

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Kristi L. Harrington, Circuit Court Judge

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Case No. 2010-CP-10-8631

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RECEIVED  
FEB 21 2013  
SC Court of Appeals

Cynthia D. Bales, as Personal Representative  
of the Estate of Frank R. Bales,

Respondent

v.

Abel Martinez Martinez and the  
South Carolina Department of Transportation,

Of whom Abel Martinez Martinez is Appellant,

Appellant

---

RECORD ON APPEAL

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CARLOCK, COPELAND & STAIR, LLP  
R. Michael Ethridge  
State Bar No.: 16892  
Katherine W. Sullivan  
State Bar No.: 78202  
40 Calhoun Street, Suite 400  
Charleston, SC 29401-3531  
Attorneys for Appellant

ANASTOPOULO LAW FIRM, LLC  
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Charleston, SC 29418  
Attorney for Respondent

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<sup>1</sup> The transcript of hearing of April 3, 2012 will be supplemented upon receipt. Attorney for Appellant requested the transcript on January 7, 2013 at the request of Respondent’s counsel. Appellant filed a Motion to Allow Transcript Out of Time on January 31, 2013.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )  
 )  
CYNTHIA BALES as Personal )  
Representative of THE ESTATE )  
OF FRANK BALES, )

Plaintiff, )

v. )

ABEL MARTINEZ and SOUTH )  
CAROLINA DEPARTMENT OF )  
TRANSPORTATION )

Defendant. )

IN THE COURT OF COMMON PLEAS  
FOR THE 9TH JUDICIAL CIRCUIT  
CASE NO.: 2010-CP-10-8631

**ORDER FOR ENTRY OF DEFAULT  
AND REFERAL FOR  
HEARING ON DAMAGES**

FILED  
2011 OCT -7 PM 3:28  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY

The Notice of Summons and Complaint in this matter was published in The Post & Courier on May 2, 5, and 16, 2011. Defendant Abel Martinez failed to submit a responsive pleading or defend the suit and on September 14, 2011 Plaintiff filed a Motion for Default and Request for a Hearing on Damages.

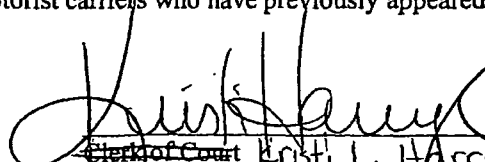
**THE COURT HEREBY FINDS** Defendant Martinez was properly served with notice via publication and failed to file and/or serve a responsive pleading within 30 days after the last day of publication and Plaintiff properly moved for entry of default on September 14, 2011.

**IT IS THEREFORE ORDERED** that Defendant Abel Martinez, is in Default and this Entry of Default is considered effective as of September 14, 2011, the date the Court was first notified of Defendant Martinez's default through Plaintiff's Motion For Entry of Default.

**IT IS FURTHER ORDERED** that this matter is to be set on the Court's docket for a hearing on damages pursuant to Plaintiff's request.

**IT IS FURTHER ORDERED** that this entry of Default has no impact on any defenses available to any alleged Uninsure Motorist carriers who have previously appeared in this action to stand in Defendant's shoes.

Dated: 10-4-11

  
~~Clerk of Court Kristi L. Harrington~~  
Charleston County Court of Common Pleas  
Circuit Court Judge

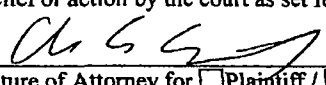
STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 CYNTHIA BALES as personal representative of the )  
 ESTATE OF FRANK BALES )  
 Plaintiff )  
 )  
 v. )  
 )  
 ABEL MARTINEZ And SOUTH CAROLINA )  
 DEPARTMENT OF TRANSPORTATION )  
 Defendant. )

IN THE COURT OF COMMON PLEAS

CASE NO.

2010-CP-10-8631

MOTION AND ORDER INFORMATION  
 FORM AND COVER SHEET

<b>Plaintiff's Attorney:</b> Akim A. Anastopoulo, Bar No. Address: 2850 Ashley Phosphate Rd. North Charleston, SC 29418 phone: 843-614-8888 fax: 800-313-2546 e-mail: akim@akimlaw.com other:	<b>Defendant's Attorney:</b> , Bar No. Address: phone: fax: e-mail: other:
<input checked="" type="checkbox"/> <b>MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)</b> <input type="checkbox"/> <b>FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)</b> <input type="checkbox"/> <b>PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)</b>	
<b>SECTION I: Hearing Information</b>	
Nature of Motion: Default Judgment Estimated Time Needed: 30 min Court Reporter Needed: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO	
<b>SECTION II: Motion/Order Type</b>	
<input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
 Signature of Attorney for <input type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant	
Date submitted _____	
<b>SECTION III: Motion Fee</b>	
<input checked="" type="checkbox"/> <b>PAID - AMOUNT: \$25</b> <input type="checkbox"/> <b>EXEMPT:</b> <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support (check reason) <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: <input type="checkbox"/> Other:	
<b>JUDGE'S SECTION</b> <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other:	_____ JUDGE CODE: _____ Date: _____
<b>CLERK'S VERIFICATION</b>	
Collected by: _____ Date Filed: _____	

SCCA/233 (11-03)

<input type="checkbox"/> MOTION FEE COLLECTED: _____
<input type="checkbox"/> CONTESTED - AMOUNT DUE: _____

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2010 CP-10-8631

Cynthia D Bales, as Personal Representative of the Estate of  
 Frank R Bales

Abel Martinez and South Carolina Department  
 of Transportation

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> 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.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41, 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

FILED  
 2012 APR 17 AM 9:45  
 CLERK OF COURT  
 JUDICIAL BRANCH

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: Defendant's Motion for Reconsideration, filed March 15, 2012 and heard on April 3, 2012, is DENIED.

ORDER INFORMATION

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

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

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

Circuit Court Judge: *Christina*      Judge Code: 2157      Date: 4/17/12  
 SCRPC Form 4C (10/2011) Page 1 of 2

**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:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
**ATTORNEY(S) FOR THE PLAINTIFF(S)**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
**ATTORNEY(S) FOR THE DEFENDANT(S)**

\_\_\_\_\_  
**CLERK OF COURT**

**Court Reporter:** Sharon D Jones

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 CYNTHIA D. BALES, as Personal )  
 Representative of the Estate of )  
 FRANK R. BALES, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 ABEL MARTINEZ MARTINEZ )  
 and the SOUTH CAROLINA )  
 DEPARTMENT OF )  
 TRANSPORTATION, )  
 )  
 Defendants. )

IN THE COURT OF COMMON PLEAS  
 FOR THE 9TH JUDICIAL CIRCUIT  
 CASE NO.: 2010-CP-10-8631

FINAL JUDGMENT

FILED  
 2012 MAR -2 PM 2:30  
 JULIE J. ARHSTRONG  
 CLERK OF COURT

THIS MATTER is before the Court on Plaintiff's Motion for a determination of unliquidated damages following Defendant Martinez-Martinez's default. A hearing was conducted before the South Carolina Court of Common Pleas for the Ninth Judicial Circuit on January 11, 2012. Attorneys for both parties were present at the call of the case as was the Plaintiff and Plaintiff's witnesses. Also present was counsel for an alleged applicable uninsured motorist carrier(s). The Defendant did not make an appearance. Following Defendant's default, Plaintiff requested this hearing pursuant to Rule 55 of the South Carolina Rules of Civil Procedure for a determination of Plaintiff's unliquidated damages. After hearing testimony and receiving evidence on the record, and for the reasons more fully articulated below, I determine and enter judgment for the Plaintiff in the amount of \$1,900,000.00 against Defendant Abel Martinez-Martinez.

**FACTUAL/PROCEDURAL BACKGROUND**

Plaintiff's husband, Frank R. Bales, was killed as a result of an auto/motorcycle collision that occurred on October 15, 2008. According to Plaintiff's Complaint, Defendant Martinez-Martinez disregarded a traffic signal, causing Defendant's vehicle to strike and fatally injure Mr. Bales. Following this accident, attorneys for the Plaintiff initiated this action which was served upon Defendant Abel Martinez-Martinez on May 16, 2011.

Defendant Martinez-Martinez failed to file any responsive pleadings with this Court or otherwise defend in this action. Plaintiff moved for an entry of default, which was signed October 4, 2011, and asked this Court to schedule a hearing to determine and enter judgment upon the proper amount of damages. Plaintiff sent notice of the hearing to Defendant's last known address and filed proof of the same with the Clerk.

*Def B*  
*3/1/12*

## LAW/ANALYSIS

In a wrongful death action, the decedent's beneficiaries are entitled to recover all damages, present and prospective, which are naturally the proximate consequence of the wrongful act, including: pecuniary loss, mental shock and suffering, wounded feelings, grief and sorrow, loss of companionship and deprivation of the use and comfort of the deceased's society, including the loss of his experience, knowledge, and judgment in managing the affairs of himself and of his beneficiaries. Smith v. Wells, 258 S.C. 316, 188 S.E.2d 470 (1972). Decedent's life expectancy for purposes of calculating future lost earnings and damages must be determined pursuant to S.C. Code Ann. § 19-1-150. In situations where the defendant's actions show willful, wanton, intentional or malicious intent, Plaintiff may also seek to recover punitive damages, provided the plaintiff is able to prove such damages by clear and convincing evidence. S.C. Code Ann. § 15-33-135.

Plaintiffs' decedent suffered fatal injuries as a result of Defendant's negligence. Plaintiff presented testimony from Clyde L. Hiers, a certified public accountant, certified financial planner, and certified forensic financial analyst. Mr. Hiers was qualified as an expert in the field of economic loss calculation without objection.

Mr. Hiers testified that Frank Bales, the decedent, through his surviving beneficiaries, sustained a present value economic loss of \$1,502,166.00. Mr. Hiers testified that this calculation was based upon the present adjusted value of Mr. Bales' lost pre-trial income; lost pre-trial fringe benefits; lost post-trial income; lost post-trial fringe benefits; lost anticipated household services (based upon statutory life expectancy); and estimated life value (based upon statutory life expectancy). Mr. Hiers also testified that Mr. Bales' historical medical costs and personal income abated were subtracted from the total economic loss.

Mr. Hiers further testified that his estimate was on the conservative side. He stated that income and benefits were calculated at a retirement age of 65 and were not adjusted to take into account possible future promotions or increases in pay. The Court finds Mr. Hiers' calculations to be reasonable. The Court accepts these findings and is satisfied that Mr. Hiers reached these conclusions to a reasonable degree of professional certainty, using methods and calculations generally recognized in his field.

Mr. Hiers' economic loss calculation did not include any amounts for mental shock and suffering, wounded feelings, grief and sorrow, loss of companionship, or deprivation of the use and comfort of the deceased's society, including the loss of his experience, knowledge, and judgment in managing the affairs of himself and of his beneficiaries.

The Court also heard testimony from Cynthia Bales, decedent's wife and the representative Plaintiff in this action. Mrs. Bales testified that her husband's death had a severe and negative impact on her and their minor child. Mrs. Bales testified that she was having trouble living life without her husband whom she referred to as her "soul mate." She testified that both she and her minor child were required to undergo grief and other counseling to deal with the consequences of Decedent's death. Based on this testimony, it is clear to the Court that the Decedent's beneficiaries have suffered a great deal of mental shock and suffering, wounded feelings, grief and sorrow, loss of companionship and deprivation of the use and comfort of the deceased's society.

Finally, because the Defendant is in default, the Court must deem all allegations in Plaintiff's Complaint as admitted. Plaintiff has alleged that Defendant's acts were willful, wanton, and/or reckless. Plaintiff has alleged that Defendant Martinez was driving without a

2063  
3/1/12

valid license and that he dis-regarded a traffic signal at a high rate of speed. Accordingly, Plaintiff argues she is entitled to punitive damages.

The Court has heard testimony from Decedent's wife and her economic loss expert and has received on the record evidence and testimony of funeral bills, lost wages, and other damages. Based on this record, and consistent with the statutory and common law of South Carolina, THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

That the Defendant, Abel Martinez-Martinez, failed to submit a responsive pleading or otherwise defend this action within thirty days of service upon him of the Summons and Complaint, and is in Default.

That The Plaintiff, and decedent's statutory beneficiaries suffered and were otherwise damaged as a result of the actions of the Defendant.

That Defendant's acts and omissions show willful misconduct, malice, wantonness and an entire want of care, raising a presumption of the Defendants' conscious indifference to the consequences of such acts and omissions.

That because of the Defendant's acts and omissions and the proximate harm resulting to Plaintiff and decedent's beneficiaries, Plaintiff and decedent's beneficiaries are entitled to punitive damages in order to punish and penalize the Defendant and to deter the Defendant and others from similar behavior.

**IT IS THEREFORE ORDERED** that Default be entered against Defendant and that he be held fully liable for the Plaintiffs' damages.

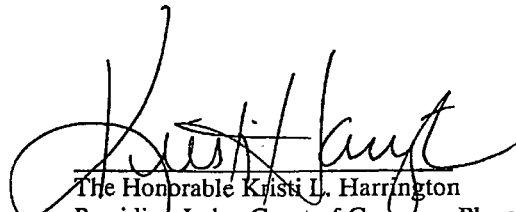
**IT IS FURTHER ORDERED** that Defendant pay Plaintiffs \$1,700,000.00 in actual damages for their injuries.

**IT IS FURTHER ORDERED** that Defendant pay Plaintiffs \$200,000.00 in punitive damages.

**IT IS HEREBY ORDERED, ADJUGED, AND DECREED THAT DEFENDANT ABEL MARTINEZ-MARTINEZ IS AND BE FULLY LIABLE FOR PLAINTIFF'S DAMAGES AND SHALL PAY UNTO DECEDENT'S BENEFICIARIES THE SUM OF \$1,900,000.00.**

IT IS SO ORDERED.

This 1<sup>st</sup> day of March, 2012

  
The Honorable Kristi L. Harrington  
Presiding Judge Court of Common Pleas  
Ninth Judicial Circuit

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2010 CP-10-8631

Cynthia D. Bales, as Personal Representative of the Estate of  
 Frank R. Bales

Abel Martinez Martinez and the South  
 Carolina Department of Transportation

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> 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.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRCP;  Rule 41, SCRCP (Vol. Nonsuit);  Rule 43(k), SCRCP (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRCP;  Bankruptcy  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other

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

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

ORDER INFORMATION

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

INFORMATION FOR THE PUBLIC 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)
Cynthia D. Bales, as Personal Representative of the Estate of Frank R. Bales	Abel Martinez-Martinez	\$1,900,000.00
		\$
		\$

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.

FILED  
 2012 MAR -2 PM 2:30  
 JULIE J. ARMSTRONG  
 CLERK OF COURT

*Justin B. [Signature]*  
Circuit Court Judge

2157  
Judge Code

3/1/12  
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:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
ATTORNEY(S) FOR THE PLAINTIFF(S)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
ATTORNEY(S) FOR THE DEFENDANT(S)  
\_\_\_\_\_  
CLERK OF COURT

**Court Reporter:**

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
C/A NO.: 2010-CP-10-

Cynthia D. Bales, as Personal )  
Representative of the Estate )  
of Frank R. Bales On behalf of the )  
Estate, and the Decedent's beneficiaries, )

PLAINTIFFS, )

VS. )

Abel Martinez Martinez and )  
South Carolina Department of )  
Transportation, )

DEFENDANTS. )

2010 OCT 15 PM 4:52  
JULIE J. ARMSTRONG  
CLERK OF COURT


FILED

SUMMONS

TO THE DEFENDANT, ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to Answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint upon the undersigned attorney, at 116 East Railroad Avenue, Moncks Corner, South Carolina 29461, within (30) days after service hereof, exclusive of the day of such service. If you fail to Answer the Complaint within that time, judgment to default will be rendered against you for the relief demanded in the Complaint.

Christopher P. Biering, Attorney at Law, P.C.

  
By: Christopher P. Biering, Esquire  
116 East Railroad Avenue  
Moncks Corner, South Carolina 29461  
843-761-4888  
Facsimile: 843-899-9015  
chris@bieringlawfirm.com

Moncks Corner, South Carolina  
April 23, 2010

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 Cynthia D. Bales, as Personal )  
 Representative of the Estate )  
 of Frank R. Bales On behalf of the )  
 Estate, and the Decedent's beneficiaries, )

COURT OF COMMON PLEAS  
 NINTH JUDICIAL CIRCUIT  
 C/A NO.: 2010-CP-10-

PLAINTIFFS,

VS.

Abel Martinez Martinez and  
 South Carolina Department of  
 Transportation,

DEFENDANTS.

2010 OCT 15 PM 4:52  
 JULIE J. ARMSTRONG  
 CLERK OF COURT

FILED

COMPLAINT  
(JURY TRIAL DEMANDED)

TO THE DEFENDANT, ABOVE-NAMED:

Plaintiffs, by and through their attorney, complaining of the Defendants, would respectfully show to this Court and allege on information and belief as follows:

PARTIES AND JURISDICTION

1. Plaintiff's decedent, Frank R. Bales, was a resident of the County of Dorchester, State of South Carolina at their time of death. The Plaintiff, Cynthia D. Bales, is the duly appointed personal representative of the Estate of her husband, Frank R. Bales. Plaintiff brings this action on behalf of the Estate and on behalf of herself--the decedent's husband, and Curtis Bales, the decedent's son, they being the statutory beneficiaries under the South Carolina Wrongful Death Act, South Carolina Code of Laws § 15-51-10, et. Seq., (1976 as amended), and the heirs to the Estate.

2. Upon information and belief, Defendant, Abel Martinez Martinez, is a resident of the County of Charleston, State of South Carolina.

3. Upon information and belief, Defendant, South Carolina Department of Transportation, is a political subdivision of the State of South Carolina, and is subject to suit pursuant to the South Carolina Tort Claims Act. The Plaintiff is informed and believes that the Defendant operates in every County, specifically in the County of Charleston.

4. The acts and omissions giving rise to this cause of action occurred in the County of Charleston, State of South Carolina, on October 15, 2008.

5. This Honorable Court has jurisdiction of the parties and of the subject matter hereinafter set forth.

6. On October 15, 2008, the Defendant Martinez was exceeding the speed limit, traveling at the intersection of Fain Street, and Aviation Avenue, in the County of Charleston, when he entered into the intersection through a red light causing the Plaintiff's decedent to collide into Defendant Martinez' vehicle.

7. Frank R. Bales died as a result of the collision.

8. That Defendant Martinez was not licensed to operate a motor vehicle, and upon information and belief, did not have knowledge requisite to understand and therefore, abide by the traffic laws and signals in place at the time and place.

9. That Defendant Martinez had been convicted on multiple occasions for operating a vehicle without a South Carolina Drivers' License.

10. That Defendant Martinez was charged as result of this collision with operating a motor vehicle without a South Carolina Drivers' License, and Disregarding a Traffic Signal).

11. That Defendant DOT, upon information and belief, had knowledge of the intersection / traffic signal issues presented at Fain and Aviation. Specifically, that they knew or should have known that drivers approaching Aviation from Fain St., could see the light controlling Aviation before the light controlling Fain St.

FOR A FIRST CAUSE OF ACTION  
(RECKLESSNESS / NEGLIGENCE)

12. That the Plaintiff repeats each and every allegation of paragraphs one (1) through eight (8) above as if set forth herein verbatim.

13. That the Defendant did not act reasonably regarding the operation of her vehicle and that injuries and losses were sustained by the Plaintiff, and that said damages were directly and proximately caused and occasioned by the negligent, reckless, willful and wanton conduct of the Defendant, in the following particulars to wit:

- a. In failing to keep a proper lookout;
- b. In failing to operate his motor vehicle at a safe speed;
- c. In failing to maintain proper control over Defendant's vehicle;
- d. In failing to seasonably and effectively utilize Defendant's vehicle brakes;
- e. In failing to take any evasive action, by any means, to avoid the lawful path vehicle on which the Plaintiff's decedent was operating;
- f. In failing to obey posted speed limit;

g. In then and their failing to obey the traffic laws of the State of South Carolina;

h. In then and there failing to exercise a degree of care and caution, which a reasonable and prudent person would have exercised under the same circumstances; and

i. Which negligence, gross negligence, carelessness, recklessness, willfulness, and wantonness of the Defendant, directly and proximately caused the injuries of the Plaintiff as is set forth below.

14. That as a direct and proximate result of the negligent, grossly negligent, careless, reckless, willful, and wanton acts and omission of the Defendant, the Plaintiff's decedent suffered great physical harm, injury and death to the Plaintiff's decedent's person which has and will in the future cause the beneficiaries to undergo much physical pain and suffering, has and will in the future cause beneficiaries to incur costs for medical treatment and services, and has and will in the future cause them to suffer trauma, anxiety, annoyance, hardship, loss of enjoyment of life, inconvenience, emotional distress, property damage, and loss of use of property, all to beneficiaries damage and detriment.

15. By reason of the acts and omissions of the Defendant as set forth above, the Plaintiff is informed and believes that the Plaintiff is entitled to an award of actual damages, together with punitive damages in an appropriate amount to be determined by the finder of fact, and for the cost of this action.

FOR A SECOND CAUSE OF ACTION  
(RECKLESSNESS / NEGLIGENT ENTRUSTMENT)

16. That the Plaintiff repeats each and every allegation of paragraphs one (1) through fifteen (15) above as if set forth herein verbatim.

17. The Defendant is charged with the maintenance, construction, design, signage, operation of traffic signals of intersection of Aviation and Fain at and near the location of the accident described herein. That the Defendant, knew or should have known of the condition which caused the accident described herein. That the Defendant has specific knowledge and notice of the hazard created by significant variations of elevation between roadway and shoulder. That the Defendant has specific knowledge that the act of placing a traffic control signal at the intersection in the direction at which it was placed could result in the operator of a vehicle on Fain St. to utilize the traffic control signal controlling Aviation.

18. That the Defendant did not act reasonably regarding the construction, design, safety, signage, operation and maintenance of the roadway, and that injuries and losses were sustained by the Plaintiff's decedent, and that said damages were directly and proximately caused and occasioned by the negligent, reckless, willful and wanton conduct of the Defendant, in the following particulars to wit:

- a. In failing to properly inspect the roadway, and if so properly inspected, in failing to ascertain the significance of the hazard;
- b. In placement of the traffic control device, selection of the traffic control device;
- c. In failing to warn of a known dangerous condition;

d. In failing to design roadway in a proper manner to avoid the dangerous condition that resulted in the injuries of the Plaintiffs, and if so designed properly, in failing to implement appropriate design;

e. In failing to train those charged with the inspection, maintenance, construction, and or repair of the roadway in a reasonable manner; and if so trained, in failing to supervised those charged with the inspection, maintenance, construction, and or repair of the roadway so that training would be utilized;

f. in failing to establish appropriate rules, regulations, and guidelines for the safe operation of this roadway, and if properly established, in failing to follow such rules, regulations, and guidelines;

g. in then and there failing to exercise a degree of care and caution, which a reasonable and prudent person would have exercised under the same circumstances; and

h. Which negligence, gross negligence, carelessness, recklessness, willfulness, and wantonness of the Defendant, directly and proximately caused the injuries of the Plaintiff as are set forth herein.

19. That as a direct and proximate result of the negligent, grossly negligent, careless, reckless, willful, and wanton acts an or omission of the Defendant, the Plaintiff's decedent suffered great physical harm, injury and death to the Plaintiff's decedent's person which has and will in the future cause the beneficiaries to undergo much physical pain and suffering, has and will in the future cause beneficiaries to incur costs for medical treatment and services, and has and will in the future cause them to suffer trauma, anxiety, annoyance, hardship, loss of enjoyment of life, inconvenience, emotional


distress, property damage, and loss of use of property, all to beneficiaries damage and detriment.

20. By reason of the acts and omissions of the Defendant as set forth above, the Plaintiff are informed and believe that the Plaintiff are entitled to individual awards of actual damages in an appropriate amount to be determined by the finder of fact, and for the cost of this action.

All to Plaintiff's damage, both actual and punitive, in an amount to be determined by the finder of fact.

WHEREFORE, the Plaintiff prays for a judgment against the Defendants in an amount of actual damages, and punitive damages in an appropriate amount to be determined by the finder of fact, and for such other and further relief as this Honorable Court might deem just and proper.

CHRISTOPHER P. BIERING, ATTORNEY AT LAW, P.C.

  
Christopher P. Biering, Esquire  
116 East Railroad Avenue  
Moncks Corner, South Carolina 29461  
Telephone No.: (843) 761-4888  
Facsimile No.: (843) 899-9015  
ATTORNEY FOR THE PLAINTIFF  
[chris@bieringlawfirm.com](mailto:chris@bieringlawfirm.com)

Moncks Corner, South Carolina  
October 15, 2010

FILED

2011 MAY 25 PM 1:35

JULIE J. ARMSTRONG  
CLERK OF COURT

ERIC POULIN ANASTOPOULO & CLORE, LLC  
2850 ASHLEY PHOSPHATE ROAD, SUITE B  
NORTH CHARLESTON SC 29418

8631

2010-CP-10-~~2742~~

**AFFIDAVIT OF PUBLICATION**

**The Post and Courier**

State of South Carolina  
County of Charleston

Personally appeared before me the undersigned advertising clerk of the above indicated newspaper published in the city of Charleston, county and state aforesaid, who, being duly sworn, says that the advertisement of

(copy attached)

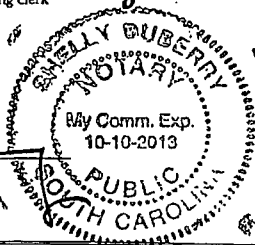
appeared in the issues of said newspaper on the following day(s):

05/02/11 Mon PC                      05/16/11 Mon CNW  
05/09/11 Mon PC  
05/16/11 Mon PC  
05/02/11 Mon CNW  
05/09/11 Mon CNW

at a cost of                      \$513.83  
Account#                      234012  
Order#                      522153  
P.O. Number:

Subscribed and sworn to before  
me this 19th day  
of May  
A.D. 2011

*Keisha Edings*  
advertising clerk



*Sherry Dule*  
NOTARY PUBLIC, SC  
My commission expires

State Of South Carolina  
County Of Charleston  
IN THE COURT OF  
COMMON PLEAS  
CASE NUMBER:  
2010-CP-10-2742  
CYNTHIA BALES as Personal, Representative of the ESTATE OF FRANK BALES,  
PLAINTIFF

VS.  
ABEL MARTINEZ MARTINEZ and SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION  
DEFENDANTS

SUMMONS  
TO DEFENDANT ABEL MARTINEZ MARTINEZ:  
YOU ARE HEREBY SUMMONED, and required to answer the Complaint in this action, a copy of which is available from the Clerk of Court for Charleston County, South Carolina, herewith served upon you, and to serve a copy of your answer to the said Complaint on the Plaintiff, or his attorneys, Akim A. Anastopoulos or David P. Bolek, at their office located at 2850 Ashley Phosphate Road, Suite B, North Charleston, South Carolina 29418, 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 amount of time aforesaid, the Plaintiff in this action will apply to the Court for judgment by default for the relief demanded in the Complaint.

/s/ Akim A. Anastopoulos,  
Esquire  
2850 Ashley Phosphate Road, Suite B  
North Charleston, SC 29418  
(843) 614-8888  
ATTORNEY FOR PLAINTIFF  
Charleston, South Carolina  
Dated: May 2, 2011

NOTICE  
TO DEFENDANT ABEL MARTINEZ MARTINEZ:  
TAKE NOTICE, that the Summons in the above mentioned action of which the foregoing is a copy, together with the Complaint therein was filed in the office of the Clerk of Court, Charleston Court of Common Pleas, 100 Broad Street, #106, Charleston, South Carolina 29401, on the 15th day of October, 2010.

