbound on I-26 – behind Sox and the spilled load of sod on the roadway. As Mr. Oulla approached the traffic jam, he slowed his vehicle accordingly and was nearly stopped behind a line of backed-up traffic when Defendant Velazques collided into Mr. Oulla's vehicle.

17. Defendant Velazques, travelling directly behind Mr. Oulla, did not slow her vehicle down for the spilled sod traffic jam on I-26 and she collided into the rear of Mr. Oulla at a high rate of speed forcing Mr. Oulla to then collide with the vehicle in front of him.

18. Mr. Oulla sustained traumatic and permanent injuries in the collision.

FOR A FIRST CAUSE OF ACTION AGAINST DEFENDANTS HARBISON AND SOX
(Negligence, Gross Negligence, Negligence *Per Se*)

19. Plaintiff realleges and reincorporates Paragraphs 1 through 18 above as if fully set forth herein verbatim.

20. At all times relevant to this Complaint, Defendant Sox was, upon information and belief, acting as an employee, agent, servant, and/or legal representative of Defendant Harbison and he was acting in the course and scope of his employment.

21. Defendant Harbison is vicariously liable for Defendant Sox's actions on July 22, 2014 and the consequences of those actions.

22. Defendant Sox at all times pertinent hereto had a duty to the general public, including Plaintiff, to properly secure his load of sod and operate his vehicle in a safe manner and in compliance with the statutory and common laws of South Carolina.

23. Defendant Sox breached his duty owed to Plaintiff by carelessly, negligently, and willfully operating a motor vehicle on a public roadway with an unsecured and unattached load of cargo that spilled onto the roadway, subsequently causing a collision.

24. Mr. Oulla was operating his vehicle in a safe, prudent, and reasonable manner at all times relevant to the Complaint.

25. The collision, injuries, and damages described in this Complaint were the direct, foreseeable and proximate result of the negligent and careless, willful, wanton, reckless, and grossly negligent acts or omissions of Defendants Harbison and Sox in the following particulars:

- a. Driving a motor vehicle in such a manner as to indicate a willful, wanton, reckless, grossly negligent, and negligent disregard for the safety of others, in violation of S.C. Code Ann. § 56-5-2920;
- b. In violating S.C. Code Ann. § 56-5-4100 et seq.;
- c. In failing to secure or attach a load of cargo during transport;
- d. In failing to prevent any of the load of cargo from dropping or otherwise escaping onto the roadway;
- e. In failing to maintain proper control of the vehicle;
- f. In failing to operate the vehicle in a safe manner;
- g. In failing to properly train and/or supervise employees and/or agents, and/or failing to have policies and procedures in place regarding how to properly load and secure cargo to prevent harm to others, including Plaintiff;

- h. Failing to use the degree of care and caution that a reasonable person would have used under the circumstances then and there prevailing; and
- i. In such other and further particulars as the evidence at trial may show.

All of which acts and omissions, or both, were the actual, direct and proximate cause of the damages and injuries claimed herein.

FOR A SECOND CAUSE OF ACTION AGAINST DEFENDANT SUPER-SOD
(Negligence, Gross Negligence, Negligence *Per Se*)

26. Plaintiff realleges and reincorporates Paragraphs 1 through 25 above as if fully set forth herein verbatim.

27. Upon information and belief, Defendant Super-Sod sold Defendant Harbison two pallets of sod from its business location on Five Chop Road in Orangeburg County and undertook the task of loading the sod onto the trailer being pulled by Defendant Sox.

28. Upon information and belief, Defendant Super-Sod knew that Defendant Sox would be transporting the loaded pallets of sod on South Carolina public roadways.

29. Defendant Super-Sod had a duty of care to the general public, including Plaintiff, to properly and safely load and secure the pallets of sod onto the trailer for transport.

30. Defendant Super-Sod breached its duty owed to Plaintiff by carelessly negligently, and willfully loading sod pallet loads of cargo onto a vehicle and not securing or attaching the cargo such that it spilled onto the roadway, subsequently causing a collision.

31. The collision, injuries, and damages described in this Complaint were the direct, foreseeable and proximate result of the negligent and careless, willful, wanton, reckless, and grossly negligent acts or omissions of Defendant Super-Sod in the following particulars:

- a. In failing to properly and safely load the sod pallets on the trailer;
- b. In failing to properly and safely distribute the weight of the sod pallets on the trailer;
- c. In failing to secure and attach the sod pallet loads to the trailer;

- d. In failing to use the proper tools and equipment to secure the sod pallet loads to the trailer;
- e. In failing to inspect the sod pallet loads on the trailer before it left Super-Sod's place of business and entered the public roadways;
- f. In failing to properly train and/or supervise employees and/or agents, and/or failing to have policies and procedures in place regarding how to properly load and secure cargo to prevent harm to others, including Plaintiff;
- g. Failing to use the degree of care and caution that a reasonable person would have used under the circumstances then and there prevailing; and
- h. In such other and further particulars as the evidence at trial may show.

All of which acts and omissions, or both, were the actual, direct and proximate cause of the damages and injuries claimed herein.

FOR A THIRD CAUSE OF ACTION AGAINST DEFENDANT VELAZQUES
(Negligence, Gross Negligence, Negligence *Per Se*)

32. Plaintiff realleges and reincorporates Paragraphs 1 through 31 above as if fully set forth herein verbatim.

33. Defendant Velazques at all times pertinent hereto had a duty to the general public, including Plaintiff, to operate her vehicle in a safe manner and in compliance with the statutory and common laws of South Carolina.

34. Defendant Velazques breached her duty owed to Plaintiff by carelessly, negligently, and willfully operating a motor vehicle on a public roadway and subsequently causing a collision when she collided into the rear of Mr. Oulla's vehicle.

35. Mr. Oulla was operating his vehicle in a safe, prudent, and reasonable manner at all times relevant to the Complaint.

36. The collision, injuries, and damages described in this Complaint were the direct, foreseeable and proximate result of the negligent and careless, willful, wanton, reckless, and grossly negligent acts or omissions of Defendant Velazques in the following particulars:

- a. Driving a motor vehicle in such a manner as to indicate a willful, wanton, reckless, grossly negligent, and negligent disregard for the safety of others, in violation of S.C. Code Ann. § 56-5-2920;
- b. Traveling too fast for conditions;
- c. Following too closely;
- d. Failing to maintain a proper lookout;
- e. Failing to keep the motor vehicle she was operating under control;
- f. Failing to apply her brakes;
- g. Failing to operate her vehicle in a safe manner;
- h. Failing to use the degree of care and caution that a reasonable person would have used under the circumstances then and there prevailing; and
- i. In such other and further particulars as the evidence at trial may show.

All of which acts and omissions, or both, were the actual, direct and proximate cause of the damages and injuries claimed herein.

37. As a direct and proximate cause of the acts and omissions, or both, of all Defendants, and/or their employees, agents, and/or servants, Mr. Oulla was severely injured, and suffered great and permanent physical harm which has caused, and in the future will cause him to suffer one or more of the following elements of damage:

- a. Past and future physical pain and suffering;
- b. Loss of income;
- c. Loss of enjoyment of life;
- d. Substantial past expenses for medical services;

- e. Future medical expenses;
- f. Permanent injury to his body;
- g. Increased susceptibility to future injury;
- h. Mental anguish, emotional distress, shock, fear, and embarrassment;
- i. Incidental expenses related to time out of work and medical care; and
- j. Other particulars as discovery and the evidence at trial may show.

38. Plaintiff is informed and believes that he is entitled to judgment against all Defendants for the damages he has suffered and will suffer in the future.

FOR A FOURTH CAUSE OF ACTION AGAINST ALL DEFENDANTS
(Loss of Consortium)

39. Plaintiff realleges and reincorporates Paragraphs 1 through 38 above as if fully set forth herein verbatim.

40. As a direct, foreseeable, and proximate result of the joint concurring negligent, grossly negligent, careless, wanton, and reckless acts and/or omissions of the Defendants and/or their employees, agents, and/or servants, as alleged above, Plaintiff Bonnie Oulla has been forced to endure substantial losses of the marital rights to company, society, cooperation, affection, assistance, fellowship, aid, and relations with her spouse. And, Plaintiff Bonnie Oulla has suffered and incurred expenses and costs, and other damages to be shown through discovery and trial.

Plaintiffs are entitled to judgment against Defendants, jointly and severally, for the above-described actual damages and injuries to Plaintiffs, and for punitive damages to be determined by a jury.

WHEREFORE, Plaintiff prays for the following:

- i. A trial by jury;
- ii. Judgment against Defendants for damages pled herein in an amount to be determined by the jury;
- iii. For the costs of this action; and
- iv. For such other and further relief as this court deems just and proper.

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ATTORNEYS FOR THE PLAINTIFFS

12-30, 2014
Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

Price Oulla and Bonnie Oulla,

Plaintiffs,

v.

Lisa Velazques,
Harbison Community Association, Inc.,
Cody Sox, and
Patten Seed Company, d/b/a Super-Sod,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2014-CP-38-01590

**NOTICE OF MOTION AND
MOTION FOR SUMMARY JUDGMENT**

**TO: WILLIAM E. APPLGATE IV, ESQUIRE, DAVID B. LAIL, ESQUIRE, AND
TATE JOHNSON, ESQUIRE, ATTORNEYS FOR PLAINTIFFS, AND TO THE
PLAINTIFFS ABOVE NAMED:**

YOU WILL PLEASE TAKE NOTICE, that the Defendant Patten Seed Company, d/b/a Super-Sod by its undersigned attorney, will move before the Presiding Judge of the Orangeburg County Court of Common Pleas on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, for an Order, pursuant to Rules 56 of the South Carolina Rules of Civil Procedure, granting summary judgment in favor of the Defendant Patten Seed Company, d/b/a Super-Sod on the grounds that there is no disputed issue as to any material fact and Defendant Patten Seed Company, d/b/a Super-Sod is entitled to judgment as a matter of law on the following grounds:

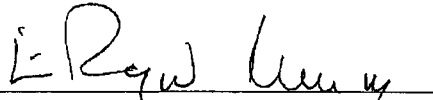
1) There is no duty under South Carolina law for a company in Patten Seed Company, d/b/a Super-Sod's position to secure a load for a vehicle operator as alleged in the Complaint, See SC Code Ann. §§ 56-5-4100 to 4110; and

2) The undisputed evidence shows that the cause of the Plaintiff's injuries was due to a rear end collision caused by co-Defendant Velazques after traffic ahead of the Plaintiff, to include the

Plaintiff, was slowed to a safe speed. See Newton v. S.C. Pub. Ry. Comm'n., 319 S.C. 430, 462 S.E.2d 266 (1995).

This Motion is made pursuant to Rule 56 of the South Carolina Rules of Civil Procedure and will be supplemented and supported by such affidavits, depositions, discovery responses, memoranda of law, and such other documents as appropriate.

MURPHY & GRANTLAND, P.A.


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***Attorneys for Defendant Patten Seed Company, d/b/a
Super-Sod***

Columbia, South Carolina
May 5, 2016

FILED FOR RECORD
STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG
JUL 21 2014

Price Oulla and Bonnie Oulla
Plaintiffs,
vs.
Lisa Velazques, Harbison Community
Association, Inc., Cody Sox, and Patten
Seed Company, d/b/a Super-Sod,
Defendants.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT
CASE NO. 2014-CP-38-1590

**PLAINTIFFS' MEMORADNUM IN
OPPOSITION TO DEFENDANTS'
MOTIONS FOR SUMMARY JUDGMENT**

Plaintiffs Price and Bonnie Oulla, by and through their undersigned counsel, respectfully submit the following Memorandum in Opposition to Defendant Harbison Community Association Inc.'s and Patten Seed Company, d/b/a Super-Sod's motions for summary judgment. For the reasons set forth below, Plaintiffs request that this Court **DENY** Defendants' motions.

FACTS

This case arises out of a chain of events that began at a sod business in Orangeburg and ended in an automobile collision on I-26. On July 22, 2014, Defendant Cody Sox ("Sox"), an employee of Defendant Harbison Community Association, Inc. ("Harbison"), travelled from Columbia to Defendant Patten Seed Company, d/b/a Super-Sod's ("Super-Sod") business located in Orangeburg to purchase a load of sod for Harbison. Cody Sox Dep. 19:21-20:14, attached as Ex. A. To transport the sod from Orangeburg to Columbia, Sox was driving a Harbison pick-up truck and pulling a flatbed trailer. Sox Dep. 20:3-10. This was Sox's first trip to Super-Sod and his first time hauling sod. Sox Dep. 25:5-10.

Prior to making the trip, Sox called and ordered two pallets of sod for Harbison. Sox Dep. 23:11-14. Super-Sod informed Sox that they would load the sod onto Sox's trailer. Sox Dep. 23:21-23. In addition to loading customer vehicles like Sox's with pallets of sod, Super-Sod loads and ships sod from its locations in four states across the southeast using its own fleet of tractor trailers. Super-Sod 30(b)(6) Dep. 11:9-21; 22:17-23, attached as Ex. B. According to Super-Sod, it loads approximately 800 pallets of sod per day from April to October. Super-Sod 30(b)(6) Dep. 17:23 - 18:7. When doing sod business with customers like Sox, the sales price includes Super-Sod's stacking the sod on pallets, wrapping the sod in plastic, and loading the 2,000 pound pallets of sod with a forklift onto customer's vehicles for transport on public roadways. Super-Sod 30(b)(6) Dep. 25:17 - 27:2; 27:12-18.

When Sox arrived at Super-Sod, he paid for the two pallets of sod and was directed a couple of miles down the road where the sod would be loaded. Sox Dep. 24:3-12. Next, Melvin Kearse, a 22-year Super-Sod veteran employee, wrapped the sod with plastic and loaded the sod onto Harbison's trailer using a Super-Sod forklift. Melvin Kearse Dep. 7:22-24; 44:2-3; 42:4-10; 15:24-16:1, attached as Ex. C. Kearse testified that it is his responsibility to: (1) properly wrap the sod in a way that it's not supposed to break during transport; and (2) safely load the sod onto the trailer and make sure it's balanced and not overloaded. Kearse Dep. 20:13-17; 31:12-19; 17:20-18:2; 28:7-18. Kearse further testified that he balances sod loads by placing pallets in the middle of the trailer, and if the sod puts too much weight on a trailer, he takes it off and has the customer come back later for loading. Kearse Dep. 33:18-21; 28:15-22. According to Kearse, there are situations where Super-Sod will decide whether or not a load can be safely transported. Kearse Dep. 60:13-19. Likewise, Super-Sod's 30(b)(6) witness, Joe Livingston, testified that

Super-Sod would not load a customer in "situations that would not be safe." Super-Sod 30(b)(6) Dep. 35:19-36:10.

Nevertheless, Kearsé ignored Super-Sod's responsibilities for safely loading its product onto Sox's vehicle, and instead, testified that he loaded the sod with one pallet on the front of the trailer and one pallet on the back of the trailer. Kearsé Dep. 40:19-41:8. Sox testified that he had not done any analysis on where the sod or any weight should have been placed on the trailer prior to having the sod loaded. Sox Dep. 51:17-22. Kearsé also testified that he denied Sox's request to remove sand from the middle of Sox's trailer where he normally places sod loads because it was not his job. Kearsé Dep. 40:12-18. Sox, who forgot to bring straps to secure the sod load, also asked Kearsé if Super-Sod had any straps, and was told no. Sox Dep. 72:16-20; 73:7-8. Both Sox and Kearsé admit that they did not secure the pallets of sod to the trailer in any way before it left Super-Sod and made its way to I-26 for the trip from Orangeburg to Columbia. Kearsé Dep. 34:14-16; Sox Dep. 34:8-10; 63:14-16.

After stopping to pick up some fast food, and right after merging onto I-26 westbound, he reached about 48 or 50 miles per hour when a tractor-trailer began "swaying just a little bit" into Sox's lane and Sox "let off the gas and adjusted 3 to 4 feet to the right, trying to go into the emergency lane." Sox Dep. 20:19-25; 21:2-12. Next, Sox's trailer loaded with unsecured sod began to sway and Sox pulled the Harbison truck off the interstate and came to a stop. Sox Dep. 21:12-16. Sox looked back and noticed that "a half a pallet of sod from the trailer had rolled off the back of it into the slow lane of I-26." Sox Dep. 21:17-20. Sox testified that the plastic wrapping on one pallet of sod was ripped "at the top" and the other pallet of sod's wrapping "was torn down about halfway from the top." Sox Dep. 132:13-133:11; 50:18-20.

With sod obstructing the highway, Sox called 911 at 11:54 am to report the spill and he and his passenger waited in the truck for emergency personnel to arrive. Sox Dep. 21:23-22:8; 43:10-17.; CAD Call Information attached as Ex. D. Five minutes later at 11:59 am, West Middle Fire Department was notified of the sod spill and dispatched to the scene. CAD Call Information attached as Ex. D. West Middle Fire Department arrived at the spill location to help clear the sod from the road at 12:10 pm. CAD Call Information attached as Ex. D. *One minute later*, at 12:11 pm, 911 received a call from a motorist stating: "Where 301 enters, traffic was backed up. Another car hit another car and the car rolled over." CAD Call Information attached as Ex. D; 911 call recording attached as Def. Harbison's Exs. H & I. Plaintiff Price Oulla was travelling westbound on I-26 – behind Sox and the spilled load of sod. Comp. ¶ 16. As Plaintiff approached the backed-up traffic due to the sod spill, he slowed his vehicle down and was rear-ended by Defendant Lisa Velazques ("Meyer") who testified that that there was "an immediate stop of cars" and she was unable to stop in time. Lisa Meyer Dep. 36:4-6; 33:6, attached as Ex. E.

SUMMARY JUDGMENT STANDARD

"Summary judgment is appropriate only if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Cunningham ex. rel. Grice v. Helping Hands, Inc.*, 352 S.C. 485, 491, 575 S.E.2d 549, 552 (2003); Rule 56(c), SCRPC. When considering a motion for summary judgment, the court views the evidence and all inferences that can be reasonably drawn therefrom in the light most favorable to the non-moving party. *Id.* "[I]n cases applying the preponderance of evidence burden of proof, the non-moving party is only required to submit a *mere scintilla* of evidence in order to withstand a motion for summary judgment." *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009)

(emphasis added). Because it is a drastic remedy, summary judgment should be cautiously invoked so no person will be improperly deprived of a trial of the disputed factual issues. *Etheredge v. Richland Sch. Dist. I*, 330 S.C. 447, 499 S.E.2d 238 (Ct. App. 1998).

LAW AND ARGUMENT

Harbison, Sox, and Super-Sod all owed Plaintiff statutory and common law duties to prevent precisely the type of harm that Plaintiff suffered in this highway accident.¹ Harbison and Sox do not even contend in their motion for summary judgment that they did not owe a duty. Super-Sod, conversely, does claim that it did not owe a duty, citing South Carolina Code sections 56-5-4100 and -4110 in its motion.

As set forth below, however, Super-Sod owed a duty not only pursuant to Code section 56-5-4100, but also pursuant to common law. Super-Sod wants the Court to believe that all it did was sell some pallets of sod to a customer, but that is not the extent of what Super-Sod did. Super-Sod affirmatively engaged in the act of stretch-wrapping the pallets in contemplation of the risk of the pallets falling off of Harbison's trailer. Super-Sod further undertook the act of loading the pallets on Harbison's trailer on behalf of Harbison and Harbison's employee, Sox. Super-Sod further allowed Sox to leave Super-Sod's premises with actual knowledge that Sox had no means of securing and in fact had not secured the pallets to the trailer, and actual knowledge that Sox was about to travel the public highway where other travelers like Plaintiff would be. Super-Sod did so despite the fact that Super-Sod retained ultimate control over whether a customer could leave the premises with an unsafe load.

¹ In setting forth his position, Plaintiff assumes the Court recognizes that the employees of the defendants, Sox (Harbison) and Kearse (Super-Sod), were acting in the course and scope of their respective employments, and that vicarious liability is undisputed. Harbison Answer ¶ 8; Super-Sod 30(b)(6) Dep. 56:9-57:2. Plaintiff respectfully seeks to not waste the Court's time to argue this point in the body of this brief. In any event, Plaintiff notes that no defendant has presented a contrary argument to the Court.

In failing to load the Harbison trailer safely and allowing Sox to haul the unsafe load on the highway, Super-Sod assumed statutory and common law duties to prevent a serious risk of harm to Plaintiff and everyone else on the highway. Super-Sod's claim that it was merely the seller of the sod and had no reason to foresee the risk is absurd. Super-Sod recognized the risk to people like Plaintiff, by its own admission recognized the need to alleviate that very risk, and failed to take steps to actually alleviate the risk. Harm to Plaintiff and other motorists was undoubtedly foreseeable, and Super-Sod had statutory and common law duties to prevent that harm.

If Super-Sod had intended to perform as a mere seller of goods, Super-Sod could have refused to actively participate in the packaging and loading of the pallets of sod. Super-Sod could have made the sale and placed all responsibility for transport on its customer, Harbison. But Super-Sod did more than that. Super-Sod wrapped the pallets of sod, due to its own recognition of the risk to other motorists. Super-Sod used its own specialty heavy equipment and loading experts to load the pallets onto Harbison's trailer, without regard to the proper balancing of the load or the need to strap down or otherwise secure the load to the trailer. Super-Sod knowingly allowed Sox, Harbison's employee, to leave Super-Sod's premises and travel the public roadways despite the glaring absence of the straps or alternative safety precautions required pursuant to South Carolina Code section 56-4-4100 and common law. Super-Sod's position that its affirmative decision to participate in the loading and hauling of this sod did not implicate the statutory and common law duties of a commercial loader to the traveling public, including Plaintiff, is meritless.

Further, in the defendants' efforts to deny material issues of proximate cause, Harbison, Sox, and Super-Sod ask the Court to ignore the decisions of the South Carolina Supreme Court

that control the issue of proximate cause in this case: Gause v. Smithers, 403 S.C. 140, 742 S.E.2d 644 (2013), and Matthews v. Porter, 239 S.C. 620, 124 S.E.2d 321 (1962). Harbison does not even cite these cases in its brief, and instead relies solely on the inapposite decision in Newton v. S.C. Public Railways Commission, 319 S.C. 430, 462 S.E.2d 266 (1995). Notably, in the recent Gause decision, which is doubtless relevant to the facts of this case, the Supreme Court did not even cite to the 1995 opinion in Newton as relevant, but did cite to the 1962 opinion in Matthews. The reason for this intentional omission by the Supreme Court was that Newton is not relevant in this line of cases.

Defendants further attempt to convince the Court that any genuine issue of proximate cause is lacking by pointing to some cases from other jurisdictions finding no proximate cause under the particular facts of those particular cases involving secondary highway accidents. As shown below, Plaintiff can equally point to numerous other secondary-accident cases from other jurisdictions, including some of the jurisdictions cited by Defendants, where the courts found proximate cause to be a jury question. This display of competing results from around the country should bring the Court back to the South Carolina standard of proof—**mere scintilla of evidence**—and the South Carolina cases that actually control here, Gause and Matthews. Overall, the Court should come back to the governing principle in South Carolina that proximate cause “is normally a question of fact for determination by the jury” and “[o]nly in rare or exceptional cases may the issue of proximate cause be decided as a matter of law.” Gause, 403 S.C. at 150, 742 S.E.2d at 649 (quotations omitted) (emphasis added). There is a genuine issue of material fact here, and proximate cause is a jury question in this case.

I. SUPER-SOD OWED STATUTORY AND COMMON LAW DUTIES TO PLAINTIFF.

As the operator of the vehicle carrying the heavy pallets of sod on the highway, Harbison and its employee, Sox, owed a statutory duty to Plaintiff and all others on the highway to secure the load of sod to the trailer and prevent it from spilling onto the highway. S.C. Code Ann. § 56-5-4100(A) (duty "to prevent any of [vehicle's] load from dropping, sifting, leaking, or otherwise escaping from the vehicle"); § 56-5-4110 (duty to securely fasten load "from becoming loose, detached or in any manner a hazard to other users of the highway"). Harbison and Sox also owed common law duties to Plaintiff. They do not even contest the existence of these duties.

Super-Sod, however, does contend that it owed no duty to Plaintiff. Super-Sod takes the position that it owed no duty to Plaintiff because Super-Sod somehow was not responsible for the load placed on the Harbison trailer and, once Sox drove away from Super-Sod's office, Super-Sod had no control over Sox or Harbison's conduct. That position ignores Super-Sod's active participation in creating the risk before Sox ever left Super-Sod's parking lot. Super-Sod wrapped the pallets of sod in contemplation of highway safety; loaded the heavy pallets of sod onto the Harbison vehicle; knew that the load was not secured with straps or by other means; knew that Sox was going to drive the vehicle on public roads; and knew that unsecured loads on the highway created a safety issue. Kearse Dep. 7:22-24; 44:2-3; 42:4-10; 15:24-16:1; 34:14-16; Super-Sod 30(b)(6) Dep. 27:12-18; 22:9-16.

While it is true that "[u]nder South Carolina common law, there is no general duty to control the conduct of another or to warn a third person or potential victim of danger," there are five exceptions to this rule: "(1) where the defendant has a special relationship to the victim; (2) where the defendant has a special relationship to the injurer; (3) where the defendant voluntarily undertakes a duty; (4) where the defendant negligently or intentionally creates the risk; and (5)

where a statute imposes a duty on the defendant.” Johnson v. Jackson, 401 S.C. 152, 160, 735 S.E.2d 664, 668 (Ct. App. 2012).

In this case, Super-Sod (a) voluntarily undertook a duty to safely load the pallets of sod; (b) negligently created the risk to Plaintiff by improperly loading the pallets of sod; and (c) had a statutory duty to safely load the sod pursuant to South Carolina Code section 56-5-4100. Plaintiff addresses these three sources of Super-Sod’s duty in reverse order.

A. Super-Sod owed a duty to Plaintiff pursuant to South Carolina Code section 56-5-4100.

Section 56-5-4100(A) provides, in pertinent part:

No vehicle may be driven or moved on any public highway unless the vehicle is so constructed or loaded as to prevent any of its load from dropping, sifting, leaking, or otherwise escaping from the vehicle....

This subsection of the statute is written in the passive voice, and neither includes nor excludes any particular class of persons against whom it is directed.

Instead, the persons against whom the entire statute is directed are identified in subsection (C), which provides:

The loader of the vehicle and the driver of the vehicle, in addition to complying with the other provisions of this section, shall sweep or otherwise remove any loose gravel or similar material from the running boards, fenders, bumpers, or other similar exterior portions of the vehicle before it is moved on a public highway.

S.C. Code Ann. § 56-5-4100(C) (emphasis added). This plainly worded provision provides that the driver **and** the loader of the vehicle not only must comply with the requirements of subsection (C), but also must comply with the requirements of subsection (A), and “other provision of this section.” See Tilley v. Pacesetter Corp., 355 S.C. 361, 373, 585 S.E.2d 292, 298 (2003) (providing that “[w]hen the language of a statute is plain, unambiguous, and conveys

a clear and definite meaning...the statutory terms...must be applied according to their literal meaning"). It is clear that in drafting section 56-5-4100, the legislature contemplated that the vehicle would be driven after being loaded by the loader, and that the loader, in addition to the driver, should be responsible for the vehicle's being so driven with the unsecured load. See Lincoln Gen. Ins. Co. v. Progressive No. Ins. Co., 406 S.C. 534, 538, 753 S.E.2d 437, 439 (Ct. App. 2013) (providing that "[t]he cardinal rule of statutory construction is to ascertain and effectuate the intent of the Legislature") (citation omitted). Here, Super-Sod, as the loader of the trailer, had a statutory duty to comply with the requirement that the trailer had to be loaded in such a way "as to prevent any of its load from dropping...or otherwise escaping from the vehicle." § 56-5-4100(A).

Plaintiff, as a traveler on the highway, was doubtless within the class of persons that section 56-5-4100 was intended to protect from this type of harm...injury from a load falling off of a trailer on the highway. See, e.g., Hurst v. Sandy, 329 S.C. 471, 494 S.E.2d 847 (Ct. App. 1997) (standing for the principle that a statutory duty arises if the "essential purpose of the statute is to protect from the kind of harm the plaintiff has suffered and that [the plaintiff] is a member of the class of persons the statute is entitled to protect"); cf. Rowe v. Frick, 250 S.C. 499, 504-05, 159 S.E.2d 47, 50 (1968) (providing generally that violations of traffic statutes constitutes negligence *per se* in actions by other drivers).

On this statutory basis alone, Super-Sod's argument that it owed no duty to Plaintiff is without merit. Because Super-Sod did have a statutory duty to Plaintiff to securely load Harbison's trailer, Super-Sod's motion for summary judgment on the basis that it had no duty should be denied.

B. Super-Sod owed Plaintiff a common law duty not to negligently create the risk of harm in failing to properly wrap the pallets, in failing to balance the pallets on the trailer, or in failing to ensure the load was secured to the trailer.

As noted above, a common law duty to foreseeable plaintiffs arises on the part of someone who negligently creates a risk in the conduct of another. Johnson, 401 S.C. at 160, 735 S.E.2d at 668. This is consistent with the basic law of torts that everyone has a common law duty to refrain from creating a risk of harm to foreseeable plaintiffs. See Carter v. R.L. Jordan Oil Co., 294 S.C. 435, 444, 365 S.E.2d 324, 329 (Ct. App. 1988) (providing generally that a duty exists “to protect others against the risk of harm from his actions,” and that a duty arises “with respect to a danger which is apparent to one in the position of the actor before the harm occurs”), rev’d on other grounds, 299 S.C. 439 (1989). This is also consistent with the general duty of due care that a party to a contract owes to foreseeable third-party plaintiffs, notwithstanding any contractual duties he or she may owe to a customer. See Dorrell v. S.C. Dept. of Transp., 361 S.C. 312, 319–20, 605 S.E.2d 12, 15–16 (2009) (identifying common law duty of care to third parties on behalf of paving contractor, independent of the duties it assumed in its contract with the DOT, based on general principles of common law negligence, and providing list of similar case law).

In this case, the Court could find that Super-Sod had a general common law duty of care to ensure the safety of the load on the Harbison trailer, per Carter or Dorrell. In the alternative, and perhaps more technically correct, the Court should find that once Super-Sod elected to participate in any way in the packaging and loading of the sod, per Johnson, it had a duty to refrain from creating a risk of harm to third parties like Plaintiff. Either way, Super-Sod did have a common law duty to Plaintiff and other motorists to refrain from creating an unsafe load on the Harbison trailer.

If Super-Sod simply sold sod to a customer like Harbison, and then required the customer to entirely handle the transport of the sod from Super-Sod's facility, Super-Sod's position may be more tenable. But that is not Super-Sod's business practice. That is not what Super-Sod did here. Rather, Super-Sod actively engaged in the preparation of the sod for hauling by its customer, Harbison, and in the loading of the sod on the Harbison's vehicle. By actively participating, Super-Sod assumed the same risk that its customer assumed with respect to the safety of the haul back home. Worse, Super-Sod actively created the risk by inadequately wrapping, carelessly loading, and failing to secure the load before sending its customer off to traverse the highway with other motorists, including Plaintiff. Michael A. Sutton, P.E. Aff. ¶¶ 6-8, attached as Ex. F.

It is undisputed that Super-Sod's employee is the one who wrapped the pallets of sod, and that the wrapping ultimately ripped, allowing the sod to spill onto the highway. Sox Dep. 50:18-20. There is a genuine issue of material fact whether Super-Sod was negligent in inadequately wrapping the pallets. Michael A. Sutton, P.E. Aff. ¶¶ 6,7; Sox Dep. 132:13-133:11; 50:18-20. There is a genuine issue of material fact whether the failure of the wrapping alone was the cause of the spillage onto the highway. Sox Dep. 50:4-20; Michael A. Sutton, P.E. Aff. ¶¶ 6,10. Consequently, there is a genuine issue of material fact whether Super-Sod is the one who negligently created the risk that caused the sod to end up blocking a lane of traffic on the highway.

In addition, there is a genuine issue of material fact whether Super-Sod loaded the trailer in such a manner as to render the trailer imbalanced and unsafe for travel. Michael A. Sutton, P.E. Aff. ¶¶ 6,7,10. While there is testimony that Super-Sod's employee simply placed the pallets where Sox told him to place them, there is also evidence from which the jury could find

that Super-Sod and its employee were more experienced in loading trailers and should have refused to disregard their own expertise. Kearsé Dep. 13:4-22; Super-Sod 30(b)(6) Dep. 17:23-18:7; Sox Dep. 51:17-22.

Moreover, Super-Sod actively participated in the loading of the Harbison trailer, yet took no measures to strap down or otherwise secure the load of pallets. Super-Sod knew that Sox did not have any straps and was not planning to secure the load before entering the highway. Kearsé Dep. 34:14-16; Sox Dep. 34:8-10; 63:14-16. In this regard, Super-Sod acted in concert with Sox and Harbison in allowing the unsecured pallets to be hauled down I-26 at highway speed, without regard to the obvious danger posed.

The facts of this case implicate Mavrikidis v. Petullo, in which the Supreme Court of New Jersey held that an asphalt supplier had "a common law duty...to load the trucks in such a manner that they were not overloaded and the load was secure." 707 A.2d 977, 992 (N.J. 1998) (quotation omitted). The basis for the holding was that it was readily foreseeable that overloading or failing to secure a load on a truck about to travel on public roads posed a danger to other motorists. Id. This holding was based on common sense.

Likewise, in this case the Court should conclude that once Super-Sod decided to participate in the wrapping and loading of the pallets, it acquired a common law duty to not create a risk of danger to the traveling public, including Plaintiff. Super-Sod chose to actively participate in the packaging and loading of the pallets of sod knowing that the pallets would be transported along public roads with other motorists like Plaintiff. Once Super-Sod decided to engage in this conduct, Super-Sod had a common law duty to refrain from creating of a danger. Johnson, 401 S.C. at 160, 735 S.E.2d at 668. Super-Sod had a duty to Plaintiff, and its motion for summary judgment must be denied on this ground.

- C. Super-Sod undertook a duty to Plaintiff to not release Harbison's truck and trailer from Super-Sod's premises unless in a safely loaded condition, and whether Super-Sod did is a question of law and fact to be resolved by the jury.

Again, Super-Sod arguably had no contractual obligation to Harbison to participate in the packaging or loading of the sod onto Harbison's trailer.² That is entirely beside the point whether Super-Sod owed a legal duty to Plaintiff. Super-Sod took it upon itself to actively participate in the packaging and loading of the Harbison trailer. There is no factual dispute that Super-Sod took it upon itself to package the pallets of sod, with its own selected wrapping product and procedure, for the purpose of securing the sod while in transport. That alone renders Super-Sod a voluntary actor with respect to the safety of the transport of the sod by Sox and Harbison. Super-Sod performed that act for the purpose of road safety, not simply protection of the goods sold to its customer.

As to the loading, there is a genuine issue of material fact whether Super-Sod merely took instruction from Sox as to where on the trailer to place the load and left all safety precautions up to Sox, or whether Super-Sod in fact maintained ultimate authority to control the situation and refuse to permit Sox to leave the premises with an unsafe load. The distinction is factually important. If the jury were to find the latter, then Super-Sod would be a voluntary actor with a duty to use due care in its own participation in the loading.

"The common law ordinarily imposes no duty on a person to act. If an act is voluntarily undertaken, however, the actor assumes the duty to use due care." Miller v. City of Camden, 329 S.C. 310, 314-15, 494 S.E.2d 813, 815 (1997) (citations omitted). Important, the Miller Court did not say that that someone must knowingly assume a legal duty. The person must simply

² Plaintiff does not admit that Super-Sod owed no such duty to Harbison.

voluntarily assume an *act*, at which point a duty is imposed upon them whether or not they realize it.

“While the law imposes this duty on a volunteer, the question whether such a duty arises in a given case may depend on the existence of particular facts. **Where there are factual issues regarding whether the defendant was in fact a volunteer, the existence of a duty becomes a mixed question of law and fact to be resolved by the fact-finder.**” Miller v. City of Camden, 329 S.C. 310, 314–15, 494 S.E.2d 813, 815 (1997) (citations omitted) (emphasis added). The voluntary duty assumed by the actor is owed to third parties if the evidence supports a finding that the duty was assumed for the benefit of third parties. Id. at 315, 494 S.E.2d at 815–16 (finding whether the voluntary actor was acting for the benefit of third parties was an issue to “be resolved by the jury”). There is a genuine issue here whether Super-Sod undertook its act in the contemplation of third parties, such as Plaintiff and other motorists on the highway.

When Harbison’s employee Sox arrived at Super-Sod to purchase the pallets of sod, he first paid for the sod in the front office and was given a ticket. He then had to drive a couple of miles to a location where the sod was to be loaded onto his trailer. Sox did not merely turn in his ticket and proceed to load the trailer himself, with all responsibility for safety falling on himself. Sox Dep. 24:3-12; 25:2-4; 26:8-29:6.

Rather, Super-Sod provided an employee with a forklift to load the pallets onto the trailer for Sox. Super-Sod also assigned this employee the task of stretch-wrapping the sod on the pallets to further contain the sod during transport. Super-Sod attempts to claim that despite the fact that it provides the acts of wrapping and loading the sod for its customers, it disclaimed any responsibility for the loading in its written receipt for payment given to Sox. Super-Sod Receipt Disclaimer, attached as Ex. G. In reality, Super-Sod simply disclaimed responsibility for any

damage to the *customer's* equipment. The language of the disclaimer on the customer's receipt does not contemplate disclaiming responsibility for the safety of the load in relation to third parties traveling public highways after the customer leaves Super-Sod. Super-Sod Receipt Disclaimer.

In fact, there is evidence in the record that Super-Sod itself, not the customer, retains ultimate authority over the safety of the load on customer vehicles. Super-Sod maintains ultimate authority to refuse to provide sod to a client who is inadequately equipped to safely haul the pallets of sod on the public roadways. In its 30(b)(6) deposition, Super-Sod testified that "we won't load something that we know is not safe, that we know is not safe, without a doubt." Super-Sod 30(b)(6) Dep. 36:11-19. Super-Sod further testified that it would refuse to participate in loading a customer's trailer if the trailer were unsafe for hauling a load. Super-Sod 30(b)(6) Dep. 71:14-23. Safety is supposedly a concern of Super-Sod, which is why Super-Sod takes the step of pre-wrapping the pallets of sod before loading them onto customers' vehicles in the first place. Super-Sod 30(b)(6) Dep. 39:22-40:17.

The Super-Sod employee who loaded the Harbison trailer testified that he is trained to ensure that he "safely load each trailer." Kearse Dep. 17:20-22. The employee also acknowledged that Super-Sod can and will refuse to let a customer leave with an unsafe load. Kearse Dep. 60:13-19. Yet, Super-Sod allowed Sox to leave with a loaded trailer fully knowing that Sox did not have more than 4,000 pounds of sod safely strapped to his trailer as required by South Carolina Code section 56-5-4100. Sox Dep. at 73:3-8; 84:9-5.

This testimony is more than a scintilla of evidence that in deciding to act—to wrap the pallets and load Harbison's trailer for the purpose of safety—Super-Sod assumed and maintained ultimate authority to ensure that customers did not leave the premises with an unsafe trailer, and

that this self-imposed obligation was for the purpose of the safety of motorists on the highway. In other words, Super-Sod assumed ultimate control over the safety of loads that it placed on customer vehicles for the purpose of everyone's safety, including third-party motorists such as Plaintiff. The jury could reasonably conclude that Super-Sod assumed a duty to Plaintiff and other motorists to not let unsafe load such as the one on the Harbison trailer leave Super-Sod's premises. This is a mixed question of law and fact, and thus a jury question pursuant to Miller. The Court should therefore deny Super-Sod's motion for summary judgment on the issue of duty.

II. PROXIMATE CAUSE IS A JURY QUESTION.

The issue of proximate cause in this case is governed by the South Carolina Supreme Court's opinions in Gause v. Smithers, 403 S.C. 140, 742 S.E.2d 644 (2013), and Matthews v. Porter, 239 S.C. 620, 124 S.E.2d 321 (1962). The Court should be curious, as Plaintiff is, why Defendant Harbison does not address—or even cite—these two controlling cases in its brief. Instead, Harbison mischaracterizes the holding in Newton v. S.C. Public Railways Commission, 319 S.C. 430, 462 S.E.2d 266 (1995), and wildly states that Newton stands for some broad proposition “that a person responsible for a stoppage or slowdown in traffic is not liable for collisions that may subsequently occur.” Harbison Brief at 2. As explained below, that is not what Newton stands for at all.

As instructed by the Supreme Court in Gause and Matthews, there is no bright-line rule of proximate cause in cases, such as this one, involving secondary accidents. The Court is to engage in the usual inquiry into whether reasonable minds could differ as to whether the secondary accident was foreseeable as a natural and probable consequence of the initial accident. Almost always, a jury question will exist, as it did in Gause and Matthews. The overriding

principle in South Carolina is that proximate cause “is normally a question of fact for determination by the jury” and “[o]nly in rare or exceptional cases may the issue of proximate cause be decided as a matter of law.” Gause, 403 S.C. at 150, 742 S.E.2d at 649 (quotations omitted). The case before the Court does not involve an “exceptional” issue of proximate cause, but one where reasonable minds could differ as to whether Defendant Meyer’s rear-ending Plaintiff in the midst of an active traffic slowdown was an ordinary and natural consequence of the sudden spillage of sod onto the 70 mph highway. Lisa Meyer Dep. 36:4-6; 33:6; Michael A. Sutton, P.E. Aff. ¶ 8; Trooper Gleich Dep. Ex. 1 at ¶ 6, attached as Ex. H³ (providing that he “expected a crash to happen”), ¶ 9 (providing that “it doesn’t take long for a crash to follow behind a spilled load or some other obstruction on the interstate”), ¶ 17 (providing that “if the sod hadn’t spilled on the road,” then this secondary accident would not have happened).

After mischaracterizing the holding and relevance of Newton, Defendant Harbison then takes great pains to summarize seventeen opinions from other jurisdictions where proximate cause was found not to have existed, under the particular facts of those cases. Notably, Harbison does not summarize or even cite a single case from South Carolina with a similar result. That is because there is not one. (And again, Newton is not relevant, or else the Supreme Court would not have intentionally chosen to disregard it in the more recent Gause opinion on secondary accidents.⁴)

In this case, pursuant to Gause and Matthews, there exist genuine issues of material fact whether the initial chaos caused by Harbison, Sox, and Super-Sod: (1) was a cause in fact of the

³ Trooper Gleich read his Affidavit into the record at his deposition on June 23, 2016 per S.C. Department of Public Safety policy.

⁴ According to Westlaw, since Newton was decided in 1995—more than twenty years ago—it has not been cited in any secondary-accident case in any jurisdiction throughout the country, including South Carolina.

Meyer-Plaintiff accident; and (2) was a legal cause of the Meyer-Plaintiff accident. Neither Harbison, Sox, nor Super-Sod is entitled to summary judgment on the issue of proximate cause.

A. Gause and Matthews Are Controlling. Newton Is Irrelevant.

The Supreme Court decided Matthews in 1962, and found a jury question as to proximate cause of a secondary accident “fifteen to forty-five minutes after the original collision.” 239 S.C. 629–30, 124 S.E.2d at 326. More recently, in 2013, the Court in Gause found a jury question as to proximate cause of a secondary accident caused so long after the initial accident that the police had already arrested the tortfeasor from the initial accident and transported him to jail. 403 S.C. at 144–45, 150–51, 742 S.E.2d at 646, 649–50. Both of these South Carolina opinions on secondary accidents illustrate that the length of time between the initial accident and the secondary accident is not dispositive of the issue of proximate cause. The length of time and the distance from the initial accident are mere factors in the proximate cause analysis to be performed by the jury.

i. Newton does not apply to secondary-accident cases.