/s/ Akim A. Anastopoulos,  
Esquire  
2850 Ashley Phosphate Road, Suite B  
Charleston, SC 29418  
(843) 614-8888  
ATTORNEY FOR PLAINTIFF  
Charleston, South Carolina  
Dated: May 2, 2011  
ADR# 522153

**ANASTOPOULO LAW FIRM**

**ATTORNEYS AT LAW**

Toll Free: (800) 313-2546

Facsimile: (800) 313-2546 or (843) 853-2291

Mailing Address: 2850 Ashley Phosphate Rd., Suite B  
North Charleston, SC 29418

Akim A. Anastopoulos (SC)

David P. Bolek, (SC, OH)

Andrew R. Hart (SC)

John P. Hayes (MI, NC, OK, PA, SC)

Florence Office: 150 W. Evans Street, Florence, SC

Reply to the North Charleston Office

May 23, 2011

Charleston County Court of Common Pleas  
ATTN: Clerk of Court  
100 Broad Street, #106  
Charleston, SC 29401

RE: *Cynthia D. Bales v. Abel M. Martinez*  
Case No.: 2010-CP-10-8631

Dear Clerk of Court:

Enclosed please find an original and two (2) copies of the Defendant's Service by Publication regarding the above-named case. We would appreciate it if you would file the original and return the clocked in copies to us.

Thank you for your assistance in this matter.

Sincerely,



Akim A. Anastopoulos

AAA/klp  
enclosures

cc: Cynthia Bales

**ADDITIONAL OFFICES**

Florence, South Carolina \* Greenville, South Carolina  
Asheville, North Carolina

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 CYNTHIA BALES as Personal )  
 Representative of THE ESTATE OF )  
 FRANK BALES )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 ABEL MARTINEZ and SOUTH )  
 CAROLINA DEPARTMENT OF )  
 TRANSPORTATION )  
 )  
 Defendant. )

IN THE COURT OF COMMON PLEAS  
 FOR THE 9TH JUDICIAL CIRCUIT  
 CASE NO.: 2010-CP-10-8631

**PLAINTIFF'S MOTION FOR ENTRY  
 OF DEFAULT AND REQUEST FOR  
 HEARING ON DAMAGES**

TO: THE COURT

Plaintiff asks the Clerk of Court to enter default against the Defendant Abel Martinez and schedule a hearing to determine damages.

FILED  
 2011 SEP 26 PM 3:37  
 JULIE J. ANSTRONG  
 CLERK OF COURT  
 BY \_\_\_\_\_

A. INTRODUCTION

Plaintiff brought this action against the Defendant Abel Martinez as a result of injuries suffered in an automobile accident that occurred on October 15, 2008. After an unsuccessful attempt to serve the Defendant through hiring Private Investigator Tom Duncan, Plaintiff was issued an Order for Publication on April 18, 2011 and published Notice of the Summons and Complaint in The Post & Courier. The Defendant Abel Martinez did not file a responsive pleading or otherwise defend the suit.

Plaintiff is, therefore, entitled to entry of default and a hearing on damages.

B. ARGUMENT AND AUTHORITIES

Rule 55(a) directs the Clerk of the Court to enter default against a party who has not filed a responsive pleading or otherwise defended the suit. SCRCP 55(a).

Rule 55(b) permits the court to enter default judgment against a party against whom

default has been entered. SCRC 55(b)(1).

Plaintiff meets the procedural requirements for obtaining an entry of default as demonstrated by attorney Akim A. Anastopoulos's sworn Affidavit of Non-Military service, attached as Exhibit A.

Plaintiff does not seek affirmative relief against an infant, an incompetent person, or the State of South Carolina.

Plaintiff published Notice of the Summons and Complaint in Post & Courier on May 5, 9 and 16, 2011. Notice was Published after private investigator Thomas H. Duncan was unable to find Defendant Martinez. An Affidavit from Thomas H. Duncan and an Affidavit from The Post & Courier certifying their publication of the Notice of Summons and Complaint in the present case are attached herein as Exhibits B and C respectively.

Under SCRC 12(a), the time for Defendant to respond is thirty (30) days after being served with process.

Because Defendant Abel Martinez did not file a responsive pleading or otherwise defend, Plaintiff is entitled to Entry of Default.

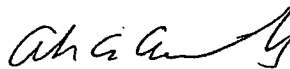
Plaintiff's damages are unliquidated and a hearing is requested to receive evidence of Plaintiff's damages.

#### C. PRAYER

For these reasons, Plaintiff asks the Court to enter a Default against Defendant Abel Martinez and to schedule an evidentiary hearing to determine Plaintiff's damages. This entry of Default and any subsequent Order or Judgment shall not be used against or in any way affect or deprive any alleged Underinsured Motorist carriers who have appeared in this action raising and

litigating any defenses available to them or pursuing any right granted them by the laws of this state including a full trial.

Respectfully submitted,



---

Akim A. Anastopoulos, Esquire  
Andrew R. Hart, Esquire  
Anastopoulos Law Firm, LLC  
2850 Ashley Phosphate Road  
North Charleston, SC 29418  
(800) 313 2546  
ATTORNEYS FOR PLAINTIFFS

Charleston, South Carolina  
Sept. 21, 2011



# EXHIBIT

# A

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )  
 )  
CYNTHIA BALES as Personal )  
Representative of the ESTATE OF )  
FRANK BALES )

Plaintiff,

ABEL MARTINEZ and SOUTH )  
CAROLINA DEPARTMENT OF )  
TRANSPORTATION )

Defendant.

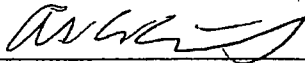
IN THE COURT OF COMMON PLEAS

CASE NO.: 2010-CP-10-8631

**AFFIDAVIT OF NON-MILITARY SERVICE**

Personally appeared before me the undersigned attorney, who first being duly sworn,  
deposes and says:

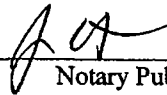
That he is familiar with the provisions of 50 App. Section 520, Civil Relief Act of 1940,  
and to induce the Court to enter a default judgment against the Defendant, Abel Martinez,  
represents to the Court that from his file in this matter, and on information and belief based on  
the hereinafter enumerated facts, the Defendant above named is/are not in the Military Service of  
the United States and is/are not entitled to the protection of the Civil Relief Act of 1940 and  
Amendments thereto. The source of information on which he bases his belief is as follows:  
Research made by the Law Offices of Akim Anastopoulos and Cynthia Bales, Plaintiff herein.



Akim A. Anastopoulos, Esquire

ATTORNEY FOR PLAINTIFF

Sworn to me this 21 day of Sept, 2011



Notary Public for South Carolina

May 5, 2021



# **EXHIBIT**

# **B**

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )  
 )  
CYNTHIA D. BALES, as Personal )  
Representative of the Estate of )  
FRANK R. BALES, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
ABEL MARTINEZ MARTINEZ )  
and the SOUTH CAROLINA )  
DEPARTMENT OF )  
TRANSPORTATION, )  
 )  
Defendants. )

IN THE COURT OF COMMON PLEAS  
FOR THE 9TH JUDICIAL CIRCUIT  
CASE NO.: 2010-CP-10-8631

AFFIDAVIT OF THOMAS H. DUNCAN

BY \_\_\_\_\_  
JULIE J. ARRISTRONG  
CLERK OF COURT

2011 APR 18 PM 12:57

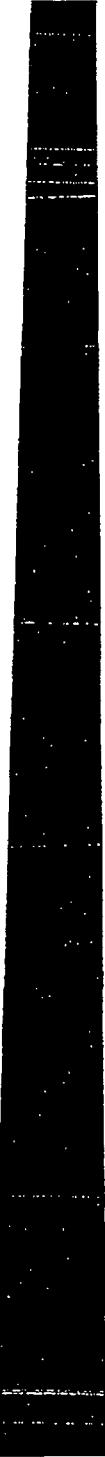
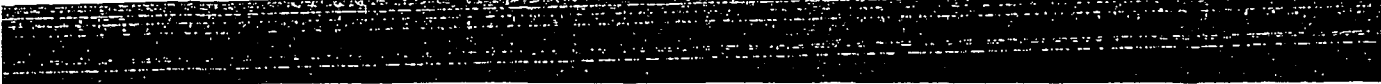
FILED

PERSONALLY APPEARED BEFORE ME, Thomas H. Duncan, who, being first duly sworn,  
swears as follows:

1. That I am not a party to this action, am over eighteen (18) years of age, a licensed South Carolina Private Investigator, and have no interest therein.
2. That I was contracted to locate Abel Martinez-Martinez.
3. I searched for Abel Martinez-Martinez using private investigative methods and means and did not locate an address of residence or work.
4. I searched for Abel Martinez-Martinez using private investigative methods and means and did not locate any phone number or email address for contact.
5. I searched for Abel Martinez-Martinez using public records and was unable to locate an address of residence or work or any phone for contact.
6. I searched the IRB Search Data systems for his name. No results were found.

7. I searched the IRB Search Data systems for vehicle tag number or the vehicle he drove in the 2008 accident. No results were found.
8. I searched the IRB Search Data systems for the name of the vehicle owner of the vehicle Abel Martinez-Martinez drove in the 2008 accident. No results were found.
9. I searched records of County, State and Federal systems for incarcerated persons. I found a history of Abel Martinez-Martinez being incarcerated in Charleston County but their records provided no additional information.
10. I spoke with the North Charleston Police Department, via phone. They were unable to provide any further information on locating Abel Martinez-Martinez.
11. I went to Abel Martinez-Martinez's last known address at 2410 Alston Ave, Apartment number 5 in North Charleston. I spoke with current occupant who advised me that the (current occupant) has lived at that address for about Five (5) months and was not familiar with Abel Martinez-Martinez.
12. I searched Facebook, Myspace and other social medias with no results.
13. That I was therefore unable to locate and serve process on Mr. Martinez after diligent efforts to do so.
14. I believe that although I have tried to contact the Defendant with due diligence, the Defendant cannot be located at this time.

[signatures on following page]



*[Handwritten signature]*

Thomas Duncan  
Thomas H. Duncan Investigations  
South Carolina License 2774  
P.O. Box 301  
Johns Island SC 29455-0301

Sworn to and Subscribed before me  
The ~~10<sup>th</sup>~~ day of April 2011

*Deanne Pace*  
Notary Public for the State of South Carolina  
My Commission Expires





# EXHIBIT

# C

FILED

2011 MAY 25 PM 1:36

JULIE J. ARMSTRONG  
CLERK OF COURT

ERIC-POULIN-ANASTOPOULO & CLORE, LLC  
2850 ASHLEY PHOSPHATE ROAD, SUITE B  
NORTH CHARLESTON SC 29418

2010-2742

AFFIDAVIT OF PUBLICATION

The Post and Courier

State of South Carolina  
County of Charleston

Personally appeared before me the undersigned advertising clerk of the above indicated newspaper published in the city of Charleston, county and state aforesaid, who, being duly sworn, says that the advertisement of

(copy attached)

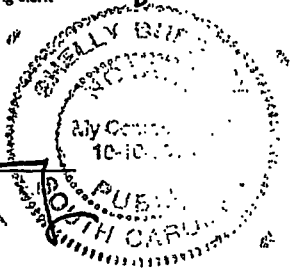
appeared in the issues of said newspaper on the following day(s):

05/02/11 Mon PC                      05/16/11 Mon CNW  
05/09/11 Mon PC  
05/16/11 Mon PC  
05/02/11 Mon CNW  
05/09/11 Mon CNW

at a cost of                      \$513.83  
Account#                      234012  
Order#                      522153  
P.O. Number:

Subscribed and sworn to before  
me this 19th day  
of May  
A.D. 2011

*Keisha Edging*  
advertising clerk



*Sherry Duh*  
NOTARY PUBLIC, SC  
My commission expires

State of South Carolina  
County of Charleston  
IN THE COURT OF  
COMMON PLEAS  
CASE NUMBER:  
2010-CP-10-2742  
CYNTHIA BALES as Personal Representative of the ESTATE OF FRANK BALES, PLAINTIFF  
VS.  
ABEL MARTINEZ MARTINEZ and SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION, DEFENDANTS  
SUMMONS  
TO DEFENDANT ABEL MARTINEZ MARTINEZ, YOU ARE HEREBY SUMMONED, and are required to answer the Complaint in this action, a copy of which is available from the Clerk of Court for Charleston County, South Carolina, herewith served upon you, and to serve a copy of your answer to the said Complaint on the Plaintiff or his attorney, Akim A. Anastopoulos, David P. Bales, at their office located at 2850 Ashley Phosphate Road, Suite B, North Charleston, South Carolina 29418, 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 amount of time aforesaid, the Plaintiff in this action will apply to the Court for judgment by default for the relief demanded in the Complaint.  
s/ Akim A. Anastopoulos, Esquire  
2850 Ashley Phosphate Road, Suite B  
North Charleston, SC 29418  
(843) 614-8888  
ATTORNEY FOR PLAINTIFF  
Charleston, South Carolina  
Dated: May 2, 2011  
NOTICE  
TO DEFENDANT ABEL MARTINEZ MARTINEZ, TAKE NOTICE that the summons in the above mentioned action, of which the foregoing is a copy, together with the Complaint herein was filed in the office of the Clerk of Court, Charleston County of Common Pleas, 100 Broad Street, #106, Charleston, South Carolina 29401, on the 15th day of October, 2010.  
s/ Akim A. Anastopoulos, Esquire  
2850 Ashley Phosphate Road, Suite B  
North Charleston, SC 29418  
(843) 614-8888  
ATTORNEY FOR THE PLAINTIFF  
Charleston, South Carolina  
Dated: May 2, 2011  
AD# 522153

**ANASTOPOULO LAW FIRM LLC**

**ATTORNEYS AT LAW**

Toll Free: (800) 313-2546

Facsimile: (800) 313-2546 or (843) 853-2291

Mailing Address: 2850 Ashley Phosphate Rd., Suite B  
North Charleston, SC 29418

Akim A. Anastopoulos (SC)

John I. Henderson, (SC)

Andrew R. Hart (SC)

John P. Hayes (MI, NC, OK, PA, SC)

Florence Office: 150 W. Evans Street, Florence, SC

Reply to the North Charleston Office

September 21, 2011

Charleston County Court of Common Pleas  
ATTN: Clerk of Court  
100 Broad Street, #106  
Charleston, SC 29401

RE: *Cynthia Bales as Personal Representative of the Estate of Frank Bales v. Abel Martinez  
and South Carolina Department of Transportation*  
Case No.: 2010-CP-10-8631

Dear Clerk of Court:

Enclosed please find the original and three (3) copies of a Motion Cover Sheet, an Order for Entry of Default and Referral for Hearing on Damages and Plaintiff's Motion for Entry of Default and Request for Hearing on Damages in the above reference case. Also enclosed is the \$25.00 filing fee. We would appreciate it if you would file the original and return the clocked in copies to us in the enclosed envelope.

Thank you for your assistance in this matter.

Sincerely,



Akim A. Anastopoulos

AAA/klp  
Enclosures

Cc: Timothy Domin  
Lisa Reynolds



**ADDITIONAL OFFICES**  
Florence, South Carolina \* Greenville, South Carolina  
Asheville, North Carolina

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 CYNTHIA D. BALES as personal )  
 representative of the ESTATE OF )  
 FRANK R. BALES, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 ABEL MARTINEZ and SOUTH )  
 CAROLINA DEPARTMENT OF )  
 TRANSPORTATION, )  
 )  
 Defendants. )

IN THE COURT OF COMMON PLEAS  
 NINTH JUDICIAL CIRCUIT

CASE NO.: 2010-CP-10-8631

NOTICE OF APPEARANCE BY

FILED  
 2012 JAN 11 AM 11:14  
 JULIE J. ARMSTRONG  
 CLERK OF COURT

TO: AKIM ANASTOPOULO, ESQUIRE, ATTORNEY FOR PLAINTIFFS:

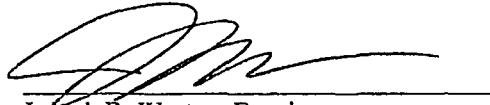
NOW COMES Joseph R. Weston, Esquire, and enters an appearance in the above-referenced action on behalf of Defendant Abel Martinez and requests that all future correspondence and pleadings in this action also be served on:

Joseph R. Weston, Esquire  
 Weston Law Firm, P.A.  
 P.O. Box 1992  
 Mt Pleasant, SC 29465-1992

Mt. Pleasant, South Carolina

WESTON LAW FIRM, P.A.

Dated: 1/11/12



Joseph R. Weston, Esquire  
 P.O. Box 1992  
 Mt. Pleasant, SC 29465-1992  
 P: 843-881-4995  
 ATTORNEY FOR DEFENDANT MARTINEZ

**CERTIFICATE OF SERVICE**

This is to certify that I have served counsel for all parties in the foregoing matter with a copy of this pleading by:

- depositing in the U.S. Mail a copy of same in a properly addressed envelope with adequate postage thereon
- hand delivery to counsel
- by facsimile and depositing in the U.S. Mail a copy of same in a properly addressed envelope with adequate postage thereon.

This 11 day of January 2012  
 By Shan Staggell

**JULIE J. ARMSTRONG**  
CLERK OF COURT, C.P. & G.S.  
100 BROAD STREET, SUITE 106  
CHARLESTON, SC 29401-2258  
RETURN SERVICE REQUESTED



[www3.charlestoncounty.org](http://www3.charlestoncounty.org)



6



JOSEPH R. WESTON  
WESTON LAW FIRM, PA  
PO BOX 1992  
MOUNT PLEASANT SC 29465-1992

**NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC**

**Order/Final Order of judgment**

**CASE NO: 2010CP1008631**

**Cynthia D As Personal Repres Bales , plaintiff, et al VS Abel Martinez Martinez , defendant, et al**

This judgment was entered on the 02th day of March, 2012, and a copy mailed first class on Thursday, March 08, 2012, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at [www3.charlestoncounty.org](http://www3.charlestoncounty.org).

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 CYNTHIA D. BALES as personal )  
 representative of the ESTATE OF )  
 FRANK R. BALES, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 ABEL MARTINEZ and SOUTH )  
 CAROLINA DEPARTMENT OF )  
 TRANSPORTATION, )  
 )  
 Defendants. )

IN THE COURT OF COMMON PLEAS  
 NINTH JUDICIAL CIRCUIT

CASE NO.: 2010-CP-10-8631

**DEFENDANT'S NOTICE OF MOTION AND  
 MOTION FOR RECONSIDERATION  
 AND MEMORANDUM IN SUPPORT**

FILED  
 2012 MAR 15 PM 4:49  
 JULIE J. ARMSTRONG  
 CLERK OF COURT  
 BY *JB*

TO: AKIM ANASTOPOULO, ATTORNEY FOR PLAINTIFF:

**PLEASE TAKE NOTICE** that Defendant Abel Martinez, by and through his undersigned counsel, will move before the Honorable Kristi L. Harrington, pursuant to South Carolina Rules of Civil Procedure 52 and 59, at such time and place as the court may appoint, for reconsideration and amendment of the Court's default judgment entered in favor of the Plaintiff on March 2, 2012, on the grounds that the Court awarded the Plaintiff certain damages which are not available to Plaintiff under the applicable law or were otherwise not supported by the evidence, as set forth in detail in the Defendant's memorandum in support which is set forth below.

Defendant will further rely upon the pleadings filed in this matter, the exhibits attached to Defendant's motion, any affidavits that may be necessary, the arguments of counsel, and any other matters deemed appropriate by the Court.

**PLEASE BE PRESENT TO DEFEND IF SO MINDED.**

## MEMORANDUM OF LAW

### A. PROCEDURAL HISTORY

This case came before the Court on January 11, 2012 with regard to the Plaintiff's motion for entry of a default judgment. On March 2, 2012, the Court entered its Order for a default judgment in favor of the Plaintiff, awarding damages totaling \$1,900,000.00. A copy of that Order is attached as Exhibit A. The Court mailed notice of the entry of the default judgment to the parties on March 8, 2012. A copy of the notice of mailing is attached as Exhibit B. Defendant then timely filed this motion for reconsideration within the ten day period provided by South Carolina Rules of Civil Procedure 59 and 52 following receipt of written notice of entry of the Order.

The Defendant requests that the Court reconsider its default judgment order in three respects. First, Defendant requests reconsideration of the inclusion of damages based on a finding of the Plaintiff's decedent's "life value", on the grounds that "life value" is not a recognized or accepted category of damage in South Carolina in a wrongful death case. Second, Defendant asks the Court to reconsider its award of \$200,000.00 in punitive damages, on the grounds that the evidence submitted at the default damages hearing as to the Defendant's actions do not support the punitive damages finding. Third, the Defendant requests reconsideration of the Court's allowance of interest added to the decedent's pre and post trial wages.

### B. ARGUMENT

#### I. "Life value" is not a recognized or recoverable item of economic damage in a wrongful death case

At the default judgment hearing, Plaintiff presented testimony from Clyde Hiers as an expert with respect to the Plaintiff's economic losses. Among other things, Mr. Hiers testified to

what he characterized as a loss of \$417,046.00 for the "life value" of the Plaintiff's decedent. The "life value" assessment was likewise set forth in Mr. Hier's report, which was introduced into evidence by the Plaintiff. A copy of that report is attached hereto as Exhibit C. Mr. Hiers testified that he based the "life value" figure on authority set forth in two court decisions, the South Carolina Federal District Court's decision in McNeill v. United States, 519 F. Supp. 283 (D.S.C. 1981) and a New Hampshire Supreme Court case captioned Marcotte v. Timberland/Hampstead School District, 733 A.2d 394, 143 N.H. 331 (N.H. 1999). In response, Defense counsel argued that an award for the "life value" of the decedent is not a recognized or accepted category of pecuniary damage in South Carolina in a wrongful death case, and urged the Court to reject any damages based upon the "life value" argument. The Court subsequently awarded Plaintiff the exact amount of the pecuniary damages asserted by Mr. Hiers, which included the "life value" figure of \$417,046.00.

The seminal case in South Carolina as to the damages allowed in a wrongful death action is Ballard v. Ballard, 314 S.C. 40, 443 S.E. 2d 802 (1994). In that case, the South Carolina Supreme Court stated that a Plaintiff in a wrongful death case may seek recovery for damages sustained by the decedent's beneficiaries, including pecuniary loss, mental shock and suffering, wounded feelings, grief, sorrow, and loss of society and companionship. The case makes no mention of allowing pecuniary damages based on a loss of the decedent's "life value". The Defendant's research has likewise failed to reveal any South Carolina case where the Court allowed or recognized "life value" as being a recoverable category of pecuniary loss in a wrongful death case.

The cases cited by the Plaintiff's expert are not on point and do not provide a basis for a "life value" award in a wrongful death case. The South Carolina Federal District Court case

cited, McNeill v. United States, 519 F. Supp. 283 (D.S.C. 1981), is first and foremost not a wrongful death case. Nowhere in that decision is there even any discussion of the permissible damages in a wrongful death action. To the contrary, the McNeill case is a negligence case where the court ruled that a *living* Plaintiff whose life expectancy was shortened due to an injury was entitled to damages for the loss he would endure as a result of his shortened life span. 519 F. Supp. 289. The allowance of damages for the Plaintiff's shortened life span was, in other words, based upon a *personal* loss to the Plaintiff himself.

A personal loss such as the one discussed by the court in McNeill has no application in a wrongful death case, as a wrongful death action is based not on personal losses sustained by the decedent, but rather on the economic and emotional harm suffered by the decedent's beneficiaries. S.C. Code § 15-51-20; Ballard, supra, at 314 S.C. 41, 42 (damages recoverable for wrongful death are the damages sustained by the statutory beneficiaries). Personal damages sustained directly by a decedent prior to his death, for things such as pain, suffering, mental anguish or loss of enjoyment of life, would instead only properly be asserted in a survival action:

Unlike actual damages in a wrongful death action, actual damages in a survival action are awarded for the benefit of the decedent's estate rather than for the family...Appropriate damages in survival actions include those for medical, surgical, and hospital bills, conscious pain, suffering, and mental distress of the deceased.

Scott v. Porter, 340 S.C. 158, 530 S.E.2d 389 (Ct. App. 2000)[citations omitted].

Because only survival actions allow for recovery of a decedent's personal damages, any claim that the McNeill type of lost life expectancy damages should extend to a case involving a decedent, as opposed to a living Plaintiff, would necessarily have to be asserted as part of a survival action, not a wrongful death case. The Plaintiff in the instant case has not brought a survival action, nor was there any testimony or even argument introduced at the default damages

2. There was insufficient evidence presented to justify the Court's award of punitive damages

The Plaintiff alleged at the damages hearing, without introducing any eyewitness testimony or direct evidence to support her allegations, that the Defendant ran a red light and was speeding at the time of the accident, and also that the Defendant did not have a valid driver's license when the accident took place. The Plaintiff further asserted that the Defendant pleaded guilty to an unspecified citation received as a result of the accident. Defense counsel argued that the conclusory allegations offered by the Plaintiff as to what she asserts happened in the accident, without any eyewitness testimony or direct evidence to support her allegations, was insufficient to support an award of punitive damages, or at the very least any significant award of the same. The Court subsequently awarded the Plaintiff \$200,000.00 in punitive damages in its default judgment Order.

While it is true that allegations in the Complaint as to liability are deemed admitted for purposes of a default damages hearing, the lack of any eyewitness or direct evidence in this case as to the Defendant's actions fails to support an award of \$200,000.00 to the Plaintiff.

The South Carolina Supreme Court's decision in Gamble v. Stevenson, 305 S.C. 104, 406 S.E.2d 350 (1991) is relevant to the punitive damage issue in this case, as it sets forth a number of factors that a Court may consider in any post-trial review of the merits of a punitive damage award by a jury. The factors set forth by the Supreme Court in Gamble are: (1) defendant's degree of culpability; (2) duration of the conduct; (3) defendant's awareness or concealment; (4) the existence of similar past conduct; (5) likelihood the award will deter the defendant or others from like conduct; (6) whether the award is reasonably related to the harm likely to result from such conduct; (7) defendant's ability to pay; and (8) other factors deemed appropriate. Gamble at 305 S.C. 111, 112.

hearing to indicate that there was any conscious pain or suffering by the Plaintiff's decedent following the accident with the Defendant. As such, the Plaintiff's assertion of a claim for loss of "life value" in this wrongful death case, based on the McNeill decision, is without legal justification and therefore the Court's award of \$417,046.00 for loss of the decedent's "life value" should be subtracted from the default judgment amount.

The New Hampshire case cited by the Plaintiff's expert, Marcotte v. Timberland/Hampstead School District, likewise has no bearing on this case whatsoever. First, as a New Hampshire case, it does not establish South Carolina law nor does it have any precedential effect on the South Carolina courts. Second, the Court in Marcotte allowed for recovery of what it termed "loss of life" damages in a wrongful death case involving a child, but only because the Court found that the New Hampshire wrongful death statute expressly allowed for recovery of such damages:

The plain language of RSA 556:12 establishes that where the decedent's death "was caused by the injury complained of in the action", "the probable duration his life but for the injury" may be considered as an element of damages in addition to the other enumerated damage elements.

Marcotte at 733 A.2d 400. The fact that New Hampshire's statute expressly allows for such damages has no bearing on what the South Carolina statutes and case law provide to Plaintiffs in this state. As previously noted, neither South Carolina's wrongful death statute nor the cases applying and interpreting that statute have established any right of recovery for pecuniary loss for the decedent's "life value". For this additional reason, the Court should revise its default judgment order to remove the \$416,046.00 awarded to the Plaintiff for loss of the decedent's "life value".

Applying the Gamble factors to the instant case, the evidence presented by the Plaintiff fell far short of showing actions on the part of the Defendant indicating a degree of culpability that would justify an award of \$200,000.00 in punitive damages. For example, Defendant would assert that there is a far cry between a Defendant who fails to stop at a light because he is momentarily distracted, versus a Defendant who fails to stop at a light because he is heavily intoxicated. There would also be a very significant difference between an accident caused by a Defendant traveling one mile an hour over the speed limit, versus one traveling 50 miles an hour over the posted limit. While the Plaintiff claims that the Defendant was speeding and ran a red light, she presented no evidence to directly support those allegations, and as a result there is nothing before the Court which would aid the Court in performing a meaningful analysis as to many of the factors described by the South Carolina Supreme Court in Gamble.

Based on the forgoing, the Defendant would request that the Court amend the default judgment to remove the punitive damage award or, in the alternative, that the Court substantially reduce the punitive damage award to reflect the lack of evidence to support the current amount awarded.

**3. The Plaintiff is not entitled to an award of interest added to the loss of income**

At the default damages hearing, Plaintiff's expert admitted that he added 3% interest to the figures for the lost income pre and post trial. However, he also admitted that all of his calculations as to lost wages assumed that all of the decedent's income was required to pay ongoing expenses, and that nothing remained for investment purposes. Defense counsel therefore argued that the inclusion of 3% interest was inappropriate, as there was no evidence before the Court that any, let alone all, of the decedent's income would have been available for any uses that would have earned interest on those funds. By awarding the Plaintiff exactly the amount of pecuniary damages urged

by Plaintiff's expert, the Court has evidently included the 3% interest in its calculation of the Plaintiff's damages.

As stated at the hearing, there is no legal basis upon which the Plaintiff's expert can arbitrarily add interest to the putative lost wages, when there is no evidence that the decedent himself earned such interest. Plaintiff's expert instead agreed that his analysis assumed the exact opposite, namely that there was in fact no opportunity for the decedent to earn interest because all of his wages were utilized to pay the decedent's bills and obligations. Defendant would therefore request that the Court's default judgment be amended to remove any amounts awarded to the Plaintiff for interest on the decedent's wages.

**CONCLUSION**

For all of the reasons set forth above, Defendant respectfully requests that the Court reconsider and amend its default judgment Order in the manner and particulars herein described.

WESTON LAW FIRM, P.A.

Dated: 3/15/12



Joseph R. Weston, Esquire  
P.O. Box 1992  
Mt. Pleasant, SC 29465-1992  
(843) 881-4995  
ATTORNEY FOR DEFENDANT ABEL  
MARTINEZ

**CERTIFICATE OF SERVICE**

This is to certify that I have served counsel for all parties in the foregoing matter with a copy of this pleading by:

- depositing in the U.S. Mail a copy of same in a properly addressed envelope with adequate postage thereon
- hand delivery to counsel
- by facsimile and depositing in the U.S. Mail a copy of same in a properly addressed envelope with adequate postage thereon.

This 15<sup>th</sup> day of March 2012  
By Brianne Kunkel

and the  
Honorable Kristi  
L. Harrington

**Rule 11 Certification**

The undersigned hereby certifies pursuant to SCRCP 11 that he did not consult with opposing counsel prior to the filing of this motion as consultation could not be timely held and would serve no useful purpose.

WESTON LAW FIRM, P.A.

Dated:

3/15/12



---

Joseph R. Weston, Esquire  
P.O. Box 1992  
Mt. Pleasant, SC 29465-1992  
(843) 881-4995  
ATTORNEY FOR DEFENDANT ABEL  
MARTINEZ

# Exhibit A

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

CYNTHIA D. BALES, as Personal )  
Representative of the Estate of )  
FRANK R. BALES, )

Plaintiff, )

v. )

ABEL MARTÍNEZ MARTINEZ )  
and the SOUTH CAROLINA )  
DEPARTMENT OF )  
TRANSPORTATION, )

Defendants. )

IN THE COURT OF COMMON PLEAS  
FOR THE 9TH JUDICIAL CIRCUIT  
CASE NO.: 2010-CP-10-8631

FINAL JUDGMENT

FILED  
2012 MAR -2 PM 2:30  
JULIE J. ARMSTRONG  
CLERK OF COURT

THIS MATTER is before the Court on Plaintiff's Motion for a determination of unliquidated damages following Defendant Martinez-Martinez's default. A hearing was conducted before the South Carolina Court of Common Pleas for the Ninth Judicial Circuit on January 11, 2012. Attorneys for both parties were present at the call of the case as was the Plaintiff and Plaintiff's witnesses. Also present was counsel for an alleged applicable uninsured motorist carrier(s). The Defendant did not make an appearance. Following Defendant's default, Plaintiff requested this hearing pursuant to Rule 55 of the South Carolina Rules of Civil Procedure for a determination of Plaintiff's unliquidated damages. After hearing testimony and receiving evidence on the record, and for the reasons more fully articulated below, I determine and enter judgment for the Plaintiff in the amount of \$1,900,000.00 against Defendant Abel Martinez-Martinez.

#### FACTUAL/PROCEDURAL BACKGROUND

Plaintiff's husband, Frank R. Bales, was killed as a result of an auto/motorcycle collision that occurred on October 15, 2008. According to Plaintiff's Complaint, Defendant Martinez-Martinez disregarded a traffic signal, causing Defendant's vehicle to strike and fatally injure Mr. Bales. Following this accident, attorneys for the Plaintiff initiated this action which was served upon Defendant Abel Martinez-Martinez on May 16, 2011.

Defendant Martinez-Martinez failed to file any responsive pleadings with this Court or otherwise defend in this action. Plaintiff moved for an entry of default, which was signed October 4, 2011, and asked this Court to schedule a hearing to determine and enter judgment upon the proper amount of damages. Plaintiff sent notice of the hearing to Defendant's last known address and filed proof of the same with the Clerk.

*Handwritten signature and date:*  
3/1/12

## LAW/ANALYSIS

In a wrongful death action, the decedent's beneficiaries are entitled to recover all damages, present and prospective, which are naturally the proximate consequence of the wrongful act, including: pecuniary loss, mental shock and suffering, wounded feelings, grief and sorrow, loss of companionship and deprivation of the use and comfort of the deceased's society, including the loss of his experience, knowledge, and judgment in managing the affairs of himself and of his beneficiaries. Smith v. Wells, 258 S.C. 316, 188 S.E.2d 470 (1972). Decedent's life expectancy for purposes of calculating future lost earnings and damages must be determined pursuant to S.C. Code Ann. § 19-1-150. In situations where the defendant's actions show willful, wanton, intentional or malicious intent, Plaintiff may also seek to recover punitive damages, provided the plaintiff is able to prove such damages by clear and convincing evidence. S.C. Code Ann. § 15-33-135.

Plaintiffs' decedent suffered fatal injuries as a result of Defendant's negligence. Plaintiff presented testimony from Clyde L. Hiers, a certified public accountant, certified financial planner, and certified forensic financial analyst. Mr. Hiers was qualified as an expert in the field of economic loss calculation without objection.

Mr. Hiers testified that Frank Bales, the decedent, through his surviving beneficiaries, sustained a present value economic loss of \$1,502,166.00. Mr. Hiers testified that this calculation was based upon the present adjusted value of Mr. Bales' lost pre-trial income; lost pre-trial fringe benefits; lost post-trial income; lost post-trial fringe benefits; lost anticipated household services (based upon statutory life expectancy); and estimated life value (based upon statutory life expectancy). Mr. Hiers also testified that Mr. Bales' historical medical costs and personal income abated were subtracted from the total economic loss.

Mr. Hiers further testified that his estimate was on the conservative side. He stated that income and benefits were calculated at a retirement age of 65 and were not adjusted to take into account possible future promotions or increases in pay. The Court finds Mr. Hiers' calculations to be reasonable. The Court accepts these findings and is satisfied that Mr. Hiers reached these conclusions to a reasonable degree of professional certainty, using methods and calculations generally recognized in his field.

Mr. Hiers' economic loss calculation did not include any amounts for mental shock and suffering, wounded feelings, grief and sorrow, loss of companionship, or deprivation of the use and comfort of the deceased's society, including the loss of his experience, knowledge, and judgment in managing the affairs of himself and of his beneficiaries.

The Court also heard testimony from Cynthia Bales, decedent's wife and the representative Plaintiff in this action. Mrs. Bales testified that her husband's death had a severe and negative impact on her and their minor child. Mrs. Bales testified that she was having trouble living life without her husband whom she referred to as her "soul mate." She testified that both she and her minor child were required to undergo grief and other counseling to deal with the consequences of Decedent's death. Based on this testimony, it is clear to the Court that the Decedent's beneficiaries have suffered a great deal of mental shock and suffering, wounded feelings, grief and sorrow, loss of companionship and deprivation of the use and comfort of the deceased's society.

Finally, because the Defendant is in default, the Court must deem all allegations in Plaintiff's Complaint as admitted. Plaintiff has alleged that Defendant's acts were willful, wanton, and/or reckless. Plaintiff has alleged that Defendant Martinez was driving without a

AKH  
3/1/12

valid license and that he dis-regarded a traffic signal at a high rate of speed. Accordingly, Plaintiff argues she is entitled to punitive damages.

The Court has heard testimony from Decedent's wife and her economic loss expert and has received on the record evidence and testimony of funeral bills, lost wages, and other damages. Based on this record, and consistent with the statutory and common law of South Carolina, **THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:**

That the Defendant, Abel Martinez-Martinez, failed to submit a responsive pleading or otherwise defend this action within thirty days of service upon him of the Summons and Complaint, and is in Default.

That The Plaintiff, and decedent's statutory beneficiaries suffered and were otherwise damaged as a result of the actions of the Defendant.

That Defendant's acts and omissions show willful misconduct, malice, wantonness and an entire want of care, raising a presumption of the Defendants' conscious indifference to the consequences of such acts and omissions.

That because of the Defendant's acts and omissions and the proximate harm resulting to Plaintiff and decedent's beneficiaries, Plaintiff and decedent's beneficiaries are entitled to punitive damages in order to punish and penalize the Defendant and to deter the Defendant and others from similar behavior.

**IT IS THEREFORE ORDERED** that Default be entered against Defendant and that he be held fully liable for the Plaintiffs' damages.

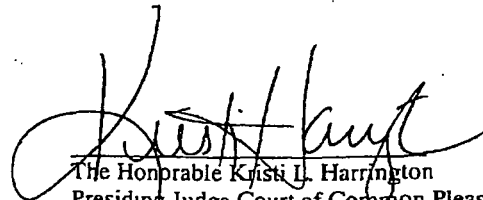
**IT IS FURTHER ORDERED** that Defendant pay Plaintiffs \$1,700,000.00 in actual damages for their injuries.

**IT IS FURTHER ORDERED** that Defendant pay Plaintiffs \$200,000.00 in punitive damages.

**IT IS HEREBY ORDERED, ADJUGED, AND DECREED THAT DEFENDANT ABEL MARTINEZ-MARTINEZ IS AND BE FULLY LIABLE FOR PLAINTIFF'S DAMAGES AND SHALL PAY UNTO DECEDENT'S BENEFICIARIES THE SUM OF \$1,900,000.00.**

IT IS SO ORDERED.

This 1<sup>st</sup> day of March, 2012

  
The Honorable Kristi L. Harrington  
Presiding Judge Court of Common Pleas  
Ninth Judicial Circuit

# Exhibit B

**JULIE J. ARMSTRONG**  
CLERK OF COURT, CP & GS  
100 BROAD STREET, SUITE 106  
CHARLESTON, SC 29401-2258  
RETURN SERVICE REQUESTED



www3.charlestoncounty.org



6



JOSEPH R WESTON  
WESTON LAW FIRM, PA  
PO BOX 1992  
MOUNT PLEASANT SC 29465-1992

**NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC**

**Order/Final Order of judgment**

**CASE NO: 2010CP1008631**

**Cynthia D As Personal Repres Bales , plaintiff, et al VS Abel Martinez Martinez , defendant, et al**

This judgment was entered on the 02th day of March, 2012, and a copy mailed first class on Thursday, March 08, 2012, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at [www3.charlestoncounty.org](http://www3.charlestoncounty.org).

# Exhibit C

**Preliminary Calculation of Economic Loss**

**Cynthia D. Bales**  
**As Personal Representative of The Estate of Frank R. Bales**  
**v.**  
**Abel Martinez Martinez et al**

**In The Court of Common Pleas**  
**For The Ninth Judicial Circuit**

**Civil Action No.: 2010-CP-10-8631**

**Clyde L. Hiers, CPA, CFP, CFFA, M.S. (Tax)**

**January 10, 2012**

Expert Report of Clyde L. Hiers

I, Clyde L. Hiers, am a Certified Public Accountant who specializes in the provision of damage analyses in commercial and personal litigation matters. I have been retained by Akim A. Anastopoulos, Esquire of the Anastopoulos Law Firm to calculate the economic loss of The Estate of Frank R. Bales resulting from a wrongful death occurring on October 15, 2008.

Qualifications

I am a Certified Public Accountant licensed in South Carolina and California. I am also a Certified Financial Planner and a Certified Forensic Financial Analyst and have had extensive training in business valuations and forensic analysis. I have a Bachelors Degree in Accounting from Charleston Southern University and a Masters Degree in Federal Taxation from California State University. In addition to being a practicing CPA for over 35 years, I have also been a Professor at The Citadel and the College of Charleston for over 20 years.

I have been qualified to testify as an expert witness by report, affidavit, deposition, and trial testimony in numerous venues including Family Court, Probate Court, Small Claims Court, The Court of The Master in Equity, Court of Common Pleas, United States District Court, and the United States Bankruptcy Court. I have testified in these various courts in South Carolina, Georgia, North Carolina, Virginia, Arizona and Massachusetts.

My Curriculum Vitae and my case matrix are attached hereto as Exhibits 1 and 2. My fee for this engagement is \$206 per hour.

Personal Character

As detailed in my Curriculum Vitae, I am Past President of the National Association of Accountants and Past President of the Daniel Island Rotary Club. I was a two time member of the Year of the NAA and was also Rotarian of the Year. Other Rotary honors include the designation of the Paul Harris Fellow.

I am also an Elder in the Presbyterian Church and have been the Treasurer of the Second Presbyterian Church for the past 9 years. I am also a Commissioner of the Charleston Atlantic Presbytery. Additionally, I am active in Habitat for Humanity, Special Olympics, and the Susan Komen Breast Cancer Foundation.

**CLYDE L. HIERS, CPA, CFP, CFFA, M.S. (Tax)**

225 Seven Farms Drive  
Suite 202

Daniel Island, SC 29492-8353

(843) 471-1501

www.clydehiers.com

(843) 849-3493

Telecopier

clydehiers@aol.com

Cybermail

This report had been prepared in accordance with the Federal Rules of Civil Procedures 26 (a)(2)(B) for the confidential use of the litigants, their attorneys, the applicable trial forum, and any appellate courts having jurisdiction over this matter. This report is in no way intended to indicate legal liability on behalf of either party. The ultimate liability, if any, is a question of law which will be determined by this proceeding.

In connection with these calculations and proceedings, I certify that I do not have any past, present, or contemplated future interest in the litigants or their attorneys, or any other interest in this litigation that might tend to prevent the rendering of a fair and unbiased determination of the alleged economic damages. Additionally, I declare that my fee for this engagement is in no way contingent upon the outcome of the litigation or the amount of the monetary award received.

Anticipated Testimony

If called as a witness at deposition and/or trial, I will testify that The Estate of Frank R. Bales has sustained economic losses with a present value in the following amounts as of the anticipated trial date:

Lost Income-Pre Trial	\$136,579
Lost Fringe Benefits-Pre Trial	75,569
Historical Medical Costs	TBD
Lost Household Services	<u>31,206</u>
<b>Total Pre Trial</b>	<b>243,354</b>
Lost Income-Post Trial	430,329
Lost Fringe Benefits-Post Trial	223,341
Lost Household Services	241,527
Personal Consumption Abated	(53,431)
Life Value	<u>417,046</u>
<b>Total Post Trial</b>	<b>1,258,812</b>
<b>Total Economic Loss</b>	<b>\$1,502,166</b>

Reservation of Right to Amend

In the event additional documents and/or discovery material is made available to me after the submission of this report, I respectfully reserve the right to amend this writing, as appropriate.

Rebuttal Testimony

In addition to the substance of the foregoing discussion, my testimony at the hearing may also include rebuttal testimony, as required.

Trial Exhibits

Selective information from this report may be incorporated into demonstrative exhibits for the purposes of trial testimony.

Prior Testimony

Over the past four years, I have testified by deposition and/or trial in the following matters as shown on the Case Matrix, attached as Exhibit 2.

Publication

Publications within the past ten years are shown on the Curriculum Vitae, attached as Exhibit 1.

---

Clyde L. Hiers, CPA, CFP, CFFA, M.S. (Tax)

**Assumptions and Limiting Conditions**

**Estate of Frank R. Bales v. Abel Martinez Martinez**

The calculation of the economic loss is subject to the following assumptions and limiting conditions:

1. Information regarding lost wages, fringe benefits and medical impairment is based on information provided by the plaintiff, his attorney and/or other experts retained by the plaintiff.
2. No attempt has been made to verify the accuracy and/or authenticity of statements or documents.
3. The calculations are based upon the assumption that all relevant information has been provided to me. No liability is assumed for withheld information or information otherwise not made available, whether intentional or unintentional.
4. The calculations are valid only for the report date.
5. The calculations are based upon the best information available as of the report date. Calculations are subject to change if better and/or different information becomes available.
6. Possession of the report, or a copy thereof, does not carry with it the right of publication, nor may it be used for any purpose by anyone other than the litigants, their attorneys. The applicable trial forum, any appellate courts having jurisdiction over this matter.

**Documents**

In preparing this expert report, I have considered the following documents:

1. Life expectancy table from Title 19, South Carolina Code of Laws
2. 2011 Annual Yearbook of Ibbotson Associates, Stocks, Bonds, Bills and Inflation, Chicago, Illinois
3. Summons and Complaint filed by Akim A. Anastopoulo on October 7, 2010 with the Court of Common Pleas for the Ninth Judicial Circuit
4. Federal income tax returns filed for the years 2005, 2006, 2007 and 2008 for Frank R. Bales and Cynthia D. Bales

**Estate of Frank R. Bales  
Economic and Financial Data**

1. Date of Birth	09-10-1958
2. Gender	Male
3. Date of Death	10-15-2008
4. Age at Date of Death	50.10 years
5. Life Expectancy at Date of Death	28.96 years
6. Pre Accident Earnings	\$37,484
7. Post Accident Earnings	\$0

**WESTON LAW FIRM, P.A.**

761 JOHNNIE DODDS BLVD, STE 100  
PO BOX 1992

MT PLEASANT, SOUTH CAROLINA 29465-1992

TELEPHONE (843) 881-4995

FACSIMILE (843) 881-4009

JOSEPH R. WESTON\*

JOHANNA S. GARDNER

SARAH L. FRAGALE

\*SC CERTIFIED MEDIATOR & ARBITRATOR

E-MAIL:

JWESTON@WESTONLAWFIRM.COM

JGARDNER@WESTONLAWFIRM.COM

SFRAGALE@WESTONLAWFIRM.COM

March 15, 2012

**VIA HAND DELIVERY:**

The Honorable Julie J. Armstrong  
Clerk of Court Charleston County  
100 Broad Street, Suite 106  
Charleston, SC 29401

Re: Cynthia D. Bales as personal representative of the Estate of Frank R.  
Bales v. Abel Martinez & SC DOT  
Case No.:2010-CP-10-8631

Dear Ms. Armstrong:

Please find enclosed for filing the original and one copy of Defendant Abel Martinez's Notice of Motion and Motion to Reconsider the Default Judgment Order entered on March 2, 2012 in the above-referenced matter. I have also enclosed a Motion Cover Sheet and check for \$25.00 for the filing of this matter. Once the enclosed motion has been filed with the Clerk of Court, please return a clocked-in copy to the bearer of this letter.

By copy of this letter I am hereby serving Plaintiff's counsel, Akim Anastopoulo, and counsel for the UIM carrier, Timothy Domin, with a copy of this motion. In addition, by copy of this letter I am also serving a copy of this motion on The Honorable Kristi L. Harrington, who issued the Default Judgment Order.

Please feel free to contact me with any questions you may have. Thank you for your attention to this matter.

With kind regards, I am

Respectfully,



Joseph R. Weston

JRW/bbk  
Enclosures

cc: Akim Anastopoulo, Esquire (w/enclosures)  
Timothy Domin, Esquire (w/enclosures)  
The Honorable Kristi L. Harrington (w/enclosures)

STATE OF SOUTH CAROLINA )

COUNTY OF Charleston )

Cynthia D. Boles as personal representative )  
 Plaintiff of the Estate of Frank R. Boles, )

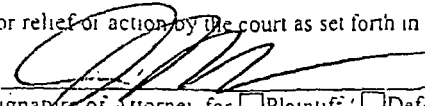
Abel Martinez and SC DOT )  
 Defendant )

IN THE Ninth Judicial Circuit

CASE NO.

2010 - CP - 10 - 8631

MOTION AND ORDER INFORMATION  
FORM AND COVER SHEET

Plaintiff's Attorney <u>AKim Anastopoulos</u> , Bar No. _____ Address <u>2850 Ashley phosphate Rd, Suite B</u> <u>North Charleston, SC 29418</u> phone <u>843-614-8888</u> fax <u>800-313-2546</u> e-mail _____ her _____	Defendant's Attorney <u>Joe Weston</u> , Bar No. _____ Address <u>P.O. Box 1992</u> <u>Mt. Pleasant, SC 29465-1992</u> phone. <u>843-881-4995</u> fax <u>843-881-4009</u> e-mail _____ her _____
<input checked="" type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion <u>Motion for reconsideration of default judgment order</u> Estimated Time Needed <u>30 minutes</u> Court Reporter Needed <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO	
SECTION II: Motion/Order Type	
<input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order <div style="text-align: center;">             Signature of Attorney for <input type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant         </div> <div style="text-align: right;"> <u>3/15/12</u>            Date submitted         </div>	
SECTION III: Motion Fee	
<input checked="" type="checkbox"/> PAID - AMOUNT <u>25.00</u> <input type="checkbox"/> EXEMPT (check reason)	
<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> Proposed order submitted at request of the court, or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter _____ <input type="checkbox"/> Other _____	
JUDGE'S SECTION <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order <input type="checkbox"/> Other _____	JUDGE _____ CODE _____ Date _____
CLERK'S VERIFICATION	
Collected by _____ <input type="checkbox"/> MOTION FEE COLLECTED <input type="checkbox"/> CONTESTED - AMOUNT DUE _____	Date Filed _____

STATE OF SOUTH CAROLINA )  
 COUNTY OF CHARLESTON )  
 CYNTHIA D. BALES as personal )  
 representative of the ESTATE OF FRANK )  
 R. BALES, )  
 Plaintiff, )  
 vs. )  
 ABEL MARTINEZ and SOUTH )  
 CAROLINA DEPARTMENT OF )  
 TRANSPORTATION )  
 Defendants. )

IN THE COURT OF COMMON PLEAS  
 THE NINTH JUDICIAL CIRCUIT  
 CASE NO.: 2010-CP-10-8631

MOTION FOR RELIEF FROM DEFAULT  
 JUDGMENT

FILED  
 APR 26 PM 2:27  
 JULIE J. ARMSTRONG  
 CLERK OF COURT

COMES NOW Defendant Abel Martinez Martinez (hereinafter "Mr. Martinez"), by and through his undersigned attorneys, and respectfully submits this Motion for Relief from the Order for Default Judgment filed on March 2, 2012 pursuant to South Carolina Rule of Civil Procedure 60(b). Mr. Martinez respectfully requests relief from the Order of Default Judgment on one or more of the following grounds: (1) mistake, inadvertence, surprise, or excusable neglect and/or (2) fraud, misrepresentation, or other misconduct of the Plaintiff. Mr. Martinez respectfully requests an expedited hearing on this Motion for Relief from Default Judgment

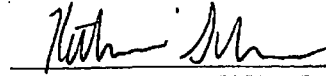
This motion is supported by the pleadings and discovery in this case, applicable statutory and case law, and the supporting memoranda and affidavits which are being filed contemporaneously with this motion and which may be filed with the Court prior to the hearing on this Motion. Please find attached to this Motion the original Affidavit of Phillip Florence, the original Affidavit of Tercsa Miller, and the original Affidavit of Katherine W. Sullivan.

Signature Page to Follow

Respectfully submitted,

CARLOCK, COPELAND & STAIR, LLP

By:



R. MICHAEL ETHRIDGE  
State Bar No. 16892

KATHERINE W. SULLIVAN  
State Bar No. 78202

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

Attorneys for Defendant Abel Martinez

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 CYNTHIA D. BALES as personal )  
 representative of the ESTATE OF FRANK )  
 R. BALES, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 ABEL MARTINEZ and SOUTH )  
 CAROLINA DEPARTMENT OF )  
 TRANSPORTATION )  
 )  
 Defendants. )

IN THE COURT OF COMMON PLEAS  
 THE NINTH JUDICIAL CIRCUIT  
 CASE NO.: 2010-CP-10-8631

**CERTIFICATE OF SERVICE**

BY \_\_\_\_\_  
 JULIE J. ARMSTRONG  
 CLERK OF COURT  
 2012 APR 26 PM 2:27  
**FILED**

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

Akim Anastopoulo, Esq.  
 2850 Ashley Phosphate Rd., Suite B  
 Charleston, SC 29418

Joseph Weston, Esq.  
 Weston Law Firm, P.A.  
 P.O. Box 1992  
 Mt. Pleasant, SC 29465-1992

JJ Anderson  
 Lisa Reynolds  
 Anderson Reynolds & Stephens, LLC  
 P.O. Box 87  
 Charleston, SC 29402

This 26 day of April, 2012.

Kathy Jo Wentland  
 Kathy Jo Wentland  
 Paralegal to Katherine W. Sullivan

Carlock, Copeland & Stair, LLP  
 40 Calhoun Street, Suite 400  
 Charleston, SC 29401-3531

**ANASTOPOULO LAW FIRM**

**ATTORNEYS AT LAW**

Toll Free: (800) 313-2546  
Facsimile: (800) 313-2546 or (843) 853-2291  
Mailing Address: 2850 Ashley Phosphate Rd., Suite B  
North Charleston, SC 29418

Akim A. Anastopoulos (SC)  
David P. Solek, (SC, OH)

Andrew R. Hurt (SC)  
John P. Hayes (MI, NC, OK, PA, SC)

Florence Office: 150 W. Evans Street, Florence, SC

Reply to the North Charleston Office

May 11, 2010

Phillip Florence  
Turner Padgett, Graham & Laney  
Post Office Box 22129  
Charleston, SC 29413

RE: *Estate of Frank Bales v. Abel Martinez-Martinez et al.*  
Case No.: 2010-CP-10-8631

Dear Phillip:

As you know, my firm is now handling this matter for the Estate of Frank Bales. Per your request, I have enclosed a copy of the substitution of counsel Order to this effect.

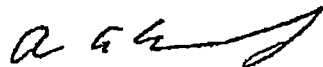
To date, there has been no settlement agreement in this case. Plaintiff's prior counsel made an offer of settlement within policy limits by letter dated September 9, 2010. Your clients failed to respond to this correspondence forcing Plaintiff to withdraw the offer and file suit.

Please be advised that Plaintiff will hereafter not settle. Plaintiff will proceed to a verdict and will seek to levy and execute on any excess judgment obtained pursuant to Tyger River Doctrine against your client for failing to accept our previous offer.