In Newton, there was no initial accident for the Court to evaluate.⁵ It was not a secondary accident case. The issue in Newton was whether a rear-end car accident at a railroad crossing was within the scope of the risk created by a malfunctioning crossing sign. The crossing sign constantly signaled that a train was coming. The first car stopped not knowing about the malfunction. The second driver, knowing of the malfunction, failed to stop on the assumption that the first driver also knew about the malfunction and would proceed without stopping. The Supreme Court found that the risk of such a rear-end collision was simply not within the risk posed by the malfunctioning crossing sign. The actual risk posed was that a driver (like the

⁵ The Newton Court did not address, mention, or even cite to Matthews.

second driver) would disregard the sign, proceed to cross the rails, and be hit by a train that was actually coming. Since the rear-end car collision was outside the foreseeable risk, the malfunctioning crossing sign did not proximately cause the accident. Newton, 319 S.C. at 431–32, 462 S.E.2d at 267. The holding in Newton was that limited, and has no application to a secondary-accident case like the one before the Court. See Dan B. Dobbs et al., *THE LAW OF TORTS* § 212, *Scope of Liability (Proximate Cause)* (2d. Ed. 2016 Update) (examining Newton and noting that “while the outcome was expressed...as a product of the superseding cause rules,” the simple holding of the case was that a car-on-car accident was not “within the scope of the risk” posed by a malfunctioning railroad crossing sign).⁶

- ii. **Matthews v. Porter represents the South Carolina Supreme Court’s preference to allow the jury to consider all factors relevant to proximate cause in secondary-accident cases, and let each case be decided on its own facts.**

In Matthews, the original accident caused one of the vehicles to become disabled in the roadway, blocking a lane of traffic. The plaintiff safely arrived at the scene, got out of her car, and offered assistance to the motorists involved in the accident. There was evidence that between fifteen and forty-five minutes later, *after* law enforcement had taken control of the scene, another vehicle approached and for some reason was unable to safely stop. That vehicle struck the

⁶ Another inapposite case is Gibson v. Gross, 280 S.C. 194, 311 S.E.2d 736 (Ct. App. 1983). In Gibson, the plaintiff stopped at the scene of an automobile accident to intervene in an altercation between the two or three other drivers following an accident caused by the defendant. While standing next to the defendant’s vehicle, which was partially blocking the road, the plaintiff was struck by another car. In finding proximate cause absent as a matter of law, the Gibson Court held that the plaintiff was not among the class of persons intended to be protected by the statute prohibiting a motorist from blocking the roadway. Id. at 197, 311 S.E.2d at 739. The Court distinguished Matthews by stating that the plaintiff had not produced any evidence that the second driver had struck him because of the partially blocked roadway. Id. at 198–99, 311 S.E.2d at 739. Like Newton, Gibson is not applicable to the facts and issues before the Court.

plaintiff, and the plaintiff sued the at-fault driver in the original accident for causing her injuries suffered by the second collision. 239 S.C. at 622–23, 629–30, 124 S.E.2d at 322–23, 325–26.

The defendant argued that any negligence in causing the original accident did not proximately cause the second accident that injured the plaintiff. Central to the defendant's argument was that the negligence of the second driver who struck the plaintiff "could not have been foreseen by the [defendant] in the exercise of reasonable care and was not a natural and probable consequence of his original negligence."⁷ *Id.* at 626, 124 S.E.2d at 324. The Court disagreed, finding:

Our decisions are to the effect that liability exists for the natural and probable consequences of negligent acts or omissions, proximately flowing therefrom. **The intervening negligence of a third person will not excuse the first wrongdoer, if such intervention ought to have been foreseen in the exercise of due care. In such case, the original negligence still remains active, and a contributing cause of the injury. The test is to be found in the probable consequences reasonably to be anticipated, and not in the number or exact character of events subsequently arising.**

Id. (citation omitted).

Quoting *American Jurisprudence* on concurrent causes, the Court stated further:

The rule is that when an injury occurs through the concurrent negligence of two persons, and it would not have happened in the absence of the negligence of either person, the negligence of each of the wrongdoers will be deemed a proximate cause of the injury, although they may have acted independently of one another; and both are answerable, jointly or severally, to the same extent as though the injury were caused by his negligence alone, without reference to which one was guilty of the last act of negligence.

⁷ The Court also addressed the issue whether the original at fault driver, in addition to being negligent in causing the original wreck, was also negligent in failing to warn oncoming traffic of his disabled vehicle in the road. The Court addressed the proximate cause issue based on both separate acts of negligence. *Matthews*, 239 S.C. at 628–30, 124 S.E.2d at 325–26.

Matthews, 239 S.C. at 627, 124 S.E.2d at 324 (citation omitted).

The Matthews Court found jury questions as to cause-in-fact and legal cause. Id. at 632, 124 S.E.2d at 327. The lapse of time, whether warnings had been given to the second tortfeasor/driver, and whether the scene was under control by police or others were all just factors for the jury to consider in deciding whether the original wreck was a "substantial factor in bringing about" the secondary accident. Id.

The Court heavily relied on two cases from other jurisdictions: Johnson v. Sunshine Creamery Co., 274 N.W. 404 (Minn. 1937), and Van Derbeek v. Conlon, 124 A.2d 531 (N.J. 1956). In Sunshine Creamery, an entire hour had elapsed between the original and secondary accidents. The first wreck had resulted in a lane blockage, and another vehicle ended up striking the disabled truck in the blocked lane. Flares had been set out, but the court found it a genuine issue of material fact whether the flares adequately controlled the scene. The lapse of time and the control of the scene were merely factors for the jury in deciding proximate cause and whether the negligence of the second driver was an intervening cause that broke the causal connection to the original accident. Matthews, 239 S.C. at 630, 124 S.E.2d at 326.

In Van Derbeek, the original accident left the road blocked. Police had arrived and set out flares to control the scene. About an hour later, a second driver negligently drove into one of the disabled vehicles. The trial court allowed the case to go to the jury, which sided with the second driver defendant on the issue of proximate cause. The New Jersey Supreme Court, in affirming the verdict, instructed that the mere passage of time, however long, does not automatically render "inactive" the danger created by the original accident. That is a jury question. Matthews, 239 S.C. at 630-31, 124 S.E.2d at 326.

Heavily relying on the analysis in Sunshine Creamery and Van Derbeek, the Matthews Court found that it could not say as a matter of law “that the chain of causation was broken by the negligent conduct on the part of [the second driver], nor can we say as a matter of law that the negligence of [the first accident driver] was insulated by the acts of [the second driver.” The Court found it was “inferable from the evidence that” the plaintiff would not have been injured but for the negligence of the first accident driver, and that “[t]he evidence justifies an inference that the negligence of [the first accident] driver was a **substantial factor** in bringing about” the secondary accident. Matthews, 239 S.C. at 632, 124 S.E.2d at 327. In other words, despite the fifteen-to-forty-five-minute time lapse, evidence that the scene was under control, and clear evidence of the second driver’s negligence, the South Carolina Supreme Court held that there was sufficient evidence of cause-in-fact and legal cause for the jury to consider. The Court could not find proximate cause absent as a matter of law.

iii. Gause v. Smithers is consistent with Matthews.

The more recent Supreme Court of opinion of Gause v. Smithers, 403 S.C. 140, 742 S.E.2d 644 (2013), is entirely consistent with the Court’s Matthews opinion from more than fifty years ago. In Gause a police officer had pulled over a driver on suspicion of drunk driving. Instead of pulling off of the road, the driver parked in the left lane of traffic on a four-lane highway. The police officer parked directly behind the drunk driver. The plaintiff, another police officer, parked behind the first officer, who eventually left. Another officer arrived, took custody of the drunk driver, and transported the driver to jail. The plaintiff remained on the scene, waiting for the tow truck to retrieve the drunk driver’s car. The plaintiff was filling out paperwork in his cruiser when a second driver crashed into the cruiser, injuring the plaintiff. Gause, 403 S.C. at 144–45, 742 S.E.2d at 646.

The plaintiff sued the drunk driver who had left his car in the lane of traffic. The drunk driver defended on the ground that proximate cause was lacking, that the second accident was not foreseeable and not a natural consequence of his negligently parking in the road. Id. at 150–51, 742 S.E.2d at 649–50. The Court disagreed and found the issue of proximate cause to be a jury question. The Court stated:

Proximate cause is normally a question of fact for determination by the jury, and may be proved by direct or circumstantial evidence. The touchstone of proximate cause is foreseeability which is determined by looking to the natural and probable consequences of the defendant's conduct. Plaintiff need not prove the defendant's negligence was the sole proximate cause of the injury. To exculpate a negligent defendant, the intervening cause must be one which breaks the sequence or causal connection between the defendant's negligence and the injury alleged. **Only in rare or exceptional cases may the issue of proximate cause be decided as a matter of law.**

Id. at 150, 742 S.E.2d at 649 (citing Matthews v. Porter; other citations omitted) (emphasis added).

The Court specifically found that the second accident was a natural and probable consequence of the lane blockage caused by the first driver. The second driver's negligence in rear-ending the police cruiser, which surely had its blue lights flashing, did not break the chain of causation. Proximate cause was properly submitted to the jury. Id. at 150–51, 742 S.E.2d at 650.

C. Pursuant to Gause and Matthews, Proximate Cause Is a Jury Question in This Case.

On the record before it, the Court is unable to say as a matter of law that proximate cause is absent in this case. It is undisputed that Sox lost control of his vehicle on the highway—where the speed limit is 70 mph—and that the sod spilled out of the trailer into the right lane of traffic. It is likewise undisputed that the right lane had to be blocked while Sox, his co-worker, and a fireman removed the sod from the highway. Traffic had to be funneled through the left lane only

during this time. Before that time ended—within fourteen or fifteen minutes after the sod spilled onto the road—Defendant Meyer ran into Plaintiff.

The only evidence in the record of the conditions of the traffic backup where the second accident happened comes from Ms. Meyer. She has testified that she was looking at the road, paying attention, and there was a “sudden” stoppage of traffic, which the jury could certainly infer was due to the lane blockage caused by the sod spill. Meyer Dep. at 35:18–37:13; 55:9–15; see also Trooper Gleich Dep. Ex. 1 at ¶¶ 19-20 (providing that “when we have travel blocked on the interstate due to a spilled load or a wreck, we send a cruiser a half a mile behind the end of the traffic to put blue lights on to warn other drivers of the sudden stop ahead so that they will have time to react,” but in this instance, “the crash happened too fast and before a cruiser could get positioned to warn other drivers”).

None of these facts remove this case out from under the umbrella of Matthews and Gause. Whereas the secondary accident in Matthews occurred fifteen to forty-five minutes after the original accident, the accident here occurred no more than seventeen minutes after the spill. Just like in Matthews, there is some evidence that authorities had assumed control over the scene and traffic. Just like in Matthews and Gause, there is evidence that the second driver, here Ms. Meyer, perhaps should have recognized the situation and been able to prevent the second accident, but she did not. If none of those facts permitted the Supreme Court in Matthews or Gause to find proximate cause absent as a matter of law, then respectfully, this Court must find a jury question on proximate cause here.

Everyone who has ever travelled on a highway is aware of the risks that arise when traffic suddenly stops or is rerouted after an accident. See Gause, 403 S.C. at 150, 742 S.E.2d at 650 (“The danger of leaving a vehicle standing on the traveled portion of a highway is well known.”)

(quoting Jeffers v. Hardeman, 231 S.C. 578, 583, 99 S.E.2d 402, 404 (1957)). The chance of a secondary accident due to inattention of other drivers increases dramatically. Trooper Gleich Dep. Ex. 1 at ¶¶ 5-9, 17-20; see also Herman v. Welland Chem., Ltd., 580 F. Supp. 823, 829 (M.D. Pa. 1984) (providing that a jury could find that a road closure due to an accident could "increase the likelihood of attendant traffic accidents"). For Defendants to claim that a secondary accident such as this was unforeseeable is nonsense.

Defendants want the Court to define a stopping point for the aftermath of this accident, and determine that the aftermath ended before Plaintiff's accident occurred. Yet, the Supreme Court has instructed in Matthews that such a determination is improper. The Trooper who responded to this scene has testified that in fact that aftermath had not ended before Plaintiff's accident. Trooper Gleich Dep. Ex. 1 at ¶¶ 19-20.

Defendants also want the Court to rely on cases from other jurisdictions which consider whether the secondary accident was an "ordinary" or "extraordinary" intervening cause. Harbison Brief at 22. Harbison argues that Ms. Meyer's actions were "extraordinary," and therefore unforeseeable, because according to Harbison, she "admits she was not looking at the road at the time of the collision." Harbison Brief at 22. Yet, that was not Ms. Meyer's testimony. She testified that she was paying attention and looking at the road. Meyer Dep. 35:18-37:13; 55:9-15.⁸ There is a genuine issue of material fact about the degree to which she was negligent.

Further, as the Georgia Supreme Court held in Smith v. Commercial Transportation, Inc., 470 S.E.2d 446, 448 (Ga. 1996), the "the nature and degree" of the second driver's conduct is irrelevant to the foreseeability of the second accident. Such an inquiry is "illogical, of course, since by definition any intervening negligent act will not be reasonable or normal, and we know

⁸ Plaintiff contends that Ms. Meyer was negligent, and that her negligence was a concurrent cause along with the negligence of the other Defendants.

that not all intervening negligent acts cut off liability.” “In any case, the foreseeability analysis is not that specific: the relevant inquiry is not whether the exact intervening negligent act was foreseeable, but whether, as a general matter, *the original negligent actor should have anticipated that this general type of harm might result.*” *Id.* at 448 (emphasis added). In *Smith*, the second accident occurred more than six hours after the original accident, and approximately two miles away. *Id.* at 448–49. Like the South Carolina Supreme Court, the Georgia Court found the time and space factors mere “factors to be considered in the foreseeability analysis,” but “not decisive as a matter of law.” *Id.* at 449; accord *Herman v. Welland Chem., Ltd.*, 580 F. Supp. 823, 827–829 (M.D. Pa. 1984) (finding that the court could not as a matter of law hold that a similar six-hour gap between the two accidents had “any legal significance,” and should be considered by the jury in deciding proximate cause).

The Supreme Court of Maine has similarly held. In *Wing v. Morse*, 300 A.2d 491 (Maine 1973), the original accident occurred when a driver attempted to make an illegal U-turn on the highway. Police arrived and turned on the blue lights to control the scene. Traffic backed up approximately half a mile behind the accident. At least ten minutes later, the plaintiff approached the end of the admittedly visible back-up, and eventually reached a point approximately 200 yards from the original accident. Despite the fact that traffic ahead of him at that point had completely stopped, he had failed to slow down enough to avoid hitting the vehicle in front of him if he stayed in the lane. He instead swerved into the median, was injured, and sued the tortfeasor in the original accident. 300 A.2d at 493–96. After the jury returned a verdict for the plaintiff, the Supreme Court of Maine, like the South Carolina Supreme Court in *Matthews*, found that the time and distance between the first and second accidents were not dispositive of the proximate cause issue. They were merely factors in the proximate cause

analysis. The court could not rule as a matter of law that proximate cause was absent. Wing, 300 A.2d at 496; see also Taylor v. Jackson, 643 A.2d 771, 773–78 (Pa. 1994) (analysis and result similar to Matthews, Gause, Smith, Herman, and Wing in case involving second wreck hours after and miles away from first wreck).

Further, construing the facts in a light most favorable to Plaintiff, Ms. Meyer's conduct may not be deemed "extraordinary" by the jury. In Cooke v. Nationwide Mutual Fire Insurance Company, 14 So.3d 1192 (Dist. Ct. App. Fla. 2009), the original accident had occurred approximately one hour prior to the second accident. At the end of the traffic back-up, which extended approximately one and a half miles, traffic slowed to approximately twenty to thirty miles per hour. The police had put out flares to give motorists notice of the accident. Unfortunately, the second accident driver failed to slow down from his 70 mph speed and slammed into the back of a truck at the end of the back-up. Id. at 1193–94, 1197. The second driver sued the tortfeasor in the original accident, who defended on the ground that proximate cause was lacking, in part, because he could not have foreseen such "extraordinary" conduct by the second accident driver in failing to heed caution signs and the slowed traffic before him. The Florida District Court of Appeals rejected this argument, finding that the chain of events leading to the second collision was "not attenuated, and is certainly not beyond the anticipation of those involved in the first accident." Id. at 1197.

In this case, it seems incontrovertible that Plaintiff's accident would not have occurred but for the spillage of sod onto the highway. Traffic would not have slowed or suddenly stopped, and Ms. Meyer would not have rear-ended Plaintiff. Trooper Gleich Dep. Ex. 1 at ¶ 17. Cause in fact is apparent, but Plaintiff concedes that is for the jury to decide.

As to legal cause, whether the spillage of the sod was a substantial factor in causing this secondary accident is at the very least debatable. Reasonable minds could differ when considering the evidence of the traffic back-up, the relatively brief lapse of time between the sod spillage and Plaintiff's accident, and the conditions at the end of the traffic back-up where Ms. Meyer struck Plaintiff. See Trivelas v. S.C. Dept. of Transp., 348 S.C. 125, 136–37, 558 S.E.2d 271, 276–77 (2001) (quoting *American Jurisprudence* for the principle that “[w]here it is not plain that reasonable men could not reasonably find a causal relation between defendant’s act and the injury, or a part of the injury, the court must leave it to the jury to find as a fact whether defendant’s conduct was a substantial factor in producing the injury, or part of the injury”). That is why proximate cause is a jury question in this case. The motions for summary judgment by Harbison/Sox and Super-Sod should therefore be denied on the issue of proximate cause.

CONCLUSION

Plaintiff respectfully requests that both Harbison/Sox and Super-Sod’s motions for summary judgment be denied. These Defendants all owed Plaintiff statutory and common law duties to prevent precisely the type of harm that Plaintiff suffered in this highway accident. Harbison and Sox do not even contest the issue of duty in their motion. Super-Sod does.

Further, contrary to the positions of Harbison/Sox and Super-Sod, the issue of proximate cause in this case, as it is in almost every case, is a jury question. This case involving an original accident (the sod spillage) and a secondary accident (Plaintiff’s accident) is controlled by the Supreme Court’s decisions in Gause v. Smithers, 403 S.C. 140, 742 S.E.2d 644 (2013), and Matthews v. Porter, 239 S.C. 620, 124 S.E.2d 321 (1962). Pursuant to those decisions, there is no genuine issue that proximate cause in this case is not a jury question. Both motions for summary judgment should be denied.

A. Super-Sod owed statutory and common law duties to Plaintiff.

Super-Sod owed Plaintiff a statutory duty pursuant to South Carolina Code section 56-5-4100, and also owed a common law duty for multiple reasons. Super-Sod did more here than sell some pallets of sod to a customer who hauled them off the premises. Super-Sod affirmatively engaged in the act of stretch-wrapping the pallets in contemplation of the risk of the pallets falling off of Harbison's trailer. Super-Sod undertook the act of loading the pallets on Harbison's trailer on behalf of Harbison and Sox. Super-Sod allowed Sox to leave Super-Sod's premises without first securing the pallets to Harbison's trailer (as required pursuant to Code section 56-5-4100), knowing that Sox was about to travel back to Columbia via the 70 mph highway. Super-Sod did all of that despite the fact that Super-Sod could have exercised the right, which it acknowledges that it had, to refuse to allow its customer to leave with an unsafe load.

Under the plain language of Code section 56-5-4100(A) and (C), Super-Sod, as loader of the Harbison trailer, owed a duty to ensure that Sox left the premises with his trailer "loaded as to prevent any of its load from dropping, sifting, leaking, or otherwise escaping from the vehicle...." As a member of the traveling public, Plaintiff was within the class of persons that the statute was intended to protect, and Super-Sod therefore owed Plaintiff this statutory duty.

Further, pursuant to common law, once Super-Sod elected to participate in the loading of the trailer, Super-Sod had a duty to Plaintiff and other members of the traveling public to not create a risk of danger. Here, Super-Sod actively created the risk by inadequately wrapping, carelessly loading, and failing to secure the load before sending its customer off to traverse the highway with other motorists, including Plaintiff.

Furthermore, and for similar reasons, once Super-Sod elected to undertake the act of wrapping and loading the Harbison trailer, it assumed a common law duty to act with due care. Super-Sod may initially have had no obligation to its customer to perform those acts, but once it did, it had an obligation to Plaintiff and other travelers on the highway to do so with due care.

B. The issue of proximate cause is a jury question.

Proximate cause in this secondary-accident case is governed by the Supreme Court's opinions in Gause and Matthews. The governing principle here is that proximate cause "is normally a question of fact for determination by the jury" and "[o]nly in rare or exceptional cases may the issue of proximate cause be decided as a matter of law." Gause, 403 S.C. at 150, 742 S.E.2d at 649 (quotations omitted).

Harbison's argument that Newton v. S.C. Public Railways Commission, 319 S.C. 430, 462 S.E.2d 266 (1995), is controlling is simply incorrect. Newton is irrelevant under these facts.

Under these facts, there is undoubtedly a jury question as to cause in fact. As the Trooper who investigated the scene has testified, Plaintiff's accident would not have occurred but for the spillage of sod onto the highway. Traffic would not have slowed or suddenly stopped, and Ms. Meyer would not have rear-ended Plaintiff.

Also under these facts, reasonable minds could differ as to foreseeability and legal cause. The Trooper testified that the secondary accident here was of course foreseeable. He recognized the risk as soon as he understood that sod had spilled onto the highway and blocked a lane of traffic. He would normally have positioned a second trooper as far back as a half mile behind the traffic stoppage, but this accident happened so quickly that he was unable to follow that protocol.

Under Matthews and Gause, the time lapse between the sod spillage and Plaintiff's accident is but one factor for the jury to consider in analyzing proximate cause. The same is true for the spatial distance between the two accidents, and for the conditions existing at the end of the traffic back-up. Defendant Lewis, who rear-ended Plaintiff, testified that there was a sudden stoppage of traffic where the accident occurred.

Based on these factors, there is a genuine issue of material fact whether the second accident was a foreseeable result, a natural and probable consequence of Harbison/Sox and Super-Sod's negligently spilling sod onto a 70 mph highway. It is for the jury to debate these factors, not for the Court to decide as a matter of law. Both motions for summary judgment should therefore be denied.

YARBOROUGH APPEGATE LLC
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843-972-0150 office
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William E. Applegate IV, Esquire
David B. Lail, Esquire
ATTORNEYS FOR THE PLAINTIFFS

6-24, 2016
Charleston, South Carolina

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record by mailing, e-mailing or hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 24th day of June, 2016

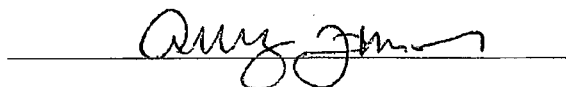


Exhibit A

Cody Sox Deposition Excerpts

IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
ORANGEBURG COUNTY
FIRST JUDICIAL CIRCUIT

DEPOSITION OF CODY T. SOX

PRICE OULLA AND BONNIE OULLA,

Plaintiffs,

vs.

CASE NO. 2014-CP-38-1590

LISA VELAZQUES, HARBISON
COMMUNITY ASSOCIATION, INC.,
CODY SOX, AND PATTEN SEED
COMPANY, D/B/A SUPER-SOD,

Defendants.

DEPONENT: CODY T. SOX

DATE: SEPTEMBER 30, 2015

TIME: 1:00 PM

LOCATION: YARBOROUGH APPLGATE LAW FIRM
CHARLESTON, SOUTH CAROLINA

REPORTED BY: CHERIE J. ANDERSON, RMR, RPR, CRR
NCRA REGISTERED MERIT REPORTER
CLARK & ASSOCIATES, INC.
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1 A P P E A R A N C E S

2
3 ON BEHALF OF PLAINTIFFS

4 YARBOROUGH APPELATE LAW FIRM
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 291 East Bay Street, Second Floor
 Charleston, SC 29401

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7 ON BEHALF OF DEFENDANT LISA VELAZQUES

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10 GOODING & GOODING, P.A.
11 BY: MARK B. TINSLEY
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 Allendale, SC 29810

12
13 ON BEHALF OF DEFENDANTS HARBISON COMMUNITY ASSOCIATION
14 AND CODY SOX

15 BARNES ALFORD STORK & JOHNSON, LLP
16 BY: CURTIS W. DOWLING
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 Columbia, SC 29202

17 ADAMS & REESE, LLP
18 BY: KIRBY D. SHEALY III
 1501 Main Street, 5th Floor
 Columbia, SC 29201

19
20 ON BEHALF OF DEFENDANT PATTEN SEED COMPANY

21 MURPHY & GRANTLAND, P.A.
22 BY: E. RAYMOND MOORE III
 4406-B Forest Drive
 Columbia, SC 29206

23
24 ALSO PRESENT: Dave Grove

25

Clark and Associates Inc.

I N D E X

- - -

CODY T. SOX

EXAMINATION

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BY MR. GRIFFITH

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BY MR. MOORE

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BY MR. GRIFFITH

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EXHIBITS

EXHIBIT NO.

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Exhibit No. 02

Aerial View

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Exhibit No. 03

Branham Statement

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Exhibit No. 04

Photograph

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1 CODY T. SOX

2 having been first duly sworn, was examined and
3 testified as follows:

4 EXAMINATION

5 BY MR. APPLGATE:

6 Q Sir, my name is William Applegate, and I
7 represent Bonnie and Price Oulla, who were injured
8 back on July 22nd, 2014 when there was a big
9 pile-up of cars.

10 And there's a lawsuit that's pending currently
11 against the Harbison Community Association related to
12 the stop in the traffic on the road that day, and so
13 I'm here today to ask you some questions about what
14 you know about what happened that day so we can
15 figure out what's going on.

16 Do you understand?

17 A Yes.

18 Q So have you ever had your deposition taken?

19 A No.

20 Q So I'm sure your attorneys explained to you,
21 general ground rules: Let me ask the question, and
22 then you can give me an answer. If you don't
23 understand the question, ask me to repeat it, explain
24 it, and I'll do that for you.

25 If you need to take a break, you can do so.

Clark and Associates Inc.

1 A No.

2 Q Do you have any criminal background?

3 A No.

4 Q Do you have any history -- and I'll tell you
5 that I have received some records from Harbison
6 related to this case; we exchanged information, so I
7 have your personnel file. And it's correct that
8 you-all would go through some sort of drug
9 screenings?

10 A Yes.

11 Q Did you ever have anything revealed on your
12 drug screenings?

13 A No.

14 Q Did you ever test positive while you were
15 working for Harbison?

16 A No.

17 Q Do you have any type of criminal background?

18 A No.

19 Q Have you ever been involved in any lawsuits?

20 A No.

21 Q On the date of July 22nd, 2014, can you kind
22 of take me through the events of the morning, so
23 starting when you woke up.

24 A Woke up. Got ready for work. Got to work.

25 We usually got there about 6:25, 6:30. We have our

1 brief meeting with the maintenance crew, and everyone
2 was assigned their tasks.

3 Earlier in the week, I had talked with Dave
4 Grove about us getting some sod for a project on the
5 outside of the pool, and he approved it; we ordered
6 the sod; and they gave us a time when we could come
7 to pick it up.

8 Myself and Corey Branham drove down there in
9 the white maintenance truck with a green John Deere
10 double-axle trailer. We got down there, I think it
11 was, around 11:00 and went to the main office of
12 Super-Sod, where we made our final purchase of the
13 sod. And they gave us direction to travel down the
14 road about 2 miles to where the sod was located.

15 We pulled in. The Super-Sod employees then
16 used a large type of -- large equipment to place the
17 two pallets on the trailer, centering them over the
18 axles.

19 We then left, went to the gas station at
20 Exit 54 in Orangeburg to get something to eat from
21 the Subway and, I think it was, like Chester's
22 Chicken. That was at 11:50. Grabbed our food.

23 Went, got back on the road. Had -- Corey was
24 eating his food. My food was sitting there in the
25 seat. Got onto the ramp heading towards 150 -- or at

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1 54 heading towards Columbia on 26.

2 Right after getting off the ramp and making
3 our way into the slow lane of I-26, we started
4 building up speed, and I got to about 48 or 50 miles
5 an hour when a large semi with a -- some -- it was a
6 blue-colored trailer began swaying just a little bit,
7 taking over our lane a little. Nothing major, but it
8 moved over in our lane enough where we would have
9 struck the back of it.

10 I then let off the gas and adjusted 3 to
11 4 feet to the right, trying to go into the emergency
12 lane so we wouldn't hit this trailer. And at that
13 time, our trailer began to sway, almost fishtail a
14 little bit. I kept it under control in the slow lane
15 and then pulled the vehicle off into the emergency
16 lane.

17 At that time, I looked back and noticed that
18 there was -- half a pallet of sod from the trailer
19 had rolled off the back of it into the slow lane of
20 I-26. No cars were hit. The left lane of traffic
21 kept moving. The right lane slowed, and people
22 actually drove over some of the sod.

23 I called -- I made sure Corey was okay. I
24 called 911. They dispatched me over to the trooper's
25 line, which at the time, the phone went dead. I

1 called back and -- to dispatch, and they dispatched
2 two fire engines -- or a fire engine and another
3 emergency fire truck; it was a large F-250,
4 something -- that style truck, to the scene, where
5 they blocked the slow lane for about 40 to 50 yards,
6 40, 50 -- yeah, 40, 50 yards, so that we could then
7 remove the sod from the road and traffic could
8 continue.

9 Q Let me pause you right here. All right.
10 We're going to come back to that point after where
11 the fire truck came. Okay.

12 Let me try to just go back and ask you a
13 couple detailed questions about your morning. Okay?

14 A Okay.

15 Q Back to the beginning, the first thing you did
16 when you arrived at work -- and that was around
17 8:00 --

18 A 6:30.

19 Q 6:30. Okay. You-all had a meeting with the
20 crew?

21 A Yes.

22 Q And do you know specifically at all what was
23 discussed that day?

24 A The group was supposed to work on concrete,
25 and me and Corey were supposed to go pick up the sod.

1 Q And Corey, again, he was another maintenance
2 worker, but you were in charge of him?

3 A Yes.

4 Q And so as far as any kind of direction related
5 to your task for the morning, that direction was
6 provided by -- you were the leader of that --

7 A Yes.

8 Q -- event.

9 Had you ordered the sod yourself?

10 A Yes.

11 Q And so you had called the Super-Sod, the local
12 Super-Sod, and asked them to place an order for two
13 pallets?

14 A Yes.

15 Q Did you ask for it to be specifically prepared
16 in any manner?

17 A No.

18 Q Tell me what you ordered.

19 A I ordered two pallets of Centipede grass or
20 sod.

21 Q And how did you expect to pick it up?

22 A They instructed me that I could bring a
23 trailer down and they would load it on.

24 Q Was there any discussions at that time about
25 how it was going to be loaded or what you-all were

1 going to do?

2 A No.

3 Q So again, you arrived at the Super-Sod. And
4 did you go inside at that time and pay?

5 A Yes.

6 Q And that's just right there at the front of
7 the -- is there an office, or how was that set up?

8 A There was a building that had all of their --
9 their financial and office workers, and then a mile
10 or so, 2 miles, down the road was where the sod was
11 being pulled up and placed on pallets and ready to be
12 shipped or given to people.

13 Q And so when you went into the office, told
14 them who you were -- and did you make payment? Had
15 you already received an invoice beforehand or --

16 A Yes.

17 Q -- how did that work?

18 So you took in your invoice?

19 A Yes.

20 Q And you paid it on the spot?

21 A Yes.

22 Q With a Harbison card?

23 A Yes.

24 Q Was there any conversation you had with the
25 office at that time?

1 A No.

2 Q Now, they direct you, at least, to go a mile
3 and a half down the road?

4 A Yes.

5 Q And had you ever been there before?

6 A No.

7 Q Had you ever engaged in this process before,
8 either personally on your own time or working for
9 Mr. Grove or Harbison?

10 A No.

11 Q Tell me real quickly what you had done before
12 you left the Harbison, where you were working. One,
13 you had gotten the truck, correct?

14 A Yes.

15 Q You had hooked up your trailer?

16 A Yes.

17 Q Had you done anything else?

18 A We had checked the tire pressure in the
19 trailer as well as the truck, filled the truck with
20 gas. And another maintenance employee, Bruce Mike,
21 checked the oil in the truck.

22 Q Did you do anything else? Did you grab any
23 other equipment to take with you?

24 A No.

25 Q Is the truck parked next to a maintenance shed

1 or anything of that nature?

2 A Yes.

3 Q Did you grab any type of straps or bungee
4 cords or any other kind of --

5 A No.

6 Q -- devices that you could use to tie down?

7 A No.

8 Q So we're going back to Super-Sod. You make
9 your payment; they tell you where to go; you go a
10 mile and a half down the road. Correct?

11 A Yes.

12 Q You get there, hand them your payment slip?

13 A Yes.

14 Q And who did you speak to there?

15 A It was a black gentleman. I do not know his
16 name.

17 Q Do you recall what he looked like at all?

18 A Skinny, about 5'8. He was sitting on the
19 actual piece of equipment that loaded the tractor --
20 or loaded the sod.

21 Q What was that piece of equipment? Do you
22 know?

23 A I don't know the name of it.

24 Q And I'm guessing; I'm not good with this,
25 either: Would it be like a front loader with the

1 two --

2 A In a way, but it was an outdoor-type front
3 loader.

4 Q Big tractor tires?

5 A Yes.

6 Q Four-wheel tractor tires?

7 A Yes.

8 Q And then sort of a bar sticking out with a
9 loading device --

10 A Yes.

11 Q -- that went up and down?

12 A Yes.

13 Q And so you handed him your invoice. And where
14 did he go to get the sod? Was it already out?

15 A It was already out sitting in a -- in an area
16 where they had prepared pallets of sod waiting.

17 Q Tell me what the sod looked like that day.
18 And what I mean is, was it on one of the little
19 crates? Was it on the ground? How was it prepared?

20 A It was sitting on each pallet -- each load of
21 sod was sitting on a pallet with plastic wrap on it.

22 Q But was it on -- you know what I'm saying --
23 like a wooden crate, thick 2 by 4s, wood slats?

24 A Yes. It was on something to move the actual
25 sod onto the truck.

1 Q So you pulled up your car. Did they instruct
2 you where to put the vehicle?

3 A No.

4 Q Did you just pull up the vehicle right next to
5 where the sod was laying?

6 A Yes.

7 Q Did you open the trailer or did they open the
8 trailer, or how did that work?

9 A I opened the trailer.

10 Q And that's just the two compartments, I think?
11 Let me just make sure here.

12 (Exhibit No. 01 was marked for
13 identification.)

14 Q I'll go ahead and mark this as Exhibit 1 to
15 the deposition. Does that appear to be the trailer
16 that was used to transport the sod on July 22nd?

17 A Yes.

18 Q That trailer is a Harbison trailer?

19 A Yes.

20 Q So again, what it appears is, on the back,
21 there's just a small sort of two-sided gate that you
22 have to drop down. Is that correct?

23 A Yes.

24 MR. DOWLING: Object to the form.

25 Q Is that so that they can drive up on that?

1 A Yes.

2 Q And what did they do? Did Super-Sod drive up
3 on there?

4 A Super-Sod drove up on there all the way to the
5 actual back of the trailer.

6 MR. TINSLEY: Can he mark that where he just
7 pointed?

8 Q I'm going to get you to follow-up on that
9 question and mark where -- I guess the first question
10 is, where did they drive to on here? Did they just
11 drive so the wheels were still on these sort of wheel
12 racks?

13 A Yes.

14 Q And then where did they drop the first pallet
15 of sod? Can you do an approximate? Put like a
16 number 1 for the first pallet.

17 A (The witness writes.)

18 Q And they also put a second pallet on there?

19 A Yes.

20 Q Where did they put the second pallet of sod?

21 A The second pallet of sod was placed behind the
22 first pallet, but before they placed the second
23 pallet, they used their machine to push the first
24 pallet over the axle.

25 Q So is the way it was set up was that the two

1 back out onto the road?

2 A We checked the tires on the trailer, checked
3 the hitch, and made sure the trailer looked balanced;
4 there was no weight disproportionate to one side or
5 the other.

6 Q Did you attempt to use any type of rope or
7 string or bungee to tie these pallets down?

8 A No.

9 Q Was the bed of the trailer clean and free of
10 debris?

11 A Yes.

12 Q Other than the pallets?

13 A Yes.

14 Q And had you cleaned it prior to use this day
15 or --

16 A Yes.

17 Q So as you arrived, the bed was completely
18 clean?

19 A Yes.

20 Q You placed the pallets. Was there any debris
21 left around the pallets at that time?

22 A No.

23 Q And again, they placed them, again, somewhat
24 over the axles; is that correct?

25 A Yes.

1 Q -- left and around you?

2 A Yes.

3 Q At that point, obviously there was no police
4 or EMS or fire to assist you?

5 A No.

6 Q It was a fairly busy traffic time, correct?

7 A I don't recall.

8 Q When you exited the vehicle, saw the sod in
9 the road, cars started to move around, did you guys
10 attempt to run out and start pulling it out?

11 A No.

12 Q So you were going to wait for somebody to get
13 there -- police -- before you went into the road to
14 get the sod?

15 A Yes.

16 Q So I would assume there were enough cars on
17 the road for you to be concerned about getting out on
18 the road and trying to pull the sod off?

19 A Yes.

20 Q It was a busy day. And the speed limit is
21 what at that point in time?

22 A I don't recall.

23 Q But generally on I-26 in that area, do you
24 know what the speed limit is?

25 A No.

1 the pallet and fall into the road?

2 MR. MOORE: Object to the form.

3 You can answer.

4 A My guess is due to the movement of the
5 trailer.

6 Q You earlier talked about a wrapping that was
7 around the sod. I mean around the pallet. Correct?
8 The shrink-wrap of some sort?

9 A A wrap around the sod, yes.

10 Q Was that still in the same condition as it had
11 been when you picked up the sod when you stopped the
12 truck?

13 A No.

14 Q What was the status of the wrapping at that
15 time?

16 A It was torn down about halfway from the top.

17 Q And from where it had torn down, the rolls
18 higher, than, I guess, the tear had fallen into the
19 road?

20 A Yes.

21 Q Now, as you stated, the swaying of the trailer
22 had, in your mind, been part of the reason why the
23 sod broke free. Any time prior to where you were --
24 I guess where the vehicle started swaying on I-26,
25 had you ever been that fast while carrying the sod

1 before that day?

2 A Yes.

3 Q Where had you been going that speed?

4 A From where we picked the sod up to the gas
5 station.

6 Q And what speed did you reach at that time?

7 A We were at 50 miles an hour, I believe. That
8 was the speed limit, and I was inside the speed
9 limit.

10 Q And you had gone 50 miles an hour, and there
11 had been no swaying at that time?

12 A No.

13 Q We started to discuss this before, but had you
14 done any analysis on where, in fact, the sod or any
15 weight should have been placed on the vehicle or on
16 the trailer prior to going and having the sod placed
17 where it was?

18 A No.

19 Q Had you ever used that trailer before?

20 A Yes.

21 Q And what had you done with that trailer before
22 that day?

23 A I had transported a tractor, several
24 lawnmowers on it before, with equipment, concrete in
25 bag form, 80-pound bags; and various lumbers had been

1 is consistent with the trailer's use, meaning made
2 sure that the weight of the load was appropriate for
3 that trailer?

4 A Yes.

5 Q Would you agree with me that you really made a
6 conscious decision not to secure the load before you
7 left Super-Sod?

8 MR. DOWLING: Object to the form.

9 A Could you repeat that?

10 Q You made a decision not to secure that load
11 before you left Super-Sod?

12 A Yes.

13 Q Had you had bungees and lines available to
14 you, you had no intent on using them?

15 A No.

16 Q Can you go back and tell me about your family.
17 Tell me the names of your family members, cousins,
18 and that kind of thing in South Carolina.

19 A I have several. Parents are Tim and Cheryl
20 Sox. I have two brothers, Luke and Cooper Sox.

21 Q Where do Tim and Cheryl live?

22 A West Columbia.

23 Q And where do your brothers live?

24 A Luke lives in Charleston; Cooper lives in West
25 Columbia.

1 Q And you didn't think to pick up the straps to
2 take with you to strap it down?

3 A No.

4 Q Did that cross your mind before you left?

5 A Yes.

6 Q Why didn't you take some straps?

7 A We had a miscommunication between employees.

8 Q And what was that?

9 A I thought I was -- or I thought Corey was
10 grabbing the straps, and Corey thought I was grabbing
11 the straps.

12 Q So you had planned on taking straps?

13 A Yes.

14 Q And just miscommunication, forgot to take them
15 altogether?

16 A Yes.

17 Q When you got to Orangeburg, why didn't you
18 turn around and go back to Columbia and tell
19 Super-Sod, we can't do it today; we'll be back
20 tomorrow?

21 A I don't know.

22 Q Why didn't you just run into Orangeburg and/or
23 Bowman, I guess, and go to the hardware store and
24 pick up some straps?

25 A I don't know.

1 Q Would that have been a safe thing to do?

2 A Yes.

3 Q Did you ask Super-Sod if they had any straps?

4 A Yes.

5 Q And what did they tell you?

6 A No.

7 Q So they had none that they could give you?

8 A Not that I recall.

9 Q So at that time, once it was loaded up, you
10 were aware that you didn't have any straps on; is
11 that correct?

12 A Yes.

13 Q And did that give you any cause for concern?

14 A No.

15 Q Why not? I mean, obviously you meant to take
16 straps; you meant to use them; but once you forgot
17 them and didn't have them, there was no concern on
18 your part?

19 MR. DOWLING: Object to the form.

20 A Could you explain?

21 Q Sure. You meant to take straps, correct?

22 A Yes.

23 Q You meant to use straps; is that correct?

24 A Yes.

25 Q When you got to Orangeburg, you realized you

1 let you go?

2 A Yes.

3 Q They didn't tell you that you can't go because
4 this is not good?

5 A No.

6 Q In other situations where you've had to carry
7 stuff on that trailer for Harbison, do you always
8 strap the equipment or whatever is on that trailer
9 down?

10 A No.

11 Q No. What would you not strap down?

12 A Lawnmowers. Yeah, mostly the large
13 lawnmowers.

14 Q Have you ever been out on the interstate with
15 lawnmowers before?

16 A No.

17 Q Is there a concern about the load shifting
18 when you apply the brakes if you are in an emergency
19 situation?

20 A Could you explain?

21 Q When you've got something on your trailer, no
22 matter what it is, is there a concern about the load
23 shifting?

24 A Yes.

25 Q And what do you do to avoid a load from

1 A Yes.

2 Q Is that right?

3 A Yes.

4 Q And I think you may have just answered this to
5 Mr. Moore. The shrink wrap around the pallets, it
6 was busted on both of them; it was cracked down the
7 sides?

8 A No.

9 Q The wrapping around the pallets, you said one
10 of them was ripped, right?

11 A Yes.

12 Q And the second was ripped just at the top or
13 the whole side or --

14 A Just at the top.

15 Q So the first one was ripped down, was a bigger
16 rip, and the second one was a smaller rip; is that --

17 A Yes.

18 Q Do you know how long those rips were? I guess
19 the first pallet was almost the entire pallet, and
20 the second one was half of it? Or put it in your
21 words.

22 A It was -- however much came off of each pallet
23 was where the rip was located, like how tall the rip
24 was.

25 Q So at the end of the day, the rip would have

1 equaled half a pallet between the two?

2 A Yes.

3 MR. APPLEGATE: That's all the questions I
4 have.

5 Mitch?

6 EXAMINATION

7 BY MR. GRIFFITH:

8 Q Mr. Sox, just looking at the Google map, what
9 I want to make sure I understand, if you set it down,
10 this has been marked as Exhibit Number 2 to your
11 deposition?

12 A Yes.

13 Q I'm not sure how this works. Have you ever
14 seen this before?

15 A The map?

16 Q Yes, sir.

17 A Yeah.

18 Q You have seen this?

19 A Yes.

20 MR. APPLEGATE: Mitch, this specific map?

21 MR. GRIFFITH: Yeah.

22 Q You've seen Exhibit Number 2 before today?

23 A No.

24 Q Because --

25 MR. DOWLING: Different question.

1 highway; is that correct?

2 A Correct.

3 Q And you wouldn't have had to get the fireman
4 to stop traffic in the right-hand lane; is that
5 correct?

6 A Correct.

7 Q And you said that by the time you heard the
8 fireman get a second call, traffic was moving,
9 correct?

10 A Yes.

11 Q But you don't know how many cars had moved,
12 correct?

13 A Correct.

14 Q And you don't know what the speed of them or
15 the speed of the tractor was at that time, correct?

16 A Correct.

17 Q All right. Thank you again.

18 A You're welcome.

19 MR. DOWLING: All right. You're through.

20 (Off-the-record discussion. Witness has a
21 clarification of his last address.)