At this time, the Post & Courier is in the process of perfecting service on Mr. Martinez and the affidavit of publication will be forwarded to your office once complete. I have also enclosed a courtesy copy of the Summons and Complaint for your review.

If you should have any questions, please do not hesitate to contact us.

Sincerely,

  
Akim A. Anastopoulos

ADDITIONAL OFFICES  
Florence, South Carolina • Greenville, South Carolina  
Asheville, North Carolina



STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

CIVIL ACTION COVER SHEET

Cynthia D. Bales, as Personal Representatives of the Estate of Frank R. Bales, on behalf of the Estate and the Decedent's beneficiaries,

Plaintiff(s)

2010-CP - 10-

Rec'd 11/31/11  
8031  
ing  
court  
annual  
extended  
1/31/11  
7/24

vs.

Abel Martinez Martinez & SC Dept of

Transportation

Defendant(s)

(Please Print)

Submitted By: Christopher P. Biering

SC Bar #: 13353

Telephone #: 843 761 4888

Address: 116 E. Railroad Ave, Moncks Corner, SC 29461

Fax #: 843 899 9016

Other:

E-mail: chris@bieringlawfirm.com

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

DOCKETING INFORMATION (Check all that apply)

\*If Action is Judgment/Settlement do not complete

- [X] 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)

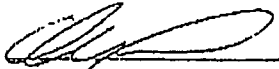
NATURE OF ACTION (Check One Box Below)

- Contracts: Construction (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-CP-..., No/Not File Med Mal (230), Other (299)
Torts - Personal Injury: Assault/Battery/Abuse (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)
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), Other (799)
Administrative Law/Relief: Reinstate Driver's License (800), Judicial Review (810), Relief (820), Permanent Injunction (830), Forfeiture-Petition (840), Forfeiture-Consent Order (850), Other (899)
Appeals: Arbitration (900), Magistrate-Civil (910), Magistrate-Criminal (920), Municipal (930), Probate Court (940), SCDCOT (950), Worker's Comp (960), Zoning Board (970), Public Service Commission (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 (\$10)

Submitting Party Signature:



Date: 10-15-2010

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

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**FOR MANDATED ADR COUNTIES ONLY**

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville, Hampton, Harry,  
Jasper, Lexington, Pickens (Family Court Only), Richland, Union 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 210<sup>th</sup> 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 CHARLESTON

Cynthia D. Bales, as Personal  
Representative of the Estate  
of Frank R. Bales On behalf of the  
Estate, and the Decedent's beneficiaries,

PLAINTIFFS,

VS.

Abel Martinez Martinez and  
South Carolina Department of  
Transportation,

DEFENDANTS.

COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
C/A NO.: 2010-CP-10-

2010 OCT 15 PM 4:52  
JULIE J. ARMSTRONG  
CLERK OF COURT

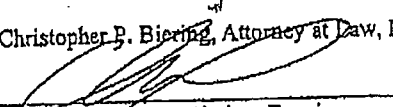
FILED

SUMMONS

TO THE DEFENDANT, ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to Answer the Complaint in this  
action, a copy of which is herewith served upon you, and to serve a copy of your Answer  
to the said Complaint upon the undersigned attorney, at 116 East Railroad Avenue,  
Moncks Corner, South Carolina 29461, within (30) days after service hereof, exclusive of  
the day of such service. If you fail to Answer the Complaint within that time, judgment to  
default will be rendered against you for the relief demanded in the Complaint.

Christopher P. Biering, Attorney at Law, P.C.

  
By: Christopher P. Biering, Esquire  
116 East Railroad Avenue  
Moncks Corner, South Carolina 29461  
843-761-4888  
Facsimile: 843-899-9015  
chris@bieringlawfirm.com

Moncks Corner, South Carolina  
April 23, 2010

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 Cynthia D. Bales, as Personal )  
 Representative of the Estate )  
 of Frank R. Bales On behalf of the )  
 Estate, and the Decedent's beneficiaries, )

COURT OF COMMON PLEAS  
 NINTH JUDICIAL CIRCUIT  
 C/A NO.: 2010-CP-10-

PLAINTIFFS,

VS.

Abel Martinez Martinez and  
 South Carolina Department of  
 Transportation,

DEFENDANTS.

2010 OCT 15 PM 4:52  
 JULIE J. ARKSTRONG  
 CLERK OF COURT

FILED

COMPLAINT  
(JURY TRIAL DEMANDED)

TO THE DEFENDANT, ABOVE-NAMED:

Plaintiffs, by and through their attorney, complaining of the Defendants, would respectfully show to this Court and allege on information and belief as follows:

PARTIES AND JURISDICTION

1. Plaintiff's decedent, Frank R. Bales, was a resident of the County of Dorchester, State of South Carolina at their time of death. The Plaintiff, Cynthia D. Bales, is the duly appointed personal representative of the Estate of her husband, Frank R. Bales. Plaintiff brings this action on behalf of the Estate and on behalf of herself--the decedent's husband, and Curtis Bales, the decedent's son, they being the statutory beneficiaries under the South Carolina Wrongful Death Act, South Carolina Code of Laws § 15-51-10, et. Seq. (1976 as amended), and the heirs to the Estate.

10. That Defendant Martinez was charged as result of this collision with operating a motor vehicle without a South Carolina Drivers' License, and Disregarding a Traffic Signal.

11. That Defendant DOT, upon information and belief, had knowledge of the intersection / traffic signal issues presented at Fain and Aviation. Specifically, that they knew or should have known that drivers approaching Aviation from Fain St., could see the light controlling Aviation before the light controlling Fain St.

FOR A FIRST CAUSE OF ACTION  
(RECKLESSNESS / NEGLIGENCE)

12. That the Plaintiff repeats each and every allegation of paragraphs one (1) through eight (8) above as if set forth herein verbatim.

13. That the Defendant did not act reasonably regarding the operation of her vehicle and that injuries and losses were sustained by the Plaintiff, and that said damages were directly and proximately caused and occasioned by the negligent, reckless, willful and wanton conduct of the Defendant, in the following particulars to wit:

- a. In failing to keep a proper lookout;
- b. In failing to operate his motor vehicle at a safe speed;
- c. In failing to maintain proper control over Defendant's vehicle;
- d. In failing to seasonably and effectively utilize Defendant's vehicle brakes;
- e. In failing to take any evasive action, by any means, to avoid the lawful path vehicle on which the Plaintiff's decedent was operating;
- f. In failing to obey posted speed limit;

g. In then and their failing to obey the traffic laws of the State of South Carolina;

h. In then and there failing to exercise a degree of care and caution, which a reasonable and prudent person would have exercised under the same circumstances; and

i. Which negligence, gross negligence, carelessness, recklessness, willfulness, and wantonness of the Defendant, directly and proximately caused the injuries of the Plaintiff as is set forth below.

14. That as a direct and proximate result of the negligent, grossly negligent, careless, reckless, willful, and wanton acts and omission of the Defendant, the Plaintiff's decedent suffered great physical harm, injury and death to the Plaintiff's decedent's person which has and will in the future cause the beneficiaries to undergo much physical pain and suffering, has and will in the future cause beneficiaries to incur costs for medical treatment and services, and has and will in the future cause them to suffer trauma, anxiety, annoyance, hardship, loss of enjoyment of life, inconvenience, emotional distress, property damage, and loss of use of property, all to beneficiaries damage and detriment.

15. By reason of the acts and omissions of the Defendant as set forth above, the Plaintiff is informed and believes that the Plaintiff is entitled to an award of actual damages, together with punitive damages in an appropriate amount to be determined by the finder of fact, and for the cost of this action.

FOR A SECOND CAUSE OF ACTION  
(RECKLESSNESS / NEGLIGENT ENTRUSTMENT)

16. That the Plaintiff repeats each and every allegation of paragraphs one (1) through fifteen (15) above as if set forth herein verbatim.

17. The Defendant is charged with the maintenance, construction, design, signage, operation of traffic signals of intersection of Aviation and Fain at and near the location of the accident described herein. That the Defendant, knew or should have known of the condition which caused the accident described herein. That the Defendant has specific knowledge and notice of the hazard created by significant variations of elevation between roadway and shoulder. That the Defendant has specific knowledge that the act of placing a traffic control signal at the intersection in the direction at which it was placed could result in the operator of a vehicle on Fain St. to utilize the traffic control signal controlling Aviation.

18. That the Defendant did not act reasonably regarding the construction, design, safety, signage, operation and maintenance of the roadway, and that injuries and losses were sustained by the Plaintiff's decedent, and that said damages were directly and proximately caused and occasioned by the negligent, reckless, willful and wanton conduct of the Defendant, in the following particulars to wit:

- a. In failing to properly inspect the roadway, and if so properly inspected, in failing to ascertain the significance of the hazard;
- b. In placement of the traffic control device, selection of the traffic control device;
- c. In failing to warn of a known dangerous condition;

d. In failing to design roadway in a proper manner to avoid the dangerous condition that resulted in the injuries of the Plaintiffs, and if so designed properly, in failing to implement appropriate design;

e. In failing to train those charged with the inspection, maintenance, construction, and or repair of the roadway in a reasonable manner; and if so trained, in failing to supervised those charged with the inspection, maintenance, construction, and or repair of the roadway so that training would be utilized;

f. in failing to establish appropriate rules, regulations, and guidelines for the safe operation of this roadway, and if properly established, in failing to follow such rules, regulations, and guidelines;

g. in then and there failing to exercise a degree of care and caution, which a reasonable and prudent person would have exercised under the same circumstances; and

h. Which negligence, gross negligence, carelessness, recklessness, willfulness, and wantonness of the Defendant, directly and proximately caused the injuries of the Plaintiff as are set forth herein.

19. That as a direct and proximate result of the negligent, grossly negligent, careless, reckless, willful, and wanton acts an or omission of the Defendant, the Plaintiff's decedent suffered great physical harm, injury and death to the Plaintiff's decedent's person which has and will in the future cause the beneficiaries to undergo much physical pain and suffering, has and will in the future cause beneficiaries to incur costs for medical treatment and services, and has and will in the future cause them to suffer trauma, anxiety, annoyance, hardship, loss of enjoyment of life, inconvenience, emotional


distress, property damage, and loss of use of property, all to beneficiaries damage and detriment.

20. By reason of the acts and omissions of the Defendant as set forth above, the Plaintiff are informed and believe that the Plaintiff are entitled to individual awards of actual damages in an appropriate amount to be determined by the finder of fact, and for the cost of this action.

All to Plaintiff's damage, both actual and punitive, in an amount to be determined by the finder of fact.

WHEREFORE, the Plaintiff prays for a judgment against the Defendants in an amount of actual damages, and punitive damages in an appropriate amount to be determined by the finder of fact, and for such other and further relief as this Honorable Court might deem just and proper.

CHRISTOPHER P. BIERING, ATTORNEY AT LAW, P.C.

  
Christopher P. Biering, Esquire  
116 East Railroad Avenue  
Moncks Corner, South Carolina 29461  
Telephone No.: (843) 761-4888  
Facsimile No.: (843) 899-9015  
ATTORNEY FOR THE PLAINTIFF  
[chrs@bieringlawfirm.com](mailto:chrs@bieringlawfirm.com)

Moncks Corner, South Carolina  
October 15, 2010

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS  
) THE NINTH JUDICIAL CIRCUIT  
) CASE NO. 2010-CP-10-8631

CYNTHIA D BALES as personal representative of the  
ESTATE OF FRANK R. BALES,

Plaintiff,

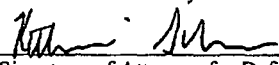
vs

ABEL MARTINEZ-MARTINEZ and SOUTH  
CAROLINA DEPARTMENT OF TRANSPORTATION

Defendants

MOTION INFORMATION & COVER SHEET

(check box above indicating submitting party)

Name, S.C. Bar no. and address of Plaintiff's attorney Christopher P. Biering (SC Bar #13353) Christopher P. Biering, Attorney at Law, P.C. 116 E Railroad Ave Moncks Corner, SC 29461		Name, S.C. Bar no. and address of Defendant's attorney R. Michael Ethridge (SC Bar #16892) Katherine W. Sullivan (SC Bar #78202) Carlock Copeland & Starr, LLP 40 Calhoun Street, Suite 400 Charleston, SC 29401 T 843-727-0307	
<input checked="" type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)			
<b>SECTION I: Hearing Information</b>			
Nature of Motion: Motion for Relief from Judgment, Memorandum of Law in Support of Relief from Judgment Estimated Time Needed: 30 Court Reporter Needed: Yes			
<b>SECTION II: Motion Type</b>			
<input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion : I hereby move for relief or action by the court as set forth in the attached proposed order.			
 Signature of Attorney for Defendant		<u>4/26/12</u> Date submitted	
<b>SECTION III: Motion Fee</b>			
<input checked="" type="checkbox"/> PAID - AMOUNT, \$25.00 <input type="checkbox"/> EXEMPT: <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCP) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ <input type="checkbox"/> Other:			
<b>JUDGE'S SECTION</b>			
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other:		JUDGE CODE: _____ Date: _____	
<b>CLERK'S VERIFICATION</b>			
<b>DATE FILED</b>			
Collected by: _____ (print name)			
<input type="checkbox"/> MOTION FEE COLLECTED: _____			
<input type="checkbox"/> CONTESTED - AMOUNT DUE: _____			

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )  
CYNTHIA D. BALES as personal )  
representative of the ESTATE OF FRANK )  
R. BALES, )  
Plaintiff, )  
vs. )  
ABEL MARTINEZ and SOUTH )  
CAROLINA DEPARTMENT OF )  
TRANSPORTATION )  
Defendants. )

IN THE COURT OF COMMON PLEAS  
THE NINTH JUDICIAL CIRCUIT  
CASE NO.: 2010-CP-10-8631

**MEMORANDUM OF LAW IN SUPPORT OF  
MOTION FOR RELIEF FROM DEFAULT  
JUDGMENT**

FILED  
2012 APR 26 PM 2:20  
JULIE J. ARMSTRONG  
CLERK OF COURT

COMES NOW Defendant Abel Martinez Martinez (hereinafter "Mr. Martinez") through his undersigned attorneys, and respectfully submits this Memorandum of Law in Support of his Motion for Relief from the Order for Default Judgment filed on March 2, 2012 pursuant to South Carolina Rule of Civil Procedure 60(b). Mr. Martinez respectfully requests relief from the Order of Default Judgment on one or more of the following grounds: (1) mistake, inadvertence, surprise, or excusable neglect and/or (2) fraud, misrepresentation, or other misconduct of the Plaintiff.

**FACTS**

This lawsuit arises from an October 15, 2008 accident that occurred between a vehicle driven by Abel Martinez and a motorcycle driven by Frank Bales, which resulted in the death of Frank Bales. Abel Martinez was insured by Allstate Insurance Company (hereinafter "Allstate") under an automobile liability policy # 955539674 for policy period June 1, 2008 through December 1, 2008 with policy limits of \$25,000 per person / \$50,000 per accident.

Shortly after the accident, Plaintiff's first attorney, Chris Biering (hereinafter "Mr. Biering"), contacted Allstate in November 2008 to engage in settlement negotiations regarding the accident. See Affidavit of Gwen McNeil, attached as Exhibit A. In October 2010, based on the belief Plaintiff, through Mr. Biering, had accepted the tender of policy limits, Allstate retained Phillip Florence (hereinafter "Mr. Florence") at Turner Padget Graham & Laney, P.A. (hereinafter "Turner Padget") to prepare the court-required wrongful death settlement documents and to provide legal services in connection with the wrongful death settlement relating to the Accident. See Affidavit of Phillip Florence, attached as Exhibit B, and Affidavit of Gwen McNeil, attached as Exhibit A.

Unbeknownst to Allstate and Mr. Florence until months later, on October 15, 2010, Plaintiff filed a Summons and Complaint with the Charleston County Clerk of Court against Mr. Martinez and the South Carolina Department of Transportation (hereinafter "SCDOT"). The Complaint alleged that Mr. Martinez "entered into the intersection through a red light causing the Plaintiff's decedent to collide into Defendant Martinez's vehicle." See Complaint, paragraph 6, attached as Exhibit C. In addition, the Complaint alleged that the SCDOT "had knowledge of the intersection/traffic signal issues presented at Fain and Aviation [and] . . . they knew or should have known that drivers approaching Aviation from Fain St. could see the light controlling Aviation before the light controlling Fain St." See Complaint, paragraph 11, attached as Exhibit C. The Complaint further alleged that SCDOT was negligent and its negligence was the proximate cause of the accident, which is the subject of this lawsuit. See id., paragraphs 18 and 19, attached as Exhibit C. Plaintiff's counsel failed to provide a copy of the Complaint to Allstate or Mr. Florence at the time of filing although Mr. Florence had been in regular contact

with Allstate and/or Mr. Florence since November 2008. See Affidavit of Phillip Florence, attached as Exhibit B, and Affidavit of Gwen McNeil, attached as Exhibit A.

At some point in 2011, Akim Anastopoulos (hereinafter "Mr. Anastopoulos") replaced Chris Biering as Plaintiff's counsel. In a letter transmitted on May 11, 2011 (approximately seven months after filing the lawsuit), Mr. Anastopoulos informed Mr. Florence that prior counsel's offer to settle with Allstate for the policy limits was withdrawn. See Letter from Akim Anastopoulos to Phillip Florence, incorrectly dated May 11, 2010, attached as Exhibit D. Importantly, Mr. Anastopoulos acknowledged Mr. Florence's role as attorney for Mr. Martinez in this letter. See id. Furthermore, Mr. Anastopoulos attached a courtesy copy of the Complaint filed October 15, 2010 with the letter, and he also stated, "[a]t this time, the Post & Courier is in the process of perfecting service on Mr. Martinez **and the affidavit of publication will be forwarded to your office once complete.**" See id. (emphasis added).

However, Mr. Anastopoulos did not fulfill that promise, and he never provided Allstate and/or Mr. Florence with the Affidavit of Publication or any other proof of service as promised. See Affidavit of Phillip Florence, attached as Exhibit B, and Affidavit of Gwen McNeil, attached as Exhibit A. Mr. Florence was unaware that service had been perfected upon Mr. Martinez, as he relied upon Mr. Anastopoulos's representation that he would provide him with a copy of the affidavit of publication if and/or when service by publication was complete. See Affidavit of Phillip Florence, attached as Exhibit B.

On September 26, 2011, Mr. Anastopoulos filed a Motion for Entry of Default and Request for Hearing on Damages. **Mr. Anastopoulos did not serve a copy of the motion or request for the damages hearing to Mr. Florence or Allstate even though he copied Lisa Reynolds (counsel for SCDOT) and Timothy Domin (counsel for the uninsured and/or**

underinsured motorist carrier) with the motion and request for the damages hearing. See Letter to the Court dated September 21, 2011, enclosing Motion for Entry of Default, attached as Exhibit E.

To date, Mr. Anastopoulo has not explained why he did not serve Mr. Florence with a copy of the motion even though Mr. Anastopoulo (and Mr. Biering) had communicated previously with Mr. Florence about this claim and the lawsuit and Mr. Anastopoulo promised to notify Mr. Florence once Plaintiff completed the process for service by publication. See Letter to the Court dated September 21, 2011, enclosing Motion for Entry of Default, attached as Exhibit E. Consequently, and as a direct result from the lack of notice by Mr. Anastopoulo, neither Allstate nor Mr. Florence contested the motion because neither knew about the motion or any issue by Plaintiff about any default claim. See Affidavit of Phillip Florence, attached as Exhibit B, and Affidavit of Gwen McNeil, attached as Exhibit A.

On October 7, 2011, the court issued an Order for Entry of Default. Allstate and Mr. Florence did not learn that service of the Complaint had been perfected by publication until after the court issued the Order for Entry of Default on October 7, 2011. See Affidavit of Phillip Florence, attached as Exhibit B, and Affidavit of Gwen McNeil, attached as Exhibit A. If Allstate and/or Mr. Florence had been notified that service had been perfected, as Mr. Anastopoulo promised, an Answer to the Complaint would have been timely filed. See Affidavit of Gwen McNeil, attached as Exhibit A.

On January 27, 2012, the court held a hearing on Mr. Martinez's Motion to Set Aside Default pursuant to South Carolina Rule of Civil Procedure 55. The court issued an order denying Mr. Martinez's Motion to Lift Default on February 15, 2012. On January 11, 2012, the court held a damages hearing on Plaintiff's Motion for Entry of a Default Judgment, and the

court issued its Order for a Default Judgment against Mr. Martinez in the amount of \$1,900,000 on March 2, 2012.

Mr. Martinez now files this Motion for Relief from Default Judgment on one or more of the following grounds: (1) mistake, inadvertence, surprise, or excusable neglect and/or (2) fraud, misrepresentation, or other misconduct of the Plaintiff.

#### **ARGUMENT**

South Carolina Rule of Civil Procedure 60(b) provides the following: “upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; . . . (3) fraud, misrepresentation, or other misconduct of an adverse party.” S.C. R. Civ. P. 60(b). “The decision to grant or deny a motion for relief from judgment lies within the sound discretion of the trial court.” McClurg v. Deaton, 380 S.C. 563, 570, 671 S.E.2d 87, 91 (Ct. App. 2008). The court should consider the following factors in determining whether to grant relief from a default judgment under Rule 60(b): “(1) the promptness with which relief is sought, (2) the reasons for the failure to act promptly, (3) the existence of a meritorious defense, and (4) the prejudice to the other parties.” Id. at 573–74, 671 S.E.2d at 93 (Ct. App. 2008).

#### **I. MR. MARTINEZ HAS PROMPTLY MOVED FOR RELIEF FROM THE DEFAULT JUDGMENT.**

Mr. Martinez has moved the Court for this relief promptly after receiving notification that the Motion to Reconsider the Default Judgment was denied, seeking this relief within 8 days after receiving the Order on Mr. Martinez's Motion to Reconsider. Following the damages hearing and this court's issuance of a default judgment against Mr. Martinez, Mr. Martinez filed a Motion to Reconsider on March 15, 2012. On April 3, 2012 a hearing was held on Mr. Martinez's Motion to Reconsider, and 14 days after that hearing, on April 17, 2012, this court

issued an order denying Mr. Martinez' Motion to Reconsider. The Order denying the Motion was posted to the Clerk of Court's website on April 17, 2012, and Mr. Martinez's counsel first received notice of the order denying the motion on April 18, 2012. See Affidavit of Katherine Sullivan, paragraphs 8 and 9, attached as Exhibit F. Mr. Martinez now files this motion within 8 days from the date counsel received notice of the court's denial of the Motion for Reconsideration.

**II. PURSUANT TO SOUTH CAROLINA CASE AND STATUTORY LAW, MR. ANASTOPOULO'S FAILURE TO PROVIDE PROOF OF SERVICE AFTER AFFIRMATIVELY REPRESENTING HE WOULD DO SO QUALIFIES AS EXCUSABLE NEGLIGENCE AND/OR MISREPRESENTATION SUCH THAT A RULE 60(B) RELIEF FROM JUDGMENT IS APPROPRIATE.**

In McClurg, the South Carolina Court of Appeals held that an attorney's failure to provide a copy of the complaint after affirmatively promising to do so qualified as surprise or excusable neglect for purposes of a Rule 60(b) Relief from Judgment. Much like the affirmative representation in McClurg, Mr. Anastopoulo's affirmative representation that he would provide proof of service qualifies as excusable neglect and/or misrepresentation such that Rule 60(b) Relief from Judgment is appropriate.

The facts of McClurg are remarkably similar to the instant case. In McClurg, the South Carolina Court of Appeals addressed the issue of whether an employer and employee should be granted relief from a default judgment entered against the employee in a personal injury action stemming from an automobile accident. 380 S.C. at 567, 671 S.E.2d at 89. Shortly after the accident, the plaintiff's attorney contacted the employer's insurer and began negotiating a settlement. Id. However, a settlement could not be reached. Id. at 568, 671 S.E.2d at 90. Without informing either the employer or the insurer, the plaintiff filed a summons and complaint against the individual employee. Id. After the individual employee defendant failed

to appear or answer within thirty days, an order of default was filed. Id. A notice of a damages hearing was then sent to the individual defendant, but the individual defendant failed to respond or appear; again, no notice was sent to the insurer. Id. At the damages hearing, judgment was entered against the individual defendant. Id. After judgment was entered, the insurer received notice of the default judgment from the plaintiff's attorney. Id.

Thereafter, the employer filed a motion to set aside the default judgment pursuant to Rule 60(b)(1) and Rule 60(b)(3) of the South Carolina Rules of Civil Procedure, because it never received notice of the plaintiff's suit, either from the individual defendant or the plaintiff's attorney. Id. at 569, 671 S.E.2d at 90. In addressing the issue, the court noted that "an insurer may, under the proper circumstances, be entitled to an order setting aside default judgment where the insurer is involved in ongoing negotiations with a claimant but is not informed that the defendant has been served with a summons and complaint." Id. at 571, 671 S.E.2d at 92 (citing Edwards v. Ferguson, 254 S.C. 278, 175 S.E.2d 224 (1970)).

Further, the McClurg court held that "[b]ased on [plaintiff's] counsel's conduct and actions, it was reasonable for [the insurer] . . . to believe . . . at the very least, that counsel would provide [the insurer] a copy of any pleadings in the matter when filed." Id. at 572-73, 671 S.E.2d at 92. According to the McClurg court, "given this history of contact and negotiations between counsel and [the insurer], most notably the representations made by counsel to [the insurer], the conduct of the [plaintiff's] counsel in failing to simply notify [the insurer] of the complaint filed against [the defendant driver] raises serious concerns for this court and quite possibly satisfies the misrepresentation and misconduct envisioned by Rule 60(b)(3)." Id. at 573, 671 S.E.2d at 92-93. Based on this reasoning, the McClurg court concluded that "the trial court committed error in finding the evidence did not, at least, support relief based on mistake, inadvertence,

surprise or excusable neglect.” Id. at 573, 671 S.E.2d at 93.

Similarly, much like the affirmative representation in McClurg, Mr. Anastopoulo specifically represented he would provide proof of service. Thus, pursuant to McClurg, this Court should find excusable neglect and/or misrepresentation such that relief from judgment pursuant to Rule 60(b), SCRCP, is appropriate

In Edwards, the defendant and his liability insurer moved to set aside a personal injury default judgment “on the ground that the same was taken through mistake, inadvertence, surprise, or excusable neglect.” Id. Much like McClurg, the plaintiff’s attorney began negotiations with the defendant driver’s insurer. Id. at 572, 671 S.E.2d at 92. When settlement could not be reached, the plaintiff served the defendant driver with a summons and complaint. Id. After the defendant driver failed to answer or appear, the lower court in Edwards entered judgment against the individual driver. Id. Upon receiving notice of the default judgment, the insurer moved the court to set aside the judgment because it had never received notice of the suit from either its insured or plaintiff’s counsel. Id. In reversing the lower court’s denial of the insurer’s motion, the Edwards court found that the “trial court abused its discretion in failing to set aside the default judgment on the grounds of mistake, inadvertence, surprise, or excusable neglect.” Id.

As discussed in McClurg and Edwards, the facts in the instant case warrant setting aside the default judgment on the grounds of excusable neglect or misrepresentation. After almost two years of settlement negotiations between Allstate and attorneys representing the estate and survivors of Mr. Bales, Mr. Anastopoulo sent a letter to Allstate’s counsel, Mr. Florence, on May 11, 2011 informing him that prior counsel’s offer to settle with Allstate for the policy limits was withdrawn and stating, “[a]t this time, the Post & Courier is in the process of perfecting service

on Mr. Martinez and the affidavit of publication will be forwarded to your office once complete." See Letter from Akim Anastopoulo to Phillip Florence, incorrectly dated May 11, 2010, attached as Exhibit D (emphasis added). Although Mr. Anastopoulo attached a courtesy copy of the Complaint with the May 11, 2011 letter, he never provided Allstate and/or Mr. Florence with the affidavit or publication or any other proof of service as he promised. See Affidavit of Phillip Florence, attached as Exhibit B, and Affidavit of Gwen McNeil, attached as Exhibit A. Mr. Florence relied upon Mr. Anastopoulo's affirmative representation that he would provide him with a copy of the affidavit of publication if and/or when service by publication was complete. See Affidavit of Phillip Florence, attached as Exhibit B.

Furthermore, Mr. Anastopoulo failed to serve the Affidavit of Publication and the Motion for Entry of Default and Request for Hearing on Damages on Mr. Florence and failed to notify Mr. Florence about hearing related to this motion as required by Rule 5(b)(1), SCRPC. Rule 5(b)(1), SCRPC, provides: "Whenever under these rules service is permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party himself is ordered by the court." Rule 5(b)(1), SCRPC (emphasis added).

In Rodriguez v. Gutierrez, 391 S.C. 323, 705 S.E.2d 94 (Ct. App. 2011), the South Carolina Court of Appeals held "Rule 5(b)(1) does not require service upon an attorney when, as in this case, the attorney gives no indication of his representation to either the court or opposing counsel." Id., 391 S.C. at 333, 705 S.E.2d at 100. Thus, the court in Rodriguez affirmed a default judgment because the defendant's attorney denied of representation of the defendant when the plaintiff attempted to serve the attorney with the complaint.

In the instant case, however, Mr. Florence clearly notified Mr. Anastopoulo of the representation of Mr. Martinez for claims arising from the accident. Further, Mr. Anastopoulo's

May 11, 2011 letter acknowledged that representation. See Letter from Akim Anastopoulos to Phillip Florence, incorrectly dated May 11, 2010, attached as Exhibit D. Mr. Anastopoulos has not refuted, and cannot refute, that he communicated with Mr. Florence as counsel for Mr. Martinez before Mr. Anastopoulos obtained service by publication on Mr. Martinez and filed the default motion. Although Mr. Anastopoulos copied Lisa Reynolds (counsel for SCDOT) and Timothy Domin (counsel for the uninsured and/or underinsured motorist carrier) with the Motion for Entry of Default and Request for Hearing on Damages, Mr. Anastopoulos failed to copy Mr. Florence and/or Allstate on this motion or the Affidavit of Service by publication. See Letter to the Court dated September 21, 2011, enclosing Motion for Entry of Default, attached as Exhibit E.

Rule 5(b)(1) required Mr. Anastopoulos to serve Mr. Florence with those documents because, at a minimum, Mr. Anastopoulos had the "indication of representation" required by Rule 5(b)(1), SCRCPC, and the Rodriguez decision. Yet, he intentionally decided to serve copies of the motion on every other attorney in the lawsuit except Mr. Florence.

Mr. Anastopoulos's failure to provide a copy of the proof of service is precisely the type of excusable neglect and/or misrepresentation which warrants setting aside the default judgment. Mr. Florence reasonably relied on Mr. Anastopoulos's representation that he would provide the proof of service after the service was perfected. Neither Allstate nor Mr. Florence was aware that service had been perfected until after the court issued an Order for Entry of Default. Because Mr. Anastopoulos failed to provide the proof of service as promised, both Allstate and Mr. Florence were surprised to learn that an Order of Default had been issued by the court. Accordingly, as discussed in McClurg, Edwards, and Rodriguez, these circumstances qualify as

excusable neglect and/or misrepresentation for purposes of relief pursuant to Rule 60(b), SCRCF.

**III. MR. MARTINEZ HAS A MERITORIOUS DEFENSE SUCH THAT RULE 60(B) RELIEF FROM JUDGMENT IS APPROPRIATE.**

Mr. Martinez has two meritorious defenses. For purposes of a Rule 60(b), "[a] meritorious defense need not be perfect nor one which can be guaranteed to prevail at a trial." Rouvet v. Rouvet, 388 S.C. 301, 312, 696 S.E.2d 204, 209 (Ct. App. 2010).

The allegations of the Complaint provide a potential meritorious defense to Mr. Martinez. The Complaint alleges that Defendant South Carolina Department of Transportation "had knowledge of the intersection/traffic signal issues presented and Fain and Aviation [and] . . . knew or should have known that drivers approaching Aviation from Fain St. could see the light controlling Aviation before the light controlling Fain St." The Complaint further alleges that SCDOT was negligent and that its negligence was the proximate cause of the accident giving rise to this lawsuit. The alleged negligence of Defendant South Carolina Department of Transportation could be a superseding or intervening cause that would have precluded liability on the part of Mr. Martinez. See Affidavit of Phillip Florence, attached as Exhibit B. Therefore, the allegations of the Complaint qualify as a meritorious defense for purposes of Rule 60(b).

Furthermore, Mr. Martinez testified in a recorded statement taken a few weeks after the accident that "the traffic light was green when he went through the intersection at the time of the accident." See Affidavit of Teresa Miller, attached as Exhibit G; see also Recorded Statement of Abel Martinez, attached as Exhibit A to Miller's Affidavit. Throughout his recorded statement, Mr. Martinez consistently testified that the traffic light was green at the time of the accident. See id. Mr. Martinez's testimony challenges the assumption, as alleged in the Complaint, that the

light was red at the time of the accident. This testimony qualifies as a meritorious defenses for purposes of Rule 60(b).

**IV. NO PREJUDICE WILL RESULT IF THIS COURT GRANTS MR. MARTINEZ RELIEF FROM THE DEFAULT JUDGMENT.**

There is absolutely no indication that the Plaintiff would be prejudiced in any respect if the court provides Mr. Martinez with relief from the default judgment as requested in this motion. Should this court grant Mr. Martinez's Motion for Relief from Default Judgment, the Plaintiff will still be afforded an opportunity to fully litigate this matter. Mr. Martinez will consent to a trial within 30 days of the entry of an order granting the relief requested by this motion. Plaintiff has not, and cannot, allege any witnesses or evidence has been lost or that the delay in trying the case will result in any prejudice to the claim. Any purported delay results from (a) Mr. Biering and/or Mr. Anastopoulo waiting until at least mid-May 2011 to attempt service by publication on Mr. Martinez when Plaintiff filed the lawsuit approximately seven months earlier and (b) Mr. Anastopoulo failing to fulfill his promise to notify Mr. Florence about service so that an answer could be timely filed on behalf of Mr. Martinez and Mr. Anastopoulo's failure to comply with the mandates of Rule 5(b)(1), SCRPC.

On the other hand, the prejudice to Mr. Martinez is obvious. Plaintiff obtained a default judgment against him because Plaintiff's attorneys failed to notify Mr. Martinez' attorney about the affidavit of publication (as Mr. Anastopoulo promised he would do) and the motion for entry of default (as Rule 5(b)(1), SCRPC, and South Carolina case law required).

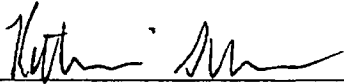
**CONCLUSION**

As discussed above, Mr. Martinez has satisfied the requirements under South Carolina law for a Rule 60(b) Motion for Relief from Default Judgment: (1) Mr. Martinez promptly moved the Court for relief upon being receiving notification that the Motion to Reconsider the

Default Judgment was denied; (2) Mr. Martinez has demonstrated grounds for relief based on mistake, inadvertence, surprise, or excusable neglect, if not misrepresentation and misconduct; (3) Mr. Martinez has submitted evidence showing the existence of meritorious defenses; and (4) there is no prejudice to the Plaintiff who would have a full and fair opportunity to litigate the matter subsequent to an order granting relief entered by the Court. Therefore, Mr. Martinez moves this Court for an Order granting relief from default judgment to the Defendants under Rule 60(b) of the South Carolina Rules of Civil Procedure.

Respectfully submitted,

CARLOCK, COPELAND & STAIR, LLP

By:   
R. MICHAEL ETHRIDGE  
State Bar No. 16892

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

KATHERINE W. SULLIVAN  
State Bar No. 78202

Attorneys for Defendant Abel Martinez

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS  
) THE NINTH JUDICIAL CIRCUIT  
) CASE NO.: 2010-CP-10-8631

CYNTHIA D. BALES as personal  
representative of the ESTATE OF FRANK  
R. BALES,

Plaintiff,

vs.

ABEL MARTINEZ and SOUTH  
CAROLINA DEPARTMENT OF  
TRANSPORTATION

Defendants.

**CERTIFICATE OF SERVICE**

**FILED**  
2012 APR 26 PM 2:28  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

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

Akim Anastopoulo, Esq.  
2850 Ashley Phosphate Rd., Suite B  
Charleston, SC 29418

Joseph Weston, Esq.  
Weston Law Firm, P.A.  
P.O. Box 1992  
Mt. Pleasant, SC 29465-1992

JJ Anderson  
Lisa Reynolds  
Anderson Reynolds & Stephens, LLC  
P.O. Box 87  
Charleston, SC 29402

This 26 day of April, 2012.

Kathy Jo Wentland  
Kathy Jo Wentland  
Paralegal to Katherine W. Sullivan

Carlock, Copeland & Stair, LLP  
40 Calhoun Street, Suite 400  
Charleston, SC 29401-3531

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 CYNTHIA D. BALES as personal )  
 representative of the ESTATE OF )  
 FRANK R. BALES, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 ABEL MARTINEZ and SOUTH )  
 CAROLINA DEPARTMENT OF )  
 TRANSPORTATION, )  
 )  
 Defendants. )

IN THE COURT OF COMMON PLEAS  
 NINTH JUDICIAL CIRCUIT  
 CASE NO.: 2010-CP-10-8631

AFFIDAVIT OF GWEN MCNEIL

FILED  
 2012 JAN 18 PM 12:42  
 JULIE J. ARMSTRONG  
 CLERK OF COURT

Gwenetta M. McNeil, of full age, being duly sworn, and deposes as says as follows:

1. I am a claims representative with Allstate Insurance Company, and I am employed at the company's Columbia, South Carolina claims office. I am making this affidavit in support of the Defendant's Motion to Vacate the Entry of Default.
2. Defendant Abel Martinez was insured with Allstate under an automobile liability policy which was in effect on October 15, 2008, which is the date of the accident referenced in the Plaintiff's Complaint. The policy provides liability limits of \$25,000.00 per person/\$50,000.00 per accident.
3. I am the claims representative assigned to investigate the wrongful death claim being presented by the Plaintiff, which claim is the subject of the Plaintiff's Complaint.
4. Various adjusters at Allstate, including myself, had talked to and corresponded with the Plaintiff's former attorney, Chris Biering, starting on November 14, 2008, and continuing throughout 2009 and 2010.
5. On October 1, 2010, I spoke with Mr. Biering and extended an offer of the applicable policy limit of \$25,000 to his client, and Mr. Biering indicated to me that the offer was accepted.
6. I subsequently referred this matter to Turner Padgett Graham & Laney on October 4, 2010 for the purpose of preparing the settlement documents and obtaining court approval of the



wrongful death settlement. Turner Padgett attorney Philip Florence was assigned the file.

7. On January 24, 2011, I was informed by Mr. Florence that attorney Biering had advised him that he would no longer be representing the Plaintiff.
8. The Plaintiff subsequently retained her present counsel, Akim Anastopoulo, Esq.. I learned of Mr. Anastopoulo's involvement through a discussion with attorney Florence on May 10, 2011. It was also my understanding at that time that a lawsuit had been filed by the Plaintiff.
9. Philip Florence, Esq. and Akim Anastopoulo, Esq. were subsequently in contact with one another over the next few months. While I have since been informed that Mr. Anastopoulo did provide attorney Florence with some additional information about the lawsuit and service of the same by publication during those communications, Allstate was not aware of that additional communication between attorneys Anastopoulo and Florence at the time it was taking place. To the contrary, Allstate itself was not aware that service of the summons and complaint had been completed by way of publication.
10. The issue concerning the lawsuit and service of the same did not come to Allstate's attention again until after attorney Anastopoulo had a default entered against the Defendant on October 7, 2011.
11. Based on the foregoing, the default in this matter did not arise due to any intentional disregard of the claim or the lawsuit by Allstate, which as noted had long been in communication with Plaintiff's prior counsel about the claim and had extended an offer to him to settle the matter. Rather, the default resulted from a breakdown in communication between Allstate and its attorney concerning the status of the litigation. If Allstate had been aware that the lawsuit had been served it would have retained defense counsel to file an answer on behalf of the Defendant.

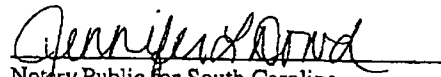
AND FURTHER DEPONENT SAYETH NOT

16 April 12  
Date

Gwenetta M. McNeil  
Gwenetta M. McNeil

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

On this 16 day of January, 2012, before me personally appeared Gwenetta M. McNeil, to me known to be the person described in and who executed the foregoing affidavit, and acknowledged that she executed the same as her free act and deed.

  
Notary Public for South Carolina

My commission expires: May 25, 2017



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2010-CP-10-8631
	)	
CYNTHIA D. BALES as personal	)	
representative of the ESTATE OF FRANK	)	
R. BALES,	)	<b>AFFIDAVIT OF PHILLIP FLORENCE, JR.</b>
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
ABEL MARTINEZ and SOUTH	)	
CAROLINA DEPARTMENT OF	)	
TRANSPORTATION	)	
	)	
Defendants.	)	

Personally appeared before me, the undersigned, Phillip Florence, Jr., who being duly sworn does state as follows:

1. I am over the age of 18 years and competent to give this affidavit.
2. I have personal knowledge of the facts contained in this affidavit.
3. I am an attorney who is licensed to practice law in the State of South Carolina.
4. I am employed by Turner Padgett Graham & Laney, P.A, and have been engaged in the full-time practice of law since 1994.
5. My practice includes, among other things, the representation of insurance companies in the settlement of wrongful death and other personal injury cases.
6. Upon information and belief, on October 15, 2008, Abel Martinez and Plaintiff's decedent, Frank Bales, were in a motor vehicle and/or motorcycle accident ("the Accident"), resulting in the death of Frank Bales.



7. Abel Martinez was insured by Allstate Insurance Company ("Allstate") under an automobile liability policy # 955539674 for policy period June 1, 2008 through December 1, 2008 with policy limits of \$25,000 per person / \$50,000 per accident.

8. My firm, Turner Padget Graham & Laney, P.A. ("Turner Padget"), was retained by Allstate in October 2010 to prepare settlement documents and provide other legal services in connection with a wrongful death settlement relating to the Accident. At the time of retention, Allstate informed Turner Padget that former Plaintiff's attorney, Chris Biering, had accepted a settlement offer of the applicable policy limit of \$25,000.

9. In 2011, Akim Anastopoulos replaced Chris Biering as Plaintiff's counsel.

10. In a letter transmitted on May 11, 2011 (See Letter from Akim Anastopoulos to Phillip Florence, incorrectly dated May 11, 2010, attached as Exhibit A), Akim Anastopoulos informed me that prior counsel, Chris Biering's, offer to settle with Allstate for the policy limits was withdrawn. In this letter, he advised me, "At this time, the Post & Courier is in the process of perfecting service on Mr. Martinez and the affidavit of publication will be forwarded to your office once complete." (See Exhibit A, emphasis added).

11. I relied upon Mr. Anastopoulos's affirmative representation that he would provide me with a copy of the affidavit of publication if and/or when the service by publication was complete.

12. Mr. Anastopoulos did not provide me with a copy of the affidavit of publication or any other evidence that service had been perfected in spite of the fact that he had represented he would do so in his letter of May 11, 2011.

13. Having relied upon Mr. Anastopoulos's representation that he would provide me with an affidavit of publication once service was complete, I was unaware that service had been

perfected on Allstate's insured, Mr. Martinez, at the time Mr. Anastopoulo filed his Motion for Entry of Default on September 26, 2011.

14. I did not learn that service had been perfected until after I was told that the court had issued an Order for Entry of Default.

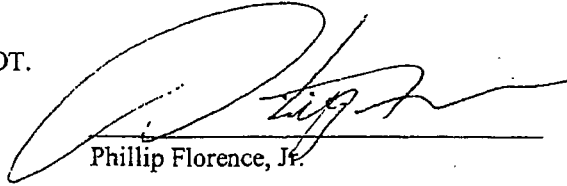
15. I relied on Mr. Anastopoulo's affirmative representation, and I was taken by surprise when I learned that Mr. Anastopoulo filed a Motion for Entry of Default without providing an affidavit of publication, as promised, or otherwise informing me that service had been perfected.

16. Mr. Anastopoulo did not provide me with a copy of Plaintiff's Motion for Entry of Default and Request for Hearing on Damages and did not provide me with notice of the Default Judgment Hearing.

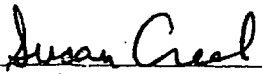
17. If I had received an affidavit of publication (as promised by Mr. Anastopoulo), I would have informed Allstate.

18. I have 18 years of experience representing defendants in cases involving motor vehicle accidents. I reviewed the Complaint wherein Plaintiff's counsel alleges that Defendant South Carolina Department of Transportation "had knowledge of the intersection/traffic signal issues presented and Fain and Aviation [and] . . . knew or should have known that drivers approaching Aviation from Fain St. could see the light controlling Aviation before the light controlling Fain St." (See Summons and Complaint, attached as Exhibit B). Based on my experience, upon information and belief, the alleged negligence of Defendant South Carolina Department of Transportation could be a superseding or intervening cause that would have precluded liability on the part of Mr. Martinez.

FURTHER AFFIANT SAYETH NOT.

  
Phillip Florence, Jr.

Sworn to and subscribed before  
me this 28<sup>th</sup> day of April, 2012

  
Notary Public for the State of South Carolina  
My Commission Expires: 2/25/2019

(AFFIX NOTARY SEAL)

**ANASTOPOULO LAW FIRM**

**ATTORNEYS AT LAW**

Toll Free: (800) 313-2546

Fax/Facsimile: (800) 313-2546 or (843) 853-2291

Mailing Address: 2850 Ashley Phosphate Rd., Suite B  
North Charleston, SC 29418

Akim A. Anastopoulos (SC)

David P. Bolck, (SC, OH)

Andrew R. Hart (SC)

John P. Hayes (MI, NC, OK, PA, SC)

Florence Office: 150 W. Evans Street, Florence, SC

Reply to the North Charleston Office

May 11, 2010

Phillip Florence  
Turner Padgett Graham & Laney  
Post Office Box 22129  
Charleston, SC 29413

RE: *Estate of Frank Bales v. Abel Martinez-Martinez et al.*  
Case No.: 2010-CP-10-8631

Dear Phillip:

As you know, my firm is now handling this matter for the Estate of Frank Bales. Per your request, I have enclosed a copy of the substitution of counsel Order to this effect.

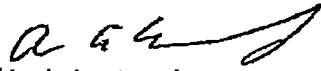
To date, there has been no settlement agreement in this case. Plaintiff's prior counsel made an offer of settlement within policy limits by letter dated September 9, 2010. Your clients failed to respond to this correspondence forcing Plaintiff to withdraw the offer and file suit.

Please be advised that Plaintiff will hereafter not settle. Plaintiff will proceed to a verdict and will seek to levy and execute on any excess judgment obtained pursuant to Tyger River Doctrine against your client for failing to accept our previous offer.

At this time, the Post & Courier is in the process of perfecting service on Mr. Martinez and the affidavit of publication will be forwarded to your office once complete. I have also enclosed a courtesy copy of the Summons and Complaint for your review.

If you should have any questions, please do not hesitate to contact us.

Sincerely,

  
Akim A. Anastopoulos

ADDITIONAL OFFICES  
Florence, South Carolina • Greenville, South Carolina  
Asheville, North Carolina



STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS

Cynthia D. Bales, as Personal Representatives of the Estate of Frank R. Bales, on behalf of the Estate and the Decedent's beneficiaries,

Plaintiff(s) )

vs. )

Abel Martinez Martinez & SC Depart of Transportation )

Defendant(s) )

CIVIL ACTION COVER SHEET

2010-CP - 10-

*Rec'd 11/31/11  
by Courtroom  
Extended 1/31/11  
JTB*

(Please Print)

Submitted By: Christopher P. Blering

Address: 116 E. Railroad Ave, Moncks Corner, SC 29461

SC Bar #: 13353

Telephone #: 843 761 4888

Fax #: 843 899 9015

Other:

E-mail: chrts@bleringlawfirm.com

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

DOCKETING INFORMATION (Check all that apply)

\*If Action is Judgment/Settlement do not complete

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

NATURE OF ACTION (Check One Box Below)

- |   |  |  |  |
|---|--|--|--|
| <p><b>Contracts</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Construction (100)</li> <li><input type="checkbox"/> Debt Collection (110)</li> <li><input type="checkbox"/> Employment (120)</li> <li><input type="checkbox"/> General (130)</li> <li><input type="checkbox"/> Breach of Contract (140)</li> <li><input type="checkbox"/> Other (199)</li> </ul> | <p><b>Torts - Professional Malpractice</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Dental Malpractice (200)</li> <li><input type="checkbox"/> Legal Malpractice (210)</li> <li><input type="checkbox"/> Medical Malpractice (220)</li> <li>Previous Notice of Intent Case #<br/>20____-CP-_____</li> <li><input type="checkbox"/> Notable File Mod Mal (230)</li> <li><input type="checkbox"/> Other (299)</li> </ul>  | <p><b>Torts - Personal Injury</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Assault/Slander/Label (300)</li> <li><input type="checkbox"/> Conversion (310)</li> <li><input type="checkbox"/> Motor Vehicle Accident (320)</li> <li><input type="checkbox"/> Premises Liability (330)</li> <li><input type="checkbox"/> Products Liability (340)</li> <li><input type="checkbox"/> Personal Injury (350)</li> <li><input checked="" type="checkbox"/> Wrongful Death (360)</li> <li><input type="checkbox"/> Other (399)</li> </ul> | <p><b>Real Property</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Claim &amp; Delivery (400)</li> <li><input type="checkbox"/> Condemnation (410)</li> <li><input type="checkbox"/> Foreclosure (420)</li> <li><input type="checkbox"/> Mechanic's Lien (430)</li> <li><input type="checkbox"/> Partition (440)</li> <li><input type="checkbox"/> Possession (450)</li> <li><input type="checkbox"/> Building Code Violation (460)</li> <li><input type="checkbox"/> Other (499)</li> </ul>  |
| <p><b>Inmate Petitions</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> PCR (500)</li> <li><input type="checkbox"/> Mandamus (520)</li> <li><input type="checkbox"/> Habeas Corpus (530)</li> <li><input type="checkbox"/> Other (599)</li> </ul>  | <p><b>Judgments/Settlements</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Death Settlement (700)</li> <li><input type="checkbox"/> Foreign Judgment (710)</li> <li><input type="checkbox"/> Magistrate's Judgment (720)</li> <li><input type="checkbox"/> Minor Settlement (730)</li> <li><input type="checkbox"/> Transcript Judgment (740)</li> <li><input type="checkbox"/> Lis Pendens (750)</li> <li><input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760)</li> <li><input type="checkbox"/> Other (799)</li> </ul> | <p><b>Administrative Law/Relief</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Reinstate Driver's License (800)</li> <li><input type="checkbox"/> Judicial Review (810)</li> <li><input type="checkbox"/> Relief (820)</li> <li><input type="checkbox"/> Permanent Injunction (830)</li> <li><input type="checkbox"/> Forfeiture-Petition (840)</li> <li><input type="checkbox"/> Forfeiture-Consent Order (850)</li> <li><input type="checkbox"/> Other (899)</li> </ul>   | <p><b>Appeals</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Arbitration (900)</li> <li><input type="checkbox"/> Magistrate-Civil (910)</li> <li><input type="checkbox"/> Magistrate-Criminal (920)</li> <li><input type="checkbox"/> Municipal (930)</li> <li><input type="checkbox"/> Probate Court (940)</li> <li><input type="checkbox"/> SCOT (950)</li> <li><input type="checkbox"/> Worker's Comp (960)</li> <li><input type="checkbox"/> Zoning Board (970)</li> <li><input type="checkbox"/> Public Service Commission (980)</li> <li><input type="checkbox"/> Employment Security Comm (991)</li> <li><input type="checkbox"/> Other (999)</li> </ul> |
| <p><b>Special/Complex /Other</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Environmental (600)</li> <li><input type="checkbox"/> Automobile Arb. (610)</li> <li><input type="checkbox"/> Medical (620)</li> <li><input type="checkbox"/> Other (699)</li> </ul>   | <ul style="list-style-type: none"> <li><input type="checkbox"/> Pharmaceutical (630)</li> <li><input type="checkbox"/> Unfiled Trade Practices (640)</li> <li><input type="checkbox"/> Out-of-State Depositions (650)</li> <li><input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660)</li> </ul>   |  |  |



Sexual Predator (S10)

Submitting Party Signature:



Date: 10-15-2010

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

**FOR MANDATED ADR COUNTIES ONLY**

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville, Hampton, Horry,  
Jasper, Lexington, Pickens (Family Court Only), Richland, Union 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 210<sup>th</sup> 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 CHARLESTON )  
 )  
 Cynthia D. Bales, as Personal )  
 Representative of the Estate )  
 of Frank R. Bales On behalf of the )  
 Estate, and the Decedent's beneficiaries, )

COURT OF COMMON PLEAS  
 NINTH JUDICIAL CIRCUIT  
 C/A NO.: 2010-CP-10-

PLAINTIFFS,

VS.

Abel Martinez Martinez and  
 South Carolina Department of  
 Transportation,

DEFENDANTS.

2010 OCT 15 PM 4:52  
 JULIE J. ARMSTRONG  
 CLERK OF COURT

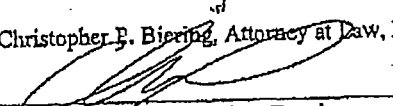
FILED

SUMMONS

TO THE DEFENDANT, ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to Answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint upon the undersigned attorney, at 116 East Railroad Avenue, Moncks Corner, South Carolina 29461, within (30) days after service herof, exclusive of the day of such service. If you fail to Answer the Complaint within that time, judgment to default will be rendered against you for the relief demanded in the Complaint.

Christopher P. Biering, Attorney at Law, P.C.

  
 By: Christopher P. Biering, Esquire  
 116 East Railroad Avenue  
 Moncks Corner, South Carolina 29461  
 843-761-4888  
 Facsimile: 843-899-9015  
 chris@bieringlawfirm.com

Moncks Corner, South Carolina  
 April 23, 2010

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
C/A NO.: 2010-CP-10-

Cynthia D. Bales, as Personal  
Representative of the Estate  
of Frank R. Bales On behalf of the  
Estate, and the Decedent's beneficiaries,

PLAINTIFFS,

VS.

Abel Martinez Martinez and  
South Carolina Department of  
Transportation,

DEFENDANTS.

20 OCT 15 PM 4:52  
JULIE J. ARMSTRONG  
CLERK OF COURT

FILED

**COMPLAINT  
(JURY TRIAL DEMANDED)  
TO THE DEFENDANT, ABOVE-NAMED:**

Plaintiffs, by and through their attorney, complaining of the Defendants, would respectfully show to this Court and allege on information and belief as follows:

**PARTIES AND JURISDICTION**

1. Plaintiff's decedent, Frank R. Bales, was a resident of the County of Dorchester, State of South Carolina at their time of death. The Plaintiff, Cynthia D. Bales, is the duly appointed personal representative of the Estate of her husband, Frank R. Bales. Plaintiff brings this action on behalf of the Estate and on behalf of herself--the decedent's husband, and Curtis Bales, the decedent's son, they being the statutory beneficiaries under the South Carolina Wrongful Death Act, South Carolina Code of Laws § 15-51-10, et. Seq., (1976 as amended), and the heirs to the Estate.