22 THE WITNESS: 351 Gaffney Street,
23 West Columbia, 29069. I was living there during --
24 while I worked at Harbison until January of 2015.

25 (The deposition concluded at 5:03 PM.)

1 CERTIFICATE OF REPORTER
2 STATE OF SOUTH CAROLINA
3 COUNTY OF CHARLESTON

4 I, Cherie J. Anderson, Registered Merit
5 Report, Registered Professional Reporter, Certified
6 Realtime Reporter, and Notary Public for the State of
7 South Carolina at Large, do hereby certify that the
8 witness in the foregoing deposition was by me duly
9 sworn to testify to the truth, the whole truth, and
10 nothing but the truth in the within-entitled cause;
11 that said deposition was taken at the time and
12 location therein stated; that the testimony of the
13 witness and all objections made at the time of the
14 examination were recorded stenographically by me and
15 were thereafter transcribed by computer-aided
16 transcription; that the foregoing is a full, complete,
17 and true record of the testimony of the witness and of
18 all objections made at the time of the examination;
19 and that the witness was given an opportunity to read
20 and correct said deposition and to subscribe the same.

21 Should the signature of the witness not be
22 affixed to the deposition, the witness shall not have
23 availed himself of the opportunity to sign or the
24 signature has been waived.

25 I further certify that I am neither related
to nor counsel for any party to the cause pending or
interested in the events thereof.

Witness my hand, I have hereunto affixed my
official seal on September 30, 2015, at Charleston,
Charleston County, South Carolina.

Cherie J. Anderson
REGISTERED MERIT REPORTER
REGISTERED PROFESSIONAL REPORTER
CERTIFIED REALTIME REPORTER
My Commission expires
April 30th, 2023

Exhibit B

Super-Sod 30(b)(6) Deposition Excerpts

1 IN THE COURT OF COMMON PLEAS
2 FOR THE STATE OF SOUTH CAROLINA
3 ORANGEBURG COUNTY

4 DEPOSITION OF JOE LIVINGSTON

5 PRICE OULLA and BONNIE OULLA,
6 Plaintiffs,

7 vs.

CASE NO. 2014-CP-38-1590

8 LISA VELAZQUES, HARBISON COMMUNITY ASSOCIATION,
9 INC., CODY SOX, and PATTEN SEED COMPANY, d/b/a
10 SUPER-SOD,
11 Defendants.

12 DEPONENT: JOE LIVINGSTON

13 DATE: MARCH 15, 2016

14 TIME: 11:00 AM

15 LOCATION: LANIER & BURROUGHS
16 ORANGEBURG, SOUTH CAROLINA

17 REPORTED BY: ANNE BOULEY MEYER, RPR
18 CLARK & ASSOCIATES, INC..
19 P.O. Box 73129
20 Charleston, SC 29415
21 843-762-6294
22 WWW.CLARK-ASSOCIATES.COM
23 Office@clark-associates.com
24
25

1 A P P E A R A N C E S

2

3 ON BEHALF OF PLAINTIFF:

4 YARBOROUGH APPLGATE
5 BY: WILLIAM APPLGATE
6 291 East Bay Street
 Charleston, SC 29401

7 ON BEHALF OF DEFENDANT PATTEN SEED COMPANY d/b/a
8 SUPER-SOD:

9 MURPHY & GRANTLAND
10 BY: E. RAYMOND MOORE, III
 P.O. BOX 6648
 Columbia, SC 29260

11

12 ON BEHALF OF DEFENDANT HARBISON COMMUNITY
 ASSOCIATION and CODY SOX:

13 BARNES ALFORD STORK & JOHNSON
14 BY: CURTIS W. DOWLING
 P.O. Box 8448
 Columbia, SC 29202

15

16 ON BEHALF OF DEFENDANT LISA VELAZQUES:

17 GRIFFITH SADLER & SHARP
18 BY: E. MITCHELL GRIFFITH
 P.O. Drawer 570
 Beaufort, SC 29901

19

20 ALSO PRESENT:

21

 KIRBY D. SHEALY, III, ESQUIRE
 On behalf of Harbison Community
 Association

22

23 DAVID GROVE
 Executive Director, Harbison Community
 Association

24

25

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Clark and Associates Inc.

1 JOE LIVINGSTON,
2 having been first duly sworn, was examined and
3 testified as follows:

4 MR. MOORE: Before we get started,
5 Mr. Joe Livingston is with Patten Seed and has been
6 designated pursuant to the 30(b)(6) notice dated
7 February 18, 2016, to respond to topics 1, as it
8 relates to corporate structure and ownership,
9 company business, 2, 3, 4, 5, 8, and 9.

10 The remaining topics deal with the
11 company's financials, which Mr. Livingston is not
12 designated on. And which, pursuant to our
13 correspondence agreement, you will reserve the
14 right to inquire on those topics later if you need
15 to, and if you file a motion to compel and succeed
16 on that.

17 MR. APPELEGATE: Okay. Thank you, Ray.

18 MR. MOORE: Thank you.

19 EXAMINATION

20 BY MR. APPELEGATE:

21 Q. Good morning, Mr. Livingston. Thank you for
22 coming here today. Again, my name is William
23 Applegate. I'm going to ask you some questions
24 today related to this notice of deposition.

25 Let me start by marking this as Exhibit 1 to

Clark and Associates Inc.

1 Q. Is Orangeburg the largest of the locations?

2 A. In what sense?

3 Q. Well, largest number of employees?

4 A. Probably at this time we are.

5 Q. Is it the largest producer?

6 A. No.

7 Q. Okay. Tell me about the other locations.

8 Just the southeast?

9 A. Yes. We have locations in Georgia, South
10 Carolina, North Carolina, and then an outlet
11 location in Florida.

12 Q. Okay. Your customer base is to both
13 residential end users and commercial entities,
14 correct?

15 A. Correct.

16 Q. All right. And ultimately you ship product
17 all over the country? Or are you limited to
18 shipping product within these four states?

19 A. Primarily the southeast. Those four states,
20 and perhaps some into the adjoining states from
21 time to time. But primarily those states.

22 Q. Okay. We talked about you grow the product.
23 On the front end y'all don't purchase product from
24 other growers, do you?

25 A. On occasion we will.

1 of, you know, a small commercial group to a
2 residential individual, but they don't -- they're
3 not professional commercial truck drivers. And so
4 in that case you add stability by doing the stretch
5 wrap to these?

6 MR. MOORE: Object to the form, but you
7 can answer.

8 A. It enhances the stability of the pallet.

9 Q. Okay. Once you use the stretch wrap, then
10 what's the sort of next part of your process?

11 A. That's about the extent of it until the
12 customer comes to pick it up. At that point we
13 load it onto his vehicle based on his instructions.

14 Q. And what do you use to load the pallet onto
15 the vehicles?

16 A. Forklift.

17 Q. Okay. And how many forklifts do you have in
18 Orangeburg?

19 A. I didn't anticipate you asking that question
20 so I didn't count them. But I would say we are in
21 the range of probably five or so that work in the
22 field in this capacity.

23 Q. Okay. How many pallets of sod are loaded
24 onto a trailer of any sort at the Super-Sod
25 location here in Orangeburg on a daily basis?

1 A.: How many pallets of sod? It varies. Again,
2 we're a seasonal business. And this time of year
3 we will harvest the equivalent of about 40
4 tractor-trailer loads a day, which would be about
5 20 each. That's kind of our unit gauge just for
6 internal purposes. So you're talking about perhaps
7 800 pallets.

8 Q. Okay. 40 -- did you say 40 tractor?

9 A. Roughly. Again, that varies with the time
10 of year.

11 Q. What's the busiest time of year?

12 A. Typically our season can be said to be
13 between mid-to-late April in through September,
14 October, depending on the weather.

15 Q. What kind of training, as it relates to
16 loading trailers, do you engage in at Super-Sod?

17 A. I assume you're asking about how we train
18 our forklift operators?

19 Q. Uh-hum.

20 A. We show a video that is really not oriented
21 toward the operation of the forklift, it's just a
22 safety video regarding the forklift. And the bulk
23 of our training is on-the-job training.

24 Q. Is there any formal training that goes along
25 with the process of loading the trailer?

1 regulations that require anyone who transports
2 goods to make sure they're safely loaded onto a
3 trailer so they do not escape from the trailer and
4 can't cause an accident?

5 A. That's the regulation I was talking about
6 earlier that requires an individual that's hauling
7 anything to make sure that his load is secure,
8 correct.

9 Q. And obviously this is important because if
10 loads are not secured safely, then things can fall
11 off and can cause accidents on the public roadway?

12 MR. MOORE: Object to the form, but you
13 can answer.

14 A. Was that a question? I'm sorry.

15 Q. Yes, it was.

16 A. I would agree with that.

17 Q. Okay. Besides the larger vehicles that you
18 use, do y'all ever use any smaller vehicles? Or
19 what are all the vehicles that you use for
20 transporting goods?

21 A. Transporting goods to our customers is
22 always done on tractor-trailer rigs,
23 semi-tractor-trailer rigs.

24 Q. Okay. And as part of that process, there is
25 a certain checklist, I assume, that you go through

1 the trailer.

2 That overhead from hiring the employees who
3 do all that to the equipment, et cetera, that's all
4 included in the ultimate price and sale of the sod,
5 correct?

6 MR. MOORE: Object to the form, but you
7 can answer.

8 A. I'm not quite sure I follow your question on
9 that.

10 Q. Okay. Do y'all calculate -- when you come
11 up with a price per pallet, I assume you add in the
12 various elements of overhead into that price per
13 pallet?

14 A. Yeah. I mean, standard business practice
15 would take into account any and all costs of the
16 business when considering pricing of the product.

17 Q. Right. So if you have somebody who comes to
18 do a small pickup and purchases a pallet of sod, a
19 single pallet of sod, and they spend \$240 on a
20 pallet of sod, you have included in the costs all
21 of the overhead it took to grow the sod, all the
22 way up through loading it onto their trailer,
23 correct?

24 A. We certainly would include cost of
25 production and sales and any overhead involved

1 throughout the company.

2 Q. For example, a customer like myself, or some
3 residential user, doesn't have the ability to come
4 out and cut the sod and load it onto the pallet,
5 correct?

6 A. Correct.

7 Q. That's part of the service you provide?

8 A. That's right.

9 Q. And they don't have the product or the
10 ability to shrink-wrap the pallet?

11 MR. MOORE: Object to the form, but you
12 can answer.

13 A. I wouldn't be able to tell you whether
14 somebody's got shrink wrap with them, of course.
15 But, you know, that's something that we do for
16 them.

17 Q. Right. And that's a service you provide,
18 and you ultimately charge your clients for that
19 service?

20 A. It would be included in the cost of
21 production.

22 Q. And these individual small pickups, they
23 also don't have the ability to load a 2000-pound
24 pallet onto their vehicle?

25 MR. MOORE: Object to the form, but you

1 can answer.

2 A. Typically not.

3 Q. Right. And so back to what we were
4 discussing earlier is that Super-Sod is engaged in
5 the process of loading five or six, or four to five
6 different groups of small pickups a day where
7 they're loading these large 2000-pound pallets onto
8 small trailers, and/or into trucks; is that
9 correct?

10 A. We do load a variety of conveyances I would
11 say.

12 Q. And as you're in that business of loading
13 people with your product, you understand these
14 individuals are -- they leave your Super-Sod
15 property with heavy loads of your product,
16 materials, and are driving those over the public
17 highways?

18 A. I understand that, yes.

19 Q. Okay. And let me go to your understanding
20 of how a trailer would work. You said earlier, if
21 I had trailer what would I do.

22 You understand that if you have -- and let
23 me ask you. I think you probably have seen this,
24 but let me just make sure for the record.

25 You've seen a copy of the trailer that was

1 having loaded many, many of these, where it
2 probably should be placed. And in collaboration
3 with the people that are hauling it, you know, load
4 the trailer.

5 Q. Okay. When it comes to these small pickups,
6 these are not generally people who are in the
7 business of transporting sod, correct?

8 MR. MOORE: Object to the form, but you
9 can answer.

10 A. Many of them are.

11 Q. You mean the landscaping companies?

12 A. Uh-hum. Yes.

13 Q. Okay. And --

14 A. People like Mr. Sox who picked this up, for
15 instance. It was certainly, according to his
16 testimony, his deposition, he certainly was
17 experienced in hauling this trailer with product on
18 it and balancing it properly.

19 Q. Okay. And I'm just trying to understand as
20 it relates to Super-Sod, Super-Sod does not
21 undertake any effort to make sure that a vehicle is
22 a proper towing vehicle, or that the trailer is a
23 proper trailer for a load that -- that you're
24 loading while you are there at Patten Seed?

25 MR. MOORE: Object to the form, but you

1 can answer.

2 A. No, I wouldn't say that. If there is an
3 obvious problem with something, if the trailer is
4 rotted and everybody can see it, if it's a
5 lawnmower trailer and somebody has come to pick up
6 four pallets of sod, these would be obvious, very
7 obvious situations that would not be safe.

8 So in those cases where it's very obvious,
9 we certainly would advise the customer -- as a
10 matter of fact, we wouldn't load the customer.

11 Q. So there are situations where you in fact
12 inform the customer that they had improperly loaded
13 their vehicle or their trailer and that they needed
14 to either go get proper equipment or come back
15 another time?

16 MR. MOORE: Object to the form.

17 A. It's more a situation where we won't load
18 something that we know is not safe, that we know is
19 not safe, without a doubt.

20 Q. And as we stated earlier, being in the
21 business of transporting commercial loads of sod,
22 and then also on a daily basis of loading
23 individual pallets for small pickups, Super-Sod is
24 aware that in South Carolina you are required to
25 make sure that these loads are tied down so that

1 no sides, or, you know, no containing element to
2 it?

3 A. It's obvious from the picture.

4 Q. Okay. So my point is, and the question I
5 have for you is, on that day, knowing that you had
6 4,000 pounds approximately -- maybe more because it
7 was wet -- of sod on this trailer without any
8 tie-downs, there is no practice or policy of
9 Super-Sod to inform the customer that that is not
10 safe and is a violation of the law?

11 MR. MOORE: Object to the form, but you
12 can answer.

13 A. That loading there on that day is the one
14 that we're discussing here was not atypical of
15 loadings that we do frequently. Landscapers come
16 with this type of trailer oftentimes, commercial
17 entities.

18 And there's -- they don't always secure it
19 in any way other than what -- you know, the
20 stacking of the pallet and the stretch wrap that's
21 on it.

22 Q. I guess in some sense, as was testified by
23 Mr. Sox, they relied that the stretch wrap is going
24 to keep the sod on the pallets, correct?

25 MR. MOORE: Object to the form.

1 A. I can't tell you what they're relying on. I
2 don't know what they're thinking when they do that.
3 It obviously starts with their responsibility to
4 secure the load. And why they don't, I don't know.

5 Q. But as we stated earlier, that's in fact why
6 you use the stretch wrap is to keep the pallet --
7 you know, the sod attached to the pallet --

8 MR. MOORE: Object to the form.

9 Q. -- for these small-type pickups?

10 MR. MOORE: Object to the form.

11 A. No. It's to add some stability to it, give
12 it some additional stability as it's being handled,
13 transported, whatever.

14 And by saying that I don't mean to say that
15 the pallet is an unstable pallet, it's a very
16 stable pallet without it. We just go the extra
17 step to add that to it for additional stability.

18 Q. Okay. Would you agree with me that if the
19 shrink wrap was applied properly it should not
20 tear?

21 MR. MOORE: Object to the form.

22 A. No. I don't agree with that. Under -- I
23 will say that under normal circumstances shrink
24 wrap should -- shouldn't tear.

25 Q. So if one of your customers is using a truck

1 A. Four to five times typically.

2 Q. And when you talk about four to five times
3 around the pallet itself? Or four to five times so
4 that you've got it layered four to five layers of
5 wrap each time?

6 A. It is layered, but it's not four to five
7 layers on top of each layer. But it is overlapped.

8 Q. There's an overlap, but I'd only go around
9 the pallet about four or five times?

10 A. Correct.

11 Q. Then when I get it all wrapped up, then you
12 pull it taut and it will pop?

13 A. Right.

14 Q. I may have misunderstood you, but I thought
15 you said that if the equipment somebody came in was
16 what you considered to be not safe, you would not
17 sell them the product, your product -- or your sod?

18 MR. MOORE: Object to the form, you can
19 answer.

20 A. We would have already sold it to them, we
21 just would not -- we wouldn't load it for them if
22 the vehicle that they came to get it on was
23 obviously unsafe to haul it.

24 Q. How many times have you done that? Sold it,
25 but not loaded it for them.

1 middle of a field. So it's not a practical device
2 for us.

3 Q. So you just -- that would be the reason why
4 y'all haven't moved to those, it's not practical?

5 A. I'm sorry?

6 Q. It's not practical for your purposes to use
7 one of those commercial grade?

8 A. I would say that's -- yes. Right.

9 Q. Okay. Thank you.

10 MR. MOORE: We will reserve.

11 (The deposition was concluded at

12 1:05 p.m.)
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1 CERTIFICATE OF REPORTER

2 STATE OF SOUTH CAROLINA
3 COUNTY OF CHARLESTON

4 I, Anne Bouley Meyer, Registered
5 Professional Reporter and Notary Public for the
6 State of South Carolina at Large, do hereby certify
7 that the witness in the foregoing deposition was by
8 me duly sworn to testify to the truth, the whole
9 truth and nothing but the truth in the
10 within-entitled cause; that said deposition was
11 taken at the time and location therein stated; that
12 the testimony of the witness and all objections
13 made at the time of the examination were recorded
14 stenographically by me and were thereafter
15 transcribed by computer-aided transcription; that
16 the foregoing is a full, complete and true record
17 of the testimony of the witness and of all
18 objections made at the time of the examination; and
19 that the witness was given an opportunity to read
20 and correct said deposition and to subscribe the
21 same.

22 Should the signature of the witness not
23 be affixed to the deposition, the witness shall not
24 have availed himself/herself of the opportunity to
25 sign or the signature has been waived.

26 I further certify that I am neither
27 related to nor counsel for any party to the cause
28 pending or interested in the events thereof.

29 Witness my hand, I have hereunto
30 affixed my official seal on 25th day of March, 2016
31 at Charleston, Charleston County, South Carolina.

32

33

34

35

36

37

Anne Bouley Meyer
NCRA
REGISTERED PROFESSIONAL REPORTER
My Commission expires
February 5, 2023

Clark and Associates Inc.

Exhibit C

Melvin Kears Deposition Excerpts

1 IN THE COURT OF COMMON PLEAS
2 FOR THE STATE OF SOUTH CAROLINA
3 ORANGEBURG COUNTY

4 DEPOSITION OF MELVIN KEARSE

5 PRICE OULLA and BONNIE OULLA,
6

7 Plaintiffs,
8

9 v. CASE NO. 2014-CP-38-1590

10 LISA VELAZQUES, HARBISON COMMUNITY ASSOCIATION,
11 INC., CODY SOX, AND PATTEN SEED COMPANY, d/b/a
12 SUPER-SOD,

13 Defendants.
14

15
16 DEPONENT: MELVIN KEARSE

17 DATE: JANUARY 28, 2016

18 TIME: 11:07 AM

19 LOCATION: Lanier & Burroughs, LLC
20 250 Gibson Street
Orangeburg, South Carolina

21
22 REPORTED BY: CHRISTINE MULLINAX
23 SC COURT REPORTER
CLARK & ASSOCIATES, INC.
24 CHARLESTON, SC 29415
843-762-6294
25 WWW.CLARK-ASSOCIATES.COM

Clark and Associates Inc.

A P P E A R A N C E S

ON BEHALF OF PLAINTIFFS:

Yarborough Applegate
BY: William E. Applegate, IV
291 East Bay Street, Floor 2
Charleston, SC 29401

ON BEHALF OF DEFENDANT PATTEN SEED COMPANY, d/b/a
SUPER-SOD:

Murphy & Grantland, PA
BY: E. Raymond Moore, III
4406-B Forest Drive {29206}
P.O. Box 6648
Columbia, SC 29260

ON BEHALF OF DEFENDANT LISA VELAZQUES:

Griffith, Sharp & Liipefert, LLC
BY: Kelly Dennis Dean
600 Monson Street
PO Box 570
Beaufort, SC 29901

ON BEHALF OF DEFENDANTS HARBISON COMMUNITY
ASSOCIATION, INC., and CODY SOX:

Barnes, Alford, Stork & Johnson,
LLP
BY: Curtis W. Dowling
1613 Main Street
Columbia, SC 29201

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1 MELVIN KEARSE,
2 having been first duly sworn, was examined and
3 testified as follows:

4 EXAMINATION

5 BY MR. APPLGATE:

6 Q. Mr. Kearse, my name is William
7 Applegate, and we just met a minute ago. And I'm
8 an attorney here. I'm just going to ask you some
9 questions about some facts you may or may not
10 have an answer to. Okay?

11 A. Okay.

12 Q. Have you ever taken your deposition
13 before?

14 A. No, sir.

15 Q. So what we want to do is we're taking
16 this down -- these questions. She's recording
17 everything that we're saying so that we can use
18 it in these court proceedings; do you understand?

19 A. Yes, sir.

20 Q. So the idea is I'm going to try to speak
21 as clearly as I can, and if you can speak as
22 clearly as you can and speak up so that she can
23 record everything that we're saying. Do you
24 understand?

25 A. Yes, sir.

1 A. None.

2 Q. None?

3 A. No, sir.

4 Q. Is Super-Sod the first job where you
5 were driving any sort of heavy equipment?

6 A. Yes, sir.

7 Q. When did you go to work for Super-Sod?

8 A. I been there before. I been there
9 18 years, then I came back.

10 Q. Okay. You were there for 18 years?

11 A. And then I leave and I came back.

12 Q. When did you leave Super-Sod?

13 A. I have no idea. It's been such a long
14 time ago.

15 Q. So you worked there for 18 years before
16 you left?

17 A. Yes, sir. Then I came back.

18 Q. How long do you think you've been there
19 since you got back?

20 A. Going on three years -- three or four
21 years.

22 Q. So overall, you've worked for Super-Sod
23 for 22 years?

24 A. Something like that.

25 Q. What have you been doing at Super-Sod

1 Q. How long does it take to get there?

2 A. Say about 20, 25 minutes, something like
3 that -- or less.

4 Q. One of the things that I understand you
5 do is load -- use a front loader to load vehicles
6 with pallets of sod when they come on to the
7 property; is that correct?

8 A. Yes, sir.

9 Q. Is that something that you do every day?

10 A. Yes, sir.

11 Q. That's a pretty large part of the
12 business at Super-Sod, correct?

13 A. Yes, sir.

14 MR. MOORE: Object to the form.

15 You can answer.

16 Q. Answer.

17 A. Yes, sir.

18 Q. And how many times a day do you engage
19 in loading trailers?

20 MR. MOORE: Object to the form, but
21 you can answer.

22 A. Every day.

23 Q. Every day? Okay. How many pallets of
24 sod do you load during a given day?

25 MR. MOORE: Same objection. You

1 Q. Tiny?

2 A. Tiny.

3 Q. Do you think that's his real name?

4 A. I don't know his real name, but that's
5 what we call him.

6 Q. Is he big or small?

7 A. He's big.

8 MR. MOORE: It always works that
9 way, doesn't it?

10 Q. Nathaniel, Maurice, Tiny. Who else?

11 A. Jerome Brooks.

12 Q. Jerome Brooks. What do you call the
13 machine you use to load the trailer?

14 A. A forklift.

15 Q. Forklift. Okay. How many forklifts do
16 you have?

17 A. I really couldn't tell you. I really
18 couldn't tell you.

19 Q. A lot?

20 A. A lot, but I don't know how many.

21 Q. Five or ten? There's a good number of
22 them there?

23 A. Yeah, there's a good bit.

24 Q. Do you have your own forklift that you
25 use?

1 A. I got my own forklift.

2 Q. So there's one that everyone knows is
3 your forklift each day?

4 A. Yes, sir.

5 Q. And how many hours a day do you work?

6 A. Sometimes 10, sometimes less.

7 Q. As part of your work, are you on the
8 forklift a good part of the day?

9 A. Yes, sir.

10 Q. What kind of vehicles are you loading?

11 A. 18-wheelers. That's mostly what I be
12 loading. 18-wheelers.

13 Q. 18-wheelers. Okay. Do you drive up
14 into the back of the 18-wheeler?

15 A. No, sir. I put it in the opening. They
16 pull the curtain back, and I come on the side of
17 it.

18 Q. It's like open-bedded?

19 A. Yeah. You got this side and this side,
20 and you go down and back right up in here.

21 Q. How many pallets can you put in one
22 18-wheeler?

23 A. 20.

24 Q. Is this an open framed 18-wheeler, like
25 a flatbed?

1 A. Some are flatbed; some, you pull the
2 curtain back.

3 Q. Besides 18-wheelers with flatbeds, what
4 other kind of trailers do you load?

5 A. Sometimes pickup trucks, things like
6 that.

7 Q. And then I guess you have pickup trucks
8 with trailers?

9 A. Yes, sir.

10 Q. Small personal trailers?

11 A. Yes, sir.

12 Q. Now, Mr. Kearse, doing this every day as
13 long as you've been doing it, I assume you've
14 been trained on how to load these trailers,
15 correct?

16 A. Yes, sir.

17 Q. Super-Sod trains you on the proper way
18 to load the trailers?

19 A. Yes, sir.

20 Q. And Super-Sod trains you that it's
21 important to make sure that you safely load each
22 trailer, correct?

23 A. Yes, sir.

24 Q. And you want to make sure that the
25 trailer is loaded so that it's balanced,

1 correct?

2 A. Yes, sir.

3 Q. And once you've loaded the trailer, you
4 need to make sure you know what the capacity of
5 the load is, right?

6 MR. MOORE: Object to the form.
7 You can answer.

8 A. Yes, sir.

9 Q. And not only do you need to know what
10 the capacity of, I guess, the truck is, but you
11 also need to know the capacity of the trailer is,
12 right?

13 MR. MOORE: Same objection. You
14 can answer.

15 A. Yes, sir.

16 Q. Once you figure out what the capacities
17 of the truck and trailer are, then you have to
18 figure out how much weight you have in the sod,
19 correct?

20 MR. MOORE: Object to the form.
21 You can answer.

22 A. Yes, sir. Sometimes -- yes, sir.

23 Q. Okay. And the sod might weigh
24 differently each day, based on whether it's wet
25 or dry; is that right?

1 this pallet weighs?

2 A. No, sir.

3 Q. You don't. Okay. So when you load the
4 trailer, do you have any way of determining
5 whether you have a proper load?

6 MR. MOORE: Object to the form.
7 You can answer.

8 A. We try to look at the tire to see -- I
9 look at the tire to see if the tire's going down.
10 That's how -- the only way --- how I tell.

11 Q. Okay. Look at the tires?

12 A. (Witness gestured.)

13 Q. All right. And it's your job to make
14 sure that the pallet has been -- is in good shape
15 and has been wrapped properly before you put it
16 on the truck, correct?

17 A. Yes, sir.

18 Q. And you need to make sure that the
19 wrapping has not been cut or pierced before you
20 put it on the truck, correct?

21 A. Yes, sir.

22 Q. Once you finish loading all the pallets
23 onto the trailer, then you need to check and make
24 sure that the weight is balanced, like checking
25 the tires, correct?

1 make sure that the shrink wrap is properly on
2 there, correct?

3 A. Yes, sir. I wrap them pallets myself.

4 Q. You wrap the pallets. Right. And you
5 make sure that there's no tears or rips in there?

6 A. None.

7 Q. And then you check the tire pressure?

8 MR. MOORE: Object to the form.

9 A. We don't check the tire pressure.

10 Q. I thought before you said you checked?

11 A. I see -- what I do, I put the pallet on
12 there and then I check to see how low the tire
13 is. See when you put the weight on there, the
14 tire go down.

15 Q. Do you make any changes depending on
16 where the tires are? Do you push the pallets
17 forward or pull them back?

18 A. If it's too much, I take a pallet off.

19 Q. You might take a pallet off. Okay.

20 Tell them to come back for the next
21 pallet?

22 A. Yes, sir.

23 Q. Do you do the shrink wrap right at the
24 time of the order, or is that done prior to the
25 pickup?

1 Q. And can you describe the wrap to me?
2 How wide is it? Is it skinny wrap or real wide
3 wrap?

4 A. It's something like this.

5 Q. So maybe 2 and a half feet?

6 A. I'm not measuring. I don't know.

7 Q. Just outside your shoulders?

8 A. Yeah, I guess.

9 Q. And that wrap, if done without any kinks
10 in it, is strong, correct?

11 A. Yes, sir.

12 Q. The idea is that, if somebody is driving
13 down the road, the grass should stay in that
14 wrap, right?

15 MR. MOORE: Object to the form.

16 You can answer.

17 A. Yes, sir.

18 Q. It's not supposed to break?

19 A. No, sir.

20 Q. You tell the client -- what do they use,
21 a knife to cut it off when they get home?

22 MR. MOORE: Object to the form.

23 A. I don't tell them nothing.

24 Q. You don't tell them anything. Is that
25 the best way to get through the plastic?

1 Q: Going back to the, sort of, training, I
2 think you said there really has been no specific
3 training as to your job over the course of the
4 20 years; is that correct?

5 MR. MOORE: Object to the form.
6 You can answer.

7 A. What you mean by training?

8 Q. I mean, do they train you how to load
9 the trailers?

10 A. I been there. I been loading the trucks
11 a good bit too.

12 Q. Did Super-Sod come in and train you;
13 this is how to load the trailer?

14 A. No, sir. Somebody had trained me.
15 Somebody had been out there -- the guy who drives
16 the forklift, he was out there driving with me
17 and he was training me.

18 Q. He trained you. Did he train you on how
19 to balance the weight of the trailer?

20 A. No. All you got to do is put it in the
21 middle.

22 Q. Did he train you to put it in the
23 middle?

24 A. I had learned that myself.

25 Q. You learned that yourself?

1 A. I had learned that myself.

2 Q. Was there any training related to
3 whether you put it in the front, in the middle or
4 in the back of the trailer?

5 A. No. They tell me where to put it at.

6 Q. If they don't tell you, you just put in
7 the middle?

8 A. I put it where they -- see, most tell me
9 where to put it at. I ask them, Where you want
10 me to put it at?

11 Q. And then, again, after you've loaded it,
12 you're done?

13 A. Yes, sir.

14 Q. And you don't do anything to make sure
15 that the load is secure on the truck?

16 A. Ain't my job.

17 Q. When you leave that area, I guess, where
18 you're loading, when a customer leaves that area,
19 do they have to go through another checkpoint
20 before they leave?

21 A. No, sir.

22 Q. That's it. So you're the last person
23 they'd be in contact with?

24 A. Yes, sir.

25 Q. Mr. Kearse, I understand that you were

1 Q. And did they give you a ticket?

2 A. Yes, sir. Two load -- they gave me a
3 ticket. I don't know. I really couldn't tell
4 you.

5 Q. What do you remember, sir?

6 A. I know I loaded something, and they kind
7 of been mean to me.

8 Q. The guy was mean to you?

9 A. Kind of talking, talking -- saying
10 stuff. I ain't know what he say, but I know he
11 been saying something.

12 Q. Was it something about how you were
13 loading it or --

14 A. No. He -- he -- I tell him -- he tell
15 me to put the pallet on the front. Then he want
16 me to move sand off the -- off the trailer. I
17 tell him that not be my job. So he tell me to
18 put it in the back, and that's what I did.

19 Q. So first, he told you to put it in the
20 front. And then you said, I can't put it in the
21 front because of the sand?

22 A. No. Mm. He tell me to put the one --
23 first one on the front, and I put it on the
24 front.

25 Q. And that's the front here?

1 A. Yeah. All the way to the front -- to
2 the front up there.

3 Q. Up here?

4 A. I put it right up -- right up in here.
5 So I couldn't get nothing in the middle. Dirt or
6 sand be right in here -- right across from here.
7 He tell me to come to the back and put it on, and
8 that's what I did.

9 Q. Now this right here -- and I'm showing
10 you Exhibit 3 again -- this, what we see in this
11 picture, this is grass and sand that comes off of
12 pallets, correct?

13 MR. MOORE: Object to the form.

14 A. Yeah. It's grass and sand, but that
15 ain't cause that, though.

16 Q. This type of dirt and grass that we see
17 on here is what you see -- if you drop a pallet
18 down on a piece of wood, this is what falls out
19 of the bottom, correct?

20 MR. MOORE: Object to the form.

21 A. That what fall, but there was sand in
22 the middle, though. Ain't no grass been there.

23 Q. And anyway, what you were saying is that
24 there was how much sand? A scoop of sand?

25 A. No. There been a whole lot of sand

1 right in here -- right in there. And I done put
2 in the back -- put the pallet in the back because
3 he tell me to do it that way.

4 Q. So you put both the pallets on the back?

5 MR. MOORE: Object to the form.

6 A. I put one in front. Sand right there --
7 right in there. He tell me to come from the back
8 and put the pallet on the back. So I slide it on
9 there and made it level, and he put two rails up,
10 and then he left.

11 Q. And he left. Okay. Thank you, sir. So
12 when you loaded the two pallets -- I guess after
13 you finished loading the two pallets, did you do
14 anything to determine the tongue weight on the
15 back of the vehicle?

16 A. No. He tell me to put it there, and he
17 lift it up -- lift the gates up, and he left.

18 Q. I understand. I'm just asking. So you
19 didn't check the tongue weight on the vehicle,
20 did you?

21 A. No, sir. He tell me to put it on there,
22 so he got to go.

23 Q. Did you talk to them about tying down
24 the vehicle -- tying down the sod?

25 A. I couldn't talk to him. He didn't have

1 MR. MOORE: Object to the form.

2 A. I done the shrink wrap, but I wasn't at
3 no station.

4 Q. I'm sorry. I shouldn't have used that
5 word.

6 Before you loaded those pallets, did you
7 check that shrink wrap?

8 A. Yes, sir.

9 Q. And it was free from any types of cuts
10 and marks?

11 A. Yes, sir. It ain't have nothing on
12 them.

13 Q. And were there any cuts or marks once
14 you put them on the trailer?

15 A. No, sir.

16 Q. And you checked that before they left?

17 A. There wasn't nothing wrong with it.

18 Q. Okay. But I'm just saying. That's
19 something that you checked before you loaded them
20 on the trailer?

21 A. Before they left, it was all right.

22 Q. And in this case, you didn't walk around
23 and inspect the tires?

24 A. No, sir.

25 Q. You didn't inspect the trailer hitch?

1 MR. MOORE: Object to the form.

2 You can answer.

3 A. What are you talking about?

4 Q. Just said, We can't load you. We can't
5 load you for safety reasons or whatever it is.

6 A. I'll call somebody out there and let
7 them decide that.

8 Q. Have you ever done that?

9 A. No, sir. Because if somebody come out
10 there, it'll be all right. If they tell me it
11 got too much weight on it, I take some off. Then
12 they have to come back.

13 Q. So you've had situations where you've
14 called the office and somebody else came out and
15 made the decision about whether or not --

16 A. Yes, sir.

17 Q. -- whether or not the load can be safely
18 transported?

19 A. Yes, sir.

20 Q. And it's decided, when you take that
21 step to call somebody, they come out and make a
22 decision, and they've said, Okay, maybe take a
23 half load off, and the people are going to have
24 to come back?

25 A. Yes, sir.

1 Q. I think you said that you shrink wrap
2 the small pickups?

3 A. Yes, ma'am.

4 Q. You don't shrink wrap the large ones?

5 A. No. The 18-wheelers, that got a cover,
6 and they strap them down with a strap.

7 Q. Why do you shrink wrap the small pickups
8 and not the large pickups?

9 A. The small pickup, we shrink wrap them
10 because they ain't got -- they on a truck. They
11 going like that. These big trucks, they got a
12 top and they throw a strap across there. That'll
13 keep them from -- they automatic. We ain't got
14 to do nothing.

15 Q. Do you make the decision of whether or
16 not to wrap a particular pallet?

17 A. If it's a small pickup, I wrap all of
18 them. An 18-wheeler, I don't wrap none of them.

19 Q. And I guess what I'm asking, is that
20 some sort of policy on Super-Sod's behalf, or is
21 that a decision that you make?

22 A. If it's a small pickup, I just wrap
23 them.

24 Q. Do you ever check a vehicle's owner
25 manual or its weight rating when you load the

1 A. Thank you.

2 MR. MOORE: I'm going to speak to
3 the witness outside. I want to leave the record
4 open about reading and signing. Is there an
5 objection to me talking to him about that
6 privately for just a minute?

7 MR. APPLEGATE: No problem.

8 MS. DEAN: That's fine.

9 (A recess was taken.)

10 MR. MOORE: We'll reserve
11 questions, and the witness is going to waive his
12 right to review the deposition.

13 (At 12:34 PM, the deposition in the
14 above-entitled matter was concluded.)

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1 CERTIFICATE OF REPORTER
2 STATE OF SOUTH CAROLINA
3 COUNTY OF CHARLESTON

4 I, Christine Mullinax, Court
5 Reporter and Notary Public for the State of South
6 Carolina at Large, do hereby certify that the
7 witness in the foregoing deposition was duly
8 sworn by me to testify to the truth, the whole
9 truth and nothing but the truth in the
10 within-entitled cause; that said deposition was
11 taken at the time and location therein stated;
12 that the testimony of the witness and all
13 objections made at the time of the examination
14 were recorded stenographically by me and were
15 thereafter transcribed by computer-aided
16 transcription; that the foregoing is a full,
17 complete and true record of the testimony of the
18 witness and of all objections made at the time of
19 the examination; and that the witness was given
20 an opportunity to read and correct said
21 deposition and to subscribe the same.

22 Should the signature of the witness
23 not be affixed to the deposition, the witness
24 shall not have availed himself of the opportunity
25 to sign or the signature has been waived.

I further certify that I am neither
related to nor counsel for any party to the cause
pending or interested in the events thereof.

Witness my hand, I have hereunto
affixed my official seal on February 10, 2016, at
Charleston, Charleston County, South Carolina.

Christine Mullinax
Notary Public for South Carolina
My Commission Expires: June 1, 2022

Exhibit D

CAD Call Information

8/27/14
9:51:44

SunGard CAD
CAD CALL INFORMATION

PAGE 1
142030110

Call Number: 142030110 Call Type.: 013 Fire-All Others Fire
Entry Day/Tm: 7/22/14 11:59:07 013 Fire-All Others Fire

CmnN: I26 WESTBOUND MM154 Agency: 025 West Middle Fire
Location....: Apt:
City.....: Block#: Loc ID: C Mapr:
Intersectn.:

Caller Name: Last: First: Mid: See Caller:
Address....: CONCERN CITIZEN Apt:
City/State: Phone#: 803-546-8277 Source:

Call Taker.: 5434 WILSON SHAUNETTE QPADEV000V
Dispatcher.: 5434 WILSON SHAUNETTE QPADEV000V

N A R R A T I V E

FM11 WAS FIRST TO RESPOND 12:01:24
REF TO A PALLET OF SOIL FALLING 12:01:41

WM Unit Status History Information

7/22/14 11:59:13	4 Dispatched	D
7/22/14 11:59:13	11 Assigned as Primary	PR
7/22/14 12:00:51	32 Enroute To Scene	G
7/22/14 12:10:20	6 Unit On Scene	A
7/22/14 12:10:23	7 On Call- Available	YS
7/22/14 12:13:06	20 Available	AV

WMB253 Unit Status History Information

7/22/14 12:08:19	4 Dispatched	D	138225 FIRE DEPT, WBS
7/22/14 12:08:22	32 Enroute To Scene	G	
7/22/14 12:10:20	6 Unit On Scene	A	
7/22/14 12:14:50	20 Available	AV	

D I S P O S I T I O N S

1 028 Fire Report

Case# 1 - 14-004113 Unit: WM

Exhibit E

Lisa Velazques (Meyer)
Deposition Excerpts

IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
ORANGEBURG COUNTY
FIRST JUDICIAL CIRCUIT

DEPOSITION OF LISA ANNE MEYER

PRICE OULLA AND BONNIE OULLA,

Plaintiffs,

vs.

CASE NO. 2014-CP-38-1590

LISA VELAZQUES, HARBISON
COMMUNITY ASSOCIATION, INC.,
CODY SOX, AND PATTEN SEED
COMPANY, D/B/A SUPER-SOD,

Defendants.

DEPONENT: LISA ANNE MEYER

DATE: SEPTEMBER 30, 2015

TIME: 10:00 AM

LOCATION: YARBOROUGH APPELATE LAW FIRM
CHARLESTON, SOUTH CAROLINA

REPORTED BY: CHERIE J. ANDERSON, RMR, RPR, CRR
NCRA REGISTERED MERIT REPORTER
CLARK & ASSOCIATES, INC.
P.O. Box 73129
Charleston, SC 29415
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WWW.CLARK-ASSOCIATES.COM

Clark and Associates Inc.

1 A P P E A R A N C E S

2
3 ON BEHALF OF PLAINTIFFS

4 YARBOROUGH APPELATE LAW FIRM
5 BY: WILLIAM APPELATE IV
6 291 East Bay Street, Second Floor
7 Charleston, SC 29401

8 ON BEHALF OF DEFENDANT LISA VELAZQUES

9 GRIFFITH SADLER & SHARP, P.A.
10 BY: E. MITCHELL GRIFFITH
11 P.O. Drawer 570
12 Beaufort, SC 29901

13 GOODING & GOODING, P.A.
14 BY: MARK B. TINSLEY
15 P.O. Box 1000
16 Allendale, SC 29810

17 ON BEHALF OF DEFENDANTS HARBISON COMMUNITY ASSOCIATION
18 AND CODY SOX

19 BARNES ALFORD STORK & JOHNSON, LLP
20 BY: CURTIS W. DOWLING
21 P.O. Box 8448
22 Columbia, SC 29202

23 ON BEHALF OF DEFENDANT PATTEN SEED COMPANY

24 MURPHY & GRANTLAND, P.A.
25 BY: E. RAYMOND MOORE III
4406-B Forest Drive
Columbia, SC 29206

26 ALSO PRESENT: Meg Horn, Esq.

1 I N D E X

2 - - -

3 LISA ANNE MEYER

4 EXAMINATION PAGE

5 BY MR. APPLGATE 4

6 BY MR. DOWLING 43

7 BY MR. MOORE 74

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9

10 EXHIBITS

11 EXHIBIT NO. PAGE

12 Exhibit No. 01 Driver's License 97

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1 LISA ANNE MEYER

2 having been first duly sworn, was examined and
3 testified as follows:

4 EXAMINATION

5 BY MR. APPLEGATE:

6 Q Ms. Velazques, my name is William Applegate,
7 and I represent Price and Bonnie Oulla, who Mr. Oulla
8 was severely injured in the accident that happened
9 back last summer. Do you understand?

10 A Yes.

11 Q Okay. And there's a lawsuit to try to recover
12 money to try to take care of Mr. Oulla at this time,
13 and you are the defendant in that case, and so
14 everyone here is related to that lawsuit; and under
15 the rules, I'm allowed to come and ask you some
16 questions so I can understand everything that
17 happened that day. Do you understand?

18 A Yes.

19 Q Have you ever had your deposition taken?

20 A No.

21 Q Well, it's an easy process. I'm going to ask
22 you some questions. Let me finish my question. Then
23 you can answer. Okay?

24 A Okay.

25 Q If you don't understand my question, just ask

1 Q What specifically do you remember as you sit
2 here right this second?

3 A Just basically getting out of the vehicle -- I
4 mean, driving down the highway, there was a sudden
5 stop of cars, and I hit my brakes to try to stop.
6 And I didn't stop in time. And then I only remember
7 getting out of the vehicle and going to the hospital.

8 Q When the crash occurred, you were trying to
9 set your GPS, correct?

10 A It might have been before that. I had just,
11 you know, looked over, because I don't constantly
12 stare at the GPS while I'm setting it. I keep my
13 eyes on the road, and I'll just look over and hit
14 something real quick and then I look back at the
15 road. So it takes me a while to program it.