2. Upon information and belief, Defendant, Abel Martinez Martinez, is a resident of the County of Charleston, State of South Carolina.

3. Upon information and belief, Defendant, South Carolina Department of Transportation, is a political subdivision of the State of South Carolina, and is subject to suit pursuant to the South Carolina Tort Claims Act. The Plaintiff is informed and believes that the Defendant operates in every County, specifically in the County of Charleston.

4. The acts and omissions giving rise to this cause of action occurred in the County of Charleston, State of South Carolina, on October 15, 2008.

5. This Honorable Court has jurisdiction of the parties and of the subject matter hereinafter set forth.

6. On October 15, 2008, the Defendant Martinez was exceeding the speed limit, traveling at the intersection of Fain Street, and Aviation Avenue, in the County of Charleston, when he entered into the intersection through a red light causing the Plaintiff's decedent to collide into Defendant Martinez's vehicle.

7. Frank R. Bales died as a result of the collision.

8. That Defendant Martinez was not licensed to operate a motor vehicle, and upon information and belief, did not have knowledge requisite to understand and therefore, abide by the traffic laws and signals in place at the time and place.

9. That Defendant Martinez had been convicted on multiple occasions for operating a vehicle without a South Carolina Drivers' License.

10. That Defendant Martinez was charged as result of this collision with operating a motor vehicle without a South Carolina Drivers' License, and Disregarding a Traffic Signal.

11. That Defendant DOT, upon information and belief, had knowledge of the intersection / traffic signal issues presented at Fain and Aviation. Specifically, that they knew or should have known that drivers approaching Aviation from Fain St., could see the light controlling Aviation before the light controlling Fain St.

**FOR A FIRST CAUSE OF ACTION**  
**(RECKLESSNESS / NEGLIGENCE)**

12. That the Plaintiff repeats each and every allegation of paragraphs one (1) through eight (8) above as if set forth herein verbatim.

13. That the Defendant did not act reasonably regarding the operation of her vehicle and that injuries and losses were sustained by the Plaintiff, and that said damages were directly and proximately caused and occasioned by the negligent, reckless, willful and wanton conduct of the Defendant, in the following particulars to wit:

- a. In failing to keep a proper lookout;
- b. In failing to operate his motor vehicle at a safe speed;
- c. In failing to maintain proper control over Defendant's vehicle;
- d. In failing to seasonably and effectively utilize Defendant's vehicle brakes;
- e. In failing to take any evasive action, by any means, to avoid the lawful path vehicle on which the Plaintiff's decedent was operating;
- f. In failing to obey posted speed limit;

g. In then and their failing to obey the traffic laws of the State of South Carolina;

h. In then and there failing to exercise a degree of care and caution, which a reasonable and prudent person would have exercised under the same circumstances; and

i. Which negligence, gross negligence, carelessness, recklessness, willfulness, and wantonness of the Defendant, directly and proximately caused the injuries of the Plaintiff as is set forth below.

14. That as a direct and proximate result of the negligent, grossly negligent, careless, reckless, willful, and wanton acts and omission of the Defendant, the Plaintiff's decedent suffered great physical harm, injury and death to the Plaintiff's decedent's person which has and will in the future cause the beneficiaries to undergo much physical pain and suffering, has and will in the future cause beneficiaries to incur costs for medical treatment and services, and has and will in the future cause them to suffer trauma, anxiety, annoyance, hardship, loss of enjoyment of life, inconvenience, emotional distress, property damage, and loss of use of property, all to beneficiaries damage and detriment.

15. By reason of the acts and omissions of the Defendant as set forth above, the Plaintiff is informed and believes that the Plaintiff is entitled to an award of actual damages, together with punitive damages in an appropriate amount to be determined by the finder of fact, and for the cost of this action.

FOR A SECOND CAUSE OF ACTION  
(RECKLESSNESS / NEGLIGENT ENTRUSTMENT)

16. That the Plaintiff repeats each and every allegation of paragraphs one (1) through fifteen (15) above as if set forth herein verbatim.

17. The Defendant is charged with the maintenance, construction, design, signage,  
operation of traffic signals of intersection of Aviation and Fain at and near the location of  
the accident described herein. That the Defendant, knew or should have known of the  
condition which caused the accident described herein. That the Defendant has specific  
knowledge and notice of the hazard created by significant variations of elevation between  
roadway and shoulder. That the Defendant has specific knowledge that the act of placing  
a traffic control signal at the intersection in the direction at which it was placed could  
result in the operator of a vehicle on Fain St. to utilize the traffic control signal  
controlling Aviation.

18. That the Defendant did not act reasonably regarding the construction, design,  
safety, signage, operation and maintenance of the roadway, and that injuries and losses  
were sustained by the Plaintiff's decedent, and that said damages were directly and  
proximately caused and occasioned by the negligent, reckless, willful and wanton  
conduct of the Defendant, in the following particulars to wit:

- a. In failing to properly inspect the roadway, and if so properly  
inspected, in failing to ascertain the significance of the hazard;
- b. In placement of the traffic control device, selection of the traffic  
control device;
- c. In failing to warn of a known dangerous condition;

d. In failing to design roadway in a proper manner to avoid the dangerous condition that resulted in the injuries of the Plaintiffs, and if so designed properly, in failing to implement appropriate design;

e. In failing to train those charged with the inspection, maintenance, construction, and or repair of the roadway in a reasonable manner; and if so trained, in failing to supervised those charged with the inspection, maintenance, construction, and or repair of the roadway so that training would be utilized;

f. in failing to establish appropriate rules, regulations, and guidelines for the safe operation of this roadway, and if properly established, in failing to follow such rules, regulations, and guidelines;

g. in then and there failing to exercise a degree of care and caution, which a reasonable and prudent person would have exercised under the same circumstances; and

h. Which negligence, gross negligence, carelessness, recklessness, willfulness, and wantonness of the Defendant, directly and proximately caused the injuries of the Plaintiff as are set forth herein.

19. That as a direct and proximate result of the negligent, grossly negligent, careless, reckless, willful, and wanton acts an or omission of the Defendant, the Plaintiff's decedent suffered great physical harm, injury and death to the Plaintiff's decedent's person which has and will in the future cause the beneficiaries to undergo much physical pain and suffering, has and will in the future cause beneficiaries to incur costs for medical treatment and services, and has and will in the future cause them to suffer trauma, anxiety, annoyance, hardship, loss of enjoyment of life, inconvenience, emotional


distress, property damage, and loss of use of property, all to beneficiaries damage and detriment.

20. By reason of the acts and omissions of the Defendant as set forth above, the Plaintiff are informed and believe that the Plaintiff are entitled to individual awards of actual damages in an appropriate amount to be determined by the finder of fact, and for the cost of this action.

All to Plaintiff's damage, both actual and punitive, in an amount to be determined by the finder of fact.

WHEREFORE, the Plaintiff prays for a judgment against the Defendants in an amount of actual damages, and punitive damages in an appropriate amount to be determined by the finder of fact, and for such other and further relief as this Honorable Court might deem just and proper.

CHRISTOPHER P. BIERING, ATTORNEY AT LAW, P.C.

  
Christopher P. Biering, Esquire  
116 East Railroad Avenue  
Moncks Corner, South Carolina 29461  
Telephone No.: (843) 761-4888  
Facsimile No.: (843) 899-9015  
ATTORNEY FOR THE PLAINTIFF  
[chris@bieringlawfirm.com](mailto:chris@bieringlawfirm.com)

Moncks Corner, South Carolina  
October 15, 2010

STATE OF SOUTH CAROLINA )

COUNTY OF CHARLESTON )

Cynthia D. Bales, as Personal )  
Representative of the Estate )  
of Frank R. Bales On behalf of the )  
Estate, and the Decedent's beneficiaries, )

PLAINTIFFS, )

VS. )

Abel Martinez Martinez and )  
South Carolina Department of )  
Transportation, )

DEFENDANTS. )

COURT OF COMMON PLEAS )  
NINTH JUDICIAL CIRCUIT )  
C/A NO.: 2010-CP-10- )

2010 OCT 15 PM 4:52  
JULIE J. ARNSTROMS  
CLERK OF COURT

FILED

COMPLAINT

(JURY TRIAL DEMANDED)

TO THE DEFENDANT, ABOVE-NAMED:

Plaintiffs, by and through their attorney, complaining of the Defendants, would respectfully show to this Court and allege on information and belief as follows:

PARTIES AND JURISDICTION

1. Plaintiff's decedent, Frank R. Bales, was a resident of the County of Dorchester, State of South Carolina at their time of death. The Plaintiff, Cynthia D. Bales, is the duly appointed personal representative of the Estate of her husband, Frank R. Bales. Plaintiff brings this action on behalf of the Estate and on behalf of herself--the decedent's husband, and Curtis Bales, the decedent's son, they being the statutory beneficiaries under the South Carolina Wrongful Death Act, South Carolina Code of Laws § 15-51-10, et. Seq., (1976 as amended), and the heirs to the Estate.



2. Upon information and belief, Defendant, Abel Martinez Martinez, is a resident of the County of Charleston, State of South Carolina.

3. Upon information and belief, Defendant, South Carolina Department of Transportation, is a political subdivision of the State of South Carolina, and is subject to suit pursuant to the South Carolina Tort Claims Act. The Plaintiff is informed and believes that the Defendant operates in every County, specifically in the County of Charleston.

4. The acts and omissions giving rise to this cause of action occurred in the County of Charleston, State of South Carolina, on October 15, 2008.

5. This Honorable Court has jurisdiction of the parties and of the subject matter hereinafter set forth.

6. On October 15, 2008, the Defendant Martinez was exceeding the speed limit, traveling at the intersection of Fain Street, and Aviation Avenue, in the County of Charleston, when he entered into the intersection through a red light causing the Plaintiff's decedent to collide into Defendant Martinez' vehicle.

7. Frank R. Bales died as a result of the collision.

8. That Defendant Martinez was not licensed to operate a motor vehicle, and upon information and belief, did not have knowledge requisite to understand and therefore, abide by the traffic laws and signals in place at the time and place.

9. That Defendant Martinez had been convicted on multiple occasions for operating a vehicle without a South Carolina Drivers' License.

10. That Defendant Martinez was charged as result of this collision with operating a motor vehicle without a South Carolina Drivers' License, and Disregarding a Traffic Signal.

11. That Defendant DOT, upon information and belief, had knowledge of the intersection / traffic signal issues presented at Fain and Aviation. Specifically, that they knew or should have known that drivers approaching Aviation from Fain St., could see the light controlling Aviation before the light controlling Fain St.

**FOR A FIRST CAUSE OF ACTION**  
**(RECKLESSNESS / NEGLIGENCE)**

12. That the Plaintiff repeats each and every allegation of paragraphs one (1) through eight (8) above as if set forth herein verbatim.

13. That the Defendant did not act reasonably regarding the operation of her vehicle and that injuries and losses were sustained by the Plaintiff, and that said damages were directly and proximately caused and occasioned by the negligent, reckless, willful and wanton conduct of the Defendant, in the following particulars to wit:

- a. In failing to keep a proper lookout;
- b. In failing to operate his motor vehicle at a safe speed;
- c. In failing to maintain proper control over Defendant's vehicle;
- d. In failing to seasonably and effectively utilize Defendant's vehicle brakes;
- e. In failing to take any evasive action, by any means, to avoid the lawful path vehicle on which the Plaintiff's decedent was operating;
- f. In failing to obey posted speed limit;

g. In then and their failing to obey the traffic laws of the State of South Carolina;

h. In then and there failing to exercise a degree of care and caution, which a reasonable and prudent person would have exercised under the same circumstances; and

i. Which negligence, gross negligence, carelessness, recklessness, willfulness, and wantonness of the Defendant, directly and proximately caused the injuries of the Plaintiff as is set forth below.

14. That as a direct and proximate result of the negligent, grossly negligent, careless, reckless, willful, and wanton acts and omission of the Defendant, the Plaintiff's decedent suffered great physical harm, injury and death to the Plaintiff's decedent's person which has and will in the future cause the beneficiaries to undergo much physical pain and suffering, has and will in the future cause beneficiaries to incur costs for medical treatment and services, and has and will in the future cause them to suffer trauma, anxiety, annoyance, hardship, loss of enjoyment of life, inconvenience, emotional distress, property damage, and loss of use of property, all to beneficiaries damage and detriment.

15. By reason of the acts and omissions of the Defendant as set forth above, the Plaintiff is informed and believes that the Plaintiff is entitled to an award of actual damages, together with punitive damages in an appropriate amount to be determined by the finder of fact, and for the cost of this action.

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(RECKLESSNESS / NEGLIGENT ENTRUSTMENT)

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18. That the Defendant did not act reasonably regarding the construction, design, safety, signage, operation and maintenance of the roadway, and that injuries and losses were sustained by the Plaintiff's decedent, and that said damages were directly and proximately caused and occasioned by the negligent, reckless, willful and wanton conduct of the Defendant, in the following particulars to-wit:

- a. In failing to properly inspect the roadway, and if so properly inspected, in failing to ascertain the significance of the hazard;
- b. In placement of the traffic control device, selection of the traffic control device;
- c. In failing to warn of a known dangerous condition;

d. In failing to design roadway in a proper manner to avoid the dangerous condition that resulted in the injuries of the Plaintiffs, and if so designed properly, in failing to implement appropriate design;

e. In failing to train those charged with the inspection, maintenance, construction, and or repair of the roadway in a reasonable manner; and if so trained, in

failing to supervised those charged with the inspection, maintenance, construction, and or repair of the roadway so that training would be utilized;

f. in failing to establish appropriate rules, regulations, and guidelines for the safe operation of this roadway, and if properly established, in failing to follow such rules, regulations, and guidelines;

g. in then and there failing to exercise a degree of care and caution, which a reasonable and prudent person would have exercised under the same circumstances; and

h. Which negligence, gross negligence, carelessness, recklessness, willfulness, and wantonness of the Defendant, directly and proximately caused the injuries of the Plaintiff as are set forth herein.

19. That as a direct and proximate result of the negligent, grossly negligent, careless, reckless, willful, and wanton acts an or omission of the Defendant, the Plaintiff's decedent suffered great physical harm, injury and death to the Plaintiff's decedent's person which has and will in the future cause the beneficiaries to undergo much physical pain and suffering, has and will in the future cause beneficiaries to incur costs for medical treatment and services, and has and will in the future cause them to suffer trauma, anxiety, annoyance, hardship, loss of enjoyment of life, inconvenience, emotional

distress, property damage, and loss of use of property, all to beneficiaries damage and detriment.

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WHEREFORE, the Plaintiff prays for a judgment against the Defendants in an amount of actual damages, and punitive damages in an appropriate amount to be determined by the finder of fact, and for such other and further relief as this Honorable Court might deem just and proper.

CHRISTOPHER P. BIERING, ATTORNEY AT LAW, P.C.



Christopher P. Biering, Esquire  
116 East Railroad Avenue  
Moncks Corner, South Carolina 29461  
Telephone No.: (843) 761-4888  
Facsimile No.: (843) 899-9015  
ATTORNEY FOR THE PLAINTIFF  
[chris@bieringlawfirm.com](mailto:chris@bieringlawfirm.com)

Moncks Corner, South Carolina  
October 15, 2010

**ANASTOPOULO LAW FIRM**

**ATTORNEYS AT LAW**

Toll Free: (800) 313-2546

Faxsimile: (800) 313-2546 or (843) 853-2291

Mailing Address: 2830 Ashley Phosphate Rd., Suite B  
North Charleston, SC 29418

Akım A. Anastopoulos (SC)

David P. Bolek, (SC, OH)

Andrew R. Hart (SC)

John P. Hayes (MI, NC, OK, PA, SC)

Florence Office: 150 W. Evans Street, Florence, SC

Reply to the North Charleston Office

May 11, 2010

Phillip Florence  
Turner Padgett Graham & Laney  
Post Office Box 22129  
Charleston, SC 29413

RE: *Estate of Frank Bales v. Abel Martinez-Martinez et al.*  
Case No.: 2010-CP-10-8631

Dear Phillip:

As you know, my firm is now handling this matter for the Estate of Frank Bales. Per your request, I have enclosed a copy of the substitution of counsel Order to this effect.

To date, there has been no settlement agreement in this case. Plaintiff's prior counsel made an offer of settlement within policy limits by letter dated September 9, 2010. Your clients failed to respond to this correspondence forcing Plaintiff to withdraw the offer and file suit.

Please be advised that Plaintiff will hereafter not settle. Plaintiff will proceed to a verdict and will seek to levy and execute on any excess judgment obtained pursuant to Tyger River Doctrine against your client for failing to accept our previous offer.

At this time, the Post & Courier is in the process of perfecting service on Mr. Martinez and the affidavit of publication will be forwarded to your office once complete. I have also enclosed a courtesy copy of the Summons and Complaint for your review.

If you should have any questions, please do not hesitate to contact us.

Sincerely,

  
Akim A. Anastopoulos

ADDITIONAL OFFICES  
Florence, South Carolina • Greenville, South Carolina  
Asheville, North Carolina



**ANASTOPOULOU LAW FIRM LLC**

**ATTORNEYS AT LAW**

Toll Free: (800) 313-2546

Facsimile: (800) 313-2546 or (843) 853-2291

Mailing Address: 2850 Ashley Phosphate Rd., Suite B  
North Charleston, SC 29418

Akim A. Anastopoulos (SC)

John I. Henderson, (SC)

Andrew R. Hart (SC)

John P. Hayes (MI, NC, OK, PA, SC)

Florence Office: 150 W. Evans Street, Florence, SC

Reply to the North Charleston Office

September 21, 2011

Charleston County Court of Common Pleas  
ATTN: Clerk of Court  
100 Broad Street, #106  
Charleston, SC 29401

RE. *Cynthia Bales as Personal Representative of the Estate of Frank Bales v. Abel Martinez*  
*and South Carolina Department of Transportation*  
Case No.: 2010-CP-10-8631

Dear Clerk of Court:

Enclosed please find the original and three (3) copies of a Motion Cover Sheet, an Order for Entry of Default and Referral for Hearing on Damages and Plaintiff's Motion for Entry of Default and Request for Hearing on Damages in the above reference case. Also enclosed is the \$25.00 filing fee. We would appreciate it if you would file the original and return the clocked in copies to us in the enclosed envelope.

Thank you for your assistance in this matter.

Sincerely,



Akim A. Anastopoulos

AAA/klp  
Enclosures

Cc: Timonthy Domin  
Lisa Reynolds

ADDITIONAL OFFICES  
Florence, South Carolina \* Greenville, South Carolina  
Asheville, North Carolina



STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )  
CYNTHIA D. BALES as personal )  
representative of the ESTATE OF FRANK )  
R. BALES, )  
Plaintiff, )  
vs. )  
ABEL MARTINEZ and SOUTH )  
CAROLINA DEPARTMENT OF )  
TRANSPORTATION )  
Defendants. )

IN THE COURT OF COMMON PLEAS  
THE NINTH JUDICIAL CIRCUIT  
CASE NO.: 2010-CP-10-8631

AFFIDAVIT OF KATHERINE W.  
SULLIVAN

Personally appeared before me, the undersigned, Katherine W. Sullivan, who being duly sworn does state as follows:

1. I am over the age of 18 years and competent to give this affidavit.
2. I have personal knowledge of the facts contained in this affidavit.
3. I am an attorney who is licensed to practice law in the State of South Carolina.
4. I have been employed as a full-time attorney at Carlock Copeland & Stair, LLP since September 2009.
5. Our firm has been retained as defense counsel for Mr. Martinez in the above-captioned case with regard to certain post-trial matters.
6. I am an Associate who is assisting Partner, R. Michael Ethridge, with the above-captioned case.
7. Following the hearing on Mr. Martinez's Motion to Reconsider (which was held on April 3, 2012), we monitored the receipt of an order relating to this motion.

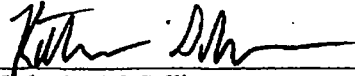


8. The court's Order Denying Mr. Martinez's Motion to Reconsider was filed and posted to the court's website on Tuesday, April 17, 2012.

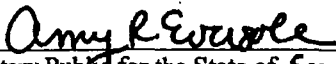
9. We were notified by co-defense counsel, Joseph Weston's, office that he received the court's Order Denying the Motion to Reconsider on Wednesday, April 18, 2012.

10. We are filing the attached Motion for Relief from Default Judgment on April 26, 2012, within 8 days after receiving notice of the court's Order Denying the Motion to Reconsider on Wednesday, April 18, 2012.

FURTHER AFFIANT SAYETH NOT.

  
Katherine W. Sullivan

Sworn to and subscribed before  
me this 26<sup>th</sup> day of April, 2012

  
Notary Public for the State of South Carolina  
My Commission Expires: March 16, 2017

(AFFIX NOTARY SEAL)

Embossed Hereon Is My  
State Of South Carolina Notary Public Seal  
My Commission Expires March 16, 2017  
AMY R. EVERSOLE

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )  
CYNTHIA D. BALES as personal )  
representative of the ESTATE OF FRANK )  
R. BALES, )  
  
Plaintiff, )  
  
vs. )  
  
ABEL MARTINEZ and SOUTH )  
CAROLINA DEPARTMENT OF )  
TRANSPORTATION )  
  
Defendants. )

IN THE COURT OF COMMON PLEAS  
THE NINTH JUDICIAL CIRCUIT  
CASE NO.: 2010-CP-10-8631

**AFFIDAVIT OF TERESA MILLER**


Personally appeared before me, the undersigned, Teresa Miller, who being duly sworn does state as follows:

1. I am over the age of 18 years and competent to give this affidavit.
2. I have personal knowledge of the facts contained in this affidavit.
3. I was employed by Allstate in Charleston, South Carolina from 1996 to 2009.
4. In 2008, I was a staff claims adjuster at Allstate.
5. My employment with Allstate included, among other things, taking statements from insureds regarding automobile accidents.
6. On October 31, 2008, I took the recorded statement of Abel Martinez ("Mr. Martinez") regarding an accident that occurred on October 15, 2008 which is the subject of the above-referenced litigation. I hereby certify that a true and correct copy of the statement is attached hereto as Exhibit A.
7. I personally recall that Mr. Martinez testified during his recorded statement that the traffic light was green when he went through the intersection at the time of the accident.

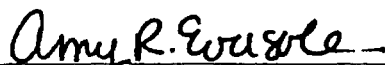


8. The statement of Mr. Martinez was taken in the course of regularly conducted business activity related to the investigation of an accident that occurred on October 15, 2008.

FURTHER AFFIANT SAYETH NOT.

  
Teresa Miller

Sworn to and subscribed before  
me this 25<sup>th</sup> day of April, 2012

  
Notary Public for the State of South Carolina  
My Commission Expires: March 16, 2017

(AFFIX NOTARY SEAL)

Embossed Hereon is My  
State Of South Carolina Notary Public Seal  
My Commission Expires March 16, 2017  
AMY R EVERSOLE

RECORDED STATEMENT OF ABEL MARTINEZ

0121580260

Tape1160133-1

ALL RIGHT. I'VE GOT THE TAPE RECORDER ON. MY NAME IS  
THERESA MILLER FROM CHARLESTON, SOUTH CAROLINA. IT'S 10:30  
ON FRIDAY, OCTOBER 31. AND I'M INTERVIEWING ABEL MARTINEZ  
ABOUT AN ACCIDENT WHICH WAS ON OCTOBER 16.

Q. MR. MARTINEZ, DO YOU UNDERSTAND I'M RECORDING THIS?

A. YES.

Q. IS IT OKAY THAT I LET OTHERS LISTENING TO YOUR STATEMENT  
THAT NEED TO?

A. YES, THAT'S FINE.

Q. ALL RIGHT. CAN YOU GIVE ME THE YEAR, MAKE AND MODEL OF  
THE VEHICLE YOU WERE DRIVING IN THE ACCIDENT?

A. IT'S A TOYOTA TACOMA AND THE YEAR IS 2000.

Q. DID YOU HAVE ANY PASSENGERS WITH YOU AND WHAT TIME DID  
THE ACCIDENT HAPPEN?

A. IT WAS AROUND 7:00.

Q. ANY PASSENGERS?

A. NO, NO PASSENGERS. I WAS BY MYSELF AND THE ACCIDENT  
OCCURRED BETWEEN 7:00 AND 10:00.

Q. IN THE MORNING OR AT NIGHT?

A. IN THE MORNING--IN THE MORNING, I WAS GOING TO MY WORK.

Q. OKAY. WERE YOU RUNNING LATE?

A. NO, NO. IT WAS AROUND 7:00 AND I'M GOING, UM, TO WORK  
AND--

Q. OKAY. ALL RIGHT. WHAT WAS THE WEATHER LIKE; RAINY OR



CLEAR?

A. IT WAS A LITTLE BIT CLOUDY.

Q. OKAY. WAS THE SUN SHINING OR DID YOU--WAS IT DARK AND  
YOU NEEDED YOUR HEADLIGHTS ON?

A. THE SUN WAS NOT OUT YET.

Q. DID YOU HAVE YOUR HEADLIGHTS ON?

A. YES.

---

Q. OKAY. DID YOU SEE THE MOTORCYCLE BEFORE THE ACCIDENT  
HAPPENED?

A. NO, I DID NOT SEE IT.

Q. OKAY. WHAT'S THE NAME OF THE ROAD YOU WERE ON?

A. NO. I DON'T KNOW THE NAME OF THE STREET, BUT IT'S THE  
ONE THAT GOES STRAIGHT FROM FREEMAN ROAD TO THE EXIT.

Q. OKAY. DID YOUR--DO YOU KNOW WHICH DIRECTION THAT YOU  
WERE TRAVELING; NORTH, SOUTH, EAST OR WEST?

INTERPRETER: WAIT A SECOND.

A. I WAS GOING TOWARDS 26<sup>TH</sup> STREET.

Q. HOW MANY LANES GOING THAT WAY?

A. ON MY SIDE, ONE AND THE OTHER ONE JUST CROSSES DIRECTLY.

Q. OKAY. WHAT'S THE SPEED LIMIT ON THE ROAD YOU WERE ON?

A. UH, YES. THE--THE NUMBER THAT I WAS GOING OR THE NUMBER  
OF THE STREET?

Q. I WANT BOTH. WHAT IS THE POSTED SPEED LIMIT ON THE ROAD  
AND WHAT SPEED WERE YOU GOING?

A. OKAY. THE SPEED LIMIT ON THE STREET IS 30 AND I WAS

A. DO YOU MEAN SOMETHING THAT WOULD HAVE COVERED THE PERSON FROM THE MOTORCYCLE? NO, THERE'S NO--IT'S PERFECT. IT WAS FINE. EVERYTHING WAS FINE.

Q. OKAY. UM, DID YOU CALL THE POLICE AT THE SCENE?

A. YES, THANK YOU. THE POLICE CAME, BUT THEY ONLY SPOKE ENGLISH, SO THEY REALLY COULDN'T UNDERSTAND WHAT I WAS SAYING. AND AFTER A LITTLE WHILE, THERE WAS ANOTHER

---

POLICEMAN THAT CAME AND HE COULD UNDERSTAND A LITTLE BIT OF SPANISH, SO HE ASKED ME WHAT HAPPENED AND I TOLD HIM THAT MY LIGHT WAS GREEN WHEN THAT PERSON ON THE MOTORCYCLE CAME AND HE CRASHED WITH ME.