16 Q But when this crash took place --

17 A Uh-huh.

18 Q -- on this day, you were trying to set your
19 GPS, correct?

20 A Before the accident.

21 Q You weren't looking at the road --

22 A Not at the time of the accident, no.

23 Q Was there anything impeding your view out of
24 your window that day?

25 A No.

1 setting your GPS?

2 A I had told them at one point I was trying to
3 set my GPS; I told him the road was -- everything was
4 fine; and all of a sudden there was an immediate stop
5 of people hitting their brakes, and I tried to hit my
6 brakes, and I didn't stop in time.

7 Q Do you realize how fast you were going at the
8 time you hit the vehicle in front of you?

9 A Just the -- the limit, that I know of.

10 Q Do you know what the limit is right there?

11 A 70 -- 60, 70.

12 Q 70 miles per hour sound correct?

13 A Uh-huh.

14 Q Do you believe you were going over the speed
15 limit? 75?

16 A I don't think so, because I set my cruise
17 control when I'm on long trips.

18 Q But you agree as we sit here today that you
19 weren't paying attention right when the accident took
20 place?

21 A I was.

22 Q So as we sit here today, your testimony is
23 that you were not looking down at your GPS when this
24 accident took place?

25 A Yes.

1 Q At any point in time, did you try to brake?

2 A Yes, as soon as I saw the cars hit their
3 brakes.

4 Q And when did you see that?

5 A Right at the time of the -- I mean, like I
6 said, it was an immediate stop of cars. I mean, I
7 hit my brakes as soon as I saw the red lights.

8 Q Did you try to make any evasive maneuvers?

9 A I tried.

10 Q What did you try to do?

11 A Well, I hit the brakes, and I tried to turn to
12 the left side of the road to get, like, the grass --
13 I tried not to hit him.

14 Q You tried to go to the left side of the road?

15 A Yeah, because we were in the left lane, that I
16 remember.

17 Q And the right two lanes were empty, correct?

18 MR. MOORE: Object to the form.

19 A No.

20 Q What was going on in the right two lanes?

21 A The cars were stopped -- stopping at the same
22 time or they were almost stopping.

23 Q And you were in the left lane of traffic?

24 A Yes.

25 Q Is that the fast lane of traffic?

1 A I guess you could call it fast lane, but I
2 just -- like I said, I set my cruise control.

3 Q Okay. And you were moving along with the
4 traffic in that fast lane of traffic, correct?

5 A Yes.

6 Q And you attempted, you're saying, to move to
7 the left --

8 A Yeah.

9 Q -- off the left side of the road?

10 A (The witness motions.)

11 Q What's the next thing you remember?

12 A Like I say, getting out of the vehicle, going
13 to the hospital.

14 Q Were you able to get out of the vehicle
15 yourself?

16 A We had some help from standbys.

17 Q Ultimately, did you have to be pulled out of
18 the vehicle? Carried out of --

19 A I didn't have to be pulled out of the vehicle,
20 but it was on its side, so we had to have help
21 getting out.

22 Q And were you able to walk at the time?

23 A No.

24 Q What did they do when they pulled you out of
25 the vehicle?

1 Q That's what you want to do.

2 And again, the statement would, to some
3 effect, speak for itself. But do you remember saying
4 something to the effect of -- when asked about what
5 happened that you said you were trying to set your
6 GPS, and after that, I don't remember? Do you
7 remember something to that effect?

8 A No.

9 Q But you do remember, even sitting here today,
10 that you were, sometime immediately before the
11 accident, trying to set your GPS?

12 A I would say before the accident because, like
13 I said, I was looking at the road; everybody started
14 to hit their brakes; and I tried to stop, and I
15 couldn't.

16 Q Would you say it was a second before that you
17 saw what was going on and you hit your brakes that
18 you were adjusting your GPS?

19 A No.

20 Q How long before?

21 A A minute or two.

22 Q A minute or two. So if you said something
23 back when it was -- a long time ago when you gave the
24 statement -- something to the effect you were trying
25 to set my GPS, and after that, I don't remember --

1 Q It has an M, an S, and a J?

2 A And a J.

3 Q Very nice. And when did you get that tattoo?

4 I'm assuming since your youngest was born?

5 A It's been a few years.

6 Q You had it before this accident?

7 A Yes.

8 MR. MOORE: Those are all the questions that
9 I have for you at this time, Ms. Meyer. Thank you
10 for your patience.

11 MR. TINSLEY: Are we done?

12 MR. APPLEGATE: Mitch?

13 MR. GRIFFITH: She's going to reserve the
14 right to read and sign.

15 (The deposition concluded at 12:59 PM.)
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1 CERTIFICATE OF REPORTER
2 STATE OF SOUTH CAROLINA
3 COUNTY OF CHARLESTON

4 I, Cherie J. Anderson, Registered Merit
5 Report, Registered Professional Reporter, Certified
6 Realtime Reporter, and Notary Public for the State of
7 South Carolina at Large, do hereby certify that the
8 witness in the foregoing deposition was by me duly
9 sworn to testify to the truth, the whole truth, and
10 nothing but the truth in the within-entitled cause;
11 that said deposition was taken at the time and
12 location therein stated; that the testimony of the
13 witness and all objections made at the time of the
14 examination were recorded stenographically by me and
15 were thereafter transcribed by computer-aided
16 transcription; that the foregoing is a full, complete,
17 and true record of the testimony of the witness and of
18 all objections made at the time of the examination;
19 and that the witness was given an opportunity to read
20 and correct said deposition and to subscribe the same.

21 Should the signature of the witness not be
22 affixed to the deposition, the witness shall not have
23 availed himself of the opportunity to sign or the
24 signature has been waived.

25 I further certify that I am neither related
to nor counsel for any party to the cause pending or
interested in the events thereof.

Witness my hand, I have hereunto affixed my
official seal on September 30, 2015, at Charleston,
Charleston County, South Carolina.

Cherie J. Anderson
REGISTERED MERIT REPORTER
REGISTERED PROFESSIONAL REPORTER
CERTIFIED REALTIME REPORTER
My Commission expires
April 30th, 2023

Exhibit F

Affidavit of Michael A. Sutton, P.E.

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

Price Oulla and Bonnie Oulla,

Plaintiffs,

vs.

Lisa Velazques, Harbison Community
Association, Inc., Cody Sox, and Patten
Seed Company, d/b/a Super-Sod,

Defendants,

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT
CASE NO. 2014-CP-38-1590

AFFIDAVIT OF MICHAEL A. SUTTON, PE

PERSONALLY APPEARED before me Michael A. Sutton who, being duly sworn, deposes
and says that:

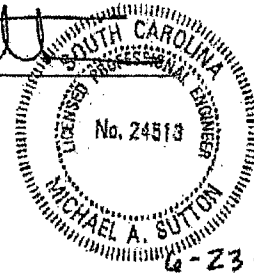
1. I am over the age of 18 and competent to execute this Affidavit.
2. I am an accident reconstructionist for Accident Research Specialists, PLLC ("ARS"). A
copy of my Curriculum Vitae is attached as Exhibit A.
3. ARS's services have been retained in the above-captioned matter to provide Plaintiff
technical expertise in crash reconstruction.
4. In forming the opinions contained herein, I have reviewed the following documents
associated with the collision that injured Price Oulla:
 - a) 7-22-2014 Traffic Collision Report
 - b) CAD Log (Oulla 06184-06185)
 - c) Lisa Velazques Recorded Statement
 - d) Cody Sox deposition transcript and exhibits 1-4 (Harbison Community
Association, Inc. employee and driver of the truck towing the trailer load of sod)
 - e) Lisa Meyer (Velasques) deposition transcript and exhibit 1 (driver of Toyota that
collided with Price Oulla)

- f) Melvin Kearse deposition transcript and exhibits 1-3 (Super-Sod employee that wrapped the pallets of sod and then loaded the cargo onto Harbison Community Association, Inc.'s trailer)
 - g) Joe Livingston deposition transcript and exhibit 1 (Super-Sod 30(b)(6) witness)
 - h) David Grove deposition transcript and exhibit 1 (Harbison 30(b)(6) witness)
 - i) Dash cam video of Trooper Gleich
 - j) Fire and police reports (Harbison 0006-0013)
 - k) Pallet specs (Pages from D Patten's ATIs, RRFPs, to P's 1st 05-08-15)
 - l) Google aerial images (5)
 - m) Photos from Tate Johnson
 - n) Statements of Mr. Branham, Lynch, Shealy, and Sox
 - o) Truck and trailer specs (Pages from D Harbison, Sox ATIs, RRFPs 07-24-15)
 - p) Bosch CDR Report Lexus
5. In forming the opinions contained herein, I also personally inspected and performed an analysis of the crash scene.
6. The first in the chain of events that resulted in the collision that injured Price Oulla occurred at Super-Sod on July 22, 2014. Super-Sod employee Melvin Kearse improperly hand-wrapped the sod with plastic in a way that allowed it to later tear under normal driving conditions. Failing to properly wrap sod to keep it securely on the pallet for transport is dangerous. Then, Kearse improperly loaded the sod onto the Harbison trailer by not distributing the weight of the load for safe trailering. Kearse loaded a pallet of sod weighing between 2,000-2,200 pounds on the back of the trailer at the direction of Cody Sox. Heavy cargo should be placed at the front of a trailer, not the back. Placing heavy cargo at the back of a trailer creates trailer sway and is dangerous. Next, neither Kearse nor Sox secured the load of sod to the trailer, which is dangerous.

7. As a result of improperly wrapping the sod, improperly loading the sod, improperly balancing the load, and not securing the sod to the trailer, the sod was allowed to spill onto the interstate during transport. The spilled sod on the interstate created a hazardous condition for other motorists.
8. Because of the spilled load of sod, travel on the interstate was obstructed and vehicles were forced to slow suddenly and stop. Stopping on an interstate is dangerous and secondary collisions are a natural and probable consequence of an obstructed highway.
9. Price Oulla was travelling I-26 westbound and came to a stop because of the spilled sod. Lisa Velasques came upon the stopped traffic on I-26 due to the spilled sod, failed to stop, and collided with Oulla's vehicle. The impact propelled Oulla's vehicle into the vehicle in front of him. As a result of the violent collision, Oulla suffered severe injuries.
10. It is my opinion that Super-Sod's failure to properly wrap the sod, properly load the sod with the weight safely distributed, and failure to secure the load of sod to the trailer that was spilled onto the interstate, was a proximate cause of the collision resulting in Price Oulla's injuries.
11. It is my opinion that Harbison Community Association, Inc. employee Sox's failure to properly load and secure the sod to the trailer that was spilled onto the interstate was a proximate cause of the collision resulting in Price Oulla's injuries.
12. All opinions set forth herein are made to a reasonable degree of certainty in the field of accident reconstruction.

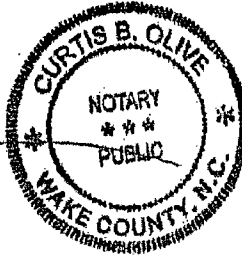
FURTHER AFFIANT SAYETH NOT

Michael A. Sutton
Michael A. Sutton, PE



Sworn and subscribed to before me
This 23rd day of June 2016.

Curtis B. Olive
Notary Public for North Carolina
My commission expires: 01-15-2019



MICHAEL A. SUTTON, PE

Accident Research Specialists, PLLC 1631 NW Maynard Road, Suite 101, Cary, NC 27513 (919) 467-8134

PROFESSIONAL ENGINEER

North Carolina #19847
South Carolina #24513
Alabama #28549-E

EMPLOYMENT

CONSULTING ENGINEER

Accident Research Specialists, PLLC

FEBRUARY 2001 TO PRESENT

Cary, North Carolina

Technical investigation and analysis of accidents and failures involving vehicles and machinery. Areas of work and expertise include accident reconstruction, engineering analysis, technical investigation, failure analysis, standards research, and laboratory testing in the areas of mechanical and automotive engineering and machine design, applied to vehicle accidents (commercial vehicle/heavy trucks, automobiles, motorcycles, marine vessels including commercial, recreational and personal watercraft, bicycles, pedestrian/vehicle, and aircraft), heavy equipment accidents, construction accidents, and product failures and testing. Testify in State and Federal Courts; qualified as an expert in accident reconstruction, mechanical engineering, failure analysis, and heavy truck braking systems.

CONSULTING ENGINEER

Accident Reconstruction Analysis, Incorporated

FEBRUARY 1989 TO FEBRUARY 2001

Raleigh, North Carolina

Technical investigation and analysis of accidents and failures involving vehicles and machinery. Areas of work and expertise same as listed above.

TECHNICIAN

Accident Reconstruction Analysis, Incorporated

AUGUST 1987 TO FEBRUARY 1989

Raleigh, North Carolina

Assist engineers with investigations and testing of accidents and failures

ENGINEERING CO-OP

Carolina Power & Light Company

JANUARY 1986 TO AUGUST 1987

New Hill, North Carolina

Worked in the reactor engineering division during the construction and initial start-up of the Shearon Harris Nuclear Power Plant.

EDUCATION

MASTER OF ENGINEERING

North Carolina State University

1996

Raleigh, North Carolina

Concentration in Mechanical Engineering-Dynamics, Vibrations and Acoustics

BACHELOR OF SCIENCE, MECHANICAL ENGINEERING

North Carolina State University

1988

Raleigh, North Carolina

Magna Cum Laude, Dean's List 1984, 1985, 1987, 1988, Pi Tau Sigma
National Honorary Mechanical Engineering Fraternity, Outstanding

Accident Research Specialists, PLLC

FORENSIC ENGINEERS

College Students of America

MEMBERSHIPS

Society of Automotive Engineers

American Society of Mechanical Engineers

American Society of Materials

TRAINING

Society of Automotive Engineers - *Fundamentals of Vehicle Dynamics*

Society of Automotive Engineers - *Tire and Wheel Safety Issues*

Society of Automotive Engineers - *The Tire as a Vehicle Component*

Society of Automotive Engineers - *Braking Performance of Heavy Commercial Vehicles*

Society of Automotive Engineers - *Motor Vehicle Accident Reconstruction*

American Society of Materials - *Principles of Failure Analysis*

OSHA - *Construction Safety and Health*

Society of Automotive Engineers - *Occupant and Vehicle Kinematics in Rollovers*

PUBLICATIONS

"Expert Testimony Regarding the Speed of a Vehicle: the Status Of North Carolina Law and the State of the Art"

"The Critical Role of the Accident Reconstructionist in Trucking Cases"

"Speed Testimony - The Brewing Battlefield"

INSTRUCTOR

Headlines Produce Change: OSHA'S Updated (and Improved) Construction Crane and Derrick Standard

North Carolina Trucking Association: Setting Course for Safety

Accident Research Specialists, PLLC
FORENSIC ENGINEERS

Exhibit G

Super-Sod Receipt Disclaimer

All Pharmacies and Drug Stores are required to keep your records.
 However, Bayer and Ciba-Geigy are responsible for distribution, not delivery,
 at hospital discharge. They are not doing anything of value given or taken
 at home. PLEASE SUBSCRIBE TO THE NEWSLETTER OF YOUR HOSPITAL

சென்னை, 15.05.2019

1. THE STATE OF NEW YORK
 2. IN SENATE
 3. JANUARY 1, 1901
 4. REPORT
 5. OF THE
 6. COMMISSIONER OF THE LAND OFFICE
 7. FOR THE YEAR 1900
 8. ALBANY:
 9. ANDREW D. LEECH, PRINTER
 10. 1901

Exhibit H

Trooper Gleich Deposition Ex. 1

7. I have responded to collisions that happen because interstate lanes are blocked due to spilled loads and drivers are faced with a sudden stop situation on a road with a 70 mph speed limit.
8. Because I knew the spilled load would cause a problem on the interstate, I accelerated my cruiser to the next exit so I could turn around and hurry back down the westbound lanes to the site of the spill.
9. In my experience, it doesn't take long for a crash to follow behind a spilled load or some other obstruction on the interstate.
10. When I arrived at the spill location I spoke with Cody Sox, the driver of the truck and trailer that lost the sod on the interstate.
11. The driver informed me that the sod was loaded by Super Sod.
12. The driver informed me that he moved over to avoid a tractor trailer, his trailer swayed, and then his load spilled onto the interstate.
13. I observed that a large amount of sod had fallen on to the highway, that the plastic wrap on the sod was torn, and that the sod pallets were not tied down and securely fastened on the trailer.
14. While cleanup of the sod was still taking place, I was notified of a large crash located close behind the sod spill.
15. I reversed my vehicle back down I-26 and responded to the car crash that happened just past the Exit 154 on-ramp to I-26 westbound.
16. I spoke to the driver of an RV that was towing a large SUV. The driver of the RV was slowing down and almost at a stop because of the sod spill when his tow vehicle was struck by a Lexus driven by Price Oulla. The Lexus slammed sideways into the rear of

the RV tow vehicle after being rear ended at a high rate of speed by a Toyota driven by Lisa Velasquez.

17. Based on my experience and training from responding to crashes on the interstate as a Trooper and based on my investigation of the sod spill and resulting car wreck, it is my opinion that if the sod hadn't spilled on the road, there would not have been a multi-vehicle car crash.
18. Based on my investigation, the failure of Super Sod and Cody Sox to secure the load of sod and the subsequent spill onto the interstate was a significant cause of the car wreck between Price Oulla and Lisa Velasquez.
19. Usually, when we have travel blocked on the interstate due to a spilled load or a wreck, we send a cruiser a half a mile behind the end of the traffic to put blue lights on to warn other drivers of the sudden stop ahead so they will have time to react.
20. On this day, the crash happened too fast and before a cruiser could get positioned to warn other drivers.

FURTHER AFFIANT SAYETH NOT

Robert H. Gleich

Sworn and subscribed to before me
This ___ day of _____, 2016.

Notary Public for South Carolina
My commission expires: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)
)
Price Oulla and Bonnie Oulla,)
)
Plaintiffs,)
)
vs.)
)
Lisa Velazques, Harbison Community)
Association, Inc., Cody Sox, and Patten)
Seed Company, d/b/a Super-Sod,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT
CASE NO. 2014-CP-38-1590

**PLAINTIFFS' MOTION TO
AMEND COMPLAINT**

FILED FOR RECORD
WILLIAM B. CLARK
JAN 29 P 3 24
CLERK OF COURT
ORANGEBURG, SC

PLEASE TAKE NOTICE that Plaintiffs, by and through their undersigned attorneys, respectfully move this Court to allow the Plaintiffs to amend the pleadings by adding a cause of action against Patten Seed Company, d/b/a Super-Sod for Breach of the Implied Warranty of Merchantability. The proposed Amended Complaint is attached hereto as **Exhibit A**.

Amendments of pleadings are controlled by Rule 15, SCRPC, which provides in pertinent part that "a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires and does not prejudice any other party." A motion to amend is addressed to the sound discretion of the trial judge. *Stanley v. Kirkpatrick*, 357 S.C. 169, 592 S.E.2d 296 (2004); *City of North Myrtle Beach v. Lewis-Davis*, 360 S.C. 225, 599 S.E.2d 462 (Ct.App.2004). Leave to amend pleadings pursuant to Rule 15, SCRPC, shall be liberally and freely given when justice so requires and does not prejudice any other party. *Crestwood Golf Club, Inc. v. Potter*, 328 S.C. 201, 493 S.E.2d 826 (1997); *Pruitt v. Bowers*, 330 S.C. 483, 499 S.E.2d 250 (Ct.App.1998). The prejudice Rule 15 envisions is a lack of notice that the new issue is going to be tried, and a lack of opportunity to refute it. *Tanner v.*

ATTEST: TRUE COPY

William B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

Florence County Treasurer, 336 S.C. 552, 521 S.E.2d 153 (1999); *Lewis-Davis*, 360 S.C. at 232, 599 S.E.2d at 465. The party opposing the amendment has the burden of establishing prejudice. *Foggie v. CSX Transp., Inc.*, 315 S.C. 17, 431 S.E.2d 587 (1993); *Pruitt*, 330 S.C. at 489, 499 S.E.2d at 253. This rule strongly favors amendments and the court is encouraged to freely grant leave to amend. *Jarrell v. Seaboard Sys. R.R.*, 294 S.C. 183, 363 S.E.2d 398 (Ct.App.1987).

In support of the motion, the Plaintiffs state the following:

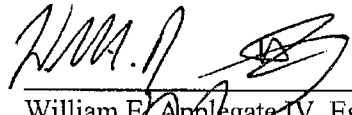
1. Plaintiffs seek to amend the Complaint in order to add an additional cause of action against Patten Seed Company, d/b/a Super-Sod for Breach of the Implied Warranty of Merchantability.
2. This amendment, if ordered, will not prejudice the Defendants in their defense of this case.

For the reasons set forth above, Plaintiffs respectfully requests that the Court grant their Motion to Amend the Complaint.

SIGNATURE PAGE TO FOLLOW

YARBOROUGH APPELATE LLC

291 East Bay Street, Floor 2
Charleston, SC 29401
843-972-0150 office
843-277-6691 fax
william@yarboroughappellate.com
dlail@yarboroughappellate.com



William E. Applegate IV, Esquire
David B. Lail, Esquire

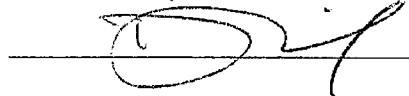
ATTORNEYS FOR THE PLAINTIFFS

6-29, 2016
Charleston, South Carolina

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record by mailing, e-mailing or hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 29th day of June, 2016

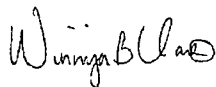


CLERK OF COURT
ORANGEBURG, SC

2016 JUN 29 PM 3:24

FILED FOR RECORD
WINNIE B. CLARK

ATTEST: TRUE COPY



CLERK OF COURT
ORANGEBURG COUNTY, SC

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)
Price Oulla and Bonnie Oulla,)
Plaintiffs,)
vs.)
Lisa Velazques, Harbison Community)
Association, Inc., Cody Sox, and Patten)
Seed Company, d/b/a Super-Sod,)
Defendants.)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT
CASE NO. 2014-CP-38-1590

**AMENDED COMPLAINT
(Jury Trial Demanded)**

FILED FOR RECORD
WINTERA B. CLARK
2015 JUN 29 PM 3:24
CLERK OF COURT
ORANGEBURG, SC

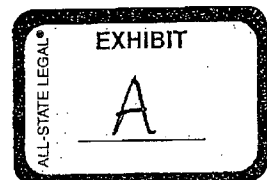
The Plaintiffs, Price Oulla and Bonnie Oulla, and the undersigned attorneys, complaining of the Defendants, jointly and severally, allege the following:

PARTIES, JURISDICTION, AND VENUE

1. The incidents that are the subject of this action occurred in Orangeburg County, South Carolina on July 22, 2014.
2. Plaintiffs Price Oulla and Bonnie Oulla are citizens and residents of Charleston County, South Carolina.
3. Upon information and belief, Defendant Lisa Velazques (hereinafter "Velazques") is a resident and citizen of Charleston County, South Carolina and was operating a motor vehicle on the highways of Orangeburg County, South Carolina on July 22, 2014 when she collided into the rear of Plaintiff Price Oulla's vehicle.
4. Upon information and belief, Defendant Patten Seed Company, d/b/a Super-Sod (hereinafter "Super-Sod") is a Georgia corporation that owns and operates a sod and seed company located on Five Chop Road in Orangeburg County, South Carolina.

ATTEST: TRUE COPY

Winnifred Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC



5. Upon information and belief, Defendant Cody Sox is a citizen and resident of Lexington County, South Carolina.

6. Upon information and belief, Defendant Harbison Community Association, Inc. (hereinafter "Harbison") is a South Carolina corporation organized and existing under the laws of South Carolina and conducts business in Orangeburg County, South Carolina. Harbison was procuring sod from Defendant Super-Sod's Orangeburg County location on the date the incidents that are the subject of this action occurred.

7. Upon information and belief, Defendant Cody Sox was acting as an employee, agent, servant, and/or legal representative of Defendant Harbison and was at all times acting in the course and scope of his employment, agency and business with Defendant Harbison on the date the incidents that are the subject of this action occurred.

8. At all times relevant to the Complaint, Defendants Super-Sod and Harbison were, and continue to be, responsible for the acts and/or omissions of their employees, agents, and/or servants.

9. Defendants Super-Sod and Harbison had the right and/or power to direct and control their employees, agents, and/or servants while doing business for a fee and/or profit, and they are personally, jointly and severally liable for the acts and/or omissions committed herein.

10. This Court has personal and subject matter jurisdiction over this case and venue is proper in this Court.

FACTS

11. On July 22, 2014, Defendant Sox, driving a pick-up truck with a trailer in tow for Defendant Harbison, travelled to Defendant Super-Sod's business located on Five Chop Road in Orangeburg County, South Carolina to obtain a load of sod for Defendant Harbison.

12. Upon information and belief, Defendants Super-Sod and Sox loaded two pallets of sod onto the trailer and did not secure or attach the load to the trailer.

13. After the pallet loads of sod were placed on the trailer, Sox left Super-Sod on Five Chop Road and eventually merged onto Interstate 26 ("I-26"), and headed westbound through Orangeburg County towing an unsecured load.

14. While Defendant Sox was pulling the trailer for Defendant Harbison on I-26, the unsecured and unattached load of sod spilled onto the roadway creating a hazard to other drivers.

15. Upon information and belief, the spilled load of unsecured sod obstructed travel on I-26 in Orangeburg County causing a traffic jam.

16. Plaintiff Price Oulla was also travelling westbound on I-26 – behind Sox and the spilled load of sod on the roadway. As Mr. Oulla approached the traffic jam, he slowed his vehicle accordingly and was nearly stopped behind a line of backed-up traffic when Defendant Velazques collided into Mr. Oulla's vehicle.

17. Defendant Velazques, travelling directly behind Mr. Oulla, did not slow her vehicle down for the spilled sod traffic jam on I-26 and she collided into the rear of Mr. Oulla at a high rate of speed forcing Mr. Oulla to then collide with the vehicle in front of him.

18. Mr. Oulla sustained traumatic and permanent injuries in the collision.

FOR A FIRST CAUSE OF ACTION AGAINST DEFENDANTS HARBISON AND SOX
(Negligence, Gross Negligence, Negligence *Per Se*)

19. Plaintiff realleges and reincorporates Paragraphs 1 through 18 above as if fully set forth herein verbatim.

20. At all times relevant to this Complaint, Defendant Sox was, upon information and belief, acting as an employee, agent, servant, and/or legal representative of Defendant Harbison and he was acting in the course and scope of his employment.

21. Defendant Harbison is vicariously liable for Defendant Sox's actions on July 22, 2014 and the consequences of those actions.

22. Defendant Sox at all times pertinent hereto had a duty to the general public, including Plaintiff, to properly secure his load of sod and operate his vehicle in a safe manner and in compliance with the statutory and common laws of South Carolina.

23. Defendant Sox breached his duty owed to Plaintiff by carelessly, negligently, and willfully operating a motor vehicle on a public roadway with an unsecured and unattached load of cargo that spilled onto the roadway, subsequently causing a collision.

24. Mr. Oulla was operating his vehicle in a safe, prudent, and reasonable manner at all times relevant to the Complaint.

25. The collision, injuries, and damages described in this Complaint were the direct, foreseeable and proximate result of the negligent and careless, willful, wanton, reckless, and grossly negligent acts or omissions of Defendants Harbison and Sox in the following particulars:

- a. Driving a motor vehicle in such a manner as to indicate a willful, wanton, reckless, grossly negligent, and negligent disregard for the safety of others, in violation of S.C. Code Ann. § 56-5-2920;
- b. In violating S.C. Code Ann. § 56-5-4100 et seq.;
- c. In failing to secure or attach a load of cargo during transport;
- d. In failing to prevent any of the load of cargo from dropping or otherwise escaping onto the roadway;
- e. In failing to maintain proper control of the vehicle;
- f. In failing to operate the vehicle in a safe manner;
- g. In failing to properly train and/or supervise employees and/or agents, and/or failing to have policies and procedures in place regarding how to properly load and secure cargo to prevent harm to others, including Plaintiff;

- h. Failing to use the degree of care and caution that a reasonable person would have used under the circumstances then and there prevailing; and
- i. In such other and further particulars as the evidence at trial may show.

All of which acts and omissions, or both, were the actual, direct and proximate cause of the damages and injuries claimed herein.

FOR A SECOND CAUSE OF ACTION AGAINST DEFENDANT SUPER-SOD
(Negligence, Gross Negligence, Negligence *Per Se*)

26. Plaintiff realleges and reincorporates Paragraphs 1 through 25 above as if fully set forth herein verbatim.

27. Upon information and belief, Defendant Super-Sod sold Defendant Harbison two pallets of sod from its business location on Five Chop Road in Orangeburg County and undertook the task of loading the sod onto the trailer being pulled by Defendant Sox.

28. Upon information and belief, Defendant Super-Sod knew that Defendant Sox would be transporting the loaded pallets of sod on South Carolina public roadways.

29. Defendant Super-Sod had a duty of care to the general public, including Plaintiff, to properly and safely load and secure the pallets of sod onto the trailer for transport.

30. Defendant Super-Sod breached its duty owed to Plaintiff by carelessly negligently, and willfully loading sod pallet loads of cargo onto a vehicle and not securing or attaching the cargo such that it spilled onto the roadway, subsequently causing a collision.

31. The collision, injuries, and damages described in this Complaint were the direct, foreseeable and proximate result of the negligent and careless, willful, wanton, reckless, and grossly negligent acts or omissions of Defendant Super-Sod in the following particulars:

- a. In failing to properly and safely load the sod pallets on the trailer;
- b. In failing to properly and safely distribute the weight of the sod pallets on the trailer;
- c. In failing to secure and attach the sod pallet loads to the trailer;

- d. In violating S.C. Code Ann. § 56-5-4100 et seq.;
- e. In failing to use the proper tools and equipment to secure the sod pallet loads to the trailer;
- f. In failing to inspect the sod pallet loads on the trailer before it left Super-Sod's place of business and entered the public roadways;
- g. In failing to properly train and/or supervise employees and/or agents, and/or failing to have policies and procedures in place regarding how to properly load and secure cargo to prevent harm to others, including Plaintiff;
- h. Failing to use the degree of care and caution that a reasonable person would have used under the circumstances then and there prevailing; and
- i. In such other and further particulars as the evidence at trial may show.

All of which acts and omissions, or both, were the actual, direct and proximate cause of the damages and injuries claimed herein.

FOR A THIRD CAUSE OF ACTION AGAINST DEFENDANT SUPER-SOD
(Breach of Implied Warranty of Merchantability)

32. Plaintiff realleges and reincorporates Paragraphs 1 through 31 above as if fully set forth herein verbatim.

33. Defendant Super-Sod is a "merchant" and the sod it sold to Defendant Harbison were "goods" as defined by the South Carolina Commercial Code, § 36-2-103 et seq.

34. In selling the sod to Defendant Harbison, Defendant Super-Sod impliedly warranted that it was merchantable, including that it was adequately contained and packaged, as set out in South Carolina Code § 36-2-314.

35. Defendant Super-Sod improperly hand-wrapped and packaged the sod with plastic in a way that allowed it to later tear under normal transport conditions.

36. Defendant Super-Sod did not exclude or modify the implied warranty of merchantability.

37. Defendant Super-Sod's implied warranty of merchantability flows to Plaintiffs pursuant to South Carolina Code § 36-2-318.

38. Defendant Super-Sod breached the implied warranty of merchantability in that the sod was, in fact, not merchantable, fit, suitable, or safe for use as set out above.

39. As a direct and proximate result of Defendant Super-Sod's breach of the implied warranty of merchantability, Plaintiffs suffered the injuries described above.

40. Due to Defendant Super-Sod's breach of the implied warranty of merchantability, Plaintiffs are entitled to recover consequential damages pursuant to South Carolina Code § 36-2-715, and actual and punitive damages as determined by a jury.

FOR A FOURTH CAUSE OF ACTION AGAINST DEFENDANT VELAZQUES
(Negligence, Gross Negligence, Negligence *Per Se*)

41. Plaintiff realleges and reincorporates Paragraphs 1 through 40 above as if fully set forth herein verbatim.

42. Defendant Velazques at all times pertinent hereto had a duty to the general public, including Plaintiff, to operate her vehicle in a safe manner and in compliance with the statutory and common laws of South Carolina.

43. Defendant Velazques breached her duty owed to Plaintiff by carelessly, negligently, and willfully operating a motor vehicle on a public roadway and subsequently causing a collision when she collided into the rear of Mr. Oulla's vehicle.

44. Mr. Oulla was operating his vehicle in a safe, prudent, and reasonable manner at all times relevant to the Complaint.

45. The collision, injuries, and damages described in this Complaint were the direct, foreseeable and proximate result of the negligent and careless, willful, wanton, reckless, and grossly negligent acts or omissions of Defendant Velazques in the following particulars:

- a. Driving a motor vehicle in such a manner as to indicate a willful, wanton, reckless, grossly negligent, and negligent disregard for the safety of others, in violation of S.C. Code Ann. § 56-5-2920;
- b. Traveling too fast for conditions;
- c. Following too closely;
- d. Failing to maintain a proper lookout;
- e. Failing to keep the motor vehicle she was operating under control;
- f. Failing to apply her brakes;
- g. Failing to operate her vehicle in a safe manner;
- h. Failing to use the degree of care and caution that a reasonable person would have used under the circumstances then and there prevailing; and
- i. In such other and further particulars as the evidence at trial may show.

All of which acts and omissions, or both, were the actual, direct and proximate cause of the damages and injuries claimed herein.

46. As a direct and proximate cause of the acts and omissions, or both, of all Defendants, and/or their employees, agents, and/or servants, Mr. Oulla was severely injured, and suffered great and permanent physical harm which has caused, and in the future will cause him to suffer one or more of the following elements of damage:

- a. Past and future physical pain and suffering;
- b. Loss of income;
- c. Loss of enjoyment of life;
- d. Substantial past expenses for medical services;
- e. Future medical expenses;
- f. Permanent injury to his body;
- g. Increased susceptibility to future injury;

- h. Mental anguish, emotional distress, shock, fear, and embarrassment;
- i. Incidental expenses related to time out of work and medical care; and
- j. Other particulars as discovery and the evidence at trial may show.

47. Plaintiff is informed and believes that he is entitled to judgment against all Defendants for the damages he has suffered and will suffer in the future.

FOR A FIFTH CAUSE OF ACTION AGAINST ALL DEFENDANTS
(Loss of Consortium)

48. Plaintiff realleges and reincorporates Paragraphs 1 through 47 above as if fully set forth herein verbatim.

49. As a direct, foreseeable, and proximate result of the joint concurring negligent, grossly negligent, careless, wanton, and reckless acts and/or omissions of the Defendants and/or their employees, agents, and/or servants, as alleged above, Plaintiff Bonnie Oulla has been forced to endure substantial losses of the marital rights to company, society, cooperation, affection, assistance, fellowship, aid, and relations with her spouse. And, Plaintiff Bonnie Oulla has suffered and incurred expenses and costs, and other damages to be shown through discovery and trial.

Plaintiffs are entitled to judgment against Defendants, jointly and severally, for the above-described actual damages and injuries to Plaintiffs, and for punitive damages to be determined by a jury.

WHEREFORE, Plaintiff prays for the following:

- i. A trial by jury;
- ii. Judgment against Defendants for damages pled herein in an amount to be determined by the jury;
- iii. For the costs of this action; and
- iv. For such other and further relief as this court deems just and proper.

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ATTORNEYS FOR THE PLAINTIFFS

_____, 2016
Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

Price Oulla and Bonnie Oulla,

Plaintiffs,

vs.

Lisa Velazques, Harbison Community
Association, Inc., Cody Sox, and Patten
Seed Company, d/b/a Super Sod,

Defendants.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT
CASE NO. 2014-CP-38-1590

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION TO ALTER OR AMEND ORDER
GRANTING PATTEN SEED COMPANY
D/B/A SUPER SOD'S MOTION FOR
SUMMARY JUDGMENT**

FILED FOR RECORD
JANIFA B. CLARK
AUG 16 P 1:43
CLERK OF COURT
ORANGEBURG, SC

PLEASE TAKE NOTICE that within ten days after service hereof, or as soon thereafter as counsel may be heard, Plaintiffs Price and Bonnie Oulla will move, pursuant to Rules 52(b) and 59(e), SCRCF, for alteration or amendment of the Order Granting Patten Seed Company d/b/a Super Sod's Motion for Summary Judgment. The basis for the motion is that the Court erred as a matter of law in finding that Patten Seed Company d/b/a Super Sod (Super Sod) had no statutory or common law duty to Plaintiffs, and Super Sod's motion should be denied. Plaintiffs also respectfully request amendment of the Court's findings of fact in various respects.¹

Undersigned counsel received written notice of entry of the subject Order by email from counsel for Defendant Lisa Velazques on August 3, 2016.

ATTEST: TRUE COPY

Winnifred Oulla

CLERK OF COURT
ORANGEBURG COUNTY, SC

¹ Plaintiffs filed a Motion to Amend the Complaint to plead a cause of action for breach of the UCC article 2 warranty of merchantability on June 29, 2016, before the Court entered the Order Granting Super Sod's Motion for Summary Judgment on the cause of action for negligence. The hearing on the Motion to Amend is scheduled to be heard on August 23, 2016.

FACTS

This case arises out of a chain of events that began at Super Sod's business in Orangeburg and ended in an automobile collision on I-26. On July 22, 2014, Defendant Cody Sox (Sox), an employee of Defendant Harbison Community Association, Inc. (Harbison), travelled from Columbia to Super Sod's business to purchase a load of sod for Harbison. Cody Sox Dep. 19:21-20:14, attached as Ex. A to Plaintiffs' Memo in Opposition. To transport the sod from Orangeburg to Columbia, Sox was driving a Harbison pick-up truck and pulling a flatbed trailer. Sox Dep. 20:3-10. This was Sox's first trip to Super Sod and his first time hauling sod. Sox Dep. 25:5-10.

Prior to making the trip, Sox called and ordered two pallets of sod for Harbison. Sox Dep. 23:11-14. Super Sod informed Sox that they would load the sod onto Sox's trailer. Sox Dep. 23:21-23. In addition to loading customer vehicles like Sox's with pallets of sod, Super Sod loads and ships sod from its locations in four states across the southeast using its own fleet of tractor trailers. Super Sod 30(b)(6) Dep. 11:9-21; 22:17-23, attached as Ex. B to Plaintiffs' Memo in Opposition. According to Super Sod, it loads approximately 800 pallets of sod per day from April to October. Super Sod 30(b)(6) Dep. 17:23-18:7. When doing sod business with customers like Sox, the sales price includes Super Sod's stacking the sod on pallets, wrapping the sod in plastic, and loading the 2,000 pound pallets of sod with a forklift onto customer's vehicles for transport on public roadways. Super Sod 30(b)(6) Dep. 25:17-27:2; 27:12-18.

When Sox arrived at Super Sod, he paid for the two pallets of sod and was directed a couple of miles down the road where the sod would be loaded. Sox Dep. 24:3-12. Next, Melvin Kearse, a 22-year Super Sod veteran employee, wrapped the sod with plastic and loaded the sod onto Harbison's trailer using a Super Sod forklift. Melvin Kearse Dep. 7:22-24; 44:2-3; 42:4-10; 15:24-16:1, attached as Ex. C to Plaintiffs' Memo in Opposition. Kearse testified that it is his

responsibility to: (1) properly wrap the sod in a way that it's not supposed to break during transport; and (2) safely load the sod onto the trailer and make sure it's balanced and not overloaded. Kears Dep. 20:13-17; 31:12-19; 17:20-18:2; 28:7-18. Kears further testified that he balances sod loads by placing pallets in the middle of the trailer, and if the sod puts too much weight on a trailer, he takes it off and has the customer come back later for loading. Kears Dep. 33:18-21; 28:15-22. According to Kears, there are situations where Super Sod will decide whether or not a load can be safely transported. Kears Dep. 60:13-19. Likewise, Super Sod's 30(b)(6) witness, Joe Livingston, testified that Super Sod would not load a customer in "situations that would not be safe." Super Sod 30(b)(6) Dep. 35:19-36:10.

Nevertheless, Kears ignored Super Sod's responsibilities for safely loading its product onto Sox's vehicle, and instead, testified that he loaded the sod with one pallet on the front of the trailer and one pallet on the back of the trailer. Kears Dep. 40:19-41:8. Sox testified that he had not done any analysis on where the sod or any weight should have been placed on the trailer prior to having the sod loaded. Sox Dep. 51:17-22. Kears also testified that he denied Sox's request to remove sand from the middle of Sox's trailer where he normally places sod loads because it was not his job. Kears Dep. 40:12-18. Sox, who forgot to bring straps to secure the sod load, also asked Kears if Super Sod had any straps, and was told no. Sox Dep. 72:16-20; 73:7-8. Both Sox and Kears admit that they did not secure the pallets of sod to the trailer in any way before it left Super Sod and made its way to I-26 for the trip from Orangeburg to Columbia. Kears Dep. 34:14-16; Sox Dep. 34:8-10; 63:14-16.

After stopping to pick up some fast food, and right after merging onto I-26 westbound, he reached about 48 or 50 miles per hour when a tractor-trailer began "swaying just a little bit" into Sox's lane and Sox "let off the gas and adjusted 3 to 4 feet to the right, trying to go into the

emergency lane.” Sox Dep. 20:19-25; 21:2-12. Next, Sox’s trailer loaded with unsecured sod began to sway and Sox pulled the Harbison truck off the interstate and came to a stop. Sox Dep. 21:12-16. Sox looked back and noticed that “a half a pallet of sod from the trailer had rolled off the back of it into the slow lane of I-26.” Sox Dep. 21:17-20. Sox testified that the plastic wrapping on one pallet of sod was ripped “at the top” and the other pallet of sod’s wrapping “was torn down about halfway from the top.” Sox Dep. 132:13-133:11; 50:18-20.

With sod obstructing the highway, Sox called 911 at 11:54 am to report the spill and he and his passenger waited in the truck for emergency personnel to arrive. Sox Dep. 21:23-22:8; 43:10-17.; CAD Call Information attached as Ex. D to Plaintiffs’ Memo in Opposition. Five minutes later at 11:59 am, West Middle Fire Department was notified of the sod spill and dispatched to the scene. CAD Call Information. West Middle Fire Department arrived at the spill location to help clear the sod from the road at 12:10 pm. CAD Call Information. *One minute later*, at 12:11 pm, 911 received a call from a motorist stating: “Where 301 enters, traffic was backed up. Another car hit another car and the car rolled over.” CAD Call Information; 911 call recording attached to Def. Harbison’s Memo in Support as Exs. H & I. Plaintiff Price Oulla was travelling westbound on I-26 – behind Sox and the spilled load of sod. Comp. ¶ 16. As Plaintiff approached the backed-up traffic due to the sod spill, he slowed his vehicle down and was rear-ended by Defendant Lisa Velazques (“Meyer”) who testified that that there was “an immediate stop of cars” and she was unable to stop in time. Lisa Meyer Dep. 36:4-6; 33:6, attached as Ex. E to Plaintiffs’ Memo in Opposition.

FINDINGS OF FACT THAT SHOULD BE AMENDED

Pursuant to Rule 52(b), SCRCP, Plaintiffs respectfully request that the Court amend various findings of fact set forth in the Order.

1. **“Although the Plaintiff was unable to remember the accident, Ms. Velazques testified that she did not see traffic had slowed in front of her until it was too late. Velazques offered no other explanation as to why she was unable to avoid the accident.” Order at 1.**

The Court’s finding is not in view of the evidence in a light most favorable to Plaintiffs, the non-moving party. Ms. Velazques testified that there was “an immediate stop of cars” and she was unable to stop in time. Lisa Meyer Dep. 36:4-6; 33:6. The distinction between this testimony and the Court’s finding is more than semantic. The “immediate stop of cars” is squarely within the scope of the risk posed by inadequately secured loads on the highway, and is therefore relevant to the issue of duty.

2. **There is evidence that the accident occurred before the sod was cleared from the highway.**

The timeline of events in the Court’s findings focus on the seventeen-minute time lapse between Sox’s initial 911 call about the sod spill and the first 911 call about Plaintiffs’ accident. The Court also finds that “[a] fire engine eventually responded and blocked traffic in the right (slow) lane so that the sod could be cleaned from the roadway.” Order at 3.

The Court should include findings that West Middle Fire Department arrived at the spill location to help clear the sod from the road at 12:10 pm. CAD Call Information. *One minute later*, at 12:11 pm, 911 received a call from a motorist stating: “Where 301 enters, traffic was backed up. Another car hit another car and the car rolled over.” CAD Call Information; 911 call recording. From this evidence a jury could conclude that the sod cleanup was still going on when Plaintiff was struck by Velazques, rendering this accident squarely within the scope of immediate risk posed by the sod spill that was caused by the unsafe loading and inadequate stretch-wrapping by Super Sod. See Trooper Gleich Dep. Ex. 1, at ¶¶ 19-20, attached to Plaintiffs’ Memo in Support as Ex. H (providing that “when we have travel blocked on the interstate due to a spilled load or a wreck,

we send a cruiser a half a mile behind the end of the traffic to put blue lights on to warn other drivers of the sudden stop ahead so that they will have time to react,” but in this instance, “the crash happened too fast and before a cruiser could get positioned to warn other drivers”).

3. The Court’s findings do not include the evidence that the stretch-wrapping provided by Super Sod ripped, which allowed the sod to spill onto the highway.

In discussing the spillage of the sod onto the highway, the Court finds simply: “Sox lost a portion of the sod from both pallets, but the pallets themselves were unmoved.” Order at 3. Because the evidence is to be viewed in the light most favorable to Plaintiffs, the discussion should include a finding that Sox testified the plastic stretch-wrapping on one pallet of sod was ripped “at the top” and the other pallet of sod’s wrapping “was torn down about halfway from the top.” Sox Dep. 132:13-133:11; 50:18-20. The ripping of the stretch-wrapping allowed the sod to spill onto the highway. Michael A. Sutton, P.E. Aff. ¶¶ 6 and 10, attached to Plaintiffs’ Memo in Opposition as Ex. F. This fact is important to the issue of Super Sod’s duty, because Super Sod performed the stretch-wrapping on its own accord, not at the direction of its customer, and did so with the safety of third parties like Plaintiff in mind. That is, Super Sod did this not only for the benefit of its customers, but also for the benefit of third parties. That implicates a jury question as to the existence of duty pursuant to Miller v. City of Camden, 329 S.C. 310, 494 S.E.2d 813 (1997), as set forth below.

4. The Court finds that Super Sod’s employee “complied with Sox’s instructions” “to load the pallets over the trailer’s two axles.” Order at 2.

There is evidence in the record, however, that the employee disregarded his and Super Sod’s own knowledge about safely loading its product the Harbison trailer and loaded the sod not over the two axles, but rather with one pallet on the front of the trailer and one pallet on the back of the trailer. Kearse Dep. 40:19-41:8. There is evidence in the record that loading the trailer in

this manner was unsafe. Michael A. Sutton, P.E. Aff. ¶¶ 6-8, attached as Ex. F to Plaintiff's Memo in Opposition.

LAW AND ARGUMENT

In finding that Super Sod owed no duty to Plaintiffs as a matter of law, the Court focuses on: (1) whether a statutory duty was owed pursuant to South Carolina Code sections 56-5-4100 and -4110 [Order at 6-8]; and (2) whether Super Sod's wrapping of the sod was "an 'undertaking' within the contemplation of Section 56-5-4110" [Order at 8]; and that Super Sod could not have assumed a duty because South Carolina has not adopted Restatement (Second) of Torts § 324A [Order at 8-10].

Respectfully, the Court misinterpreted Code section 56-5-4100, which plainly provides that its loading requirements apply to both operators and loaders. Further, Super Sod's wrapping of the sod constituted an undertaking pursuant to common law, regardless whether Super Sod undertook any act to become a loader of the trailer "within the contemplation of Code section 56-5-4100." Furthermore, notwithstanding the Supreme Court's decision not to expressly adopt Restatement (Second) of Torts § 324A, the Supreme Court has found a jury question as to duty to a third party when there is evidence that the defendant undertook an act "for the benefit of third parties." Miller v. City of Camden, 329 S.C. 310, 315, 494 S.E.2d 813, 815-16 (1997) (citations omitted). There is such evidence here. Plaintiffs are not asking the Court to apply Restatement § 324A, but rather are asking the Court to apply Miller.

Finally, the Court has not addressed the issue whether Super Sod negligently created the risk that the stretch-wrapping would fail under these circumstances. Negligent creation of risk is one of the five exceptions to the general principle that "[u]nder South Carolina common law, there is no general duty to control the conduct of another or to warn a third person or potential victim of

danger.” Johnson v. Jackson, 401 S.C. 152, 160, 735 S.E.2d 664, 668 (Ct. App. 2012). The five exceptions are: “(1) where the defendant has a special relationship to the victim; (2) where the defendant has a special relationship to the injurer; (3) where the defendant voluntarily undertakes a duty; (4) where the defendant negligently or intentionally creates the risk; and (5) where a statute imposes a duty on the defendant.” Id. Plaintiffs have argued, but the Court has not addressed, exception (4) from Johnson. Plaintiffs’ Memo in Opposition at 9, 11–13.²

A. Super Sod owed a duty to Plaintiff pursuant to South Carolina Code section 56-5-4100.

Section 56-5-4100(A) provides, in pertinent part:

No vehicle may be driven or moved on any public highway unless the vehicle is so constructed or loaded as to prevent any of its load from dropping, sifting, leaking, or otherwise escaping from the vehicle....

This subsection of the statute is written in the passive voice, and neither includes nor excludes any particular class of persons against whom it is directed.

Instead, the persons against whom the entire statute is directed are identified in subsection (C), which provides:

The loader of the vehicle and the driver of the vehicle, in addition to complying with the other provisions of this section, shall sweep or otherwise remove any loose gravel or similar material from the running boards, fenders, bumpers, or other similar exterior portions of the vehicle before it is moved on a public highway.

S.C. Code Ann. § 56-5-4100(C) (emphasis added). This plainly worded provision provides that the driver *and* the loader of the vehicle not only must comply with the requirements of subsection (C), but also must comply with the requirements of subsection (A), one of the “other provisions of

² In this Motion, Plaintiffs do not intend to re-argue all of their positions set forth in their Memo in Opposition or articulated at the hearing. Plaintiffs do not wish to waive any of those positions, however, and incorporate all previously raised arguments herein by reference.

this section.” See Tilley v. Pacesetter Corp., 355 S.C. 361, 373, 585 S.E.2d 292, 298 (2003) (providing that “[w]hen the language of a statute is plain, unambiguous, and conveys a clear and definite meaning...the statutory terms...must be applied according to their literal meaning”). It is clear that in drafting section 56-5-4100, the legislature contemplated that the vehicle would be driven after being loaded by the loader, and that the loader, in addition to the driver, should be responsible for the vehicle’s being so driven with the unsecured load. See Lincoln Gen. Ins. Co. v. Progressive No. Ins. Co., 406 S.C. 534, 538, 753 S.E.2d 437, 439 (Ct. App. 2013) (providing that “[t]he cardinal rule of statutory construction is to ascertain and effectuate the intent of the Legislature”) (citation omitted). Here, Super Sod, as the loader of the trailer, had a statutory duty to comply with the requirement that the trailer be loaded in such a way “as to prevent any of its load from dropping...or otherwise escaping from the vehicle.” § 56-5-4100(A).

The Court, however, has held that section 56-5-4100(A) applies to operators only, not loaders. If that were correct, then South Carolina Code section 56-5-4110 would be superfluous and unnecessary. That section provides:

No person shall operate on any highway any vehicle with any load unless such load and any covering thereon is securely fastened so as to prevent such covering or load from becoming loose, detached or in any manner a hazard to other users of the highway.

S.C. Code Ann. § 56-5-4110. This section plainly applies to operators only, and provides that the operator shall not operate his vehicle with an unsecured load. That is exactly how the Court has interpreted Code section 56-5-4100. Yet, if section 56-5-4100 were so limited, then section 56-5-4110 would be superfluous and unnecessary. The Court is supposed to assume that no statute is superfluous, and interpret statutes consistent with that principle of statutory construction. See generally CFRE, LLC v. Greenville Co. Assessor, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (providing that “sections which are a part of the same general statutory law must be construed

together and each one given effect,” and that the Court “must read the statute so that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous”) (quotations omitted). The notion that the General Assembly did not intend section 56-5-4110 to be superfluous buttresses Plaintiffs’ interpretation of section 56-5-4100 that the obligations imposed therein apply to both operators and loaders. Such obligations include the passively worded obligations of section 56-5-4100(A).

Plaintiff, as a traveler on the highway, was doubtless within the class of persons that section 56-5-4100 was intended to protect from this type of harm...injury from a load falling off of a trailer on the highway. See, e.g., Hurst v. Sandy, 329 S.C. 471, 494 S.E.2d 847 (Ct. App. 1997) (standing for the principle that a statutory duty arises if the “essential purpose of the statute is to protect from the kind of harm the plaintiff has suffered and that [the plaintiff] is a member of the class of persons the statute is entitled to protect”); cf. Rowe v. Frick, 250 S.C. 499, 504–05, 159 S.E.2d 47, 50 (1968) (providing generally that violations of traffic statutes constitutes negligence *per se* in actions by other drivers).

Super Sod did have a statutory duty to Plaintiff to securely load Harbison’s trailer, and the Court should amend its Order and deny Super Sod’s motion for summary judgment.

B. Super Sod owed Plaintiff a common law duty not to negligently create the risk of harm in failing to properly wrap the pallets, in failing to balance the pallets on the trailer, or in failing to ensure the load was secured to the trailer.

As noted above, the Court has not addressed Plaintiffs’ position on the principle that a common law duty to foreseeable plaintiffs arises on the part of someone who negligently creates a risk in the conduct of another. Johnson, 401 S.C. at 160, 735 S.E.2d at 668. As set forth in Plaintiffs’ Memo in Opposition, this principle is consistent with the basic law of torts that everyone has a common law duty to refrain from creating a risk of harm to foreseeable plaintiffs. See Carter

v. R.L. Jordan Oil Co., 294 S.C. 435, 444, 365 S.E.2d 324, 329 (Ct. App. 1988) (providing generally that a duty exists “to protect others against the risk of harm from his actions,” and that a duty arises “with respect to a danger which is apparent to one in the position of the actor before the harm occurs”), rev’d on other grounds, 299 S.C. 439 (1989). This is also consistent with the general duty of due care that a party to a contract owes to foreseeable third-party plaintiffs, notwithstanding any contractual duties he or she may owe to a customer. See Dorrell v. S.C. Dept. of Transp., 361 S.C. 312, 319–20, 605 S.E.2d 12, 15–16 (2009) (identifying common law duty of care to third parties on behalf of paving contractor, independent of the duties it assumed in its contract with the DOT, based on general principles of common law negligence, and providing list of similar case law).

In this case, the Court could find that Super Sod had a general common law duty of care to ensure the safety of the load on the Harbison trailer, per Carter or Dorrell. The Court could also find that in wrapping the sod, per Johnson, Super Sod had a duty to refrain from creating a risk of harm to third parties like Plaintiff. Either way, Super Sod did have a common law duty to Plaintiff and other motorists to refrain from creating an unsafe condition on the Harbison trailer. Super Sod actively created the risk by inadequately stretch-wrapping, carelessly loading, and failing to secure the load before sending its customer off to traverse the highway with other motorists, including Plaintiff. Michael A. Sutton, P.E. Aff. ¶¶ 6-8.

It is undisputed that Super Sod’s employee is the one who wrapped the pallets of sod, and that the wrapping ultimately ripped, allowing the sod to spill onto the highway. Sox Dep. 50:18-20. There is a genuine issue of material fact whether Super Sod was negligent in inadequately wrapping the pallets. Michael A. Sutton, P.E. Aff. ¶¶ 6,7; Sox Dep. 132:13-133:11; 50:18-20. There is a genuine issue of material fact whether the failure of the wrapping was the cause of the

spillage onto the highway. Sox Dep. 50:4-20; Michael A. Sutton, P.E. Aff. ¶¶ 6,10. Accepting, as the Court has in its Order on page 3, Sox's testimony that "the pallets themselves were unmoved," the jury could easily conclude that Super Sod had negligently stretch-wrapped the sod and that is why the sod spilled. Per Johnson, Super Sod had a duty not to negligently create that risk.

In addition, there is a genuine issue of material fact whether Super Sod loaded the trailer in such a manner as to render the trailer imbalanced and unsafe for travel. Michael A. Sutton, P.E. Aff. ¶¶ 6,7,10. While there is testimony that Super Sod's employee simply placed the pallets where Sox told him to place them, there is also evidence from which the jury could find that Super Sod and its employee were more experienced in loading trailers and should have refused to disregard their own expertise. Kearse Dep. 13:4-22; Super Sod 30(b)(6) Dep. 17:23-18:7; Sox Dep. 51:17-22. Super Sod retained ultimate authority over whether an unsafe load would leave its yard, and negligently failed to exercise that authority here, creating the risk that caused this wreck. Super Sod 30(b)(6) Dep. 36:11-19; 71:14-23.

Moreover, Super Sod actively participated in the loading of the Harbison trailer, yet took no measures to strap down or otherwise secure the load of pallets. Super Sod knew that Sox did not have any straps and was not planning to secure the load before entering the highway. Kearse Dep. 34:14-16; Sox Dep. 34:8-10; 63:14-16. In this regard, Super Sod acted in concert with Sox and Harbison in allowing the unsecured pallets to be hauled down I-26 at highway speed, without regard to the obvious danger posed. Super Sod was an active participant in negligently loading the trailer, and therefore its negligent conduct created the risk that caused the sod spill.

For these numerous reasons, pursuant to Johnson exception (4), Super Sod had a common law duty to not negligently create a risk of danger. 401 S.C. at 160, 735 S.E.2d at 668. There is at least a scintilla of evidence that Super Sod did negligently create a risk of danger, and the scope

of the risk included injury to those traveling the highway, including Plaintiff. The Court should therefore amend its Order and deny Super Sod's motion for summary judgment.

- C. **Restatement (Second) of Torts § 324A is inapposite. There is evidence that Super Sod undertook numerous acts in contemplation of the safety of third parties traveling the highway, such as Plaintiff, and whether Super Sod assumed a duty in doing so is a mixed question of law and fact to be resolved by the jury pursuant to Miller v. City of Camden.**

There is a subtle but significant difference between the rule of Restatement (Second) of Torts § 324A, which the Miller Court declined to adopt, and the rule that the Miller Court did adopt. The rule of Restatement § 324A is that the volunteer has a duty to third parties, regardless whether he undertakes the act only for the benefit of a second party, if he "should recognize" the need to consider "the protection of a third person" while undertaking the act. Miller, 329 S.C. at 315, 494 S.E.2d at 815 n.2. The rule adopted in Miller is more limited, and provides that the volunteer assumes a duty to the third party only if he actually undertakes the act with the protection of such a third party in mind.

Here, there is evidence from which the jury could infer that Super Sod's stretch-wrapping the pallets of sod in plastic, "to add some stability to [the stack of sod], give it some additional stability as it's being handled, transported, whatever," was undertaken with the protection of traveling motorists on the highway in mind. Super Sod 30(b)(6) Dep. at 40:5-13. The jury could infer that the safety of other motorists was Super Sod's concern in this undertaking, not simply to maintain the goods on the trailer for the benefit of its customer. Moreover, Super Sod's sales price for sod includes Super Sod's acts of: (1) stacking the sod on pallets, (2) stretch-wrapping the sod in plastic, and (3) loading the 2,000 pound pallets of sod with a forklift onto customer's vehicles for transport on public roadways. Super Sod 30(b)(6) Dep. 25:17-27:2; 27:12-18. Super Sod's undertaking of these actions for which they charge customers, particularly stretch-wrapping to give

the sod stability during transport, is evidence of Super Sod's contemplation of the safety of third parties traveling the highway, such as Plaintiff.

There is also evidence that in loading customer vehicles, Super Sod reserved to itself ultimate authority whether to allow the customer leave with an unsafe load, with the protection of third-party motorists in mind. In its 30(b)(6) deposition, Super Sod testified that "we won't load something that we know is not safe, that we know is not safe, without a doubt." Super Sod 30(b)(6) Dep. 36:11–19. Super Sod further testified that it would refuse to participate in loading a customer's trailer if the trailer were unsafe for hauling a load. Super Sod 30(b)(6) Dep. 71:14–23. Highway safety is supposedly a concern of Super Sod, which is why Super Sod takes the step of pre-wrapping the pallets of sod before loading them onto customers' vehicles in the first place. Super Sod 30(b)(6) Dep. 39:22–40:17.

The Super Sod employee who loaded the Harbison trailer testified that he is trained to ensure that he "safely load each trailer." Kears Dep. 17:20–22. The employee also acknowledged that Super Sod can and will refuse to let a customer leave with an unsafe load. Kears Dep. 60:13–19. Yet, Super Sod allowed Sox to leave with a loaded trailer fully knowing that Sox did not have more than 4,000 pounds of sod safely strapped to his trailer. Sox Dep. at 73:3–8; 84:9–5.

This testimony is more than a scintilla of evidence from which the jury could infer that in stretch-wrapping the sod and loading the pallets, Super Sod acted "for the benefit of *third parties*." Miller, 329 S.C. at 315, 494 S.E.2d at 815 (emphasis in original). This presents a mixed question of law and fact as to whether Super Sod had a duty to Plaintiffs, which is a jury question pursuant to Miller. The Court should therefore amend its Order and deny Super Sod's motion for summary judgment.

CONCLUSION

Plaintiffs respectfully request that the Court amend its Order and deny Super Sod's motion for summary judgment. As a preliminary matter, the Court should amend its findings of fact to acknowledge the evidence that Ms. Velazques struck Plaintiff due to the immediacy of the stoppage of traffic, and the evidence from which the jury could conclude that the sod cleanup was still going on at the time of the accident. The Court should also include findings regarding the inadequate stretch-wrapping of the sod performed by Super Sod, which is essential to the issue of duty.

As to the issue of duty, the Court misinterpreted Code section 56-5-4100, which plainly provides that its loading requirements apply to both operators and loaders. To interpret the statute as applying only to operators would render companion section 56-5-4110 superfluous, which the Court must assume the General Assembly did not intend.

Further, there is evidence that Super Sod stretch-wrapped the sod and reserved ultimate authority over the safety of customers' loads with the safety of third parties in mind. This implicates the principle adopted by the Supreme Court in Miller that a duty will arise if a party undertakes an act "for the benefit of third parties." There is a mixed question of law and fact whether Super Sod did so here, rendering summary judgment improper. The fact that the Supreme Court has declined to adopt Restatement (Second) of Torts § 324A is inapposite.

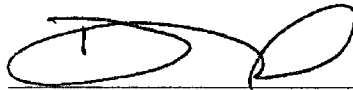
Finally, the Court has not addressed the issue raised by Plaintiffs whether Super Sod negligently created the risk that the load was unsafe, particularly that the stretch-wrapping would fail under these circumstances. Negligent creation of the risk is one of the exceptions to the general principle that "[u]nder South Carolina common law, there is no general duty to control the conduct of another or to warn a third person or potential victim of danger." Johnson v. Jackson, 401 S.C.

152, 160, 735 S.E.2d 664, 668 (Ct. App. 2012). Plaintiffs raised this argument in opposition to Super Sod's motion, but the Court has not addressed it. There is at least a scintilla of evidence that in stretch-wrapping the sod and loading the pallets onto the Harbison trailer, Super Sod negligently created the risk of harm that resulted in this accident. Summary judgment should therefore be denied on this ground.

For these reasons, Plaintiffs respectfully request that the Court amend its Order and deny Super Sod's motion for summary judgment.

YARBOROUGH APPEGATE LLC

291 East Bay Street, Floor 2
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843-972-0150 office
843-277-6691 fax



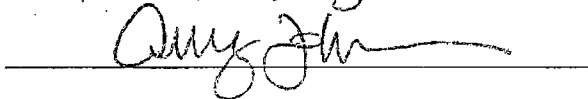
William E. Applegate IV, Esquire
David B. Lail, Esquire
ATTORNEYS FOR THE PLAINTIFFS

8-12, 2016
Charleston, South Carolina

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record by mailing, e-mailing or hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 12th day of August, 2016



STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

Price Oulla and Bonnie Oulla,

Plaintiffs,

vs.

Lisa Velazques, Harbison Community
Association, Inc., Cody Sox, and Patten
Seed Company, d/b/a Super Sod,

Defendants.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT
CASE NO. 2014-CP-38-1590

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR RELIEF FROM JUDGMENT**

FILED FOR RECORD
WINNIE B. CLARK
2017 Feb -6 P 10:32
CLERK OF COURT
ORANGEBURG, SC

TO: EDWARD RAYMOND MOORE, III, ATTORNEY FOR DEFENDANT PATTEN
SEED COMPANY D/B/A SUPER SOD

PLEASE TAKE NOTICE that within ten days after service hereof, or as soon thereafter as counsel may be heard, Plaintiffs Price and Bonnie Oulla will move, pursuant to Rules 15(a) and 60(b), SCRPC, and the Order of the South Carolina Court of Appeals entered on March 23, 2017,¹ for relief from the Order Granting Patten Seed Company d/b/a Super Sod's Motion for Summary Judgment and the Order Denying Plaintiffs' Motion to Reconsider. The basis for the motion is that the Court should reopen the action to consider and grant Plaintiffs' Motion to Amend the Complaint, which was filed on June 29, 2016 but never ruled upon by the Court.²

While this motion may technically be a Rule 60(b) motion, it is governed by the more liberal standard of Rule 15, SCRPC. The reason is that the sole subject of the motion is a Rule 15 motion to amend that had been filed and was pending, but had never been ruled upon, when

¹ A copy of the Order is attached as Exhibit A.

² A copy of the Motion is attached as Exhibit B. The proposed Amended Complaint was attached to the Motion as Exhibit A and is included again herewith.

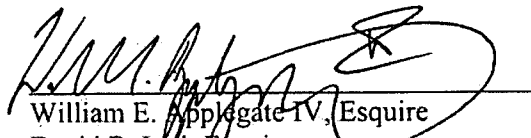
the Court entered final judgment. See, e.g., Laber v. Harvey, 438 F.3d 404, 427 (4th Cir. 2006) (providing that parties are permitted to file a motion for leave to amend the complaint at any time during the litigation, even after entry of final judgment, but first the judgment must be vacated to reopen the proceedings); Katyle v. Penn Nat'l Gaming, Inc., 637 F.3d 462, 471 (2011) (providing that even where a motion to amend has been filed *after* entry of final judgment, “[t]o determine whether vacatur is warranted...the court need not concern itself with either of [Rule 59 or Rule 60’s] standards,” but rather should consider the motion “under the same legal standard as a similar motion filed before judgment was entered” pursuant to Rule 15) (quotation omitted). Under the liberal standard of Rule 15, Plaintiffs’ motion to reopen the action and permit amendment of the complaint should be granted.

Even if the Court were to find that the more rigorous standard of Rule 60(b) applies, Plaintiffs’ motion should still be granted. The unusual circumstances leading to the lack of a ruling on Plaintiffs’ motion to amend prior to entry of judgment constitute the “mistake, inadvertence, surprise, or excusable neglect” contemplated in Rule 60(b)(1).

Under either standard, the Court should grant the motion, reopen the action, and permit Plaintiffs to amend their complaint to plead a cause of action for breach of the implied warranty of merchantability against Defendant Super Sod.

YARBOROUGH APPLGATE LLC

291 East Bay Street, Floor 2
Charleston, South Carolina 29401
843-972-0150 office
843-277-6691 fax


William E. Applegate IV, Esquire
David B. Lall, Esquire
ATTORNEYS FOR THE PLAINTIFFS

April 3, 2017

The South Carolina Court of Appeals

CLERK OF COURT
ORANGEBURG, SC

2017 APR - 6 P 10: 32

FILED FOR RECORD
WINNIE B. CLARK

Price Oulla and Bonnie Oulla, Appellants,

v.

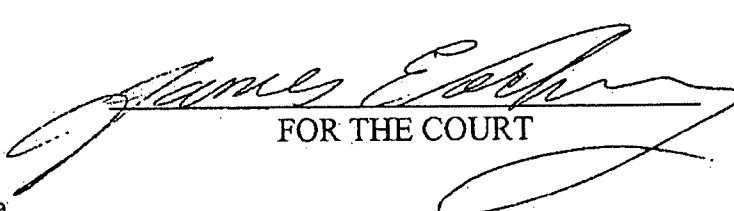
Lisa Velazques; Harbison Community Association, Inc.;
Cody Sox; and, Patton Seed Company d/b/a Super Sod,
Defendants,

Of Whom Patton Seed Company d/b/a Super Sod is the
Respondent.

Appellate Case No. 2017-000093

ORDER

Appellants' motion for leave to file a motion pursuant to Rule 60, SCRCP, with the circuit court is granted. This appeal shall be held in abeyance for ninety days to allow the circuit court to consider this matter. Counsel for Appellants shall provide this court with proof that the motion has been filed with the circuit court within fifteen days of this order, and counsel for Appellants shall immediately notify this court when the motion has been resolved.


FOR THE COURT

Columbia, South Carolina

cc:

William E. Applegate, IV, Esquire

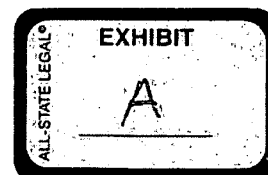
David Breault Lail, Esquire

Edward Raymond Moore, III, Esquire

The Honorable R. Knox McMahon

FILED

March 23, 2017



STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)
)
Price Oulla and Bonnie Oulla,)
)
Plaintiffs,)
)
vs.)
)
Lisa Velazques, Harbison Community)
Association, Inc., Cody Sox, and Patten)
Seed Company, d/b/a Super-Sod,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT
CASE NO. 2014-CP-38-1590

**PLAINTIFFS' MOTION TO
AMEND COMPLAINT**

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2014 APR 29 PM 3:24
CLERK OF COURT
ORANGEBURG, SC

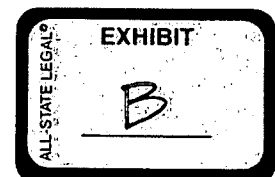
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2014 APR 29 PM 10:12
CLERK OF COURT
ORANGEBURG, SC

PLEASE TAKE NOTICE that Plaintiffs, by and through their undersigned attorneys, respectfully move this Court to allow the Plaintiffs to amend the pleadings by adding a cause of action against Patten Seed Company, d/b/a Super-Sod for Breach of the Implied Warranty of Merchantability. The proposed Amended Complaint is attached hereto as **Exhibit A**.

Amendments of pleadings are controlled by Rule 15, SCRCPP, which provides in pertinent part that "a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires and does not prejudice any other party." A motion to amend is addressed to the sound discretion of the trial judge. *Stanley v. Kirkpatrick*, 357 S.C. 169, 592 S.E.2d 296 (2004); *City of North Myrtle Beach v. Lewis-Davis*, 360 S.C. 225, 599 S.E.2d 462 (Ct.App.2004). Leave to amend pleadings pursuant to Rule 15, SCRCPP, shall be liberally and freely given when justice so requires and does not prejudice any other party. *Crestwood Golf Club, Inc. v. Potter*, 328 S.C. 201, 493 S.E.2d 826 (1997); *Pruitt v. Bowers*, 330 S.C. 483, 499 S.E.2d 250 (Ct.App.1998). The prejudice Rule 15 envisions is a lack of notice that the new issue is going to be tried, and a lack of opportunity to refute it. *Tanner v.*

ATTEST: TRUE COPY

Winnifab. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC



Florence County Treasurer, 336 S.C. 552, 521 S.E.2d 153 (1999); *Lewis-Davis*, 360 S.C. at 232, 599 S.E.2d at 465. The party opposing the amendment has the burden of establishing prejudice. *Foggie v. CSX Transp., Inc.*, 315 S.C. 17, 431 S.E.2d 587 (1993); *Pruitt*, 330 S.C. at 489, 499 S.E.2d at 253. This rule strongly favors amendments and the court is encouraged to freely grant leave to amend. *Jarrell v. Seaboard Sys. R.R.*, 294 S.C. 183, 363 S.E.2d 398 (Ct.App.1987).

In support of the motion, the Plaintiffs state the following:

1. Plaintiffs seek to amend the Complaint in order to add an additional cause of action against Patten Seed Company, d/b/a Super-Sod for Breach of the Implied Warranty of Merchantability.

2. This amendment, if ordered, will not prejudice the Defendants in their defense of this case.

For the reasons set forth above, Plaintiffs respectfully requests that the Court grant their Motion to Amend the Complaint.

SIGNATURE PAGE TO FOLLOW

YARBOROUGH APPLGATE LLC

291 East Bay Street, Floor 2

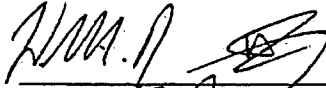
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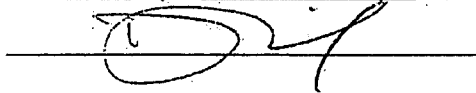
ATTORNEYS FOR THE PLAINTIFFS

6-29, 2016
Charleston, South Carolina

CERTIFICATE OF SERVICE

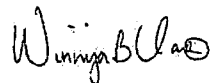
I certify that on this date a copy of the foregoing was served on each party or counsel of record by mailing, e-mailing or hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 29th day of June, 2016



Winnie B. Lail

ATTEST: TRUE COPY



Winnie B. Lail

CLERK OF COURT
ORANGEBURG COUNTY, SC

FILED FOR RECORD
WINNIE B. LAIL
2016 JUN 29 PM 3:24
CLERK OF COURT
ORANGEBURG SC

STATE OF SOUTH CAROLINA)

COUNTY OF ORANGEBURG)

Price Oulla and Bonnie Oulla,)

Plaintiffs,)

vs.)

Lisa Velazques, Harbison Community)
Association, Inc., Cody Sox, and Patten)
Seed Company, d/b/a Super-Sod,)

Defendants.)

IN THE COURT OF COMMON PLEAS

FIRST JUDICIAL CIRCUIT

CASE NO. 2014-CP-38-1590

**AMENDED COMPLAINT
(Jury Trial Demanded)**

FILED FOR RECORD
WINNIE B. CLARK
JUN 29 P 3:24
CLERK OF COURT
ORANGEBURG, SC

The Plaintiffs, Price Oulla and Bonnie Oulla, and the undersigned attorneys, complaining of the Defendants, jointly and severally, allege the following:

PARTIES, JURISDICTION, AND VENUE

1. The incidents that are the subject of this action occurred in Orangeburg County, South Carolina on July 22, 2014.

2. Plaintiffs Price Oulla and Bonnie Oulla are citizens and residents of Charleston County, South Carolina.

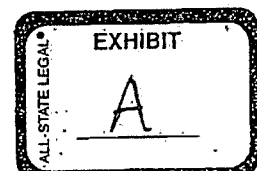
3. Upon information and belief, Defendant Lisa Velazques (hereinafter "Velazques") is a resident and citizen of Charleston County, South Carolina and was operating a motor vehicle on the highways of Orangeburg County, South Carolina on July 22, 2014 when she collided into the rear of Plaintiff Price Oulla's vehicle.

4. Upon information and belief, Defendant Patten Seed Company, d/b/a Super-Sod (hereinafter "Super-Sod") is a Georgia corporation that owns and operates a sod and seed company located on Five Chop Road in Orangeburg County, South Carolina.

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Winnie B. Clark

CLERK OF COURT
ORANGEBURG COUNTY, SC



5. Upon information and belief, Defendant Cody Sox is a citizen and resident of Lexington County, South Carolina.

6. Upon information and belief, Defendant Harbison Community Association, Inc. (hereinafter "Harbison") is a South Carolina corporation organized and existing under the laws of South Carolina and conducts business in Orangeburg County, South Carolina. Harbison was procuring sod from Defendant Super-Sod's Orangeburg County location on the date the incidents that are the subject of this action occurred.

7. Upon information and belief, Defendant Cody Sox was acting as an employee, agent, servant, and/or legal representative of Defendant Harbison and was at all times acting in the course and scope of his employment, agency and business with Defendant Harbison on the date the incidents that are the subject of this action occurred.

8. At all times relevant to the Complaint, Defendants Super-Sod and Harbison were, and continue to be, responsible for the acts and/or omissions of their employees, agents, and/or servants.

9. Defendants Super-Sod and Harbison had the right and/or power to direct and control their employees, agents, and/or servants while doing business for a fee and/or profit, and they are personally, jointly and severally liable for the acts and/or omissions committed herein.

10. This Court has personal and subject matter jurisdiction over this case and venue is proper in this Court.

FACTS

11. On July 22, 2014, Defendant Sox, driving a pick-up truck with a trailer in tow for Defendant Harbison, travelled to Defendant Super-Sod's business located on Five Chop Road in Orangeburg County, South Carolina to obtain a load of sod for Defendant Harbison.

12. Upon information and belief, Defendants Super-Sod and Sox loaded two pallets of sod onto the trailer and did not secure or attach the load to the trailer.

13. After the pallet loads of sod were placed on the trailer, Sox left Super-Sod on Five Chop Road and eventually merged onto Interstate 26 ("I-26"), and headed westbound through Orangeburg County towing an unsecured load.

14. While Defendant Sox was pulling the trailer for Defendant Harbison on I-26, the unsecured and unattached load of sod spilled onto the roadway creating a hazard to other drivers.

15. Upon information and belief, the spilled load of unsecured sod obstructed travel on I-26 in Orangeburg County causing a traffic jam.

16. Plaintiff Price Oulla was also travelling westbound on I-26 – behind Sox and the spilled load of sod on the roadway. As Mr. Oulla approached the traffic jam, he slowed his vehicle accordingly and was nearly stopped behind a line of backed-up traffic when Defendant Velazques collided into Mr. Oulla's vehicle.

17. Defendant Velazques, travelling directly behind Mr. Oulla, did not slow her vehicle down for the spilled sod traffic jam on I-26 and she collided into the rear of Mr. Oulla at a high rate of speed forcing Mr. Oulla to then collide with the vehicle in front of him.

18. Mr. Oulla sustained traumatic and permanent injuries in the collision.

FOR A FIRST CAUSE OF ACTION AGAINST DEFENDANTS HARBISON AND SOX
(Negligence, Gross Negligence, Negligence *Per Se*)

19. Plaintiff realleges and reincorporates Paragraphs 1 through 18 above as if fully set forth herein verbatim.

20. At all times relevant to this Complaint, Defendant Sox was, upon information and belief, acting as an employee, agent, servant, and/or legal representative of Defendant Harbison and he was acting in the course and scope of his employment.

21. Defendant Harbison is vicariously liable for Defendant Sox's actions on July 22, 2014 and the consequences of those actions.

22. Defendant Sox at all times pertinent hereto had a duty to the general public, including Plaintiff, to properly secure his load of sod and operate his vehicle in a safe manner and in compliance with the statutory and common laws of South Carolina.

23. Defendant Sox breached his duty owed to Plaintiff by carelessly, negligently, and willfully operating a motor vehicle on a public roadway with an unsecured and unattached load of cargo that spilled onto the roadway, subsequently causing a collision.

24. Mr. Oulla was operating his vehicle in a safe, prudent, and reasonable manner at all times relevant to the Complaint.

25. The collision, injuries, and damages described in this Complaint were the direct, foreseeable and proximate result of the negligent and careless, willful, wanton, reckless, and grossly negligent acts or omissions of Defendants Harbison and Sox in the following particulars:

- a. Driving a motor vehicle in such a manner as to indicate a willful, wanton, reckless, grossly negligent, and negligent disregard for the safety of others, in violation of S.C. Code Ann. § 56-5-2920;
- b. In violating S.C. Code Ann. § 56-5-4100 et seq.;
- c. In failing to secure or attach a load of cargo during transport;
- d. In failing to prevent any of the load of cargo from dropping or otherwise escaping onto the roadway;
- e. In failing to maintain proper control of the vehicle;
- f. In failing to operate the vehicle in a safe manner;
- g. In failing to properly train and/or supervise employees and/or agents, and/or failing to have policies and procedures in place regarding how to properly load and secure cargo to prevent harm to others, including Plaintiff;

- h. Failing to use the degree of care and caution that a reasonable person would have used under the circumstances then and there prevailing; and
- i. In such other and further particulars as the evidence at trial may show.

All of which acts and omissions, or both, were the actual, direct and proximate cause of the damages and injuries claimed herein.

FOR A SECOND CAUSE OF ACTION AGAINST DEFENDANT SUPER-SOD
(Negligence, Gross Negligence, Negligence *Per Se*)

26. Plaintiff realleges and reincorporates Paragraphs 1 through 25 above as if fully set forth herein verbatim.

27. Upon information and belief, Defendant Super-Sod sold Defendant Harbison two pallets of sod from its business location on Five Chop Road in Orangeburg County and undertook the task of loading the sod onto the trailer being pulled by Defendant Sox.

28. Upon information and belief, Defendant Super-Sod knew that Defendant Sox would be transporting the loaded pallets of sod on South Carolina public roadways.

29. Defendant Super-Sod had a duty of care to the general public, including Plaintiff, to properly and safely load and secure the pallets of sod onto the trailer for transport.

30. Defendant Super-Sod breached its duty owed to Plaintiff by carelessly negligently, and willfully loading sod pallet loads of cargo onto a vehicle and not securing or attaching the cargo such that it spilled onto the roadway, subsequently causing a collision.

31. The collision, injuries, and damages described in this Complaint were the direct, foreseeable and proximate result of the negligent and careless, willful, wanton, reckless, and grossly negligent acts or omissions of Defendant Super-Sod in the following particulars:

- a. In failing to properly and safely load the sod pallets on the trailer;
- b. In failing to properly and safely distribute the weight of the sod pallets on the trailer;
- c. In failing to secure and attach the sod pallet loads to the trailer;

- d. In violating S.C. Code Ann. § 56-5-4100 et seq.;
- e. In failing to use the proper tools and equipment to secure the sod pallet loads to the trailer;
- f. In failing to inspect the sod pallet loads on the trailer before it left Super-Sod's place of business and entered the public roadways;
- g. In failing to properly train and/or supervise employees and/or agents, and/or failing to have policies and procedures in place regarding how to properly load and secure cargo to prevent harm to others, including Plaintiff;
- h. Failing to use the degree of care and caution that a reasonable person would have used under the circumstances then and there prevailing; and
- i. In such other and further particulars as the evidence at trial may show.

All of which acts and omissions, or both, were the actual, direct and proximate cause of the damages and injuries claimed herein.

FOR A THIRD CAUSE OF ACTION AGAINST DEFENDANT SUPER-SOD
(Breach of Implied Warranty of Merchantability)

32. Plaintiff realleges and reincorporates Paragraphs 1 through 31 above as if fully set forth herein verbatim.

33. Defendant Super-Sod is a "merchant" and the sod it sold to Defendant Harbison were "goods" as defined by the South Carolina Commercial Code, § 36-2-103 et seq.

34. In selling the sod to Defendant Harbison, Defendant Super-Sod impliedly warranted that it was merchantable, including that it was adequately contained and packaged, as set out in South Carolina Code § 36-2-314.

35. Defendant Super-Sod improperly hand-wrapped and packaged the sod with plastic in a way that allowed it to later tear under normal transport conditions.

36. Defendant Super-Sod did not exclude or modify the implied warranty of merchantability.

37. Defendant Super-Sod's implied warranty of merchantability flows to Plaintiffs pursuant to South Carolina Code § 36-2-318.

38. Defendant Super-Sod breached the implied warranty of merchantability in that the sod was, in fact, not merchantable, fit, suitable, or safe for use as set out above.

39. As a direct and proximate result of Defendant Super-Sod's breach of the implied warranty of merchantability, Plaintiffs suffered the injuries described above.

40. Due to Defendant Super-Sod's breach of the implied warranty of merchantability, Plaintiffs are entitled to recover consequential damages pursuant to South Carolina Code § 36-2-715, and actual and punitive damages as determined by a jury.

FOR A FOURTH CAUSE OF ACTION AGAINST DEFENDANT VELAZQUES
(Negligence, Gross Negligence, Negligence *Per Se*)

41. Plaintiff realleges and reincorporates Paragraphs 1 through 40 above as if fully set forth herein verbatim.

42. Defendant Velazques at all times pertinent hereto had a duty to the general public, including Plaintiff, to operate her vehicle in a safe manner and in compliance with the statutory and common laws of South Carolina.

43. Defendant Velazques breached her duty owed to Plaintiff by carelessly, negligently, and willfully operating a motor vehicle on a public roadway and subsequently causing a collision when she collided into the rear of Mr. Oulla's vehicle.

44. Mr. Oulla was operating his vehicle in a safe, prudent, and reasonable manner at all times relevant to the Complaint.

45. The collision, injuries, and damages described in this Complaint were the direct, foreseeable and proximate result of the negligent and careless, willful, wanton, reckless, and grossly negligent acts or omissions of Defendant Velazques in the following particulars:

- a. Driving a motor vehicle in such a manner as to indicate a willful, wanton, reckless, grossly negligent, and negligent disregard for the safety of others, in violation of S.C. Code Ann. § 56-5-2920;
- b. Traveling too fast for conditions;
- c. Following too closely;
- d. Failing to maintain a proper lookout;
- e. Failing to keep the motor vehicle she was operating under control;
- f. Failing to apply her brakes;
- g. Failing to operate her vehicle in a safe manner;
- h. Failing to use the degree of care and caution that a reasonable person would have used under the circumstances then and there prevailing; and
- i. In such other and further particulars as the evidence at trial may show.

All of which acts and omissions, or both, were the actual, direct and proximate cause of the damages and injuries claimed herein.

46. As a direct and proximate cause of the acts and omissions, or both, of all Defendants, and/or their employees, agents, and/or servants, Mr. Oulla was severely injured, and suffered great and permanent physical harm which has caused, and in the future will cause him to suffer one or more of the following elements of damage:

- a. Past and future physical pain and suffering;
- b. Loss of income;
- c. Loss of enjoyment of life;
- d. Substantial past expenses for medical services;
- e. Future medical expenses;
- f. Permanent injury to his body;
- g. Increased susceptibility to future injury;

- h. Mental anguish, emotional distress, shock, fear, and embarrassment;
- i. Incidental expenses related to time out of work and medical care; and
- j. Other particulars as discovery and the evidence at trial may show.

47. Plaintiff is informed and believes that he is entitled to judgment against all Defendants for the damages he has suffered and will suffer in the future.

FOR A FIFTH CAUSE OF ACTION AGAINST ALL DEFENDANTS
(Loss of Consortium)

48. Plaintiff realleges and reincorporates Paragraphs 1 through 47 above as if fully set forth herein verbatim.

49. As a direct, foreseeable, and proximate result of the joint concurring negligent, grossly negligent, careless, wanton, and reckless acts and/or omissions of the Defendants and/or their employees, agents, and/or servants, as alleged above, Plaintiff Bonnie Oulla has been forced to endure substantial losses of the marital rights to company, society, cooperation, affection, assistance, fellowship, aid, and relations with her spouse. And, Plaintiff Bonnie Oulla has suffered and incurred expenses and costs, and other damages to be shown through discovery and trial.

Plaintiffs are entitled to judgment against Defendants, jointly and severally, for the above-described actual damages and injuries to Plaintiffs, and for punitive damages to be determined by a jury.

WHEREFORE, Plaintiff prays for the following:

- i. A trial by jury;
- ii. Judgment against Defendants for damages pled herein in an amount to be determined by the jury;
- iii. For the costs of this action; and
- iv. For such other and further relief as this court deems just and proper.

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ATTORNEYS FOR THE PLAINTIFFS

_____, 2016
Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

IN THE COURT OF COMMON PLEAS

Price Oulla and Bonnie Oulla,

Plaintiffs,

v.

Lisa Velazques, Harbison Community
Association, Inc., Cody Sox, and Patten
Seed Company, d/b/a Super-Sod,

Defendants.