Q. OKAY. YEAH, YOU WERE, UH, TAKEN TO JAIL FOR THE ACCIDENT; IS THAT CORRECT?

A. THEY TOOK ME BECAUSE I DID NOT HAVE A LICENSE AND BECAUSE THERE WAS AMERICAN PERSON THAT PULLED UP RIGHT AT THE ACCIDENT SCENE AND ABOUT TWO MINUTES AFTER THE ACCIDENT. AND HE TOLD THEM THAT I WAS CROSSING THE LIGHT AND IT WAS RED, BUT THAT IS NOT TRUE, BECAUSE WHEN HE CAME, THE ACCIDENT HAD ALREADY HAPPENED, BUT THAT'S MINUTES AGO.

Q. OKAY. SO, UM, WERE THERE ANY OTHER TICKETS OTHER THAN NOT HAVING A LICENSE?

A. NO. THAT WAS ALL AND THEN THEY ARRESTED ME BECAUSE I DIDN'T HAVE A LICENSE AND SUPPOSEDLY RAN A RED LIGHT.

Q. OKAY. NOW, HOW LONG HAVE YOU BEEN IN THE UNITED STATES?

A. ABOUT FOUR TO FIVE YEARS.

Q. AND DO YOU HAVE A LICENSE IN MEXICO?

A. NO. THE LICENSE THAT I HAVE IS THE ONLY ONE THAT I'VE ALWAYS HAD.

Q. WHERE IS IT FROM?

A. IT'S FROM SAN JUAN.

Q. JUAN. OKAY. , SO WHERE DID YOU--YOUR TRUCK STOP AFTER

THE IMPACT? WHAT--CAN YOU DESCRIBE IN THE RELATIONSHIP OF THE INTERSECTION WHERE YOU--WHERE YOUR VEHICLE CAME TO REST?

A. IT WAS IN-BETWEEN THE THREE LANES. THE ONE THAT GOES TOWARDS THE RIVER SCOOP AND THE ONE THAT WAS GOING TOWARDS THE AIRPORT, IT WAS RIGHT IN THE MIDDLE OF THE TWO LANES.

Q. OKAY. AND DID YOU MOVE YOUR TRUCK BEFORE THE POLICE CAME?

A. NO. JUST WHERE IT ENDED UP AFTER THE ACCIDENT, THAT'S WHERE I LEFT IT. I DID NOT MOVE IT AT ALL.

Q. OKAY. UM, HOW WOULD YOU DESCRIBE THE TRAFFIC THAT MORNING IN THAT INTERSECTION? WERE THERE ANY OTHER CARS AROUND?

A. NO. THERE WAS NO OTHER CARS. THERE WERE NO CARS BEHIND ME. THERE WERE NO OTHER CARS IN THE OTHER STREET THAT I WAS--THAT I WAS CROSSING.

Q. OKAY. WHERE--WHERE DID THE DAMAGE OCCUR ON YOUR

VEHICLE?

A. UH, ON THE--ON THE DRIVER'S SIDE AND IT GOT PART OF THE DOOR AND THE FRONT PART OF THE TRUNK.

Q. OKAY. DID YOU HAVE ANY INJURIES?

A. WELL, I STILL HAVE A HEADACHE, BUT I HAVEN'T GONE TO THE DOCTOR.

~~Q. OKAY. ALL RIGHT. NOW, DID YOU--I KNOW YOU SAID YOU~~

WERE GOING STRAIGHT, BUT DID YOU BY ANY CHANCE HAVE YOUR TURN SIGNAL ON?

A. YES.

Q. THE PERSON--I MEAN WHEN YOU WERE TURNING AT THE INTERSECTION IS WHAT I'M ASKING ABOUT.

A. WHEN I WAS CROSSING THE STOPLIGHT, I DIDN'T.

Q. OKAY. GOTCHA. IS THERE ANYTHING ELSE THAT YOU WANT TO TELL ME ABOUT THE ACCIDENT BEFORE WE TURN OFF THE TAPE RECORDER?

A. NO.

Q. OKAY. I'M GOING TO TURN OFF THE TAPE RECORDER THEN, OKAY?

END OF RECORDED STATEMENT

LAW OFFICES  
**CARLOCK, COPELAND & STAIR, LLP**

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

KATHERINE W. SULLIVAN

40 CALHOUN STREET, SUITE 400  
CHARLESTON, SC 29401-3531

ATLANTA OFFICE

191 Peachtree St, N E  
Suite 3600  
Atlanta, Georgia 30303-1235  
(404) 522-8220

DIRECT DIAL NUMBER  
843-266-8233

TELEPHONE (843) 727-0307

E-MAIL ADDRESS  
ksullivan@carlockcopeland.com

www.carlockcopeland.com

REPLY TO SC

FACSIMILE  
843-727-2995

April 26, 2012

**VIA HAND DELIVERY**

The Honorable Julie J. Armstrong, Clerk  
Circuit Court of Charleston County  
100 Broad Street, Suite 106  
Charleston, SC 29401

Re: Balco v. Martinez  
CCS File No.: 1900-45369  
C/A No.: 2010-CP-10-8631

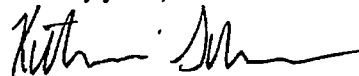
Dear Madam Clerk:

Enclosed for filing, please find an original and one copy of Defendant Abel Martinez's Motion for Relief from Judgment, Memorandum of Law in Support of Relief from Judgment, and Motion to Stay Enforcement of Default Judgment, along with the Motion Slips and required fees, regarding the above-referenced matter. Please file the original Notice and return a "clocked" copy of the same to my courier.

Defendant Martinez respectfully requests an expedited hearing on the Motion for Relief from Judgment and the Motion to Stay Enforcement of Default Judgment.

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

Sincerely yours,



KATHERINE W. SULLIVAN

KWS/kjw  
Enclosures

cc: All Counsel of record.

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Kristi L. Harrington, Circuit Court Judge

Case No. 2010-CP-10-8631

Abel Martinez Martinez,

Appellant,

v.


Cynthia D. Bales, as Personal Representative  
of the Estate of Frank R. Bales

Respondent

NOTICE OF APPEAL

Abel Martinez Martinez appeals the Final Judgment of the Honorable Kristi L. Harrington dated March 2, 2012.

This 14 day of May, 2012.

  
CARLOCK, COPELAND & STAIR, LLP  
R. Michael Ethridge, Esq.  
Katherine W. Sullivan, Esq.  
40 Calhoun Street, Suite 400  
Charleston, SC 29401-3531  
(843) 727-0307

Other Counsel of Record:  
Akim Anastopoulos, Esq.  
2850 Ashley Phosphate Rd., Suite B  
Charleston, SC 29418  
Attorney for Respondent

Joseph Weston, Esq.  
Weston Law Firm, P.A.  
P.O. Box 1992  
Mt. Pleasant, SC 29465-1992



64222

LAW OFFICES

**CARLOCK, COPELAND & STAIR, LLP**

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

KATHERINE W. SULLIVAN

40 CALHOUN STREET, SUITE 400  
CHARLESTON, SC 29401-3531

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Suite 3600  
Atlanta, Georgia 30303-1235  
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TELEPHONE (843) 727-0307

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ksullivan@carlockcopeland.com

www.carlockcopeland.com

FACSIMILE  
843-727-2995

REPLY TO SC

May 14, 2012

RECEIVED  
MAY 16 2012  
SC COURT OF APPEALS

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29201

Re: Cynthia D. Bales, as Personal Representative of the Estate of Frank R. Bales,  
Respondent, v. Abel Martinez Martinez, Appellant  
Case No.: 2010-CP-10-8631  
CCS File No.: 1900-45369

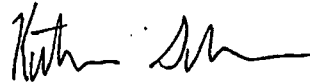
Dear Ms. Kitchings :

Enclosed for filing is a notice of appeal in the above-referenced matter. Also enclosed are the following:

- 1) Proof of service of the notice of appeal on the respondent.
- 2) A copy of the judgment which is to be challenged on appeal.
- 3) A filing fee of \$100.

Should you have any questions or concerns, please do not hesitate to call me. With kind regards, I am

Sincerely yours,



KATHERINE W. SULLIVAN

KWS/arp

cc: Akim Anastopoulo, Esq.  
Joseph Weston, Esq.  
JJ Anderson, Esq.  
Lisa Reynolds, Esq.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )  
 )  
CYNTHIA D. BALES, as Personal )  
Representative of the Estate of )  
FRANK R. BALES, )

Plaintiff, )

v. )

ABEL MARTINEZ MARTINEZ )  
and the SOUTH CAROLINA )  
DEPARTMENT OF )  
TRANSPORTATION, )

Defendants. )

IN THE COURT OF COMMON PLEAS  
FOR THE 9TH JUDICIAL CIRCUIT  
CASE NO.: 2010-CP-10-8631

FINAL JUDGMENT

FILED  
2012 MAR -2 PM 2:30  
JULIE C. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

THIS MATTER is before the Court on Plaintiff's Motion for a determination of unliquidated damages following Defendant Martinez-Martinez's default. A hearing was conducted before the South Carolina Court of Common Pleas for the Ninth Judicial Circuit on January 11, 2012. Attorneys for both parties were present at the call of the case as was the Plaintiff and Plaintiff's witnesses. Also present was counsel for an alleged applicable uninsured motorist carrier(s). The Defendant did not make an appearance. Following Defendant's default, Plaintiff requested this hearing pursuant to Rule 55 of the South Carolina Rules of Civil Procedure for a determination of Plaintiff's unliquidated damages. After hearing testimony and receiving evidence on the record, and for the reasons more fully articulated below, I determine and enter judgment for the Plaintiff in the amount of \$1,900,000.00 against Defendant Abel Martinez-Martinez.

#### FACTUAL/PROCEDURAL BACKGROUND

Plaintiff's husband, Frank R. Bales, was killed as a result of an auto/motorcycle collision that occurred on October 15, 2008. According to Plaintiff's Complaint, Defendant Martinez-Martinez disregarded a traffic signal, causing Defendant's vehicle to strike and fatally injure Mr. Bales. Following this accident, attorneys for the Plaintiff initiated this action which was served upon Defendant Abel Martinez-Martinez on May 16, 2011.

Defendant Martinez-Martinez failed to file any responsive pleadings with this Court or otherwise defend in this action. Plaintiff moved for an entry of default, which was signed October 4, 2011, and asked this Court to schedule a hearing to determine and enter judgment upon the proper amount of damages. Plaintiff sent notice of the hearing to Defendant's last known address and filed proof of the same with the Clerk.

Noted  
3/1/12

## LAW/ANALYSIS

In a wrongful death action, the decedent's beneficiaries are entitled to recover all damages, present and prospective, which are naturally the proximate consequence of the wrongful act, including: pecuniary loss, mental shock and suffering, wounded feelings, grief and sorrow, loss of companionship and deprivation of the use and comfort of the deceased's society, including the loss of his experience, knowledge, and judgment in managing the affairs of himself and of his beneficiaries. Smith v. Wells, 258 S.C. 316, 188 S.E.2d 470 (1972). Decedent's life expectancy for purposes of calculating future lost earnings and damages must be determined pursuant to S.C. Code Ann. § 19-1-150. In situations where the defendant's actions show willful, wanton, intentional or malicious intent, Plaintiff may also seek to recover punitive damages, provided the plaintiff is able to prove such damages by clear and convincing evidence. S.C. Code Ann. § 15-33-135.

Plaintiffs' decedent suffered fatal injuries as a result of Defendant's negligence. Plaintiff presented testimony from Clyde L. Hiers, a certified public accountant, certified financial planner, and certified forensic financial analyst. Mr. Hiers was qualified as an expert in the field of economic loss calculation without objection.

Mr. Hiers testified that Frank Bales, the decedent, through his surviving beneficiaries, sustained a present value economic loss of \$1,502,166.00. Mr. Hiers testified that this calculation was based upon the present adjusted value of Mr. Bales' lost pre-trial income; lost pre-trial fringe benefits; lost post-trial income; lost post-trial fringe benefits; lost anticipated household services (based upon statutory life expectancy); and estimated life value (based upon statutory life expectancy). Mr. Hiers also testified that Mr. Bales' historical medical costs and personal income abated were subtracted from the total economic loss.

Mr. Hiers further testified that his estimate was on the conservative side. He stated that income and benefits were calculated at a retirement age of 65 and were not adjusted to take into account possible future promotions or increases in pay. The Court finds Mr. Hiers' calculations to be reasonable. The Court accepts these findings and is satisfied that Mr. Hiers reached these conclusions to a reasonable degree of professional certainty, using methods and calculations generally recognized in his field.

Mr. Hiers' economic loss calculation did not include any amounts for mental shock and suffering, wounded feelings, grief and sorrow, loss of companionship, or deprivation of the use and comfort of the deceased's society, including the loss of his experience, knowledge, and judgment in managing the affairs of himself and of his beneficiaries.

The Court also heard testimony from Cynthia Bales, decedent's wife and the representative Plaintiff in this action. Mrs. Bales testified that her husband's death had a severe and negative impact on her and their minor child. Mrs. Bales testified that she was having trouble living life without her husband whom she referred to as her "soul mate." She testified that both she and her minor child were required to undergo grief and other counseling to deal with the consequences of Decedent's death. Based on this testimony, it is clear to the Court that the Decedent's beneficiaries have suffered a great deal of mental shock and suffering, wounded feelings, grief and sorrow, loss of companionship and deprivation of the use and comfort of the deceased's society.

Finally, because the Defendant is in default, the Court must deem all allegations in Plaintiff's Complaint as admitted. Plaintiff has alleged that Defendant's acts were willful, wanton, and/or reckless. Plaintiff has alleged that Defendant Martinez was driving without a

2/6/11  
3/1/12

valid license and that he dis-regarded a traffic signal at a high rate of speed. Accordingly, Plaintiff argues she is entitled to punitive damages.

The Court has heard testimony from Decedent's wife and her economic loss expert and has received on the record evidence and testimony of funeral bills, lost wages, and other damages. Based on this record, and consistent with the statutory and common law of South Carolina, **THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:**

That the Defendant, Abel Martinez-Martinez, failed to submit a responsive pleading or otherwise defend this action within thirty days of service upon him of the Summons and Complaint, and is in Default.

That The Plaintiff, and decedent's statutory beneficiaries suffered and were otherwise damaged as a result of the actions of the Defendant.

That Defendant's acts and omissions show willful misconduct, malice, wantonness and an entire want of care, raising a presumption of the Defendants' conscious indifference to the consequences of such acts and omissions.

That because of the Defendant's acts and omissions and the proximate harm resulting to Plaintiff and decedent's beneficiaries, Plaintiff and decedent's beneficiaries are entitled to punitive damages in order to punish and penalize the Defendant and to deter the Defendant and others from similar behavior.

**IT IS THEREFORE ORDERED** that Default be entered against Defendant and that he be held fully liable for the Plaintiffs' damages.

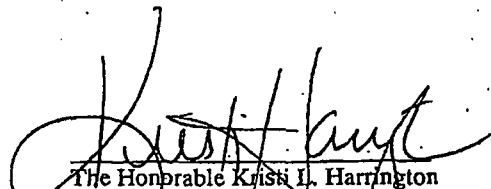
**IT IS FURTHER ORDERED** that Defendant pay Plaintiffs \$1,700,000.00 in actual damages for their injuries.

**IT IS FURTHER ORDERED** that Defendant pay Plaintiffs \$200,000.00 in punitive damages.

**IT IS HEREBY ORDERED, ADJUGED, AND DECREED THAT DEFENDANT ABEL MARTINEZ-MARTINEZ IS AND BE FULLY LIABLE FOR PLAINTIFF'S DAMAGES AND SHALL PAY UNTO DECEDENT'S BENEFICIARIES THE SUM OF \$1,900,000.00.**

IT IS SO ORDERED.

This 1<sup>st</sup> day of March, 2012

  
The Honorable Kristi L. Harrington  
Presiding Judge Court of Common Pleas  
Ninth Judicial Circuit

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2010 CP-10-8631

Cynthia D. Bales, as Personal Representative of the Estate of  
 Frank R. Bales

Abel Martinez Martinez and the South  
 Carolina Department of Transportation

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	OR
	<input type="checkbox"/> 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.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41, 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

FILED  
 2012 MAR -2 PM 2:30  
 JULIE J. ARMSTRONG  
 CLERK OF COURT

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

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

ORDER INFORMATION

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

INFORMATION FOR THE PUBLIC 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)
Cynthia D. Bales, as Personal Representative of the Estate of Frank R. Bales	Abel Martinez-Martinez	\$1,900,000.00
		\$
		\$
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.

Kristi Hays  
Circuit Court Judge

2157  
Judge Code

3/1/12  
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:

\_\_\_\_\_  
\_\_\_\_\_  
ATTORNEY(S) FOR THE PLAINTIFF(S)

\_\_\_\_\_  
\_\_\_\_\_  
ATTORNEY(S) FOR THE DEFENDANT(S)

\_\_\_\_\_  
CLERK OF COURT

**Court Reporter:**

State of South Carolina ) In the Court of Common Pleas

County of Charleston ) Ninth Judicial Circuit

Cynthia D. Bales, ) Transcript of Record

Plaintiff, ) 2010-CP-10-08631

V. )

Abel Martinez, )

Defendant. )

January 11, 2012

Charleston, South Carolina

B E F O R E:

The Honorable Kristi L. Harrington, Judge

A P P E A R A N C E S:

Akim A. Anastopoulo, Esquire

Eric Poulin, Esquire

Attorneys for the Plaintiff

Joseph R. Weston, Esquire

Attorney for the Defendant

SHARON L. VIZER-HANKS

CIRCUIT COURT REPORTER

I N D E X

Wednesday, January 11, 2012

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2 THE COURT: All right, Counsel. If you'll state  
3 your name for the record and the party you represent.

4 MR. POULIN: Good afternoon, Your Honor. Eric  
5 Poulin and Akim Anastopoulos for the plaintiff, Cindy  
6 Bales.

7 THE COURT: And for the benefit of our court  
8 reporter, could you spell your last name.

9 MR. POULIN: P-o-u-l-i-n.

10 THE COURT: And Mr. Anastopoulos.

11 MR. ANASTOPOULO: A-n-a-s-t-o-p-o-u-l-o. First  
12 name A-k-i-m.

13 THE COURT: All right. And we're here on your  
14 motion for a damages hearing; is that correct?

15 MR. POULIN: That's correct, Your Honor.

16 THE COURT: And that's the only matter before the  
17 Court, is that correct?

18 MR. WESTON: Your Honor, if I have may? Joe Weston  
19 on behalf of the defendant, Mr. Martinez. Your Honor, I  
20 have, as of this morning, filed a notice of appearance in  
21 this matter for Mr. Martinez, and also filed a notice of  
22 motion, motion to vacate default, and I have a copy of  
23 that for Your Honor, if I may approach.

24 THE COURT: But that's not on my docket here today,  
25 Mr. Weston.

1 MR. WESTON: It's not, Your Honor, because I was  
2 not aware until this morning that this motion had been  
3 scheduled for the default judgment hearing.

4 MR. POULIN: And, Your Honor, we would object of  
5 course to hearing that motion today pursuant to Rule 6 of  
6 the South Carolina Rules of Civil Procedure, 6(d), the  
7 10-day limitation.

8 Your Honor, we filed our motion for default back in  
9 September of 2010, and I believe that it's been on the  
10 Court's docket since about December 19th. So there's  
11 been ample notice of the motion -- of our motion.

12 THE COURT: All right. Mr. Domin?

13 MR. DOMIN: I just wanted to indicate my name is  
14 Tim Domin. I represent the State Farm Automobile  
15 Insurance Company, as well as Illinois National, the  
16 alleged underinsured motorist carriers. I have no  
17 position with respect to the hearing or not hearing of  
18 that motion.

19 THE COURT: All right. Mr. Weston, your motion is  
20 not on the docket today so what I'm going to do is we're  
21 going to go forward with the damages hearing and then  
22 I'll procedurally make some determination on whether or  
23 not we should hear your motion at some later date, but  
24 we're ready for the damages hearing, we're going to go  
25 forward on the damages hearing.

1 And you are?

2 MS. FRAGALE: Sarah Fragale. I'm here with Joe  
3 Weston.

4 THE COURT: Okay. All right. Mr. Domin?

5 MR. DOMIN: If I might say at the outset, I have  
6 been served as an alleged underinsured motorist carrier,  
7 my clients have, State Farm and Illinois National. They  
8 have both, within the time provided, filed an answer as  
9 they are allowed to do, pursuant to underinsured  
10 motorists codes.

11 By agreement this default shall not be effective as  
12 against those underinsured motorist carriers, and I just  
13 need to make certain that's very clear on the record, as  
14 this is only the default of the individual at fault  
15 party, Ms. Martinez.

16 THE COURT: All right. So you want me to hear a  
17 damages hearing that I may vacate the default; is that  
18 correct?

19 MR. POULIN: Yes, Your Honor.

20 THE COURT: And, Mr. Domin, you are just here and  
21 merely as an observer, correct?

22 MR. DOMIN: To answer your question, I do not  
23 believe per both agreements as well as by the fact I  
24 filed an answer that this is binding against my  
25 underinsured motorist carriers; and therefore, I do not

1 have an interest in the amount of damages that you award  
2 against Mr. Martinez. I guess that pretty much renders  
3 me an observer, yes.

4 THE COURT: All right.

5 MR. POULIN: We'll agree with that. And, Your  
6 Honor, we have Ms. Bales here today, who had to take off  
7 work, and Curtis, who's taken off school, as well as our  
8 expert witness for the damages hearing. So we are  
9 prepared to proceed with that hearing at this time.

10 THE COURT: All right. Mr. Weston, I'm going to  
11 hear the damages hearing because everybody is here and it  
12 hasn't been -- your motion is not on the docket.

13 MR. WESTON: I understand, Your Honor.

14 THE COURT: So are you able to participate with  
15 that understanding so that I don't have to have this  
16 damages hearing again, assuming I don't grant your  
17 motion?

18 MR. WESTON: That's correct, Your Honor.

19 THE COURT: I just want the record to be clear --

20 MR. WESTON: Yes.

21 THE COURT: -- that you are able fully to  
22 participate and to cross-examine the witnesses and to  
23 protect your client's interest here today.

24 MR. WESTON: I am, Your Honor.

25 THE COURT: All right.

1 All right, Mr. Poulin. Call your first witness.

2 MR. ANASTOPOULO: Thank you, Your Honor. I'll be  
3 handling the damages part.

4 THE COURT: Oh, sorry. Mr. Anastopoulos.

5 MR. ANASTOPOULO: Your Honor, we'd call Cindy  
6 Bales.

7 THE COURT: Ms. Bales, please come forward.

8 CYNTHIA D. BALES, after having been duly  
9 sworn, testified as follows:

10 THE CLERK: Please state your full name and spell  
11 your last for the record.

12 MS. BALES: My name is Cynthia Bales. Cynthia,  
13 C-y-n-t-h-i-a. Bales, B-a-l-e-s.

14 DIRECT EXAMINATION

15 BY MR. ANASTOPOULO:

16 Q. Ms. Bales, where do you live at?

17 A. I live at 286 Ridge Road in Ridgeville, South  
18 Carolina.

19 Q. And who do you live with?

20 A. I live with my son, Curtis Bales.

21 Q. And how old are you?

22 A. I'm 48, soon to be 49.

23 Q. And how old is your son?

24 A. He is 11.

25 Q. And what do you do for a living?

- 1 A. I'm a dental hygienist.
- 2 Q. And how much do you make a year?
- 3 A. Oh, about 28 to 30,000, depending on my hours.
- 4 Q. And the house you are living in, do you own it?
- 5 A. I don't own it. It's my house but it's got
- 6 payments on it so...
- 7 Q. Yeah. And do you have a mortgage on it?
- 8 A. Mortgage.
- 9 Q. And what is your mortgage payment on that?
- 10 A. It's 840 a month.
- 11 Q. And you were married to Frank Randall Bales; is
- 12 that correct?
- 13 A. That's correct.
- 14 Q. And could you tell us a little bit about your
- 15 relationship with Mr. Bales.
- 16 A. Well, we had great relationship. He was my husband
- 17 and we did a lot together and --
- 18 Q. When did you first meet?
- 19 A. I met him in 2001.
- 20 Q. And from that marriage how many children did you
- 21 have?
- 22 A. Actually I met him in '91.
- 23 Q. In '91?
- 24 A. Yeah.
- 25 Q. And this accident occurred on October 15th, 2008,

1 correct?

2 A. Correct.

3 Q. So that's kind of over 17 years of your life you  
4 spent with him?

5 A. Correct.

6 Q. And from this marriage how many children did you  
7 have?

8 A. Just the one, with my husband.

9 Q. And is that Curtis Randall Bales?

10 A. Yes, it is.

11 Q. And is he in the courtroom here today?

12 A. Yes, he is.

13 Q. And you said he's 11 years old?

14 A. Yes.

15 Q. And when did you marry Frank Randall Bales?

16 A. It was April 21st, 2000.

17 Q. And tell me, where does Curtis go to school?

18 A. He goes to St. John's Christian Academy in Monks  
19 Corner.

20 Q. Okay. And is that a private school?

21 A. Yes, it is.

22 Q. And why do you have him in private school?

23 A. Well, my husband always wanted him to go to private  
24 school and I wanted to honor his wishes. So he has been  
25 going to private school since he was in kindergarten.

1 Q. During the course of your marriage who took care of  
2 all the financial needs of the family?

3 A. My husband mostly. I mean, he did pay the bills  
4 and did help to pay for Curtis' school, and helped out.

5 Q. And where was he working at the time that he died  
6 in this accident?

7 A. Well, he just started working at Global  
8 Aeronautica, and that's his dream job. He always loved  
9 airplanes. So he got a job out there and I guess started  
10 about a year before he got killed on his way to work.

11 Q. And you said earlier that you all had bought a  
12 marital home. Do you know what year that was,  
13 approximately? Is it after you got married?

14 A. It was before.

15 Q. Right before you got married. So during the course  
16 of the marriage you all lived in this house?

17 A. Yes.

18 Q. And he took care of that mortgage payment?

19 A. Yes, he did.

20 Q. And he took care of the school payment?

21 A. Yes.

22 Q. And did he also take care of the bills around the  
23 house?

24 A. Yes.

25 Q. Were you working at the time that he died?

1 A. I was working. I'm working three days a week.

2 Q. And how about now?

3 A. Three days a week.

4 Q. Three days a week. Okay. I'm going to go back to  
5 October 15th, 2008 and --

6 Your Honor, if I may approach the witness?

7 THE COURT: You may.

8 BY MR. ANASTOPOULO:

9 Q. I'm going to show you the traffic collision report.

10 Do you recognize that?

11 A. Yes, I do.

12 MR. ANASTOPOULO: Your Honor, we would like to  
13 introduce this into evidence.

14 THE COURT: Any objection?

15 MR. WESTON: Yes, objection, Your Honor. The  
16 police report would not be admissible into evidence.

17 Under the rules of evidence it would not be admissible  
18 even if the police officer was here to testify about it.

19 THE COURT: Mr. Anastopoulos, your response?

20 MR. ANASTOPOULO: Your Honor, I believe

21 Mr. Weston's position can only be concerning the damages.

22 I don't know if it can be towards this but we are just  
23 trying to simplify the damages hearing so Your Honor has

24 an idea of what happened in the wreck, I mean why we're

25 all here.

1 THE COURT: Mr. Weston?

2 MR. WESTON: Well, if it is being introduced for  
3 anything having to do with damages in this case it would  
4 not be admissible, Your Honor.