Civil Action No. 2014-CP-38-1590

**MOTION FOR SUMMARY
JUDGMENT OF DEFENDANTS
HARBISON COMMUNITY
ASSOCIATION, INC.
AND CODY SOX**

**TO: PLAINTIFFS AND THEIR ATTORNEYS, WILLIAM E. APPLGATE, IV,
ESQUIRE, DAVID B. LAIL, ESQUIRE AND TATE JOHNSON, ESQUIRE**

YOU WILL PLEASE TAKE NOTICE that the Defendants, Harbison Community Association, Inc. and Cody Sox (hereinafter the "Harbison Defendants"), through their undersigned counsel, hereby move for summary judgment on all causes of action asserted against them in the Complaint. This motion is made pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, as well as other applicable law, and on the ground that there is no genuine issue as to any material fact that will entitle the Plaintiffs to a verdict against the Harbison Defendants because the negligence of Defendant Lisa Velazques in failing to watch the roadway was not foreseeable by and is, therefore, not chargeable against the Harbison Defendants. See Newton v. S.C. Pub. Railways Comm'n, 319 S.C. 430, 432, 462 S.E.2d 266, 267 (1995). Accordingly, the Harbison Defendants are entitled to judgment as a matter of law.

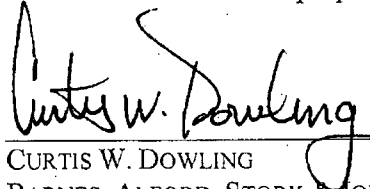
This motion is supported by the pleadings in this action, any memoranda of law

~~which may be subsequently submitted, any affidavits which may be subsequently~~

~~submitted, all applicable statutes and case authority, all completed discovery, the~~

applicable Rules of Civil Procedure, and such other evidence and authority as the Court may find acceptable.

The undersigned counsel certifies, pursuant to Rule 11 of the South Carolina Rules of Civil Procedure, that there is no duty of consultation on a motion for summary judgment and that, in any event, a consultation would serve no useful purpose.



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May 3, 2016

1 IN THE COURT OF COMMON PLEAS
2 FOR THE STATE OF SOUTH CAROLINA
3 ORANGEBURG COUNTY

4 DEPOSITION OF JOE LIVINGSTON

5 PRICE OULLA and BONNIE OULLA,
6 Plaintiffs,

7 vs.

8 CASE NO. 2014-CP-38-1590

9 LISA VELAZQUES, HARBISON COMMUNITY ASSOCIATION,
10 INC., CODY SOX, and PATTEN SEED COMPANY, d/b/a
11 SUPER-SOD,
12 Defendants.

13 DEPONENT: JOE LIVINGSTON

14 DATE: MARCH 15, 2016

15 TIME: 11:00 AM

16 LOCATION: LANIER & BURROUGHS
17 ORANGEBURG, SOUTH CAROLINA

18 REPORTED BY: ANNE BOULEY MEYER, RPR
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7 ON BEHALF OF DEFENDANT PATTEN SEED COMPANY d/b/a
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20 ALSO PRESENT:

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21 KIRBY D. SHEALY, III, ESQUIRE
On behalf of Harbison Community
22 Association

22

23 DAVID GROVE
Executive Director, Harbison Community
24 Association

24

25

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EXHIBITS

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1 Q. Is Orangeburg the largest of the locations?

2 A. In what sense?

3 Q. Well, largest number of employees?

4 A. Probably at this time we are.

5 Q. Is it the largest producer?

6 A. No.

7 Q. Okay. Tell me about the other locations.

8 Just the southeast?

9 A. Yes. We have locations in Georgia, South
10 Carolina, North Carolina, and then an outlet
11 location in Florida.

12 Q. Okay. Your customer base is to both
13 residential end users and commercial entities,
14 correct?

15 A. Correct.

16 Q. All right. And ultimately you ship product
17 all over the country? Or are you limited to
18 shipping product within these four states?

19 A. Primarily the southeast. Those four states,
20 and perhaps some into the adjoining states from
21 time to time. But primarily those states.

22 Q. Okay. We talked about you grow the product.
23 On the front end y'all don't purchase product from
24 other growers, do you?

25 A. On occasion we will.

1 Q. But the majority of your business is
2 something you grow yourself?

3 A. The vast majority, yes.

4 Q. Okay. So you grow the product at your
5 various locations. And approximately how much
6 product are y'all growing annually?

7 A. I'm not sure I understand your question. In
8 what regard?

9 Q. Well, let's say in the sod.

10 A. Sod? Well, the way we gauge our production
11 for years in square feet. The Orangeburg farm we
12 would have sold last year about 40 million square
13 feet, more or less.

14 Q. Okay. Do y'all analyze it and keep records
15 on how much of that is commercial and how much of
16 that is for residential?

17 A. Not so much, no. It's more of a variety --
18 by variety.

19 Q. By what kind of grass it is?

20 A. Yes.

21 Q. That 40 million square feet includes the
22 Centipede or St. Augustine or whatever you might --

23 A. Right.

24 Q. Okay. So as part of your process you engage
25 in growing the product, and then I guess cutting

1 the product?

2 A. Uh-hum. Right.

3 Q. And the next step is to, what, package the
4 product?

5 A. Yes. Before it's shipped or picked up we
6 do.

7 Q. And so y'all engage in that process of
8 packaging the product --

9 MR. MOORE: Objection, form.

10 Q. -- as you load them onto pallets?

11 MR. MOORE: Object to the form, but you
12 can answer.

13 A. I don't know that I would term it packaging.
14 We don't use that term.

15 Q. Well, I don't want to put words in your
16 mouth. Tell me sort of your process, if you can,
17 from growing it until it leaves Super-Sod.

18 A. Okay. It's a harvested-by-order product.
19 It's a perishable product, so we don't shelve any
20 of it. We can't put a bunch of pallets on the
21 shelf and pull them off as we need them, so an
22 order generates a harvesting activity.

23 As far as the, to use your term, packaging
24 or whatever you want to substitute for that is
25 concerned, we use automated harvesters that

1 automatically stack the sod on a wooden pallet.

2 Q. And the automated harvester, is that the
3 machine that goes out, cuts the sod --

4 A. Right.

5 Q. -- driven by some employee, and then stacks
6 them on the pallet, correct?

7 A. Correct.

8 Q. Thanks. I'm just not familiar with the
9 process.

10 All right. So after you do that, then you
11 do some type of shrink-wrapping on the product?

12 A. We use a product called stretch wrap.
13 That's not the name of it, but it's the generic
14 term for the product we use.

15 Q. Okay. Can you tell me the name of the
16 product you use?

17 A. It's Sigma Stretch is what we're currently
18 using.

19 Q. S-I-G-M-A?

20 A. Uh-hum.

21 Q. Do you know if that's the product you were
22 using two years ago?

23 A. I'm not sure.

24 Q. Have you looked into whether -- what product
25 you were using at the time that the incident that

1 A. The forklift driver will put four to five
2 wraps around the entire pallet.

3 Q. And that's a continuous wrap?

4 A. Yes.

5 Q. And the purpose of wrapping the pallet is to
6 secure the sod to the wooden pallet structure?

7 MR. MOORE: Object to the form, but you
8 can answer.

9 A. The pallet, as I mentioned earlier, is
10 stacked by the machine. And it's a very stable
11 stack, first of all, but we add some stability to
12 it by -- some additional stability to it by
13 stretch-wrapping.

14 Q. Right. And that's because you've got these
15 small pickups that are not sort of commercial
16 operations that are going to be transporting these
17 goods, correct?

18 MR. MOORE: Object to the form, but you
19 can answer.

20 A. It's a variety of people that -- I don't
21 know that I would term it quite that way, but it's
22 just a variety of people that come pick up.
23 Everything from a customer, homeowner like you or
24 me, to a small commercial entity.

25 Q. Right. These small pickups may be a variety

1 of, you know, a small commercial group to a
2 residential individual, but they don't -- they're
3 not professional commercial truck drivers. And so
4 in that case you add stability by doing the stretch
5 wrap to these?

6 MR. MOORE: Object to the form, but you
7 can answer.

8 A. It enhances the stability of the pallet.

9 Q. Okay. Once you use the stretch wrap, then
10 what's the sort of next part of your process?

11 A. That's about the extent of it until the
12 customer comes to pick it up. At that point we
13 load it onto his vehicle based on his instructions.

14 Q. And what do you use to load the pallet onto
15 the vehicles?

16 A. Forklift.

17 Q. Okay. And how many forklifts do you have in
18 Orangeburg?

19 A. I didn't anticipate you asking that question
20 so I didn't count them. But I would say we are in
21 the range of probably five or so that work in the
22 field in this capacity.

23 Q. Okay. How many pallets of sod are loaded
24 onto a trailer of any sort at the Super-Sod
25 location here in Orangeburg on a daily basis?

1 A. How many pallets of sod? It varies. Again,
2 we're a seasonal business. And this time of year
3 we will harvest the equivalent of about 40
4 tractor-trailer loads a day, which would be about
5 20 each. That's kind of our unit gauge just for
6 internal purposes. So you're talking about perhaps
7 800 pallets.

8 Q. Okay. 40 -- did you say 40 tractor?

9 A. Roughly. Again, that varies with the time
10 of year.

11 Q. What's the busiest time of year?

12 A. Typically our season can be said to be
13 between mid-to-late April in through September,
14 October, depending on the weather.

15 Q. What kind of training, as it relates to
16 loading trailers, do you engage in at Super-Sod?

17 A. I assume you're asking about how we train
18 our forklift operators?

19 Q. Uh-hum.

20 A. We show a video that is really not oriented
21 toward the operation of the forklift, it's just a
22 safety video regarding the forklift. And the bulk
23 of our training is on-the-job training.

24 Q. Is there any formal training that goes along
25 with the process of loading the trailer?

1 A. Formal? Unless you call on-the-job training
2 formal, no.

3 Q. Okay. You'd agree with me that, you know,
4 when you are out operating the trailers with heavy
5 materials and heavy equipment across the highways
6 of South Carolina, you need to do that safely?

7 MR. MOORE: Object to the form.

8 Q. Would you agree with that statement?

9 A. I certainly would if I were hauling one.

10 Q. Okay. And that as a company, and I say you,
11 but as Super-Sod, as part of Patten Seed who is
12 shipping goods across the country, Super-Sod has a
13 responsibility to the public to make sure those
14 goods are transported in a safe manner?

15 MR. MOORE: Object to the form.

16 A. When we're hauling a product, we're required
17 by law to make sure that we're transporting safely,
18 yes.

19 Q. And you are aware as Super-Sod, as someone
20 who does transport product across the country or
21 around the country, that there are requirements
22 related to transporting goods, correct?

23 MR. MOORE: Object to the form.

24 A. Yes.

25 Q. You understand that as a company that

1 transports goods and produces goods for transport,
2 that in South Carolina you cannot drive a vehicle
3 or move a vehicle on the public highway unless the
4 vehicle is loaded so as to prevent any of its load
5 from dropping or escaping from the vehicle?

6 MR. MOORE: Object to the form, but you
7 can answer.

8 A. My understanding of the law is that the
9 operator of the vehicle is responsible for the
10 securement of his load.

11 Q. And in the business of -- let me understand
12 this. Do y'all -- does Super-Sod transport product
13 itself?

14 A. Yes, we do.

15 Q. Okay. So as someone who does transport
16 product around the country, you're aware of the
17 regulations as it relates to you transporting
18 goods, correct?

19 MR. MOORE: Object to the form, but you
20 can answer.

21 A. Yes. We are required by -- our
22 transportation is DOT transportation, large trucks,
23 and we have to conform with the -- or comply with
24 the rules and regulations regarding transport of
25 equipment on large trucks.

1 The Federal Motor Carrier Safety Association
2 [sic] puts forth those rules that we have to comply
3 with, and we do comply with.

4 Q. Okay. And, again, so you're aware not only
5 of the DOT regulations, but you're aware of the
6 South Carolina regulations as it relates to
7 transporting materials, correct?

8 MR. MOORE: Object to the form, but you
9 can answer.

10 A. I know that if I'm hauling something down
11 the highway on my trailer personally, it's my
12 responsibility to secure that load, yes.

13 Q. And Super-Sod is aware that if it's
14 transporting goods, it needs to make sure that the
15 load is secure and safely placed on a trailer so
16 that nothing falls off the trailer, correct?

17 MR. MOORE: Object to the form, but you
18 can answer.

19 A. Yeah. As I said earlier, the Federal Motor
20 Carrier Safety regulations require that of us in
21 hauling commercial product on commercial motor
22 vehicles.

23 Q. Okay. And you're aware, or Super-Sod is
24 aware that in South Carolina there's also
25 regulations beyond the Federal Motor Carrier

1 regulations that require anyone who transports
2 goods to make sure they're safely loaded onto a
3 trailer so they do not escape from the trailer and
4 can't cause an accident?

5 A. That's the regulation I was talking about
6 earlier that requires an individual that's hauling
7 anything to make sure that his load is secure,
8 correct.

9 Q. And obviously this is important because if
10 loads are not secured safely, then things can fall
11 off and can cause accidents on the public roadway?

12 MR. MOORE: Object to the form, but you
13 can answer.

14 A. Was that a question? I'm sorry.

15 Q. Yes, it was.

16 A. I would agree with that.

17 Q. Okay. Besides the larger vehicles that you
18 use, do y'all ever use any smaller vehicles? Or
19 what are all the vehicles that you use for
20 transporting goods?

21 A. Transporting goods to our customers is
22 always done on tractor-trailer rigs,
23 semi-tractor-trailer rigs.

24 Q. Okay. And as part of that process, there is
25 a certain checklist, I assume, that you go through

1 to make sure that a load is properly secured on
2 your vehicle; is that correct?

3 A. There is not a formal checklist as such, but
4 our drivers certainly are trained to make sure
5 their load is secure. And they're required to make
6 sure their load is secure before they leave.

7 Q. And you understand that just generally if
8 you're using a trailer to carry the sod -- which I
9 understand is 2000 pounds per pallet?

10 A. Roughly.

11 Q. Okay. -- that you would always need to make
12 sure that the vehicle has the proper tow capacity
13 for the load?

14 MR. MOORE: Object to the form, but you
15 can answer.

16 A. Anything that we haul certainly has proper
17 towing capacity to carry the loads that we haul.

18 Q. Okay. If you're actually -- but if you're
19 using any kind of load, I mean -- let me take this
20 back a little bit.

21 Super-Sod, as we were talking about before,
22 loads, I think you said, 800 pallets maybe a day,
23 correct?

24 A. Give or take, depending.

25 Q. And how many of those pallets does it load

1 the trailer.

2 That overhead from hiring the employees who
3 do all that to the equipment, et cetera, that's all
4 included in the ultimate price and sale of the sod,
5 correct?

6 MR. MOORE: Object to the form, but you
7 can answer.

8 A. I'm not quite sure I follow your question on
9 that.

10 Q. Okay. Do y'all calculate -- when you come
11 up with a price per pallet, I assume you add in the
12 various elements of overhead into that price per
13 pallet?

14 A. Yeah. I mean, standard business practice
15 would take into account any and all costs of the
16 business when considering pricing of the product.

17 Q. Right. So if you have somebody who comes to
18 do a small pickup and purchases a pallet of sod, a
19 single pallet of sod, and they spend \$240 on a
20 pallet of sod, you have included in the costs all
21 of the overhead it took to grow the sod, all the
22 way up through loading it onto their trailer,
23 correct?

24 A. We certainly would include cost of
25 production and sales and any overhead involved

1 throughout the company.

2 Q. For example, a customer like myself, or some
3 residential user, doesn't have the ability to come
4 out and cut the sod and load it onto the pallet,
5 correct?

6 A. Correct.

7 Q. That's part of the service you provide?

8 A. That's right.

9 Q. And they don't have the product or the
10 ability to shrink-wrap the pallet?

11 MR. MOORE: Object to the form, but you
12 can answer.

13 A. I wouldn't be able to tell you whether
14 somebody's got shrink wrap with them, of course.
15 But, you know, that's something that we do for
16 them.

17 Q. Right. And that's a service you provide,
18 and you ultimately charge your clients for that
19 service?

20 A. It would be included in the cost of
21 production.

22 Q. And these individual small pickups, they
23 also don't have the ability to load a 2000-pound
24 pallet onto their vehicle?

25 MR. MOORE: Object to the form, but you

1 can answer.

2 A. Typically not.

3 Q. Right. And so back to what we were
4 discussing earlier is that Super-Sod is engaged in
5 the process of loading five or six, or four to five
6 different groups of small pickups a day where
7 they're loading these large 2000-pound pallets onto
8 small trailers, and/or into trucks; is that
9 correct?

10 A. We do load a variety of conveyances I would
11 say.

12 Q. And as you're in that business of loading
13 people with your product, you understand these
14 individuals are -- they leave your Super-Sod
15 property with heavy loads of your product,
16 materials, and are driving those over the public
17 highways?

18 A. I understand that, yes.

19 Q. Okay. And let me go to your understanding
20 of how a trailer would work. You said earlier, if
21 I had trailer what would I do.

22 You understand that if you have -- and let
23 me ask you. I think you probably have seen this,
24 but let me just make sure for the record.

25 You've seen a copy of the trailer that was

1 having loaded many, many of these, where it
2 probably should be placed. And in collaboration
3 with the people that are hauling it, you know, load
4 the trailer.

5 Q. Okay. When it comes to these small pickups,
6 these are not generally people who are in the
7 business of transporting sod, correct?

8 MR. MOORE: Object to the form, but you
9 can answer.

10 A. Many of them are.

11 Q. You mean the landscaping companies?

12 A. Uh-hum. Yes.

13 Q. Okay. And --

14 A. People like Mr. Sox who picked this up, for
15 instance. It was certainly, according to his
16 testimony, his deposition, he certainly was
17 experienced in hauling this trailer with product on
18 it and balancing it properly.

19 Q. Okay. And I'm just trying to understand as
20 it relates to Super-Sod, Super-Sod does not
21 undertake any effort to make sure that a vehicle is
22 a proper towing vehicle, or that the trailer is a
23 proper trailer for a load that -- that you're
24 loading while you are there at Patten Seed?

25 MR. MOORE: Object to the form, but you

1 can answer.

2 A. No, I wouldn't say that. If there is an
3 obvious problem with something, if the trailer is
4 rotted and everybody can see it, if it's a
5 lawnmower trailer and somebody has come to pick up
6 four pallets of sod, these would be obvious, very
7 obvious situations that would not be safe.

8 So in those cases where it's very obvious,
9 we certainly would advise the customer -- as a
10 matter of fact, we wouldn't load the customer.

11 Q. So there are situations where you in fact
12 inform the customer that they had improperly loaded
13 their vehicle or their trailer and that they needed
14 to either go get proper equipment or come back
15 another time?

16 MR. MOORE: Object to the form.

17 A. It's more a situation where we won't load
18 something that we know is not safe, that we know is
19 not safe, without a doubt.

20 Q. And as we stated earlier, being in the
21 business of transporting commercial loads of sod,
22 and then also on a daily basis of loading
23 individual pallets for small pickups, Super-Sod is
24 aware that in South Carolina you are required to
25 make sure that these loads are tied down so that

1 There may have been a couple other things,
2 but they escape me at the moment.

3 Q. What research did you come up with on the
4 shrink wrap itself? When you say you researched
5 it, did you just ask what kind we use or?

6 A. I looked into what kind we use. Tried to
7 find out when we started using it, if anybody knew
8 where we had gotten the first stretch wrap we used.
9 Again, it was so long ago that that knowledge is
10 gone I guess at this point.

11 Q. Are there various gauges of shrink wrap?

12 A. Yes.

13 Q. What gauge did y'all use?

14 A. We use .7 mil.

15 Q. Why do you use .7 instead of a higher gauge?

16 A. Again, that was the determination we made
17 long ago that nobody remembers why. I'm sorry.

18 Q. If you used, let's say, a .8 or .9, is that
19 a tougher shrink wrap?

20 MR. MOORE: Object to the form, you can
21 answer.

22 A. It is my understanding that a higher number
23 is, for lack of a better term, a thicker shrink
24 wrap.

25 Q. Right. Is a .7 about the lowest gauge you

1 A. Four to five times typically.

2 Q. And when you talk about four to five times
3 around the pallet itself? Or four to five times so
4 that you've got it layered four to five layers of
5 wrap each time?

6 A. It is layered, but it's not four to five
7 layers on top of each layer. But it is overlapped.

8 Q. There's an overlap, but I'd only go around
9 the pallet about four or five times?

10 A. Correct.

11 Q. Then when I get it all wrapped up, then you
12 pull it taut and it will pop?

13 A. Right.

14 Q. I may have misunderstood you, but I thought
15 you said that if the equipment somebody came in was
16 what you considered to be not safe, you would not
17 sell them the product, your product -- or your sod?

18 MR. MOORE: Object to the form, you can
19 answer.

20 A. We would have already sold it to them, we
21 just would not -- we wouldn't load it for them if
22 the vehicle that they came to get it on was
23 obviously unsafe to haul it.

24 Q. How many times have you done that? Sold it,
25 but not loaded it for them.

IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
ORANGEBURG COUNTY

DEPOSITION OF MELVIN KEARSE

PRICE OULLA and BONNIE OULLA,

Plaintiffs,

v.

CASE NO. 2014-CP-38-1590

LISA VELAZQUES, HARBISON COMMUNITY ASSOCIATION,
INC., CODY SOX, AND PATTEN SEED COMPANY, d/b/a
SUPER-SOD,

Defendants.

DEPONENT: MELVIN KEARSE
DATE: JANUARY 28, 2016
TIME: 11:07 AM
LOCATION: Lanier & Burroughs, LLC
250 Gibson Street
Orangeburg, South Carolina

REPORTED BY: CHRISTINE MULLINAX
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21

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23

24

25

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1 A. None.

2 Q. None?

3 A. No, sir.

4 Q. Is Super-Sod the first job where you
5 were driving any sort of heavy equipment?

6 A. Yes, sir.

7 Q. When did you go to work for Super-Sod?

8 A. I been there before. I been there
9 18 years, then I came back.

10 Q. Okay. You were there for 18 years?

11 A. And then I leave and I came back.

12 Q. When did you leave Super-Sod?

13 A. I have no idea. It's been such a long
14 time ago.

15 Q. So you worked there for 18 years before
16 you left?

17 A. Yes, sir. Then I came back.

18 Q. How long do you think you've been there
19 since you got back?

20 A. Going on three years -- three or four
21 years.

22 Q. So overall, you've worked for Super-Sod
23 for 22 years?

24 A. Something like that.

25 Q. What have you been doing at Super-Sod

1 Q. Tiny?

2 A. Tiny.

3 Q. Do you think that's his real name?

4 A. I don't know his real name, but that's
5 what we call him.

6 Q. Is he big or small?

7 A. He's big.

8 MR. MOORE: It always works that
9 way, doesn't it?

10 Q. Nathaniel, Maurice, Tiny. Who else?

11 A. Jerome Brooks.

12 Q. Jerome Brooks. What do you call the
13 machine you use to load the trailer?

14 A. A forklift.

15 Q. Forklift. Okay. How many forklifts do
16 you have?

17 A. I really couldn't tell you. I really
18 couldn't tell you.

19 Q. A lot?

20 A. A lot, but I don't know how many.

21 Q. Five or ten? There's a good number of
22 them there?

23 A. Yeah, there's a good bit.

24 Q. Do you have your own forklift that you
25 use?

1 A. I got my own forklift.

2 Q. So there's one that everyone knows is
3 your forklift each day?

4 A. Yes, sir.

5 Q. And how many hours a day do you work?

6 A. Sometimes 10, sometimes less.

7 Q. As part of your work, are you on the
8 forklift a good part of the day?

9 A. Yes, sir.

10 Q. What kind of vehicles are you loading?

11 A. 18-wheelers. That's mostly what I be
12 loading. 18-wheelers.

13 Q. 18-wheelers. Okay. Do you drive up
14 into the back of the 18-wheeler?

15 A. No, sir. I put it in the opening. They
16 pull the curtain back, and I come on the side of
17 it.

18 Q. It's like open-bedded?

19 A. Yeah. You got this side and this side,
20 and you go down and back right up in here.

21 Q. How many pallets can you put in one
22 18-wheeler?

23 A. 20.

24 Q. Is this an open framed 18-wheeler, like
25 a flatbed?

1 A. Some are flatbed; some, you pull the
2 curtain back.

3 Q. Besides 18-wheelers with flatbeds, what
4 other kind of trailers do you load?

5 A. Sometimes pickup trucks, things like
6 that.

7 Q. And then I guess you have pickup trucks
8 with trailers?

9 A. Yes, sir.

10 Q. Small personal trailers?

11 A. Yes, sir.

12 Q. Now, Mr. Kears, doing this every day as
13 long as you've been doing it, I assume you've
14 been trained on how to load these trailers,
15 correct?

16 A. Yes, sir.

17 Q. Super-Sod trains you on the proper way
18 to load the trailers?

19 A. Yes, sir.

20 Q. And Super-Sod trains you that it's
21 important to make sure that you safely load each
22 trailer, correct?

23 A. Yes, sir.

24 Q. And you want to make sure that the
25 trailer is loaded so that's it's balanced,

1 correct?

2 A. Yes, sir.

3 Q. And once you've loaded the trailer, you
4 need to make sure you know what the capacity of
5 the load is, right?

6 MR. MOORE: Object to the form.
7 You can answer.

8 A. Yes, sir.

9 Q. And not only do you need to know what
10 the capacity of, I guess, the truck is, but you
11 also need to know the capacity of the trailer is,
12 right?

13 MR. MOORE: Same objection. You
14 can answer.

15 A. Yes, sir.

16 Q. Once you figure out what the capacities
17 of the truck and trailer are, then you have to
18 figure out how much weight you have in the sod,
19 correct?

20 MR. MOORE: Object to the form.
21 You can answer.

22 A. Yes, sir. Sometimes -- yes, sir.

23 Q. Okay. And the sod might weigh
24 differently each day, based on whether it's wet
25 or dry; is that right?

1 this pallet weighs?

2 A. No, sir.

3 Q. You don't. Okay. So when you load the
4 trailer, do you have any way of determining
5 whether you have a proper load?

6 MR. MOORE: Object to the form.
7 You can answer.

8 A. We try to look at the tire to see -- I
9 look at the tire to see if the tire's going down.
10 That's how -- the only way --- how I tell.

11 Q. Okay. Look at the tires?

12 A. (Witness gestured.)

13 Q. All right. And it's your job to make
14 sure that the pallet has been -- is in good shape
15 and has been wrapped properly before you put it
16 on the truck, correct?

17 A. Yes, sir.

18 Q. And you need to make sure that the
19 wrapping has not been cut or pierced before you
20 put it on the truck, correct?

21 A. Yes, sir.

22 Q. Once you finish loading all the pallets
23 onto the trailer, then you need to check and make
24 sure that the weight is balanced, like checking
25 the tires, correct?

1 MR. MOORE: Object to the form.

2 You can answer.

3 A. I check it and see if it's too much on
4 and I take one off. But sometimes they tell me,
5 don't take nothing off.

6 Q. Who is "they"?

7 A. People that come out there.

8 Q. So sometimes the truck driver might tell
9 you to leave it on?

10 A. Yes, sir. In the small pickup.

11 Q. I imagine after you loaded the trailer
12 then you need to check the tongue weight on the
13 back of the truck, right?

14 MR. MOORE: Object to the form.

15 A. Yes, sir.

16 Q. And do you use a tongue weight scale to
17 check that?

18 MR. MOORE: Object to the form.

19 A. No, sir.

20 Q. How do you check that?

21 A. I look at the tire.

22 Q. You look at the tire. But you also look
23 at the tongue weight, right -- to see how the
24 tongue is sitting on the back of the truck?

25 A. I look at the tire. That's what I do.

1 make sure that the shrink wrap is properly on
2 there, correct?

3 A. Yes, sir. I wrap them pallets myself.

4 Q. You wrap the pallets. Right. And you
5 make sure that there's no tears or rips in there?

6 A. None.

7 Q. And then you check the tire pressure?

8 MR. MOORE: Object to the form.

9 A. We don't check the tire pressure.

10 Q. I thought before you said you checked?

11 A. I see -- what I do, I put the pallet on
12 there and then I check to see how low the tire
13 is. See when you put the weight on there, the
14 tire go down.

15 Q. Do you make any changes depending on
16 where the tires are? Do you push the pallets
17 forward or pull them back?

18 A. If it's too much, I take a pallet off.

19 Q. You might take a pallet off. Okay.

20 Tell them to come back for the next
21 pallet?

22 A. Yes, sir.

23 Q. Do you do the shrink wrap right at the
24 time of the order, or is that done prior to the
25 pickup?

1 Q. And can you describe the wrap to me?
2 How wide is it? Is it skinny wrap or real wide
3 wrap?

4 A. It's something like this.

5 Q. So maybe 2 and a half feet?

6 A. I'm not measuring. I don't know.

7 Q. Just outside your shoulders?

8 A. Yeah, I guess.

9 Q. And that wrap, if done without any kinks
10 in it, is strong, correct?

11 A. Yes, sir.

12 Q. The idea is that, if somebody is driving
13 down the road, the grass should stay in that
14 wrap, right?

15 MR. MOORE: Object to the form.
16 You can answer.

17 A. Yes, sir.

18 Q. It's not supposed to break?

19 A. No, sir.

20 Q. You tell the client -- what do they use,
21 a knife to cut it off when they get home?

22 MR. MOORE: Object to the form.

23 A. I don't tell them nothing.

24 Q. You don't tell them anything. Is that
25 the best way to get through the plastic?

1 MR. MOORE: Same objection.

2 A. I don't know.

3 Q. You don't know. You don't have to take
4 it off?

5 A. Mm. I don't know what they do.

6 Q. Okay. When you're inspecting the pallet
7 to put it on the truck, if it's been cut or
8 damaged by the forklift or anything, you'll
9 rewrap it and replace it, correct?

10 A. Yes, sir.

11 Q. I'm not sure. I was trying to ask you
12 if there was any kind of training related to how
13 you wrap the sod. Is there a rule that you
14 always do it three times or four times or five
15 times?

16 A. No, sir.

17 Q. Who taught you how to do the wrapping?

18 A. I did it myself.

19 Q. You figured it out?

20 A. Yes, sir.

21 Q. When did you figure that out? 20 years
22 ago?

23 A. I just seen how they wrap it.

24 Q. Watching other people wrap it?

25 A. Yes, sir.

1 Q. Going back to the, sort of, training, I
2 think you said there really has been no specific
3 training as to your job over the course of the
4 20 years; is that correct?

5 MR. MOORE: Object to the form.
6 You can answer.

7 A. What you mean by training?

8 Q. I mean, do they train you how to load
9 the trailers?

10 A. I been there. I been loading the trucks
11 a good bit too.

12 Q. Did Super-Sod come in and train you;
13 this is how to load the trailer?

14 A. No, sir. Somebody had trained me.
15 Somebody had been out there -- the guy who drives
16 the forklift, he was out there driving with me
17 and he was training me.

18 Q. He trained you. Did he train you on how
19 to balance the weight of the trailer?

20 A. No. All you got to do is put it in the
21 middle.

22 Q. Did he train you to put it in the
23 middle?

24 A. I had learned that myself.

25 Q. You learned that yourself?

1 A. I had learned that myself.

2 Q. Was there any training related to
3 whether you put it in the front, in the middle or
4 in the back of the trailer?

5 A. No. They tell me where to put it at.

6 Q. If they don't tell you, you just put in
7 the middle?

8 A. I put it where they -- see, most tell me
9 where to put it at. I ask them, Where you want
10 me to put it at?

11 Q. And then, again, after you've loaded it,
12 you're done?

13 A. Yes, sir.

14 Q. And you don't do anything to make sure
15 that the load is secure on the truck?

16 A. Ain't my job.

17 Q. When you leave that area, I guess, where
18 you're loading, when a customer leaves that area,
19 do they have to go through another checkpoint
20 before they leave?

21 A. No, sir.

22 Q. That's it. So you're the last person
23 they'd be in contact with?

24 A. Yes, sir.

25 Q. Mr. Kears, I understand that you were

1 Q. And did they give you a ticket?

2 A. Yes, sir. Two load -- they gave me a
3 ticket. I don't know. I really couldn't tell
4 you.

5 Q. What do you remember, sir?

6 A. I know I loaded something, and they kind
7 of been mean to me.

8 Q. The guy was mean to you?

9 A. Kind of talking, talking -- saying
10 stuff. I ain't know what he say, but I know he
11 been saying something.

12 Q. Was it something about how you were
13 loading it or --

14 A. No. He -- he -- I tell him -- he tell
15 me to put the pallet on the front. Then he want
16 me to move sand off the -- off the trailer. I
17 tell him that not be my job. So he tell me to
18 put it in the back, and that's what I did.

19 Q. So first, he told you to put it in the
20 front. And then you said, I can't put it in the
21 front because of the sand?

22 A. No. Mm. He tell me to put the one --
23 first one on the front, and I put it on the
24 front.

25 Q. And that's the front here?

1 A. Yeah. All the way to the front -- to
2 the front up there.

3 Q. Up here?

4 A. I put it right up -- right up in here.
5 So I couldn't get nothing in the middle. Dirt or
6 sand be right in here -- right across from here.
7 He tell me to come to the back and put it on, and
8 that's what I did.

9 Q. Now this right here -- and I'm showing
10 you Exhibit 3 again -- this, what we see in this
11 picture, this is grass and sand that comes off of
12 pallets, correct?

13 MR. MOORE: Object to the form.

14 A. Yeah. It's grass and sand, but that
15 ain't cause that, though.

16 Q. This type of dirt and grass that we see
17 on here is what you see -- if you drop a pallet
18 down on a piece of wood, this is what falls out
19 of the bottom, correct?

20 MR. MOORE: Object to the form.

21 A. That what fall, but there was sand in
22 the middle, though. Ain't no grass been there.

23 Q. And anyway, what you were saying is that
24 there was how much sand? A scoop of sand?

25 A. No. There been a whole lot of sand

1 right in here -- right in there. And I done put
2 in the back -- put the pallet in the back because
3 he tell me to do it that way.

4 Q. So you put both the pallets on the back?

5 MR. MOORE: Object to the form.

6 A. I put one in front. Sand right there --
7 right in there. He tell me to come from the back
8 and put the pallet on the back. So I slide it on
9 there and made it level, and he put two rails up,
10 and then he left.

11 Q. And he left. Okay. Thank you, sir. So
12 when you loaded the two pallets -- I guess after
13 you finished loading the two pallets, did you do
14 anything to determine the tongue weight on the
15 back of the vehicle?

16 A. No. He tell me to put it there, and he
17 lift it up -- lift the gates up, and he left.

18 Q. I understand. I'm just asking. So you
19 didn't check the tongue weight on the vehicle,
20 did you?

21 A. No, sir. He tell me to put it on there,
22 so he got to go.

23 Q. Did you talk to them about tying down
24 the vehicle -- tying down the sod?

25 A. I couldn't talk to him. He didn't have

1 MR. MOORE: Object to the form.

2 A. I done the shrink wrap, but I wasn't at
3 no station.

4 Q. I'm sorry. I shouldn't have used that
5 word.

6 Before you loaded those pallets, did you
7 check that shrink wrap?

8 A. Yes, sir.

9 Q. And it was free from any types of cuts
10 and marks?

11 A. Yes, sir. It ain't have nothing on
12 them.

13 Q. And were there any cuts or marks once
14 you put them on the trailer?

15 A. No, sir.

16 Q. And you checked that before they left?

17 A. There wasn't nothing wrong with it.

18 Q. Okay. But I'm just saying. That's
19 something that you checked before you loaded them
20 on the trailer?

21 A. Before they left, it was all right.

22 Q. And in this case, you didn't walk around
23 and inspect the tires?

24 A. No, sir.

25 Q. You didn't inspect the trailer hitch?

IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
ORANGEBURG COUNTY
FIRST JUDICIAL CIRCUIT

DEPOSITION OF CODY T. SOX

PRICE OULLA AND BONNIE OULLA,

Plaintiffs,

vs.

CASE NO. 2014-CP-38-1590

LISA VELAZQUES, HARBISON
COMMUNITY ASSOCIATION, INC.,
CODY SOX, AND PATTEN SEED
COMPANY, D/B/A SUPER-SOD,

Defendants.

DEPONENT: CODY T. SOX

DATE: SEPTEMBER 30, 2015

TIME: 1:00 PM

LOCATION: YARBOROUGH APPELATE LAW FIRM
CHARLESTON, SOUTH CAROLINA

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ALSO PRESENT: Dave Grove

I N D E X

- - -

CODY T. SOX

EXAMINATION

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Exhibit No. 03

Branham Statement

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Exhibit No. 04

Photograph

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1 A No.

2 Q Do you have any criminal background?

3 A No.

4 Q Do you have any history -- and I'll tell you
5 that I have received some records from Harbison
6 related to this case; we exchanged information, so I
7 have your personnel file. And it's correct that
8 you-all would go through some sort of drug
9 screenings?

10 A Yes.

11 Q Did you ever have anything revealed on your
12 drug screenings?

13 A No.

14 Q Did you ever test positive while you were
15 working for Harbison?

16 A No.

17 Q Do you have any type of criminal background?

18 A No.

19 Q Have you ever been involved in any lawsuits?

20 A No.

21 Q On the date of July 22nd, 2014, can you kind
22 of take me through the events of the morning, so
23 starting when you woke up.

24 A Woke up. Got ready for work. Got to work.
25 We usually got there about 6:25, 6:30. We have our

1 brief meeting with the maintenance crew, and everyone
2 was assigned their tasks.

3 Earlier in the week, I had talked with Dave
4 Grove about us getting some sod for a project on the
5 outside of the pool, and he approved it; we ordered
6 the sod; and they gave us a time when we could come
7 to pick it up.

8 Myself and Corey Branham drove down there in
9 the white maintenance truck with a green John Deere
10 double-axle trailer. We got down there, I think it
11 was, around 11:00 and went to the main office of
12 Super-Sod, where we made our final purchase of the
13 sod. And they gave us direction to travel down the
14 road about 2 miles to where the sod was located.

15 We pulled in. The Super-Sod employees then
16 used a large type of -- large equipment to place the
17 two pallets on the trailer, centering them over the
18 axles.

19 We then left, went to the gas station at
20 Exit 54 in Orangeburg to get something to eat from
21 the Subway and, I think it was, like Chester's
22 Chicken. That was at 11:50. Grabbed our food.

23 Went, got back on the road. Had -- Corey was
24 eating his food. My food was sitting there in the
25 seat. Got onto the ramp heading towards 150 -- or at

1 54 heading towards Columbia on 26.

2 Right after getting off the ramp and making
3 our way into the slow lane of I-26, we started
4 building up speed, and I got to about 48 or 50 miles
5 an hour when a large semi with a -- some -- it was a
6 blue-colored trailer began swaying just a little bit,
7 taking over our lane a little. Nothing major, but it
8 moved over in our lane enough where we would have
9 struck the back of it.

10 I then let off the gas and adjusted 3 to
11 4 feet to the right, trying to go into the emergency
12 lane so we wouldn't hit this trailer. And at that
13 time, our trailer began to sway, almost fishtail a
14 little bit. I kept it under control in the slow lane
15 and then pulled the vehicle off into the emergency
16 lane.

17 At that time, I looked back and noticed that
18 there was -- half a pallet of sod from the trailer
19 had rolled off the back of it into the slow lane of
20 I-26. No cars were hit. The left lane of traffic
21 kept moving. The right lane slowed, and people
22 actually drove over some of the sod.

23 I called -- I made sure Corey was okay. I
24 called 911. They dispatched me over to the trooper's
25 line, which at the time, the phone went dead. I

1 called back and -- to dispatch, and they dispatched
2 two fire engines -- or a fire engine and another
3 emergency fire truck; it was a large F-250,
4 something -- that style truck, to the scene, where
5 they blocked the slow lane for about 40 to 50 yards,
6 40, 50 -- yeah, 40, 50 yards, so that we could then
7 remove the sod from the road and traffic could
8 continue.

9 Q Let me pause you right here. All right.
10 We're going to come back to that point after where
11 the fire truck came. Okay.

12 Let me try to just go back and ask you a
13 couple detailed questions about your morning. Okay?

14 A Okay.

15 Q Back to the beginning, the first thing you did
16 when you arrived at work -- and that was around
17 8:00 --

18 A 6:30.

19 Q 6:30. Okay. You-all had a meeting with the
20 crew?

21 A Yes.

22 Q And do you know specifically at all what was
23 discussed that day?

24 A The group was supposed to work on concrete,
25 and me and Corey were supposed to go pick up the sod.

1 Q And Corey, again, he was another maintenance
2 worker, but you were in charge of him?

3 A Yes.

4 Q And so as far as any kind of direction related
5 to your task for the morning, that direction was
6 provided by -- you were the leader of that --

7 A Yes.

8 Q -- event.

9 Had you ordered the sod yourself?

10 A Yes.

11 Q And so you had called the Super-Sod, the local
12 Super-Sod, and asked them to place an order for two
13 pallets?

14 A Yes.

15 Q Did you ask for it to be specifically prepared
16 in any manner?

17 A No.

18 Q Tell me what you ordered.

19 A I ordered two pallets of Centipede grass or
20 sod.

21 Q And how did you expect to pick it up?

22 A They instructed me that I could bring a
23 trailer down and they would load it on.

24 Q Was there any discussions at that time about
25 how it was going to be loaded or what you-all were

1 going to do?

2 A No.

3 Q So again, you arrived at the Super-Sod. And
4 did you go inside at that time and pay?

5 A Yes.

6 Q And that's just right there at the front of
7 the -- is there an office, or how was that set up?

8 A There was a building that had all of their --
9 their financial and office workers, and then a mile
10 or so, 2 miles, down the road was where the sod was
11 being pulled up and placed on pallets and ready to be
12 shipped or given to people.

13 Q And so when you went into the office, told
14 them who you were -- and did you make payment? Had
15 you already received an invoice beforehand or --

16 A Yes.

17 Q -- how did that work?

18 So you took in your invoice?

19 A Yes.

20 Q And you paid it on the spot?

21 A Yes.

22 Q With a Harbison card?

23 A Yes.

24 Q Was there any conversation you had with the
25 office at that time?

1 A No.

2 Q Now, they direct you, at least, to go a mile
3 and a half down the road?

4 A Yes.

5 Q And had you ever been there before?

6 A No.

7 Q Had you ever engaged in this process before,
8 either personally on your own time or working for
9 Mr. Grove or Harbison?

10 A No.

11 Q Tell me real quickly what you had done before
12 you left the Harbison, where you were working. One,
13 you had gotten the truck, correct?

14 A Yes.

15 Q You had hooked up your trailer?

16 A Yes.

17 Q Had you done anything else?

18 A We had checked the tire pressure in the
19 trailer as well as the truck, filled the truck with
20 gas. And another maintenance employee, Bruce Mike,
21 checked the oil in the truck.

22 Q Did you do anything else? Did you grab any
23 other equipment to take with you?

24 A No.

25 Q Is the truck parked next to a maintenance shed

1 pallets are actually on the back of the trailer?

2 A They were on the trailer in a straight line,
3 pallet 1, pallet 2, sitting here and here.

4 Q Can you mark where the other pallet was
5 sitting? And I don't know how we're going to do that
6 generally, because -- just put a P for pallet where
7 the other pallet was sitting.

8 A At its final resting place?

9 Q Yes.

10 A (The witness writes.)

11 Q So it appears from what you've shown is that
12 they had put them sort of over the axle; is that
13 correct?

14 A Yes.

15 Q And they loaded both those pallets from the
16 rear of the trailer?

17 A Yes.

18 Q Do you recall how they picked the pallets up
19 and put them on there?

20 A They would use the forks on the front of the
21 machine, drive up the ramp, set the first pallet
22 down. And then they used their forks -- they could
23 push out with them and would slowly move them up into
24 the center of the trailer. And they did the same
25 process with the second one.

1 Q Did the wrapping go down to around the part of
2 the wood?

3 A I don't recall.

4 Q Once it was loaded on there, did you then
5 close the rear of the trailer?

6 A Yes.

7 Q Was that you or was that Corey?

8 A It was both of us.

9 Q And were there any other conversations you had
10 with any employees of Super-Sod at that time?

11 A Yes.

12 Q What were the conversations at that time?

13 A We asked how -- if we needed to take a certain
14 route to leave the loading area.

15 Q And they directed you out of the facility?

16 A Yes.

17 Q Did they tell you that the pallets were safely
18 stowed on the trailer and safe for you to transport
19 as they were?

20 A I don't recall.

21 Q Before you left, did you do anything else?

22 A No.

23 Q Can you tell me everything you did do at that
24 time to make sure that the two newly loaded pallets
25 of sod were secure on this trailer before getting

1 back out onto the road?

2 A We checked the tires on the trailer, checked
3 the hitch, and made sure the trailer looked balanced;
4 there was no weight disproportionate to one side or
5 the other.

6 Q Did you attempt to use any type of rope or
7 string or bungee to tie these pallets down?

8 A No.

9 Q Was the bed of the trailer clean and free of
10 debris?

11 A Yes.

12 Q Other than the pallets?

13 A Yes.

14 Q And had you cleaned it prior to use this day
15 or --

16 A Yes.

17 Q So as you arrived, the bed was completely
18 clean?

19 A Yes.

20 Q You placed the pallets. Was there any debris
21 left around the pallets at that time?

22 A No.

23 Q And again, they placed them, again, somewhat
24 over the axles; is that correct?

25 A Yes.

1 Q Did you know how much weight you were
2 carrying?

3 A No, not approximately.

4 Q Did you do any analysis to make sure that this
5 was a proper weight compared to the load you had in
6 the truck and the load on the trailer?

7 A Yes.

8 Q What was your analysis?

9 A We -- the trailer was able to carry
10 4,000 pounds -- or 14,000 pounds. And we were told
11 that -- I looked up on the internet that the two
12 stacks of sod did not equal 4,000 -- or
13 14,000 pounds.

14 Q And before we move on to the next part of the
15 trip, just to verify, neither you nor anyone from
16 Super-Sod did anything to fasten or secure these
17 pallets onto the trailer before you left?

18 A No.

19 Q You didn't try to test the strength of the
20 wrap or determine whether these rolls of sod were
21 safely on the top of the pallet?

22 A No.

23 Q Did you see anyone from Super-Sod test or
24 manipulate the sod in any way, shape, or form to make
25 sure that it was securely in the wrapping?

1 Q You just looked back and saw it there?

2 A Yes.

3 Q And you say it was half a pallet, right?

4 A Yes.

5 Q So each pallet you said weighed how much?

6 A I don't know the weight of the pallets.

7 Q But you had analyzed that to make sure that
8 your load was appropriate?

9 A Yes.

10 Q But an entire half, or do you know if it was
11 more than half or almost a whole pallet was gone?

12 A It was roughly half. It wasn't an approximate
13 number of rolls.

14 Q Now, all of those pallets were in the right
15 lane, correct?

16 A Yes.

17 Q None of those pallets were actually in the
18 merge lane, were they?

19 A No.

20 MR. MOORE: Object to the form. I think
21 there's a semantic -- are you using the word pallet
22 to describe one roll or are you using the word
23 pallet to describe one of the two large pallets
24 that were placed on the trailer?

25 Q Where were all of the rolls that had fallen

1 believe you were half a mile away from the on-ramp?

2 A Yes.

3 Q How far back at that point was the rolls of
4 sod?

5 A 10 yards from our trailer.

6 Q And how far did that go? I think you said
7 50 feet?

8 A It's 30 to 40 feet of small rolls. I guess
9 two or three rolls at a time were in piles.

10 Q At that time once you looked back, saw the
11 rolls in the highway, you guys exited the vehicle?

12 A Yes.

13 Q Did you make a call before you exited the
14 vehicle or after?

15 A I was calling as we were exiting the vehicle.

16 Q And what phone were you using then?

17 A I believe it was the work phone, the Harbison
18 phone.

19 Q How many cars ran over the sod?

20 A Two or three.

21 Q And then had you put on your flashers?

22 A Yes, as well as my light bar that's on top of
23 the work truck.

24 Q And so traffic continued to move --

25 A Yes.

1 Q -- left and around you?

2 A Yes.

3 Q At that point, obviously there was no police
4 or EMS or fire to assist you?

5 A No.

6 Q It was a fairly busy traffic time, correct?

7 A I don't recall.

8 Q When you exited the vehicle, saw the sod in
9 the road, cars started to move around, did you guys
10 attempt to run out and start pulling it out?

11 A No.

12 Q So you were going to wait for somebody to get
13 there -- police -- before you went into the road to
14 get the sod?

15 A Yes.

16 Q So I would assume there were enough cars on
17 the road for you to be concerned about getting out on
18 the road and trying to pull the sod off?

19 A Yes.

20 Q It was a busy day. And the speed limit is
21 what at that point in time?

22 A I don't recall.

23 Q But generally on I-26 in that area, do you
24 know what the speed limit is?

25 A No.

1 A One other fireman, yes.

2 Q How long did that take?

3 A It took maybe five minutes.

4 Q Did you-all put it all back on the trailer?

5 A No. We threw it into the grass on the side of
6 the interstate.

7 Q And then what did you do at that point?

8 A We then gave the fireman our license-plate
9 information.

10 Q And then what?

11 A And then the fireman turned around and went
12 the opposite direction.

13 Q Did you have a conversation with him at that
14 time?

15 A Other than give him the information for our
16 vehicle, no.

17 Q And so he took your information. Did he go to
18 write you a ticket or was he going to respond to the
19 other incident?

20 A They started talking on the radio and then
21 went the opposite direction. We didn't exactly know
22 what was going on. Somebody yelled, there's a --
23 there's another incident. And that's all they did.

24 Q Did you hear it? Did you hear the crash?

25 A No.

1 the pallet and fall into the road?

2 MR. MOORE: Object to the form.

3 You can answer.

4 A My guess is due to the movement of the
5 trailer.

6 Q You earlier talked about a wrapping that was
7 around the sod. I mean around the pallet. Correct?
8 The shrink-wrap of some sort?

9 A A wrap around the sod, yes.

10 Q Was that still in the same condition as it had
11 been when you picked up the sod when you stopped the
12 truck?

13 A No.

14 Q What was the status of the wrapping at that
15 time?

16 A It was torn down about halfway from the top.

17 Q And from where it had torn down, the rolls
18 higher, than, I guess, the tear had fallen into the
19 road?

20 A Yes.

21 Q Now, as you stated, the swaying of the trailer
22 had, in your mind, been part of the reason why the
23 sod broke free. Any time prior to where you were --
24 I guess where the vehicle started swaying on I-26,
25 had you ever been that fast while carrying the sod

1 before that day?

2 A Yes.

3 Q Where had you been going that speed?

4 A From where we picked the sod up to the gas
5 station.

6 Q And what speed did you reach at that time?

7 A We were at 50 miles an hour, I believe. That
8 was the speed limit, and I was inside the speed
9 limit.

10 Q And you had gone 50 miles an hour, and there
11 had been no swaying at that time?

12 A No.

13 Q We started to discuss this before, but had you
14 done any analysis on where, in fact, the sod or any
15 weight should have been placed on the vehicle or on
16 the trailer prior to going and having the sod placed
17 where it was?

18 A No.

19 Q Had you ever used that trailer before?

20 A Yes.

21 Q And what had you done with that trailer before
22 that day?

23 A I had transported a tractor, several
24 lawnmowers on it before, with equipment, concrete in
25 bag form, 80-pound bags; and various lumbars had been

1 vehicle under proper control, correct?

2 MR. DOWLING: Object to the form.

3 A Could you repeat the question?

4 Q You agree that day you did not keep your
5 vehicle under proper control?

6 A I don't understand the question.

7 Q Well, on the day of the accident, you did not
8 keep your vehicle under control?

9 A Yes.

10 Q You agree with that?

11 A Yes.

12 Q You have a duty to anticipate making evasive
13 maneuvers, maneuvers while you're out on the road,
14 correct?

15 A Yes.

16 Q And as part of that duty to anticipate, you
17 had a duty to make sure that your load was fastened,
18 correct?

19 A I don't know.

20 Q Well, you understand what the law is in
21 South Carolina, correct?

22 A Yes.

23 Q And you understand the law requires you to
24 make sure that every load is fastened so that nothing
25 can fall off in the event of an evasive maneuver, in

1 the event that your trailer does begin to wobble?

2 MR. DOWLING: Object to the form.

3 Q Correct?

4 A Correct. Yes.

5 Q And you understand that, under the law, you
6 violated that, correct?

7 MR. DOWLING: Object to the form.

8 A Can you repeat it?

9 Q That you violated the law by not fastening the
10 load. You understand that?

11 A Yes.

12 Q Have you thought about what you could have
13 done differently that day to have avoided this
14 accident?

15 A Yes.

16 Q What was that?

17 A I could have stayed in the lane and tried to
18 drive straight and drive out of the wobble of the
19 trailer.

20 Q Would that have kept the sod on the trailer?

21 A I don't know.

22 Q Could you have fastened the load?

23 A Yes.

24 Q Could you have researched and made sure that
25 you were actually putting the load on in a way that

1 is consistent with the trailer's use, meaning made
2 sure that the weight of the load was appropriate for
3 that trailer?

4 A Yes.

5 Q Would you agree with me that you really made a
6 conscious decision not to secure the load before you
7 left Super-Sod?

8 MR. DOWLING: Object to the form.

9 A Could you repeat that?

10 Q You made a decision not to secure that load
11 before you left Super-Sod?

12 A Yes.

13 Q Had you had bungees and lines available to
14 you, you had no intent on using them?

15 A No.

16 Q Can you go back and tell me about your family.
17 Tell me the names of your family members, cousins,
18 and that kind of thing in South Carolina.

19 A I have several. Parents are Tim and Cheryl
20 Sox. I have two brothers, Luke and Cooper Sox.

21 Q Where do Tim and Cheryl live?

22 A West Columbia.

23 Q And where do your brothers live?

24 A Luke lives in Charleston; Cooper lives in West
25 Columbia.

1 the trailer, and then you said they used their
2 machine to push them forward. Is that correct?

3 A Yes.

4 Q Did you have any direction or give any
5 direction on where to put the pallets?

6 A Yes.

7 Q What did you tell them?

8 A Over the two axles.

9 Q And how come you said you wanted them over the
10 two axles?

11 A You wanted -- I wanted to distribute the
12 weight over the tires of the trailer instead of
13 having it on one end or the other.

14 Q And how did you know that that's how you
15 wanted to load the trailer?

16 A That's how I loaded trailers before in my
17 life.

18 Q And who taught you that?

19 A Various people.

20 Q And I guess I'm wondering where you got that
21 training from.

22 A Coworkers, family members, other
23 construction-type people.

24 Q And so it was you who directed where that
25 pallet should be?

1 A Yes.

2 Q And there's no question you were working for
3 Harbison at the time you went to pick up this sod,
4 correct?

5 A Correct.

6 Q And then they put the second pallet on behind
7 the first; is that correct?

8 A Yes.

9 Q And it was, I guess, shrink-wrapped around the
10 sides?

11 A It was wrapped around the sides, yes.

12 Q At that point in time, did you ever request
13 that they tie it down?

14 A No.

15 Q You never undertook any action to tie it down?

16 A No.

17 Q You were asked just a second or minute ago by
18 Mr. Applegate about in hindsight that you could have
19 fastened it down; is that correct? Do you remember
20 him asking you that question?

21 A I remember the question, yes.

22 Q And you said that I could have fastened the
23 load down; is that correct?

24 A Yes.

25 Q What equipment did you have to fasten it down

1 with?

2 A Nothing.

3 Q Well, knowing that you could have fastened it
4 down, why didn't you take something? You didn't have
5 any straps at Harbison?

6 A Yes, we had straps at Harbison.

7 Q And you didn't think to take them?

8 A We -- could you repeat the question?

9 Q You didn't think to take straps with you? I
10 mean, you're going to -- I moved my daughter to
11 school a couple weeks ago. I took some straps to
12 make sure that the bed stayed in the trailer I had.
13 You didn't think to take straps with you that you
14 were going to be carrying a load back up the
15 interstate?

16 MR. DOWLING: Object to the form.

17 A Could you, I guess, explain a little?

18 Q Well, I was trying to explain it. You knew
19 you were going to be going to pick up a load or at
20 least two pallets of sod?

21 A Yes.

22 Q You knew at Harbison you had straps that could
23 strap down things that were going to be transported
24 on the trailer; is that correct?

25 A Yes.

1 Q And you didn't think to pick up the straps to
2 take with you to strap it down?

3 A No.

4 Q Did that cross your mind before you left?

5 A Yes.

6 Q Why didn't you take some straps?

7 A We had a miscommunication between employees.

8 Q And what was that?

9 A I thought I was -- or I thought Corey was
10 grabbing the straps, and Corey thought I was grabbing
11 the straps.

12 Q So you had planned on taking straps?

13 A Yes.

14 Q And just miscommunication, forgot to take them
15 altogether?

16 A Yes.

17 Q When you got to Orangeburg, why didn't you
18 turn around and go back to Columbia and tell
19 Super-Sod, we can't do it today; we'll be back
20 tomorrow?

21 A I don't know.

22 Q Why didn't you just run into Orangeburg and/or
23 Bowman, I guess, and go to the hardware store and
24 pick up some straps?

25 A I don't know.

1 Q Would that have been a safe thing to do?

2 A Yes.

3 Q Did you ask Super-Sod if they had any straps?

4 A Yes.

5 Q And what did they tell you?

6 A No.

7 Q So they had none that they could give you?

8 A Not that I recall.

9 Q So at that time, once it was loaded up, you
10 were aware that you didn't have any straps on; is
11 that correct?

12 A Yes.

13 Q And did that give you any cause for concern?

14 A No.

15 Q Why not? I mean, obviously you meant to take
16 straps; you meant to use them; but once you forgot
17 them and didn't have them, there was no concern on
18 your part?

19 MR. DOWLING: Object to the form.

20 A Could you explain?

21 Q Sure. You meant to take straps, correct?

22 A Yes.

23 Q You meant to use straps; is that correct?

24 A Yes.

25 Q When you got to Orangeburg, you realized you

1 A Yes.

2 Q How far do you believe you had to travel on
3 that Highway 301 or Five Chop Road before you came to
4 the gas station?

5 A It was -- I don't recall.

6 Q So more than a couple of miles?

7 A I'm not sure.

8 Q Was it at least over 1 mile?

9 A Yes.

10 Q And after you were loaded, you pulled out of
11 the field, correct?

12 A Yes.

13 Q And the field is not paved, obviously,
14 correct?

15 A Yes.

16 Q And you were pulling the trailer with two
17 pallets on it at that time, correct?

18 A Yes.

19 Q And you got out of the field with no problem
20 to the pallets, correct?

21 A Yes.

22 Q You got on the dirt road that led to
23 Highway 301, correct?

24 A Yes.

25 Q And traveled down the dirt road. No problems

1 with the pallets or with the sod, correct?

2 A Correct. Yes.

3 Q Then you get on to Highway 301 or Five Chop
4 Road, and you travel at least a mile to the gas
5 station right before the interstate, correct?

6 A Yes.

7 Q And at that time, you said you got to 50 miles
8 per hour on Highway 301, correct?

9 A Yes.

10 Q And at that point, no problem with the sod?

11 A No.

12 Q And then you stopped at a Subway and a chicken
13 restaurant that's right there before you get on the
14 exit, correct?

15 A Yes.

16 Q And where did you park?

17 A In the gas -- it was like a truck stop or
18 whatever in a -- one of those kind of areas.

19 Q Was it a longer slot for like a
20 tractor-trailer --

21 A Yes.

22 Q -- where you would not have to back your
23 trailer out?

24 A Yes.

25 Q And when you stopped there, you got out, both

1 A Could you --

2 Q Yeah. You recall that the plastic wrap went
3 all the way to the top of the sod load, correct?

4 MR. APPLEGATE: Object to the form.

5 A Yes.

6 Q And in fact, there are a few courses of rolled
7 sod at the very top that are kind of bunched, not
8 quite like a pyramid but like a ziggurat where the
9 top couple layers or layer doesn't cover the whole
10 bottom. Do you understand what I'm saying?

11 A Yes.

12 Q It's not a perfect cube?

13 A Yes.

14 MR. APPLEGATE: Object to the form.

15 Q And those top courses were wrapped, correct?

16 MR. APPLEGATE: Object to the form.

17 A I don't recall.

18 Q Well, at any rate, you and Corey get out of
19 the vehicle at the gas station, and the sod is on the
20 back of the trailer just as it was loaded with no
21 problems, correct?

22 A Yes.

23 Q Plastic wrap hasn't been ripped?

24 A No.

25 Q None of the rolls of sod are missing?

1 A Yes.

2 Q It's a little tighter on that entrance ramp
3 than on most entrance ramps, isn't it?

4 A Yes.

5 Q Even with that tight turn, you were able to
6 get up to about 35 to 40 miles per hour as you
7 reached the merge lane?

8 A Yes.

9 Q And going between 35 and 40 miles per hour, as
10 you began to merge onto I-26, you had not lost any
11 sod at that point?

12 A No.

13 Q As far as you knew, the sod was still stable;
14 both pallets?

15 A Yes.

16 Q And the sod was still properly wrapped; both
17 pallets?

18 A Yes.

19 Q Even after the fact, after this incident
20 occurs, did you ever determine that you lost any sod
21 as far back as the entrance ramp?

22 A No.

23 Q Did you verify that you did not lose sod back
24 that far?

25 A Yes.

1 Q How did you verify that?

2 A We had another truck come down with a trailer,
3 and we asked them if they had seen any sod anywhere
4 else, and they said no.

5 Q And that other truck -- I thought I had their
6 names. The other truck was Mr. Shealy and Mr. Lynch?

7 A Yes.

8 Q And they came down 26, got off on the opposite
9 side, and then came back on and retraced your path?

10 A Yes.

11 Q And saw that there was no sod?

12 A Yes.

13 Q You were asked some questions about the whole
14 merge and yielding issue, and I want to make sure
15 that I understand. I think I understand it
16 correctly. But this incident of losing the sod, that
17 didn't occur while you were merging into traffic, did
18 it?

19 A No.

20 Q You had safely merged and were in the right
21 lane of I-26 coming back towards Columbia before this
22 incident ever occurred, correct?

23 A Yes.

24 Q I'm going to mark as Exhibit 2 -- do you mind
25 if I stand over your shoulder, Mr. Sox?

1 MR. MOORE: No.

2 MR. APPLEGATE: I see there's areas you've
3 marked for what happened.

4 MR. MOORE: Yes, it's based on photographs.

5 MR. APPLEGATE: Okay. And this is just what
6 you generated?

7 MR. MOORE: Yes.

8 MR. APPLEGATE: Thank you. Go ahead.

9 (The last question is read back by the court
10 reporter.)

11 A I was actually past the other entrance ramp.

12 Q Yeah. Okay. That's what I want. So even
13 without looking at Exhibit 2, you recall that there
14 are two entrance ramps that head towards Columbia
15 within a very close proximity?

16 A Yes.

17 Q And so you entered on the furthest -- I always
18 think of I-26 as running north and south, but that
19 you were on the furthest-east entrance ramp?

20 A Yes.

21 Q And not only did you safely enter on the
22 furthest-east ramp, but before the incident occurred,
23 you had already passed the western entrance ramp?

24 A Yes.

25 Q And how far past the western entrance ramp

1 were you before the incident occurred?

2 A Not very far. Within 3/10 of a mile is an
3 estimate.

4 Q Do you recall a speed-limit sign in that area?

5 A I do not recall.

6 Q Do you recall an interstate marker in that
7 area?

8 A I do not recall.

9 Q Just hold that for a moment, please.

10 The blue tractor-trailer that encroached on
11 your lane, when was the first time that you observed
12 it?

13 A As it was beside us, on my driver's-side door.

14 Q So you never observed it behind you as you
15 were merging?

16 A No.

17 Q You don't know if it was in the right or the
18 left lane as you were merging onto I-26?

19 A No.

20 Q Did you observe any traffic in the right lane
21 as you were merging onto I-26?

22 A No.

23 Q When you merged onto I-26, on the entrance
24 ramp, did you have to adjust your speed in order to
25 fit yourself into traffic?

1 fireman was collecting our -- he was getting our
2 license -- just our tag information from the
3 trailer --

4 Q Right.

5 A -- that's -- within that 15 minutes was
6 when --

7 Q That's a third increment of time that I hadn't
8 accounted for in my earlier questions to you. I
9 apologize.

10 So we've got five minutes while you're waiting
11 for the fire department; you've got eight to ten
12 minutes while you're cleaning up; and now we have a
13 third period of time between when you're done
14 cleaning up and when they get another call?

15 A Yes.

16 Q Where were they parked during that last period
17 of time while it was all cleaned up and they were
18 talking to you?

19 A The larger -- the actual fire-truck engine had
20 already started going back the way it came and --

21 Q Let me interrupt you. Back the way it came --
22 was it going the wrong way?

23 A Yes.

24 Q And I'm sorry. Was it going on the road or on
25 the shoulder?

1 A On the shoulder.

2 And then the other emergency vehicle was
3 pulled over behind the trailer.

4 Q So at the time that they received a call of an
5 accident that had occurred, there was nothing
6 blocking the right lane anymore?

7 A No.

8 Q Let me ask that again to make sure. I think I
9 understood you, but I keep asking bad questions. At
10 the time that they got a call that another accident
11 had occurred, was there anything blocking the right
12 lane of travel?

13 A No.

14 Q The sod had been totally picked up?

15 A Yes.

16 Q And there were no vehicles blocking the right
17 lane of travel anymore?

18 A No.

19 Q Was traffic flowing in the right lane?

20 A Yes.

21 Q Was traffic flowing in the left lane?

22 A Yes.

23 Q And now we have this third increment of time.
24 How long was it after you had finished picking up
25 when that call came that there had been another

1 Q After your incident was over and you were
2 waiting on the officers to come back and talk to you,
3 were you able to see down to where the accident scene
4 was?

5 A No.

6 Q If you put that down, just look at that
7 photograph, I want to point something out to you. Do
8 you see the sign down here --

9 A Yes.

10 Q -- on I-26 towards Columbia?

11 A Yes.

12 Q Do you see a vehicle right in front of that
13 sign?

14 A I can't make that out on the picture.

15 Q Can you tell if that's where you came to rest
16 after this incident while you were waiting for the
17 officers to come back and talk to you?

18 A No, I can't.

19 Q Did you count the number of rolls that you
20 lost?

21 A No.

22 Q The half a load is based just on an estimate?

23 A Yes.

24 Q And did you lose them evenly from each one or
25 was there more lost from one pallet or the other?

1 A There was more lost from the back pallet than
2 the front.

3 Q And are you able to approximate what
4 percentage of each pallet you lost?

5 A The pallet 1, which was closest to the truck,
6 probably lost -- I can't give an exact number, but it
7 lost less than what pallet 2 lost.

8 Q When you were in the right lane before the
9 tractor-trailer encroached on your lane, were you
10 traveling in the center of that lane as near as you
11 could?

12 A Yes.

13 Q And you said the tractor-trailer encroached on
14 your lane 3 to 4 feet. Did I hear that correctly?

15 A No.

16 Q How far into your lane did the tractor-trailer
17 encroach?

18 A It encroached enough where our front left
19 quarter panel would have caught that back, I guess,
20 step-like bumper they have on the back of the
21 trailer, and I moved over 3 to 4 feet.

22 Q Did you move over 3 to 4 feet or 3 to 4 feet
23 into the shoulder?

24 A I moved over 3 to 4 feet.

25 Q So at that point you would have still been

1 Q Did you believe that you were going to have
2 any trouble losing it, losing part of the load?

3 A No.

4 Q As you sit here today, do you think you would
5 have ever had any trouble with that load if a truck
6 hadn't veered into your lane?

7 A No.

8 Q I want to talk a little bit more about the
9 truck veering into your lane. I think you were very
10 kind earlier in your testimony when you described
11 Mr. Branham making a verbal announcement. All right.
12 What did he say?

13 A "Oh, shit."

14 Q He said that when the truck veered into your
15 lane; is that right?

16 A Yes.

17 Q And I don't mean to be flippant or suggest
18 that's inappropriate at all. Was he scared?

19 A Yes.

20 Q Were you scared?

21 A I don't know.

22 Q What did you think could happen?

23 A When -- when that happened, it was just like
24 react to it. It wasn't like oh, no. It was, all
25 right, I need to move out of the path of -- he's

1 Q Do you remember what your budget was?

2 A No.

3 Q Did you ask someone about whether you could
4 have it delivered?

5 A Yes.

6 Q Who did you ask?

7 A Dave Grove.

8 Q But you understood that delivery was a service
9 that Super-Sod offered?

10 A Yes.

11 Q You've seen their trucks?

12 A Yes.

13 Q After you pull over to the side of the road
14 and you realize that you've lost some sod, did you
15 see that the pallets were in the same location where
16 they had been loaded?

17 A Yes.

18 Q And what did you observe with regard to where
19 they were?

20 A Everything looked as if the -- the stacks had
21 literally just dumped the load that -- sorry. It
22 looked as if the sod had just been dumped off the top
23 of the stacks.

24 Q Were the pallets -- again, the wood, not the
25 entire mass, but just the wood at the bottom. Were

1 A Yes.

2 Q Is that right?

3 A Yes.

4 Q And I think you may have just answered this to
5 Mr. Moore. The shrink wrap around the pallets, it
6 was busted on both of them; it was cracked down the
7 sides?

8 A No.

9 Q The wrapping around the pallets, you said one
10 of them was ripped, right?

11 A Yes.

12 Q And the second was ripped just at the top or
13 the whole side or --

14 A Just at the top.

15 Q So the first one was ripped down, was a bigger
16 rip, and the second one was a smaller rip; is that --

17 A Yes.

18 Q Do you know how long those rips were? I guess
19 the first pallet was almost the entire pallet, and
20 the second one was half of it? Or put it in your
21 words.

22 A It was -- however much came off of each pallet
23 was where the rip was located, like how tall the rip
24 was.

25 Q So at the end of the day, the rip would have

1 equaled half a pallet between the two?

2 A Yes.

3 MR. APPLEGATE: That's all the questions I

4 have.

5 Mitch?

6 EXAMINATION

7 BY MR. GRIFFITH:

8 Q Mr. Sox, just looking at the Google map, what
9 I want to make sure I understand, if you set it down,
10 this has been marked as Exhibit Number 2 to your
11 deposition?

12 A Yes.

13 Q I'm not sure how this works. Have you ever
14 seen this before?

15 A The map?

16 Q Yes, sir.

17 A Yeah.

18 Q You have seen this?

19 A Yes.

20 MR. APPLEGATE: Mitch, this specific map?

21 MR. GRIFFITH: Yeah.

22 Q You've seen Exhibit Number 2 before today?

23 A No.

24 Q Because --

25 MR. DOWLING: Different question.

1 Q And you stayed in the right lane the entire
2 time; is that correct?

3 A Yes.

4 Q And as I understood, Mr. Moore asked you
5 several times that when you looked at the load at
6 lunch, when you stopped at the filling station for
7 lunch, the load looked like it had not moved,
8 correct?

9 A Yes.

10 Q Did you get your lunch to go?

11 A Yes.

12 Q Were you-all eating at the time that this
13 truck came by you?

14 A No.

15 Q What happened to lunch?

16 A Lunch was sitting next to me. Corey may have
17 been eating, may have -- at that exact point, I don't
18 know if he was physically putting something in his
19 mouth.

20 Q Had you started to eat lunch or reached down
21 to get your food or anything?

22 A No.

23 Q And you were a good half mile on the
24 interstate by now?

25 A Yes.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG) FIRST JUDICIAL CIRCUIT

2014-CP-38-1590

Price Oulla and Bonnie Oulla,)
)
 Plaintiff,)
)
 v.) Transcript of Record
)
 Lisa Velazquez, et al.,)
)
 Defendant.)
)
)

June 6, 2017
Orangeburg, South Carolina

B E F O R E:

The Honorable James Jackson, Judge

A P P E A R A N C E S:

William E. Applegate, IV., Esquire
Attorney for the Plaintiff

E. Raymond Moore, III., Esquire
Attorney for the Defendant

Hilda M. Jordan, CVR-M
Circuit Court Reporter

I N D E X

MOTION HEARING

WITNESS/DESCRIPTION

PAGE NO.

EXHIBITS:

NO EXHIBITS WERE MARKED TO THIS PROCEEDING

Certificate of Court Reporter 31

Oulla v Velazquez et al

6/6/17

6

1 sod would not be displaced when it was traveling on the
2 highway. Okay?

3 That case was filed December 31st of 2014 and the got
4 answers around February 15th, of 2015. And then we
5 proceeded through litigation. We did some litigation,
6 mostly from the plaintiff's side, took a bunch of
7 depositions. And we approach -- the spring of 2016, I've
8 taken approximately six depositions. The neighborhood
9 association has taken two depositions, meaning Mr. Qulla and
10 Ms. Qulla. Super Sod has not taken any depositions in the
11 case, but they filed -- they're preparing to file, I guess,
12 a motion for summary judgment. I've been -- didn't know
13 much about the motion for summary judgment, but I've been
14 informed by counsel that they were hiring the Wades Firm.
15 They intended to file a motion for summary judgment at some
16 point in the spring, and so they did in May 5th, 2016. And
17 so right about that time we had taken the deposition of the
18 30(b)(6) witness for Super Sod. At that point the 30(b)(6)
19 witness testified that in fact they charged their customers
20 for creating this plastic wrap around the pallets of sod,
21 okay? And that that was a part of their process and a part
22 of their charge to the customer. We also got testimony from
23 a Trooper in June of 2016, which is six weeks after even the
24 motion for summary judgment, that it was -- if it weren't
25 for the packaging ripping, then this accident wouldn't have

1 taken place, okay? And so at that point we amended, we
2 began to amend our complaint?

3 THE COURT: The Highway Patrolman? The Highway
4 Patrolman testified to that?

5 MR. APPLEGATE: Yes, sir. So during this period
6 of time on June 21st I had sent a request to Mr. Moore,
7 counsel for defense for Super Sod, and requested consent to
8 amend the complaint. The other two parties at the time
9 consented to the amendment and I didn't hear any response
10 from Mr. Moore. On June 23rd, we had a follow-up
11 deposition. I again requested consent that Super Sod
12 consent to the amendment and there was no -- he said he was
13 considering it, that it was possible, but he didn't think
14 that -- he didn't want to interfere with our upcoming
15 summary judgment hearing, which was set for the 29th, but
16 he'd get back to me. I didn't hear back from him and on
17 June 29th we had the hearing set here in Orangeburg in front
18 of Judge McMahon was presiding. And I came and I went ahead
19 that morning, filed the motion to amend without consent of
20 Super Sod and we proceeded to the hearing -- again, my
21 motion to amend at this point adding the theory of recovery,
22 which was a breach of implied warrant of merchantability
23 because, in fact, they had charged for this wrapping and we
24 had expert testimony as well that suggested that had the
25 wrapping not broken, then again, this accident would not

1 State of South Carolina)

In the Court
Of Common Pleas

2 County of Orangeburg)

3 Docket No. 2014-CP-38-01590

4
5
6 Bonnie Oulla and Price Oulla,)
Plaintiffs,)

7
8 vs.)

Transcript of Record

9
10 Government Employees Insurance)
Company, Harbison Community)
Association, Inc., Patten Seed)
11 Company, D/B/A Super Sod, Cody)
Sox, and Lisa Velazquez,)
12 Defendants.)

13 June 29, 2016
14 Orangeburg, South Carolina

15 B E F O R E:

16 The Honorable R. Knox McMahon, Judge.

17
18 A P P E A R A N C E S:

19 William E. Applegate, IV, Esquire
Attorney for the Plaintiffs

20 Curtis W. Dowling, Esquire
21 Ernest Mitchell Griffith, Esquire
Edward Raymond Moore, III, Esquire
22 Rogers E. Harrell, III, Esquire
Attorneys for the Defendants

23
24 Brenda J. Sigwald, Circuit Court Reporter
To The Honorable R. Knox McMahon
25 P.O. Box 206, Jackson, South Carolina 29831

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(REPORTER'S NOTE: There were no exhibits
entered during this hearing.)

1 know, they start their brief and they start their argument
2 with the idea --

3 THE COURT: Who was that in Hornbook? Was that
4 Ms. Palsgraf? Is that correct?

5 MR. APPELATE: Palsgraf.

6 THE COURT: Wasn't that a classic case -- well some
7 of you weren't born when I was in law school. Many of you.

8 MR. GRIFFITH: Yeah, we went through that case.

9 THE COURT: All right. Go ahead. Wasn't it on a
10 train platform.

11 MR. APPELATE: Well, interesting enough, I mean I
12 think that is -- I think that's almost one of the simplest
13 cases. I think Mr. Moore cited it talking about this whole
14 issue. He has Palsgraf is a case where a conductor
15 generally tried to help somebody board the train and in
16 that process, the guy drops a big bag of fireworks, which
17 explode and cause injury to the plaintiff. I think we
18 see --

19 THE COURT: Great argument on the eve of the 4th,
20 isn't it.

21 MR. APPELATE: I think what we see in the case law
22 throughout all of the cases that have been cited by both
23 parties, is that that is something that using our common
24 sense and human experience is considered to be
25 unforeseeable. No one would have ever thought that a guy

1 was carrying grenades or fireworks or whatever that would
2 explode and cause injury to the plaintiff. Well, on the
3 other hand where we're sitting here today, when you
4 actually load product onto a truck to carry on the highways
5 and it spills off, wrecks happen on a daily basis because
6 of this.

7 And, in fact, we have a statute in place which you
8 read and are aware of which relates to both of the parties
9 in this case, both to Mr. Dowling's and Mr. Moore's clients
10 which direct specifically to the loaders and the drivers of
11 vehicles are required to make sure they properly load and
12 secure loads onto vehicles before they get out on the
13 highway. I bring that up because I think most importantly
14 for this foreseeability argument, it's -- legislature has
15 contemplated this. It's clearly foreseeable. And that's
16 why there's, in fact, a statute in place as relates to it
17 and that's why as far as -- and we won't go into the duty
18 now, but as it relates to Mr. Dowling.

19 They're not arguing any duty. Clearly they
20 violated the duty and we're not at that issue. We focus on
21 this one issue of foreseeability.

22 Importantly, if you read the affidavit of Trooper
23 Gleach -- Gleach, he states that he was driving down the
24 road in the opposite direction and sees the sod sitting on
25 the road and sees those young kids trying to extract it

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	FIRST JUDICIAL CIRCUIT
COUNTY OF ORANGEBURG	)	
	)	
Price Oulla,	)	CASE NO. 2014-CP-38-01590
	)	
PLAINTIFF,	)	TRANSCRIPT OF RECORD
	)	
VS.	)	
	)	
Lisa Velazques,	)	
	)	
DEFENDANT.	)	
	)	

August 23, 2016

Orangeburg, South Carolina

B E F O R E:

The Honorable Diane Goodstein

A P P E A R A N C E S:

William E. Applegate, IV, Esquire
For the Plaintiff

Edward Raymond Moore, III, Esquire
For the Defense

Phyllis Norton, CVR-Master, Nationally Certified Verbatim Court Reporter
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PNorton@sccourts.org

I N D E XHEARING

-- 03

EXHIBITS - None ProfferedCERTIFICATION OF TRANSCRIPT

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If you need an additional copy of this transcript or a sealed transcript or if opposing counsel requires a copy of the transcript, you should contact the court reporter.

Certification will satisfy Rule 80, Stenographic Report of Transcript as Evidence.

1 Okay, so on June 21st, 2016, you know, four or five
2 weeks after me receiving their motion I sent an amended
3 complaint and consent to Mr. Moore along with Mr. Griffith
4 of one of the defendants. And Mr. Dowling and one of the
5 other defendants, they didn't need to participate today; so
6 they are not here. They consented to my amendment of the
7 complaint at that time. I didn't hear anything from Mr.
8 Moore.

9 Two days later on June 23rd, 2016, I went to a
10 deposition with Mr. Moore, one of a trooper in the case.
11 After the deposition I asked Mr. Moore what do you want to
12 do, are you going to agree to my amended complaint.

13 And he said: Well, I tend to agree; I might consent; I
14 am not really sure, but I want to know that this is not
15 going to delay our motion for summary judgment.

16 And I said: I don't intend to move to continue; I need
17 to preserve my rights here as it relates to the amendment,
18 but we can go ahead and proceed with the motion for summary
19 judgment.

20 Okay. And then it was sort of left open he would get
21 back to me, but I never got a formal consent.

22 So five days later on June 29th I returned from
23 Charleston back to Orangeburg. At that point I filed --
24 went ahead and filed a motion for an amended complaint
25 because I hadn't heard back from Mr. Moore. So I went ahead

IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
ORANGEBURG COUNTY
FIRST JUDICIAL CIRCUIT

DEPOSITION OF LISA ANNE MEYER

PRICE OULLA AND BONNIE OULLA,

Plaintiffs,

vs.

CASE NO. 2014-CP-38-1590

LISA VELAZQUES, HARBISON
COMMUNITY ASSOCIATION, INC.,
CODY SOX, AND PATTEN SEED
COMPANY, D/B/A SUPER-SOD,

Defendants.

DEPONENT: LISA ANNE MEYER

DATE: SEPTEMBER 30, 2015

TIME: 10:00 AM

LOCATION: YARBOROUGH APPLGATE LAW FIRM
CHARLESTON, SOUTH CAROLINA

REPORTED BY: CHERIE J. ANDERSON, RMR, RPR, CRR
NCRA REGISTERED MERIT REPORTER
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3 ON BEHALF OF PLAINTIFFS

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7 ON BEHALF OF DEFENDANT LISA VELAZQUES

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10 GOODING & GOODING, P.A.
11 BY: MARK B. TINSLEY
P.O. Box 1000
12 Allendale, SC 29810

13 ON BEHALF OF DEFENDANTS HARBISON COMMUNITY ASSOCIATION
14 AND CODY SOX

15 BARNES ALFORD STORK & JOHNSON, LLP
16 BY: CURTIS W. DOWLING
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Columbia, SC 29202

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18 ON BEHALF OF DEFENDANT PATTEN SEED COMPANY

19 MURPHY & GRANTLAND, P.A.
20 BY: E. RAYMOND MOORE III
4406-B Forest Drive
Columbia, SC 29206

21

22 ALSO PRESENT: Meg Horn, Esq.

23

24

25

I N D E X

- - -

LISA ANNE MEYER

EXAMINATION

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BY MR. DOWLING

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BY MR. MOORE

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EXHIBITS

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Exhibit No. 01

Driver's License

97

1 Q -- I assume. Correct?

2 A Yes.

3 Q Did you make any stops?

4 A No.

5 Q You were proceeding directly to the zoo?

6 A Yes.

7 Q So you got on 26?

8 A Yes.

9 Q Proceeded up the highway?

10 A Yes.

11 Q While you were driving, what were you doing?

12 A Talking to the kids.

13 Q Talking on the phone?

14 A No.

15 Q Listening to the radio?

16 A I think the kids had the radio on, but I don't
17 pay attention to the radio because I don't listen to
18 it.

19 Q So you're driving up the highway. It was
20 clear that day, correct?

21 A Yes.

22 Q And at some point an hour into the trip --
23 correct -- is when the accident took place?

24 A I don't remember what time the accident took
25 place.

1 Q What specifically do you remember as you sit
2 here right this second?

3 A Just basically getting out of the vehicle -- I
4 mean, driving down the highway, there was a sudden
5 stop of cars, and I hit my brakes to try to stop.
6 And I didn't stop in time. And then I only remember
7 getting out of the vehicle and going to the hospital.

8 Q When the crash occurred, you were trying to
9 set your GPS, correct?

10 A It might have been before that. I had just,
11 you know, looked over, because I don't constantly
12 stare at the GPS while I'm setting it. I keep my
13 eyes on the road, and I'll just look over and hit
14 something real quick and then I look back at the
15 road. So it takes me a while to program it.

16 Q But when this crash took place --

17 A Uh-huh.

18 Q -- on this day, you were trying to set your
19 GPS, correct?

20 A Before the accident.

21 Q You weren't looking at the road --

22 A Not at the time of the accident, no.

23 Q Was there anything impeding your view out of
24 your window that day?

25 A No.

1 setting your GPS?

2 A I had told them at one point I was trying to
3 set my GPS; I told him the road was -- everything was
4 fine; and all of a sudden there was an immediate stop
5 of people hitting their brakes, and I tried to hit my
6 brakes, and I didn't stop in time.

7 Q Do you realize how fast you were going at the
8 time you hit the vehicle in front of you?

9 A Just the -- the limit, that I know of.

10 Q Do you know what the limit is right there?

11 A 70 -- 60, 70.

12 Q 70 miles per hour sound correct?

13 A Uh-huh.

14 Q Do you believe you were going over the speed
15 limit? 75?

16 A I don't think so, because I set my cruise
17 control when I'm on long trips.

18 Q But you agree as we sit here today that you
19 weren't paying attention right when the accident took
20 place?

21 A I was.

22 Q So as we sit here today, your testimony is
23 that you were not looking down at your GPS when this
24 accident took place?

25 A Yes.

1 Q At any point in time, did you try to brake?

2 A Yes, as soon as I saw the cars hit their
3 brakes.

4 Q And when did you see that?

5 A Right at the time of the -- I mean, like I
6 said, it was an immediate stop of cars. I mean, I
7 hit my brakes as soon as I saw the red lights.

8 Q Did you try to make any evasive maneuvers?

9 A I tried.

10 Q What did you try to do?

11 A Well, I hit the brakes, and I tried to turn to
12 the left side of the road to get, like, the grass --
13 I tried not to hit him.

14 Q You tried to go to the left side of the road?

15 A Yeah, because we were in the left lane, that I
16 remember.

17 Q And the right two lanes were empty, correct?

18 MR. MOORE: Object to the form.

19 A No.

20 Q What was going on in the right two lanes?

21 A The cars were stopped -- stopping at the same
22 time or they were almost stopping.

23 Q And you were in the left lane of traffic?

24 A Yes.

25 Q Is that the fast lane of traffic?

1 and trying to get on with, I guess, his life. You
2 know, repair his life, I guess.

3 Q Had you been paying attention and watching
4 that road closely, you could have stopped your car,
5 couldn't you?

6 A I was paying attention to the road. Like I
7 said, there was a sudden stop --

8 MR. GRIFFITH: Objection.

9 A -- and I could not stop in time.

10 Q So what do you think? That you were driving
11 too close to the car in front of you?

12 A No. I had like a car space in between us or
13 two car spaces.

14 Q Were you just driving too fast?

15 A I was driving the limit.

16 Q But you weren't driving in a way where you
17 could stop your vehicle if something happened, were
18 you?

19 A Not in a sudden stop like that, no.

20 Q Did you call and report this to your insurance
21 company or did they call you?

22 A I called them after the accident.

23 Q And we talked about you gave a recorded
24 interview?

25 A Yes.

1 Q Now, you were of sound mind when you gave that
2 interview, correct?

3 A Yes.

4 Q And as we discussed, you told your insurance
5 company at that time it was your fault, correct?

6 A Yes. I thought -- I believed it was.

7 Q And at some point, you understood that there
8 were serious injuries related to this, correct?

9 A Not at the time. I did not know that there
10 was serious injuries when I reported it.

11 Q But at a later date, you found out from the
12 insurance company there were serious injuries related
13 to this, correct?

14 A Yes.

15 Q You thought that your insurance company was
16 going to protect you, correct?

17 A Yes.

18 Q You thought your insurance company was going
19 to pay the other driver, correct?

20 A Yes.

21 Q And that's what you expected them to do?

22 A Yes.

23 MR. APPLEGATE: Let me take a quick break.

24 (A recess was taken.)

25 Q Ma'am, I hate to repeat this. Let me ask you

1 Q That's what you want to do.

2 And again, the statement would, to some
3 effect, speak for itself. But do you remember saying
4 something to the effect of -- when asked about what
5 happened that you said you were trying to set your
6 GPS, and after that, I don't remember? Do you
7 remember something to that effect?

8 A No.

9 Q But you do remember, even sitting here today,
10 that you were, sometime immediately before the
11 accident, trying to set your GPS?

12 A I would say before the accident because, like
13 I said, I was looking at the road; everybody started
14 to hit their brakes; and I tried to stop, and I
15 couldn't.

16 Q Would you say it was a second before that you
17 saw what was going on and you hit your brakes that
18 you were adjusting your GPS?