5 THE COURT: I believe Mr. Anastopoulos is just  
6 trying to lay a factual background. So would you prefer  
7 him to just inquire as to the witness or I can inquire as  
8 to the factual background?

9 MR. WESTON: Again, to the extent that that's going  
10 to be used to establish any damages then I would object  
11 to it, Your Honor, and I haven't heard anything as to why  
12 it's being introduced.

13 MR. ANASTOPOULO: Well, we'll just --

14 THE COURT: All right, Counsel. Don't talk each  
15 other.

16 Mr. Anastopoulos, what I need then is just a factual  
17 background as to the nature of the accident. We'll do it  
18 that way.

19 BY MR. ANASTOPOULO:

20 Q. Can you tell me what you have learned happened in  
21 that accident. And first of all, how did you become  
22 aware that your husband had died in the accident?

23 THE COURT: Mr. Anastopoulos, we can do it this way.  
24 If you would just give my what -- because we're here only  
25 for a damages hearing, I just need a factual background

1 as to what happened.

2 I'm going to let Mr. Anastopoulos indicate to the  
3 Court what he believes that the factual background as to  
4 the cause of the accident and those things. All right,  
5 Mr. Weston? I am going to give him latitude but he will  
6 not admit the report into evidence.

7 MR. WESTON: Yes, Your Honor. Thank you.

8 THE COURT: Ma'am, I'm going to just -- there will  
9 be no more questions. I'm going to let Mr. Anastopoulos  
10 just give a brief factual background.

11 And that's all I need, and that you don't need to  
12 inquire as to whether or not she believes those facts to  
13 be true. I just need some background.

14 MR. ANASTOPOULO: Thank you, Your Honor, for your  
15 patience. Your Honor, this incident occurred on October  
16 15th, 2008. Mr. Bales was driving to work. This  
17 incident occurred at the intersection of Fain Street and  
18 Aviation Avenue.

19 Mr. Bales, according to the witness, was proceeding  
20 through the intersection rightfully when an illegal  
21 immigrant, Abel Martinez, who is not in this Country  
22 legally and had no license, ran a red light killing  
23 Mr. Bales.

24 Mr. Martinez was charged with disregarding a  
25 traffic signal, and I believe driving without a license.

1 Before any additional charges could be levied against him  
2 he paid a fine and nobody has seen him since. And there  
3 has been talks that this should have been voluntary  
4 manslaughter and stuff like this but --

5 THE COURT: All right. I just need the factual  
6 background.

7 I'm sure that was your objection?

8 MR. WESTON: Yes, Your Honor.

9 THE COURT: I'm not going to consider -- I am only  
10 considering he has had two traffic tickets, as a result  
11 of these two traffic citations, as a result.

12 MR. ANASTOPOULO: And he pled guilty.

13 THE COURT: And he pled guilty.

14 All right. You may continue.

15 MR. ANASTOPOULO: Thank you.

16 BY MR. ANASTOPOULO:

17 Q. And, Ms. Bales, how did you first hear about this  
18 accident happening?

19 A. I was at work on a patient and the doctor came in  
20 and said somebody needed to talk to me, and so I left the  
21 room and went to his office and that's when I heard my  
22 husband was dead, he got killed.

23 Q. And did you go to the scene?

24 A. No. No, I didn't. I didn't hear about it for like  
25 a few hours later and he was already pronounced dead at

1 the scene.

2 Q. And can you tell me from how your life changed  
3 after hearing those words that your husband was dead.

4 A. Well, I think the largest being was probably my  
5 son, and he said he'll never forget that day, and just  
6 having to take care of him by myself and the stress and  
7 stuff of everyday life on my own trying to, you know,  
8 take care of bills and hope that nothing unexpected  
9 happens. And I always think if something ever happened  
10 to me what would he do.

11 Q. How old was he at the time?

12 A. Seven.

13 Q. And how old was your husband?

14 A. He was 50. He had just turned 50 and had a  
15 birthday.

16 Q. And economically how has this changed your life?

17 A. Well, it's harder on me trying to pay everything  
18 and, you know, just having to worry about house payments  
19 and rent and -- I mean, the house payments and  
20 everything, taking care of everything.

21 I have to hire people from the outside to come in  
22 and do things that he normally would have done because he  
23 was very good at fixing stuff and he was very  
24 mechanically inclined. And so I have to get other people  
25 to do it. And just taking care of Curtis I have to

1 depend on myself and just myself to do it. I don't have  
2 anybody else.

3 Q. And what have you noticed with your child as a  
4 result of this accident?

5 A. He's very hurt, withdrawn. I mean, he misses his  
6 daddy. I mean, that was his life. They did a lot  
7 together. They shot off rockets, they played video  
8 games. I mean, that was his life.

9 Q. And I know you prepared a small statement for --  
10 what else would you like to tell the Court?

11 A. Just Christmas was hard this year. We always went  
12 to the lights and stuff and, you know, the fun times we  
13 shared as family.

14 I lost my soulmate, my best friend, the love of my  
15 life. I go to bed thinking and feeling the emptiness  
16 next to me. The holding at night we once shared are  
17 gone. It's a feeling that will never be replaced, ever.

18 Q. Is there anything else you wanted to read?

19 A. One thing I do feel is there's no closure because  
20 we never have addressed the man that killed my husband,  
21 my child's father, and he's gone. There's just no  
22 closure there. I mean, I wish something would have been  
23 done to charge him.

24 I mean, he was let out with a 474-dollar bond. Is  
25 that what my husband's life was worth? I mean, that's

1 how he got out, scot-free, and here we are. He's nowhere  
2 to be found. And I just feel like there was nothing ever  
3 closed there. I mean, he never got charged and that's  
4 what my husband's life was worth so --

5 Q. Did your son go to any type of counseling?

6 A. Yeah. We did but my son, he closed up. He  
7 wouldn't talk too much. He just doesn't talk, and he  
8 won't talk about it so...

9 Q. And have you seen a change since the death of his  
10 father?

11 A. After this has happened I just don't feel the  
12 happiness, I think, is pretty much gone. He's just not a  
13 happy, smiling kid like he used to be.

14 Q. How about yourself?

15 A. The best as can be expected and keep going, and  
16 keep going.

17 Q. I'm sorry. Did you want to say something else?

18 A. The other thing is I had very good medical  
19 insurance through his company where he worked, and my  
20 employer does not offer medical insurance so I have to  
21 take that out on my own private policies. And it's just  
22 not a good insurance so I find myself not going and  
23 getting stuff done because I know I'm going to have to  
24 pay for it. And, I mean, the insurance I have to take  
25 out and that's another big expense, you know, over 500 a

1 month. I think it's like 540 a month for my own  
2 insurance, and that's cheap insurance, the crappy stuff.

3 Q. I know you brought some pictures here today; is  
4 that correct?

5 A. I think there are some in here.

6 MR. ANASTOPOULO: Your Honor, may I approach the  
7 bench? She would like Your Honor just to see some family  
8 pictures.

9 THE COURT: All right. Have you shown these to  
10 Mr. Weston?

11 (PAUSE)

12 MR. WESTON: I have no objection, Your Honor.

13 THE COURT: All right. Thank you.

14 (WHEREUPON, the pictures were given to the Court.)

15 THE COURT: You may continue, Mr. Anastopoulos.

16 BY MR. ANASTOPOULO:

17 Q. Did you also incur burial expenses?

18 A. Yes, I did.

19 Q. And do you know how much those were?

20 A. Probably about 12,000 for the burial and all, and  
21 then the stone was -- which we did a nice stone. I put  
22 Curtis's picture with his daddy on the headstone, and I  
23 think that was about 4,000.

24 Q. And could you tell us what birthday and holidays  
25 are like now.

1 A. Well, like I said, Christmas just isn't the same.  
2 I mean, every year we used to go to the lights at James  
3 Island Park and walk around. We did a lot of stuff as a  
4 family, go to the beach.

5 On Halloween we would take him trick-or-treating,  
6 and go to the fair every year. We'd take him to the fair  
7 ever since he was little. And we just did a lot of  
8 things on the holidays. And it's just very quite. It's  
9 not the same. Very depressing, really. It never will be  
10 the same.

11 MR. ANASTOPOULO: Thank you, Ms. Bales. Please  
12 answer any questions Mr. Weston may have.

13 THE COURT: Mr. Weston?

14 MR. WESTON: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. WESTON:

17 Q. Ms. Bales, I just have a few questions for you.

18 A. Okay.

19 Q. You mentioned that your husband had started work at  
20 Global Aeronautics [sic] a little bit less than a year  
21 before this accident?

22 A. I think it was a little less than a year. It might  
23 have been right at a year, right at a year. It was  
24 around that time frame.

25 Q. What kind of work did he do specifically at Global

1 Aeronautics?

2 A. He was a set-up, like -- I don't know exactly. He  
3 worked on airplanes. They were doing that dream lifter  
4 and they were building it, so that's where he was,  
5 working on the dream lifter.

6 Q. Was he working full-time or part-time?

7 A. Full-time.

8 Q. And how much was your husband earning at the time  
9 of his death?

10 A. I think around 40,000, but he had worked at Bosch  
11 for a while, too. I mean, that was his first job.

12 Q. That was my next question. Where did he work for  
13 Global Aeronautics?

14 A. He worked at Robert Bosch.

15 Q. When did he leave Robert Bosch?

16 A. I'm not sure.

17 Q. Approximately how much time was there between the  
18 point when he left Bosch and he started working at Global  
19 Aeronautics?

20 A. He worked at Bosch from '90 -- '80 something until  
21 then, and then he had picked up -- he was working little  
22 bit at a place called M. T. U. Drive Shafts.

23 Q. That was after Bosch?

24 A. Yes.

25 Q. How long was he at M. T. U. Drive Shafts?

1 A. I think about a year, two years, and then he went  
2 to -- that's it.

3 Q. And approximately what time frame are we talking  
4 about in terms of him being at M. T. U.?

5 A. It was -- he worked for -- from Bosch to M. T. U.  
6 and to Global. So it was right before then.

7 Q. Was there ever a period of time where he was out of  
8 work for any extended period of time?

9 A. Not for extended. Maybe three months. He had some  
10 surgery done.

11 Q. And what kind of work did he do at Bosch, exactly?

12 A. He was a set-up mechanic.

13 Q. How much was he earning at Bosch?

14 A. About 45; 40, 45,000 a year.

15 Q. And how about M. T. U.?

16 A. Thirty. Thirty. I don't...

17 Q. Approximately 30,000?

18 A. That's -- yes.

19 Q. And was that full-time?

20 A. Yes.

21 Q. Had your husband ever been terminated from any  
22 employer for any reason?

23 A. Yes.

24 Q. And can you just briefly tell us the circumstances  
25 of that.

1 A. All right. He had some surgery done at Bosch and  
2 he wasn't ready to go back, and he never did get the  
3 right letter sent to them and they said he did not come  
4 back so they terminated him.

5 Q. And that was the reason why he left Bosch?

6 A. Yes.

7 Q. Now, at the time of his passing was your husband  
8 suffering from any kind of medical conditions, anything  
9 where he was treating with a doctor on any long-term  
10 basis?

11 A. No.

12 Q. He had not been diagnosed, for example, with heart  
13 disease --

14 A. No.

15 Q. -- or diabetes, or anything like that?

16 A. No.

17 Q. Was he -- at the time of his passing was he  
18 scheduled to have any type of surgery for any reason?

19 A. No.

20 Q. And forgive me for asking this, but had the two of  
21 you all ever separated at any point during the marriage?

22 A. No.

23 Q. Had anybody ever filed for divorce?

24 A. No.

25 Q. Filed for anything in the family court --

1 A. No.

2 Q. -- related to that marriage?

3 MR. WESTON: That's all I have. Thank you.

4 THE COURT: Mr. Anastopoulos?

5 MR. ANASTOPOULO: Nothing else, Your Honor. We do  
6 have another witnesses.

7 THE COURT: You may step down. Thank you.

8 Call your next witness.

9 MR. ANASTOPOULO: Clyde Hiers, please.

10 CLYDE L. HIERS, after having been duly  
11 sworn, testified as follows:

12 THE CLERK: Have a seat please and state your full  
13 name for the record, please.

14 THE WITNESS: My name is Clyde Larry Hiers,  
15 H-i-e-r-s.

16 DIRECT EXAMINATION

17 BY MR. ANASTOPOULO:

18 Q. Mr. Hiers, what is your job title?

19 A. I am a certified public accountant. I am also a  
20 certified financial planner, and I am a certified  
21 forensic financial analyst.

22 Q. And where is your office?

23 A. Daniel Island.

24 Q. And tell us a little bit about your education.

25 A. I have a bachelor's degree in accounting from what

1 is now Charleston Southern University. I have a master's  
2 degree in federal taxation from California State  
3 University.

4 Q. And how long have you been practicing C. P. A.?

5 A. Almost 40 years.

6 Q. Have you taught any courses on accounting or  
7 financial planning?

8 A. Yes. I was a professor at Citadel for eight years  
9 and then at the College of Charleston for another 16  
10 years.

11 Q. And what kind of courses did you teach there?

12 A. At the Citadel I taught accounting taxation. When  
13 I left and went to the College of Charleston I actually  
14 started their financial planning education program, and I  
15 was the director of that program and the lead instructor.

16 Q. And do you have -- you are currently still  
17 licensed, and do you have to keep up with any courses  
18 annually to --

19 A. Yes, sir.

20 Q. -- keep your license?

21 Could you tell us a little bit about that?

22 A. It 40 hours per year.

23 Q. And have you ever been qualified as an expert on  
24 giving calculations of economic losses in any court?

25 A. Yes, I have, in many different courts in South

1 Carolina and also in numerous other states.

2 Q. Approximately how many times have you testified in  
3 various courts in South Carolina and other states?

4 A. Any given day of the week I probably have two or  
5 three open files on some sort of litigation. On an  
6 annual basis I will do anywhere from 10 to 15 cases, and  
7 I've been doing that since the late 1970's.

8 MR. ANASTOPOULO: Your Honor, at this time we would  
9 like to introduce Clyde Hiers as an expert on calculating  
10 economic loss in the case of Frank R. Bales.

11 THE COURT: Any objection?

12 MR. WESTON: No, Your Honor.

13 THE COURT: Mr. Hiers will be so qualified. You  
14 may continue.

15 MR. ANASTOPOULO: Thank you, Your Honor.

16 BY MR. ANASTOPOULO:

17 Q. Can you tell us how you got involved in this case  
18 and what you did in preparing your evaluation.

19 A. I was called by your office sometime in mid  
20 December and told that this case was coming up for trial,  
21 and I was given a copy of the summons and complaint and  
22 other legal documents which really had no bearing on the  
23 calculations per se, but nevertheless, they were  
24 informative. And I then gathered the financial  
25 documents.

1 I spoke with Ms. Bales, learned as much as I could  
2 about the lifestyle of Mr. Bales. I understood his  
3 employment at Bosch and then his progression back to  
4 Global Aeronautics, and the damages are unfortunately  
5 very simple. It's just a matter of what did you have  
6 prior to death and what do you have following the death.

7 Q. And just to go -- before I get your analysis, you  
8 obtained a complete history of this financial --

9 A. Yes, sir.

10 Q. And you also talked to -- looked at financial  
11 documents; is that correct?

12 A. Yes, sir.

13 Q. And did you talk to the family and other people you  
14 needed to make your opinion?

15 A. Yes, I did.

16 Q. And tell me a little bit about how you calculated  
17 his economic loss, and did you do it to present value?

18 A. Yes, I did.

19 Q. Okay. And tell us how you calculated it and what  
20 your findings were.

21 A. The basic methodology is that the date of death was  
22 October 15, 2008. Here we are in early 2012, so we have  
23 a timeline. We take the losses from 2008 up until the  
24 projected trial date of today. Those damages get  
25 compounded forward. Then the damages between today and

1 his statistical lifespan would be reduced to present  
2 value.

3 The present value is just the exact opposite of  
4 compounding. If we put money in a savings account it  
5 will grow to a larger number in the future. Present  
6 value is also known as discounting and it says, ever so  
7 simply how much do we need to put into that savings  
8 account today that will grow to a certain number in the  
9 future.

10 Q. And can you tell me what your findings were in this  
11 case and what the economic loss was.

12 A. I determined that the pretrial damages, the damages  
13 as of today, \$243,354. I determined that his future  
14 damages are 1,258,812, for a grand total of 1,502,166.

15 Q. And tell me a little bit how you did the breakdown  
16 on that.

17 A. The first item we always look at is lost wages. We  
18 knew that he had made about 45,000 a year going back to  
19 2003, 2004, then his income did go down. Unfortunately,  
20 we can only base this on his historical earnings for the  
21 year 2008. At the time of his death he had made about  
22 \$29,000. On an annualized basis that would have been  
23 about 35,000 per year. So for 2008, a partial year, we  
24 had a loss there. Then for all of 2009, '10 and '11 we  
25 have a full year of loss, and then there's compound

1 interest applied on top of that.

2 Then the exact opposite is done for the future  
3 damages. We know he would have made that same wage,  
4 probably more, but we use only his historical wages. And  
5 his life expectancy was about 30 years. His work life  
6 probability was about 16 years. So that 37,000 a year  
7 for about 12 years, that comes out to about 430,000 on a  
8 future basis. So the actual wages would have been 136 up  
9 to today, and then 434 is future lost wages.

10 For each dollar of wage there is also an amount of  
11 fringe benefits. As Mrs. Bales said he had health  
12 insurance. In addition to health insurance, he had  
13 holidays, he had sick leave. He also had what we refer  
14 to as federally mandated fringe benefits; Social  
15 Security, Medicare, things of that nature. All of this  
16 is based on the Bureau of Labor standards, and it's  
17 strictly a percentage of each dollar direct wage.

18 We also have his lost household services. In  
19 speaking with Mrs. Bales she tells me that the family  
20 home was actually a small farm and she estimates that he  
21 worked about 30 hours per week in and around the house.  
22 That works out to about four hours a day, which is not  
23 unreasonable for a home with a wife and a child, and a  
24 so-called small farm.

25 Q. And what did you base his life expectancy on? Did

1 you go by the table or --

2 A. Yes, sir, Title 19 of the South Carolina Code.

3 Q. Would have been how many years would he have been  
4 projected to live?

5 A. His life expectancy was 28.96 years. His work life  
6 expectancy was 15.96 years.

7 Q. So in your calculations you didn't go by the 28  
8 years to get his economic work loss. You did it by the  
9 60 -- you did it projected that he would work until he  
10 was 66?

11 A. Sixty-six. And in his situation it would not be  
12 unreasonable to assume that he would have worked longer,  
13 especially since he, in essence, changed careers and was  
14 starting over. If we used a longer work life it would  
15 have increased the damages, but again, absent proof of  
16 that fact we used the statistical 16 years.

17 Q. And could there have been other factors that would  
18 have made it higher too, such as pay raises, bonuses?

19 A. Yes, sir.

20 Q. And you didn't calculate any of that in there?

21 A. No, sir.

22 Q. And I see in here that you subtracted 53,000 toward  
23 personal consumption abated, you took that off of your  
24 figure; why is that?

25 A. Again, this is a calculation that comes from the

1 Bureau of Labor Statistics based upon size of the family.  
2 We know that in his absence there are certain expenses of  
3 daily living that would not be consumed. He is not  
4 consuming food, no longer buying clothes, no longer  
5 incurring transportation expenses. So we subtract from  
6 the total damages 53,000 for what his estimated so-called  
7 personal consumption would have been.

8 Q. And after subtracting that and not taking into  
9 account any bonuses or salary increases and only doing  
10 his work until he was 66 you came up with a figure of  
11 1,502,166, correct?

12 A. That's correct.

13 MR. ANASTOPOULO: Your Honor, at this time we would  
14 like to introduce his report into evidence.

15 THE COURT: Any objection?

16 MR. WESTON: I have not seen it, Your Honor.

17 (WHEREUPON, the document was handed to Mr. Weston.)

18 MR. WESTON: Thank you, Your Honor. If I could  
19 have just a few minutes to review it.

20 THE COURT: You may.

21 (PAUSE)

22 MR. WESTON: Your Honor, if I may voir dire the  
23 witness as to some of the matters contained in this  
24 report. Either I can do it now or --

25 THE COURT: I'll just wait and hold subject to your

1 cross-examination, then we'll admit the report.

2 MR. WESTON: Yes, Your Honor. Thank you.

3 MR. ANASTOPOULO: Thank you, Your Honor.

4 BY MR. ANASTOPOULO:

5 Q. Mr. Heirs, so your report is just economic damages,  
6 correct?

7 A. That's correct.

8 Q. And you did not consider other damages that might  
9 be considered under the Wrongful Death Statute such as  
10 mental shock and suffering?

11 A. No, sir.

12 Q. Wounded feelings?

13 A. No, sir.

14 Q. Grief and sorrow?

15 A. No, sir.

16 Q. Loss of companionship and deprivation of use and  
17 comfort of the deceased society?

18 A. No, sir.

19 Q. And you did not include Ms. Bales' loss of  
20 experience, knowledge and judgment in managing the  
21 affairs of himself and his family?

22 A. No, sir.

23 MR. ANASTOPOULO: Thank you, Your Honor.

24 THE COURT: Mr. Weston?

25 MR. WESTON: Thank you, Your Honor.

1 CROSS-EXAMINATION

2 BY MR. WESTON:

3 Q. Mr. Hiers, my understanding is you did disregard  
4 the earnings for Mr. Bales prior to 2003. I think you  
5 indicated you used the post 2003 wages as your guidepost?

6 A. Yes, sir.

7 Q. Now, you indicated that in terms of calculating the  
8 damages to date that you included interest on top of the  
9 wages?

10 A. Yes, sir.

11 Q. And what was the interest rate that you were adding  
12 to that?

13 A. Three percent.

14 Q. Now, did you as part of your examination make a  
15 determination as to how much of Mr. Bales' wages were  
16 actually going into paying the household expenses?

17 A. No, sir.

18 Q. So you have no idea how much once he was done  
19 paying, as Mrs. Bales indicated, his share of the  
20 household expenses how much was left over to invest or  
21 how much was left over --

22 A. No, sir.

23 Q. -- to put in the bank?

24 Did you make any determination as to whether or not  
25 he was putting money in the bank or making any kind of

1 contributions to a 401K or anything like that out of his  
2 wages?

3 A. No, sir.

4 Q. So you would agree with me that in terms of his  
5 wages to the extent that they were being -- if they would  
6 have been utilized to pay household expenses they would  
7 not be available to invest to that degree?

8 A. No, sir. Categorically I would have to disagree  
9 with that contingent upon an analysis of the household  
10 cash flow.

11 Q. But that's what I'm getting at. In terms of --  
12 let's assume whatever portion of Mr. Bales' wages were  
13 being used to pay household expenses, ongoing expenses,  
14 you would agree with me that once those payments are made  
15 and once that money is exhausted it's not available for  
16 investment, it's not available for anything that would  
17 have earned interest?

18 A. Yes, sir.

19 Q. And you made a -- did you make any determination as  
20 to what kind of insurance Mrs. Bales had or whether  
21 insurance was available to her and how that differed from  
22 the cost of what Mr. Bales had --

23 A. No, sir.

24 Q. So in terms of that issue you don't know -- you  
25 indicated the loss of the insurance to Mrs. Bales but you

1 haven't made a determination as to what a replacement  
2 policy would cost for Ms. Bales or whether she has any  
3 coverage through her anywhere?

4 A. I believe that would increase her out-of-pocket  
5 damages. She had a policy that was provided through the  
6 husband's employment before that was not costing  
7 Mr. Bales anything. Now she has an out-of-pocket cost.  
8 So if anything I think the damages would be slightly  
9 increased.

10 Q. In terms of the farm that you mentioned or the  
11 small farm aspect of their home.

12 A. Yes, sir.

13 Q. What determination did you make in that regard as  
14 to what the scope of that operation was or what they were  
15 doing with respect to anything they might have grown or  
16 raised on that farm?

17 A. Nothing other than a reasonable assumption when she  
18 said he contributed 30 hours over and above his 40 hours  
19 of work at his job, then based upon a so-called small  
20 farm 30 hours is not unreasonable.

21 Q. What is your understanding of the actual scope of  
22 this small farm as it was described to you?

23 A. It was described to me as a small farm where they  
24 grow some crops, and I believe there's also some  
25 livestock.

1 Q. But other than those basic facts you don't know  
2 what the extent of that operation was?

3 A. No, sir. I did not do a site visit.

4 Q. Did you ever try to make any determination as to  
5 whether or not they ever sold produce from this small  
6 farm as was described to you?

7 A. No, sir.

8 Q. Any determination made by you as to whether any  
9 part of their income relied upon this small farming  
10 operation?

11 A. There was no reference in the tax returns to the  
12 farm being a business.

13 Q. And was there indication as to any out-of-pocket  
14 expenses Mrs. Bales actually had in connection with  
15 services that her husband was no longer able to perform?  
16 Any indication that she had actually hired anybody to  
17 help around the house or to do anything, replacement of  
18 those services that she described?

19 A. Yes. She told me that she was having to purchase  
20 in the marketplace various maintenance repairs and other  
21 services that normally Mr. Bales would have done on the  
22 farm.

23 Q. Did you review any invoices or receipts or anything  
24 indicating what Mrs. Bales had actually paid  
25 out-of-pocket for those services?

1 A. No, sir.

2 Q. Did you attempt to arrive at a number as to exactly  
3 what Ms. Bales had paid in connection with those  
4 replacement services?

5 A. Again, we used data from the Bureau of Labor and  
6 Statistics and it's based on minimum wage.

7 Q. You also in the calculation of damages have set  
8 forth in your report, you have in addition to the lost  
9 wages that you discussed and the future lost wages that  
10 you discussed you have a life value --

11 A. Yes, sir.

12 Q. -- item added for \$417,000?

13 A. Yes, sir.

14 Q. How did you come up with that determination?

15 A. That is a number judicially created that assigns a  
16 value to a life over and above what society would think  
17 of as an economic engine. The economic engine goes out  
18 and works and earns wages.

19 Based upon the Marcotte case, M-a-r-c-o-t-t-e, and  
20 I believe the McNeil case the courts came to a conclusion  
21 that over and above the economic engine life is worth  
22 about \$12,000 per year. So based upon his remaining life  
23 expectancy I calculated his life value over and above the  
24 economic engine.

25 Q. Are those South Carolina cases?

1 A. One is South Carolina, one is New Hampshire.

2 Q. To your knowledge, did South Carolina adopt the New  
3 Hampshire standard as set forth in that case?

4 A. I'm unaware of that.

5 Q. And I forgot to ask you this earlier but I was  
6 talking to you about the interest that you calculated  
7 prior to -- or for the wages that were lost prior to  
8 today.

9 A. Yes, sir.

10 Q. The same thing that I asked you earlier would also  
11 hold true with respect to any wages that Mr. Bales would  
12 have earned going forward. Would it be fair to say that  
13 you are assuming as part of your analysis that some part  
14 of his wages would have gone to pay the household  
15 expenses?

16 A. Yes, sir.

17 Q. And again, to the extent that he would have used  
18 those wages to pay household expenses whatever he  
19 expended in that regard would not have been available for  
20 investment purposes or any interest bearing investments?

21 A. Well, that's true but if we're going to ignore  
22 interest for compounding purposes forward we would  
23 logically ignore that same discount rate for coming back  
24 to a present value. In essence, the gate has to swing  
25 both ways.

1 Q. And at the time of his passing you would agree that  
2 Mr. Bales had less than one year in at Global  
3 Aeronautics?

4 A. Yes, sir.

5 Q. To your knowledge, had he been up for any  
6 promotions or advance at all during that less than one  
7 year that he had been there?

8 A. Not to my knowledge.

9 