19 A No.

20 Q How long before?

21 A A minute or two.

22 Q A minute or two. So if you said something
23 back when it was -- a long time ago when you gave the
24 statement -- something to the effect you were trying
25 to set my GPS, and after that, I don't remember --

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7. I have responded to collisions that happen because interstate lanes are blocked due to spilled loads and drivers are faced with a sudden stop situation on a road with a 70 mph speed limit.
8. Because I knew the spilled load would cause a problem on the interstate, I accelerated my cruiser to the next exit so I could turn around and hurry back down the westbound lanes to the site of the spill.
9. In my experience, it doesn't take long for a crash to follow behind a spilled load or some other obstruction on the interstate.
10. When I arrived at the spill location I spoke with Cody Sox, the driver of the truck and trailer that lost the sod on the interstate.
11. The driver informed me that the sod was loaded by Super Sod.
12. The driver informed me that he moved over to avoid a tractor trailer, his trailer swayed, and then his load spilled onto the interstate.
13. I observed that a large amount of sod had fallen on to the highway, that the plastic wrap on the sod was torn, and that the sod pallets were not tied down and securely fastened on the trailer.
14. While cleanup of the sod was still taking place, I was notified of a large crash located close behind the sod spill.
15. I reversed my vehicle back down I-26 and responded to the car crash that happened just past the Exit 154 on-ramp to I-26 westbound.
16. I spoke to the driver of an RV that was towing a large SUV. The driver of the RV was slowing down and almost at a stop because of the sod spill when his tow vehicle was struck by a Lexus driven by Price Oulla. The Lexus slammed sideways into the rear of

the RV tow vehicle after being rear ended at a high rate of speed by a Toyota driven by Lisa Velasquez.

17. Based on my experience and training from responding to crashes on the interstate as a Trooper and based on my investigation of the sod spill and resulting car wreck, it is my opinion that if the sod hadn't spilled on the road, there would not have been a multi-vehicle car crash.
18. Based on my investigation, the failure of Super Sod and Cody Sox to secure the load of sod and the subsequent spill onto the interstate was a significant cause of the car wreck between Price Oulla and Lisa Velasquez.
19. Usually, when we have travel blocked on the interstate due to a spilled load or a wreck, we send a cruiser a half a mile behind the end of the traffic to put blue lights on to warn other drivers of the sudden stop ahead so they will have time to react.
20. On this day, the crash happened too fast and before a cruiser could get positioned to warn other drivers.

FURTHER AFFIANT SAYETH NOT

Robert H. Gleich

Sworn and subscribed to before me.
This ____ day of _____, 2016.

Notary Public for South Carolina
My commission expires: _____

9/12/14
7:37:10

SunGard CAD
CAD CALL INFORMATION

PAGE 1
142030114

Call Number: 142030114 Call Type.: 083 AUTO ACCIDENT WITH INJUR Medic
Entry Day/Tm: 7/22/14 12:12:45 083 AUTO ACCIDENT WITH INJUR Medic

CmnN: Agency.....: 001 NEESES
Location....: 126 WESTBOUND MM154 DR Apt:
City.....: Block#: Loc ID: Mapr:
Intersectn.:

Caller Name: Last:CONCERNED First:CITIZEN Mid: See Caller:
Address....: 126 WESTBOUND MM154 DR Apt:
City/State: ORANGEBURG SC Phone#: Source:

Call Taker.: 5: QPADEV0004
Dispatcher.: QPADEV0004

N A R R A T I V E

FM10 REQUESTED FOR LIFENET TO BE ON STBY AT 1215HRS 12:18:52
LN3 ON STBY FROM BASE ETA OF 5MIN PLUS LIFT 12:19:46
F2 IC ON SCENE 12:30:36
FH29 ON SCENE 12:38:49

GRIDS 35-A5 12:44:13
M6-RESPONDING FROM HOMESTEAD RD 12:44:13
CC: | CM: 12:44:13
MILEAGE: (1) 280 (2) 289 (3) 299 13:03:15
WMFD REQUESTED ANOTHER MEDIC UNIT ADVISING THEY HAVE 12:44:13
MULTIPLE PATIENTS THAT ARE AMBULATORY 13:33:23
M3-RESPONDING FROM HQ 12:44:13
CC: | CM: 12:44:13
MILEAGE: (1) 898 (2) 907 (3) 917 13:03:23

Invalid code received:501E 12:45:29

Chief Compl: Motor Vehicle Accident 12:45:29
Q: What exactly has happened? 12:45:29
A: Rollover 12:45:29
Q: How many people have been injured? 12:45:29
A: 5 or more 12:45:29
Q: Are there any safety hazards at the scene? 12:45:29
A: None 12:45:29
Q: Has anyone been trapped? 12:45:29
A: No 12:45:29
Q: Has anyone been thrown from a vehicle? 12:45:29
A: No 12:45:29

Invalid code received:501E 12:45:33

Chief Compl: Motor Vehicle Accident 12:45:33
Q: Statement: Is it possible someone can look out for respon 12:45:33
ders and direct them to the scene? 12:45:33

TR CALL CLOSED 12:45:34

Chief Compl: Motor Vehicle Accident 12:45:34

REDACTED

SC Code 44-61-160

9/12/14
7:37:10

SunGard CAD
CAD CALL INFORMATION

PAGE 2
142030114

M6 1ST PATIENT TRANSFERRED TO LIFENET INJURY 12:54:20
M6-ENROUTE TO TRMC(4014)NON-EMERGENT X 1/BLS 12:54:20
MONITORING X 1 12:54:20
M3-ENROUTE TO TRMC(4014)NON-EMERGENT INJURY X 2 12:54:20

LN3 Unit Status History Information

7/22/14 12:31:18	4 Dispatched	D
7/22/14 12:33:11	32 Enroute To-Scene	G
7/22/14 12:40:53	6 Unit On Scene	A
7/22/14 12:48:18	20 Available	AV

M2 Unit Status History Information

7/22/14 12:18:20	4 Dispatched	D
7/22/14 12:18:38	12 Unit Swap	SW
7/22/14 12:18:38	20 Available	AV

M3 Unit Status History Information

7/22/14 12:18:38	4 Dispatched	D
7/22/14 12:20:37	32 Enroute To Scene	G
7/22/14 12:32:27	6 Unit On Scene	A
7/22/14 12:51:53	34 Depart Scene/Enroute	Y
7/22/14 13:03:01	39 At Hospital	N
7/22/14 13:34:04	20 Available	AV

M6 Unit Status History Information

7/22/14 12:12:59	4 Dispatched	D
7/22/14 12:12:59	11 Assigned as Primary	PR
7/22/14 12:15:13	32 Enroute To Scene	G
7/22/14 12:27:55	6 Unit On Scene	A
7/22/14 12:52:30	34 Depart Scene/Enroute	Y
7/22/14 13:02:46	39 At Hospital	N
7/22/14 13:38:44	30 Return to Station	R
7/22/14 14:10:31	20 Available	AV

700 Unit Status History Information

7/22/14 12:18:44	4 Dispatched	D
7/22/14 12:19:08	20 Available	AV

REDACTED

*HIPAA-Confidential Patient Health
Information*

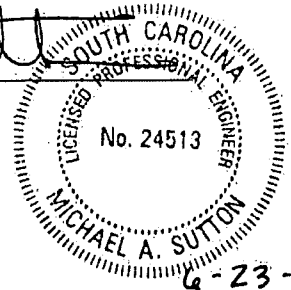
- f) Melvin Kearsé deposition transcript and exhibits 1-3 (Super-Sod employee that wrapped the pallets of sod and then loaded the cargo onto Harbison Community Association, Inc.'s trailer)
 - g) Joe Livingston deposition transcript and exhibit 1 (Super-Sod 30(b)(6) witness)
 - h) David Grove deposition transcript and exhibit 1 (Harbison 30(b)(6) witness)
 - i) Dash cam video of Trooper Gleich
 - j) Fire and police reports (Harbison 0006-0013)
 - k) Pallet specs (Pages from D Patten's ATIs, RRFPs, to P's 1st 05-08-15)
 - l) Google aerial images (5)
 - m) Photos from Tate Johnson
 - n) Statements of Mr. Branham, Lynch, Shealy, and Sox
 - o) Truck and trailer specs (Pages from D Harbison, Sox ATIs, RRFPs 07-24-15)
 - p) Bosch CDR Report Lexus
5. In forming the opinions contained herein, I also personally inspected and performed an analysis of the crash scene.
6. The first in the chain of events that resulted in the collision that injured Price Oulla occurred at Super-Sod on July 22, 2014. Super-Sod employee Melvin Kearsé improperly hand-wrapped the sod with plastic in a way that allowed it to later tear under normal driving conditions. Failing to properly wrap sod to keep it securely on the pallet for transport is dangerous. Then, Kearsé improperly loaded the sod onto the Harbison trailer by not distributing the weight of the load for safe trailering. Kearsé loaded a pallet of sod weighing between 2,000-2,200 pounds on the back of the trailer at the direction of Cody Sox. Heavy cargo should be placed at the front of a trailer, not the back. Placing heavy cargo at the back of a trailer creates trailer sway and is dangerous. Next, neither Kearsé nor Sox secured the load of sod to the trailer, which is dangerous.

7. As a result of improperly wrapping the sod, improperly loading the sod, improperly balancing the load, and not securing the sod to the trailer, the sod was allowed to spill onto the interstate during transport. The spilled sod on the interstate created a hazardous condition for other motorists.
8. Because of the spilled load of sod, travel on the interstate was obstructed and vehicles were forced to slow suddenly and stop. Stopping on an interstate is dangerous and secondary collisions are a natural and probable consequence of an obstructed highway.
9. Price Oulla was travelling I-26 westbound and came to a stop because of the spilled sod. Lisa Velasques came upon the stopped traffic on I-26 due to the spilled sod, failed to stop, and collided with Oulla's vehicle. The impact propelled Oulla's vehicle into the vehicle in front of him. As a result of the violent collision, Oulla suffered severe injuries.
10. It is my opinion that Super-Sod's failure to properly wrap the sod, properly load the sod with the weight safely distributed, and failure to secure the load of sod to the trailer that was spilled onto the interstate, was a proximate cause of the collision resulting in Price Oulla's injuries.
11. It is my opinion that Harbison Community Association, Inc. employee Sox's failure to properly load and secure the sod to the trailer that was spilled onto the interstate was a proximate cause of the collision resulting in Price Oulla's injuries.
12. All opinions set forth herein are made to a reasonable degree of certainty in the field of accident reconstruction.

FURTHER AFFIANT SAYETH NOT

Michael A. Sutton

Michael A. Sutton, PE

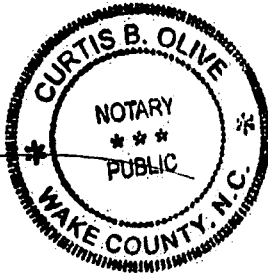


Sworn and subscribed to before me
This 23rd day of June, 2016.

Curtis B. Olive

Notary Public for North Carolina

My commission expires: 02-15-2019



MICHAEL A. SUTTON, PE

Accident Research Specialists, PLLC 1631 NW Maynard Road, Suite 101, Cary, NC 27513 (919) 467-8134

PROFESSIONAL ENGINEER

North Carolina #19847

South Carolina #24513

Alabama #28549-E

EMPLOYMENT

CONSULTING ENGINEER

FEBRUARY 2001 TO PRESENT

Accident Research Specialists, PLLC

Cary, North Carolina

Technical investigation and analysis of accidents and failures involving vehicles and machinery. Areas of work and expertise include accident reconstruction, engineering analysis, technical investigation, failure analysis, standards research, and laboratory testing in the areas of mechanical and automotive engineering and machine design, applied to vehicle accidents (commercial vehicle/heavy trucks, automobiles, motorcycles, marine vessels including commercial, recreational and personal watercraft, bicycles, pedestrian/vehicle, and aircraft), heavy equipment accidents, construction accidents, and product failures and testing. Testify in State and Federal Courts; qualified as an expert in accident reconstruction, mechanical engineering, failure analysis, and heavy truck braking systems.

CONSULTING ENGINEER

FEBRUARY 1989 TO FEBRUARY 2001

Accident Reconstruction Analysis, Incorporated

Raleigh, North Carolina

Technical investigation and analysis of accidents and failures involving vehicles and machinery. Areas of work and expertise same as listed above.

TECHNICIAN

AUGUST 1987 TO FEBRUARY 1989

Accident Reconstruction Analysis, Incorporated

Raleigh, North Carolina

Assist engineers with investigations and testing of accidents and failures

ENGINEERING CO-OP

JANUARY 1986 TO AUGUST 1987

Carolina Power & Light Company

New Hill, North Carolina

Worked in the reactor engineering division during the construction and initial start-up of the Shearon Harris Nuclear Power Plant.

EDUCATION

MASTER OF ENGINEERING

1996

North Carolina State University

Raleigh, North Carolina

Concentration in Mechanical Engineering-Dynamics, Vibrations and Acoustics

BACHELOR OF SCIENCE, MECHANICAL ENGINEERING

1988

North Carolina State University

Raleigh, North Carolina

*Magna Cum Laude, Dean's List 1984, 1985, 1987, 1988, Pi Tau Sigma
National Honorary Mechanical Engineering Fraternity, Outstanding*

Accident Research Specialists, PLLC

FORENSIC ENGINEERS

College Students of America.

MEMBERSHIPS

Society of Automotive Engineers

American Society of Mechanical Engineers

American Society of Materials

TRAINING

Society of Automotive Engineers - *Fundamentals of Vehicle Dynamics*

Society of Automotive Engineers - *Tire and Wheel Safety Issues*

Society of Automotive Engineers - *The Tire as a Vehicle Component*

Society of Automotive Engineers - *Braking Performance of Heavy Commercial Vehicles*

Society of Automotive Engineers - *Motor Vehicle Accident Reconstruction*

American Society of Materials - *Principles of Failure Analysis*

OSHA - *Construction Safety and Health*

Society of Automotive Engineers - *Occupant and Vehicle Kinematics in Rollovers.*

PUBLICATIONS

"Expert Testimony Regarding the Speed of a Vehicle: the Status OF North Carolina Law and the State of the Art"

"The Critical Role of the Accident Reconstructionist in Trucking Cases"

"Speed Testimony - The Brewing Battlefield"

INSTRUCTOR

Headlines Produce Change: OSHA'S Updated (and Improved) Construction Crane and Derrick Standard

North Carolina Trucking Association: Setting Course for Safety

ORIGINAL

SOUTH CAROLINA DISPOSITIONS & DMV USE ONLY				Page 1		SOUTH CAROLINA TRAFFIC COLLISION REPORT FORM				# Of Units		Reviewed - Initials/Date		Notified		Arrived							
				2		TR-310 (Rev. 11/2011)				03				1216		1217							
Date		Time of Collision		County		1- Interstate		4- Secondary		Collision Location (Rt. # / Name)				2- Main Line		6- Connection		Notes		Dir. of Travel		In (Near) City or Town of	
07-22-2014		1215		38		2- US Primary		5- County		5 26 /				3- SC Primary		6- Other		5.63		N E		CAMERON	
Lane # / Dir.		Distance Offset		Direction		1- Interstate		4- Secondary		Base Intersection (Rt. # / Name)				2- Main Line		6- Connection		GPS COORDINATES OF CR 0000					
1 / S		.70		N E		2- US Primary		5- County		301 / FIVE CHOP RD				2- Alternate		7- Business		DEGREES MINUTES SECONDS					
P.R. Id.		From		Ramp Only		To		1- Interstate		4- Secondary		Second Intersection (Rt. # / Name)				2- Main Line		6- Connection		Latitude			
		N E		1- Entrance		N E		2- US Primary		5- County		60 / FOUR HOLES RD				2- Alternate		7- Business		33 27 46.01			
		S W		2- Exit		S W		3- SC Primary		6- Other						2- Alternate		7- Business		Longitude			
																2- Alternate		7- Business		83 44 07.91			
E-813778										E-813779													
SMITH TIMOTHY B										OULLA PRICE MULLINS													
Unit #		Sex		Race		Street		Unit #		Sex		Race		Street		Unit #		Sex		Race		Street	
01		M		W		2520 RAVEN DR		02		M		W		5284 WATER WAY LN		03		F		W		4476 RIVERS RD	
4000		Birth Date		City, State, & Zip		4000		Birth Date		City, State, & Zip		4000		Birth Date		City, State, & Zip		4000		City, State, & Zip		4000	
6		08-25-1958		SULLIVANS IS SC 29482		6		04-03-1945		HOLLYWOOD SC 29440		4		12-30-1976		JOHNS ISLAND SC 29455		4		12-30-1976		JOHNS ISLAND SC 29455	
State		Driver's License #		Class		Insurance Company		State		Driver's License #		Class		Insurance Company		State		Driver's License #		Class		Insurance Company	
SC		004324437		D		AIG PRIVATE CLIENT GROUP		SC		1570728		D		USAA		SC		007387921		D		UNKNOWN	
Year		Body		Vehicle Make		VIN #		Year		Body		Vehicle Make		VIN #		Year		Body		Vehicle Make		VIN #	
2008		MH		MNAC		1RF175711B1040480		2004		AS		LEXS		JTHBA30GX45010823		1999		SU		TOYT		JT3GN87R6X01170B2	
State		Year		License Plate #		Owner's D.L. #		State		Year		License Plate #		Owner's D.L. #		State		Year		License Plate #		Owner's D.L. #	
SC		2015		FMZ319		004324437		SC		2014		PH50023		UNKNOWN		SC		2014		G815054		21	
Home Telephone		Owner's Full Name		Home Telephone		Owner's Full Name		Home Telephone		Owner's Full Name		Home Telephone		Owner's Full Name		Home Telephone		Owner's Full Name		Home Telephone		Owner's Full Name	
(843) 3458183		SMITH TIMOTHY B		(843) 3459060		LAWS LILLIAN BRADLEY		()		VELAZQUES LISA ANNE		()		VELAZQUES LISA ANNE		()		VELAZQUES LISA ANNE		()		VELAZQUES LISA ANNE	
Bus. Telephone		Street		Bus. Telephone		Street		Bus. Telephone		Street		Bus. Telephone		Street		Bus. Telephone		Street		Bus. Telephone		Street	
()		2520 RAVEN DR		()		5284A WATER WAY LN		()		4476 RIVERS RD		()		4476 RIVERS RD		()		4476 RIVERS RD		()		4476 RIVERS RD	
Contributed To Collision		City, State, & Zip		Contributed To Collision		City, State, & Zip		Contributed To Collision		City, State, & Zip		Contributed To Collision		City, State, & Zip		Contributed To Collision		City, State, & Zip		Contributed To Collision		City, State, & Zip	
Yes (No)		SULLIVANS IS SC 29482		Yes (No)		HOLLYWOOD SC 29440		Yes (No)		JOHNS ISLAND SC 29455		Yes (No)		JOHNS ISLAND SC 29455		Yes (No)		JOHNS ISLAND SC 29455		Yes (No)		JOHNS ISLAND SC 29455	
Estimated Speed		Speed Limit		C.D.L. Req. Yes (No)		T/W/S Req. Yes (No)		Estimated Speed		Speed Limit		C.D.L. Req. Yes (No)		T/W/S Req. Yes (No)		Estimated Speed		Speed Limit		C.D.L. Req. Yes (No)		T/W/S Req. Yes (No)	
5		70		Summons #		Code		10		70		Summons #		Code		70		70		Summons #		Code	
Towed By		Yes (No)		Towed By		Yes (No)		Towed By		Yes (No)		Towed By		Yes (No)		Towed By		Yes (No)		Towed By		Yes (No)	
ABLE GARAGE		Yes (No)		ABLE GARAGE		Yes (No)		ABLE GARAGE		Yes (No)		ABLE GARAGE		Yes (No)		ABLE GARAGE		Yes (No)		ABLE GARAGE		Yes (No)	
E-813780										E-813781													
VELAZQUES LISA ANNE										VELAZQUES LISA ANNE													
Unit #		Sex		Race		Street		Unit #		Sex		Race		Street		Unit #		Sex		Race		Street	
03		F		W		4476 RIVERS RD		04		F		W		4476 RIVERS RD		05		F		W		4476 RIVERS RD	
4000		Birth Date		City, State, & Zip		4000		Birth Date		City, State, & Zip		4000		Birth Date		City, State, & Zip		4000		Birth Date		City, State, & Zip	
4		12-30-1976		JOHNS ISLAND SC 29455		4		12-30-1976		JOHNS ISLAND SC 29455		4		12-30-1976		JOHNS ISLAND SC 29455		4		12-30-1976		JOHNS ISLAND SC 29455	
State		Driver's License #		Class		Insurance Company		State		Driver's License #		Class		Insurance Company		State		Driver's License #		Class		Insurance Company	
SC		007387921		D		UNKNOWN		SC		007387921		D		UNKNOWN		SC		007387921		D		UNKNOWN	
Year		Body		Vehicle Make		VIN #		Year		Body		Vehicle Make		VIN #		Year		Body		Vehicle Make		VIN #	
1999		SU		TOYT		JT3GN87R6X01170B2		1999		SU		TOYT		JT3GN87R6X01170B2		1999		SU		TOYT		JT3GN87R6X01170B2	
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SC		2014		G815054		21		SC		2014		G815055		94		SC		2014		G815055		94	
Home Telephone		Owner's Full Name		Home Telephone		Owner's Full Name		Home Telephone		Owner's Full Name		Home Telephone		Owner's Full Name		Home Telephone		Owner's Full Name		Home Telephone		Owner's Full Name	
()		VELAZQUES LISA ANNE		()		VELAZQUES LISA ANNE		()		VELAZQUES LISA ANNE		()		VELAZQUES LISA ANNE		()		VELAZQUES LISA ANNE		()		VELAZQUES LISA ANNE	
Bus. Telephone		Street		Bus. Telephone		Street		Bus. Telephone		Street		Bus. Telephone		Street		Bus. Telephone		Street		Bus. Telephone		Street	
()		4476 RIVERS RD		()		4476 RIVERS RD		()		4476 RIVERS RD		()		4476 RIVERS RD		()		4476 RIVERS RD		()		4476 RIVERS RD	
Contributed To Collision		City, State, & Zip		Contributed To Collision		City, State, & Zip		Contributed To Collision		City, State, & Zip		Contributed To Collision		City, State, & Zip		Contributed To Collision		City, State, & Zip		Contributed To Collision		City, State, & Zip	
Yes (No)		JOHNS ISLAND SC 29455		Yes (No)		JOHNS ISLAND SC 29455		Yes (No)		JOHNS ISLAND SC 29455		Yes (No)		JOHNS ISLAND SC 29455		Yes (No)		JOHNS ISLAND SC 29455		Yes (No)		JOHNS ISLAND SC 29455	
Estimated Speed		Speed Limit		C.D.L. Req. Yes (No)		T/W/S Req. Yes (No)		Estimated Speed		Speed Limit		C.D.L. Req. Yes (No)		T/W/S Req. Yes (No)		Estimated Speed		Speed Limit		C.D.L. Req. Yes (No)		T/W/S Req. Yes (No)	
70		70		Summons #		Code		70		70		Summons #		Code		70		70		Summons #		Code	
Towed By		Yes (No)		Towed By		Yes (No)		Towed By		Yes (No)		Towed By		Yes (No)		Towed By		Yes (No)		Towed By		Yes (No)	
HILLIARDS AUTO		Yes (No)		HILLIARDS AUTO		Yes (No)		HILLIARDS AUTO		Yes (No)		HILLIARDS AUTO		Yes (No)		HILLIARDS AUTO		Yes (No)		HILLIARDS AUTO		Yes (No)	
Dir. of Travel		Unit 1: N S E (W)		Unit 2: N S E (W)		Unit 3: N S E (W)		Dir. of Travel		Unit 1: N S E (W)		Unit 2: N S E (W)		Unit 3: N S E (W)		Dir. of Travel		Unit 1: N S E (W)		Unit 2: N S E (W)		Unit 3: N S E (W)	
		Unit 1: N S E (W)		Unit 2: N S E (W)		Unit 3: N S E (W)				Unit 1: N S E (W)		Unit 2: N S E (W)		Unit 3: N S E (W)				Unit 1: N S E (W)		Unit 2: N S E (W)		Unit 3: N S E (W)	
Unit #1		Unit #2		Unit #3		Unit #4		Unit #1		Unit #2		Unit #3		Unit #4		Unit #1		Unit #2		Unit #3		Unit #4	
Unit #1		Unit #2		Unit #3		Unit #4		Unit #1		Unit #2		Unit #3		Unit #4		Unit #1		Unit #2		Unit #3		Unit #4	
Unit #1		Unit #2		Unit #3		Unit #4		Unit #1		Unit #2		Unit #3		Unit #4		Unit #1		Unit #2		Unit #3		Unit #4	
Unit #1		Unit #2		Unit #3		Unit #4		Unit #1		Unit #2		Unit #3		Unit #4		Unit #1		Unit #2		Unit #3		Unit #4	
Unit #1		Unit #2		Unit #3		Unit #4		Unit #1		Unit #2		Unit #3		Unit #4		Unit #1		Unit #2		Unit #3		Unit #4	
Unit #1		Unit #2		Unit #3		Unit #4		Unit #1		Unit #2		Unit #3		Unit #4		Unit #1		Unit #2		Unit #3		Unit #4	
Unit #1		Unit #2		Unit #3		Unit #4		Unit #1		Unit #2		Unit #3		Unit #4		Unit #1		Unit #2		Unit #3		Unit #4	
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Unit #1		Unit #2		Unit #3		Unit #4		Unit #1		Unit #2		Unit #3		Unit #4		Unit #1		Unit #2		Unit #3		Unit #4	

Unit	Date of Birth	Sex	Race	INO	Seat	R/S/D	4.0 D	Eject	LAI	Trans	Name	Street Address	City	State	Zip Code	
01	08-25-1958	M	W	0	01	13	4	3	1	1	2	SMITH TIMOTHY B	2520 RAVEN DR	SULLIVAN	SC	29482
02	04-03-1946	M	W	3	01	13	2	3	1	1	1	OULLA PRICE MULLI	5284 WATER WAY LN	HOLLYWOOD	SC	29449
03	12-30-1976	F	W	3	01	13	2	3	1	1	1	VELAZQUE LISA ANNE	4476 RIVERS RD	JOHNS	SC	29455
01	03-07-1974	F	W	0	03	13	4	3	1	1	2					
01	02-05-2001	M	W	0	50	00	4	3	1	1	2					
01	06-04-2002	M	W	0	50	00	4	3	1	1	2					
01	04-10-2004	M	W	0	50	00	4	3	1	1	2					
01	06-26-2006	F	W	0	50	00	4	3	1	1	2					

Race		A - Asian/Pacific Islander		W - Caucasian		a) Injury Status		2 - Non-incapacitating		Seating Loc.		20 - Pedestrian		60 - Shoulder of Car		Restraint/Safety Device	
B - African American		H - Hispanic		O - Other		b) Not Injured		3 - Incapacitating		01 02 03		30 - Trailing Unit		80 - Left		60 - None Used	
1 - Asian/Native or American Indian		U - Unknown		U - Unknown		c) Possible Injury		4 - Fatal		04 05 06		40 - Bus or Van (4th row or Higher)		90 - Lap		11 - Shoulder belt	
Air Bag Deployment / Switch		Ejection		b) 2 or 3 Wheel Motorized Vehicle		Head Injury		1 - Yes		2 - No		50 - Other Enclosed Area (nontrailing)		99 - Unknown		12 - Lash Belt Only	
1 - Deployed Front Air Not Deployed		1 - Not Ejected		Location After Impact		3 - Fractured (non-mech.)		4 - Not Applicable		a) Transported to Medical Facility		51 - Other Unenclosed Area (nontrailing)		31 - Helmet		13 - Shoulder & Lap Belt	
2 - Deployed Side 7 - Not Available		2 - Part Ejected		1 - Not Trapped		2 - Extremity (Mechanical Means)		5 - Unknown		1 - Yes		2 - No		3 - Unknown		14 - Pedestrian Motor Vehicle Only	
3 - Deployed Both 8 - Deployment Link		3 - Not Ejected		2 - Extremity (Mechanical Means)		5 - Unknown		5 - Unknown		2 - Yes		3 - No		4 - Unknown		15 - Reflective Clothing	
4 - Switch in Off Position 3 - Unknown		4 - Not App.		3 - Unknown		3 - Unknown		3 - Unknown		3 - By: 1 - EMS 2 - Police 3 - Other 4 - Unknown		3 - By: 1 - EMS 2 - Police 3 - Other 4 - Unknown		41 - Pre-Occupant Pads 41 - Lighting		16 - Reflective Pads 41 - Lighting	

Non-Collision		Collision: Not Fixed		Collision: Fixed Object		Collision: Fixed Object		Collision: Fixed Object		Collision: Fixed Object		Collision: Fixed Object		Collision: Fixed Object		Collision: Fixed Object	
01 - Collision/Explosion or Shift		05 - Fire/Explosion		09 - Collision/Explosion		13 - Collision/Explosion		17 - Collision/Explosion		21 - Collision/Explosion		25 - Collision/Explosion		29 - Collision/Explosion		33 - Collision/Explosion	
02 - Collision/Explosion		06 - Fire/Explosion		10 - Collision/Explosion		14 - Collision/Explosion		18 - Collision/Explosion		22 - Collision/Explosion		26 - Collision/Explosion		30 - Collision/Explosion		34 - Collision/Explosion	
03 - Collision/Explosion		07 - Fire/Explosion		11 - Collision/Explosion		15 - Collision/Explosion		19 - Collision/Explosion		23 - Collision/Explosion		27 - Collision/Explosion		31 - Collision/Explosion		35 - Collision/Explosion	
04 - Collision/Explosion		08 - Fire/Explosion		12 - Collision/Explosion		16 - Collision/Explosion		20 - Collision/Explosion		24 - Collision/Explosion		28 - Collision/Explosion		32 - Collision/Explosion		36 - Collision/Explosion	

Manner of Collision (Strike Vail)		30 - Rear-End		30 - Rear-End		30 - Rear-End		30 - Rear-End		30 - Rear-End		30 - Rear-End		30 - Rear-End		30 - Rear-End	
1 - 00 - Not Coll. w/ Motor Veh.		41 - Angle		41 - Angle		41 - Angle		41 - Angle		41 - Angle		41 - Angle		41 - Angle		41 - Angle	
2 - 10 - Rear End		42 - Angle		42 - Angle		42 - Angle		42 - Angle		42 - Angle		42 - Angle		42 - Angle		42 - Angle	
3 - 20 - Head On		43 - Angle		43 - Angle		43 - Angle		43 - Angle		43 - Angle		43 - Angle		43 - Angle		43 - Angle	

Vehicle Type		15 - Mini Van		15 - Mini Van		15 - Mini Van		15 - Mini Van		15 - Mini Van		15 - Mini Van		15 - Mini Van		15 - Mini Van	
01 - Automobile		16 - Mini Van		16 - Mini Van		16 - Mini Van		16 - Mini Van		16 - Mini Van		16 - Mini Van		16 - Mini Van		16 - Mini Van	
02 - Pickup Truck		17 - Sport Utility		17 - Sport Utility		17 - Sport Utility		17 - Sport Utility		17 - Sport Utility		17 - Sport Utility		17 - Sport Utility		17 - Sport Utility	
03 - Truck Tractor		25 - Motorcycle		25 - Motorcycle		25 - Motorcycle		25 - Motorcycle		25 - Motorcycle		25 - Motorcycle		25 - Motorcycle		25 - Motorcycle	
04 - Other Truck		26 - Other Motorcycle		26 - Other Motorcycle		26 - Other Motorcycle		26 - Other Motorcycle		26 - Other Motorcycle		26 - Other Motorcycle		26 - Other Motorcycle		26 - Other Motorcycle	

Vehicle Use Code		04 - Ambulance		04 - Ambulance		04 - Ambulance		04 - Ambulance		04 - Ambulance		04 - Ambulance		04 - Ambulance		04 - Ambulance	
01 - Ambulance		05															

ORIGINAL

SOUTH CAROLINA DEPT. OF TRANSPORTATION & PUBLIC SAFETY				SOUTH CAROLINA TRAFFIC COLLISION REPORT FORM TR-310 (Rev. 11/2011)				# Of Units 03		Accident - Attach Copy of Original Report		Notified 1216		Arrived 1217	
Date 07-22-2014		Time of Collision 1215		County 30		1- Interstate 2- US Primary 3- SC Primary 4- Secondary 5- County 6- PP 8 28 /		Collision Location (Rt. # / Name) 301 / FIVE CHOP RD				Mileage 5.63		In (Near) City or Town of CAMERON	
Lane # / Dir. 1 / S		Distance Off 10		Direction N E S W		1- Interstate 2- US Primary 3- SC Primary 4- Secondary 5- County 6- Other		Date Intersection (Rt. # / Name) 301 / FIVE CHOP RD				Main Line 2- Alternative 3- Spur		Connection 7- Business 8- Other	
RR. Id.		From N E S W		Ramp Only 1- Entrance 2- Exit		To N E S W		Second Intersection (Rt. # / Name) 50 / FOUR HOLES RD				Main Line 2- Alternative 3- Spur		Connection 7- Business 8- Other	
Driver/Pedestrian's Full Name								Driver/Pedestrian's Full Name							
Unit #		Sex		Race		Street		Unit #		Sex		Race		Street	
AOC		Birth Date		City, State, & Zip		AOC		Birth Date		City, State, & Zip		AOC		Birth Date	
State		Driver's License #		Class		Insurance Company		State		Driver's License #		Class		Insurance Company	
Year		Body		Vehicle Make		VIN #		Year		Body		Vehicle Make		VIN #	
State		Year		License Plate #		Owner's D.L. #		State		Year		License Plate #		Owner's D.L. #	
Home Telephone		Owner's Full Name		Home Telephone		Owner's Full Name		Home Telephone		Owner's Full Name		Home Telephone		Owner's Full Name	
Bus. Telephone		Street		Bus. Telephone		Street		Bus. Telephone		Street		Bus. Telephone		Street	
Contributed To Collision Yes No		City, State, & Zip		Contributed To Collision Yes No		City, State, & Zip		Contributed To Collision Yes No		City, State, & Zip		Contributed To Collision Yes No		City, State, & Zip	
Estimated Speed		Speed Limit		C.D.L. Req. Yes No		T/O S Req. Yes No		Alcohol Info (see back) Yes No		Estimated Speed		Speed Limit		C.D.L. Req. Yes No	
Summons #		Code		Summons #		Code		Towed By Yes No		Summons #		Code		Summons #	
Driver/Pedestrian's Full Name		State		Year		License Plate #		Owner's D.L. #		Driver/Pedestrian's Full Name		State		Year	
Unit #		Sex		Race		Street		Unit #		Sex		Race		Street	
AOC		Birth Date		City, State, & Zip		AOC		Birth Date		City, State, & Zip		AOC		Birth Date	
State		Driver's License #		Class		Insurance Company		State		Driver's License #		Class		Insurance Company	
Year		Body		Vehicle Make		VIN #		Year		Body		Vehicle Make		VIN #	
State		Year		License Plate #		Owner's D.L. #		State		Year		License Plate #		Owner's D.L. #	
Home Telephone		Owner's Full Name		Home Telephone		Owner's Full Name		Home Telephone		Owner's Full Name		Home Telephone		Owner's Full Name	
Bus. Telephone		Street		Bus. Telephone		Street		Bus. Telephone		Street		Bus. Telephone		Street	
Contributed To Collision Yes No		City, State, & Zip		Contributed To Collision Yes No		City, State, & Zip		Contributed To Collision Yes No		City, State, & Zip		Contributed To Collision Yes No		City, State, & Zip	
Estimated Speed		Speed Limit		C.D.L. Req. Yes No		T/O S Req. Yes No		Alcohol Info (see back) Yes No		Estimated Speed		Speed Limit		C.D.L. Req. Yes No	
Summons #		Code		Summons #		Code		Towed By Yes No		Summons #		Code		Summons #	
Dir. of Travel		Unit 1: N S E W		Unit 2: N S E W		Unit 3: N S E W		Unit 1: N S E W		Unit 2: N S E W		Unit 3: N S E W		Unit 4: N S E W	
Unit 1 Dam.		Unit 2 Dam.		Unit 3 Dam.		Prop. Dam. 1		Prop. Dam. 2		Unit 1 Dam.		Unit 2 Dam.		Unit 3 Dam.	
\$		\$		\$		\$		\$		Unit 1 Dam.		Unit 2 Dam.		Unit 3 Dam.	
Property Owner/Witness:								Property Owner/Witness:							
Address								Address							
State Zip Phone								State Zip Phone							
Photo: Describe What Happened (Refer to Units by Number)															
☒ N															
NOTICE - THE TR-310 IS FOR STATISTICAL REPORTING PURPOSES ONLY AND IS A REFLECTION OF THE OFFICER'S BEST KNOWLEDGE, OPINION AND BELIEF COVERING THE COLLISION BUT NO WARRANTY IS MADE AS TO THE FACTUAL ACCURACY THEREOF.															
Investigating Officer's Name GLEICH - R H				Rank TFC		Badge # T 100		Jurisdiction Code H P 07		Report Date 08-09-2014		Reviewer's Name C E Davis		Rank Cpl	
														Internal Agency Code 14BW140593	

[illegible]R. 348

911 Call Recordings

Available via Dropbox at <https://bit.ly/2knlpm>

1 Q. Does it start at the bottom?

2 A. Start at the bottom?

3 Q. If you've got the pallet -- is there a
4 piece of wood on the bottom?

5 A. Yes, sir. But there's grass on it.

6 Q. And grass stacked on top, right?

7 A. Yes, sir.

8 Q. You wrap it around the sides?

9 A. Yes, sir.

10 Q. How low do you start the wrap? At the
11 wood?

12 A. No, sir.

13 Q. Right above the wood?

14 A. About the third -- about the second --
15 you got one layer right here. This right here is
16 the third layer, then all the way to the top.

17 Q. All the way to the top?

18 A. Yes, sir.

19 Q. But don't wrap the top?

20 A. I wrap the top too. Them four on top, I
21 wrap them too and then come back down.

22 Q. How many times do you go around with the
23 plastic?

24 A. Sometimes four or five. Then when I get
25 the top, then two more times to the bottom.

ATTEST: TRUE COPY

STATE OF SOUTH CAROLINA)

COUNTY OF ORANGEBURG)

Price Oulla and Bonnie Oulla,

Plaintiffs,

vs.

Lisa Velazques, Harbison Community
Association, Inc., Cody Sox, and Patten
Seed Company, d/b/a Super-Sod,

Defendants.

IN THE COURT OF COMMON PLEAS

FIRST JUDICIAL CIRCUIT

CASE NO. 2014-CP-38-1590

CLERK OF COURT

ORANGEBURG COUNTY, SOUTH CAROLINA

**ORDER DENYING DEFENDANT
HARBISON COMMUNITY ASSOCIATION
INC. AND CODY SOX'S MOTIONS FOR
SUMMARY JUDGMENT**

FILED FOR
RECORD
2016 AUG -
CLERK OF COURT
ORANGEBURG
COUNTY, SOUTH CAROLINA

4m

This matter came before me on Defendants' Motions for Summary Judgment. Defendants Harbison Community Association, Inc. ("Harbison") and Cody Sox ("Sox") filed a Motion for Summary Judgment arguing that Plaintiffs' claims fail as a matter of law due to an absence of proximate cause. Defendant Patten Seed Company, d/b/a Super-Sod ("Super-Sod") also filed a Motion for Summary Judgment arguing that Plaintiffs' claims fail because of an absence of proximate cause as well as an absence of any legal duty owed to Plaintiffs. Defendant Lisa Velazques ("Velazques"), along with Plaintiffs, opposed the Motions for Summary Judgment filed by Harbison, Sox, and Super-Sod.

Defendants and Plaintiffs briefed the Motions extensively and I presided over a hearing on June 29, 2016, and heard arguments from counsel for Defendants and Plaintiffs. Upon consideration of the evidence, supporting affidavits, briefing, and arguments of counsel, and viewing the facts in the light most favorable to the plaintiff, the Court finds that there are sufficient genuine issues of material facts which preclude summary judgment as to Defendants



Harbison and Sox and, therefore Defendant Harbison and Defendant Sox's Motions are therefore denied.

FACTS

On July 22, 2014, Defendant Sox, an employee of Defendant Harbison, drove a Harbison pick-up truck pulling a flatbed trailer from Columbia to Defendant Super-Sod's business in Orangeburg to purchase 2 pallets of sod for Harbison. Super-Sod stacked the sod onto pallets, wrapped the sod in plastic, and loaded the 2,000 pound pallets of sod with a forklift onto its customer's vehicle, all services which were included in the price of the pallets of sod.

Sox left Super-Sod and drove towards I-26. According to Mr. Sox, after he merged onto the interstate, a tractor trailer swayed into Sox's lane causing him to slow down and adjust into the emergency lane. While he moved off the side of the road, Mr. Sox lost a portion of sod which spilled onto the outside lane of I-26. Sox called 911 and emergency personnel arrived on the scene to assist in the sod clean up and removal. During this time, the outside lane of travel was blocked due to the spill and traffic began slow and back-up behind the spill location. Plaintiff Price Oulla approached the backed-up traffic in the left lane and was forced to stop due to the sod spill. As he was coming to a stop, he was rear-ended by Defendant Velazques and suffered injuries.

In addition to these undisputed facts, the testimony and affidavits filed by counsel reveal the following genuine issues of material fact:

- There is a genuine issue of material fact whether the accident involving Velazques/Oulla was a foreseeable result – a natural and probable consequence of Harbison and Sox's actions.
- There is a genuine issue of material fact regarding the degree to which Velazques was negligent.

- There is a genuine issue of material fact regarding the amount of time that passed between the sod spill and the Velazques/Oulla collision.
- There is a genuine issue of material fact regarding the distance between the sod spill and the Velazques/Oulla collision.

SUMMARY JUDGMENT STANDARD

“Summary judgment is appropriate only if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” Cunningham ex. rel. Grice v. Helping Hands, Inc., 352 S.C. 485, 491, 575 S.E.2d 549, 552 (2003); Rule 56(c), SCRPC. When considering a motion for summary judgment, the court views the evidence and all inferences that can be reasonably drawn therefrom in the light most favorable to the non-moving party. Id. “[I]n cases applying the preponderance of evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.” Hancock v. Mid-South Mgmt. Co., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). Because it is a drastic remedy, summary judgment should be cautiously invoked so no person will be improperly deprived of a trial of the disputed factual issues. Etheredge v. Richland Sch. Dist. I, 330 S.C. 447, 499 S.E.2d 238 (Ct. App. 1998).

LAW AND ANALYSIS

I. Proximate Cause

The South Carolina Supreme Court addressed the issue of proximate cause in another case involving secondary accidents and held the following:

Proximate cause is normally a question of fact for determination by the jury, and may be proved by direct or circumstantial evidence.

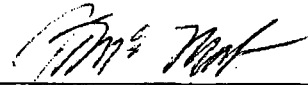
The touchstone of proximate cause is foreseeability which is determined by looking to the natural and probable consequences of the defendant's conduct. Plaintiff need not prove the defendant's negligence was the sole proximate cause of the injury. To exculpate a negligent defendant, the intervening cause must be one which breaks the sequence or causal connection between the defendant's negligence and the injury alleged. Only in rare or exceptional cases may the issue of proximate cause be decided as a matter of law.

Gause v. Smithers, 403 S.C. 140, 150, 742 S.E.2d 644, 649 (2013) (quotations omitted). The evidence, testimony, and affidavits before the Court reveal numerous genuine issues of material fact with regards to proximate cause. Because there are genuine issues of material fact on the issue of proximate cause and viewing the evidence and all inferences that can be reasonably drawn therefrom in the light most favorable to the Plaintiff, this issue is to be decided by a jury, not by the Court as a matter of law.

CONCLUSION

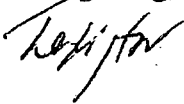
For the reasons stated above, Defendant Harbison and Defendant Sox's Motions for Summary Judgment are denied.

IT IS SO ORDERED.



Honorable R. Knox McMahon

July 21 2016
Orangeburg, South Carolina



ATTEST: TRUE COPY



CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA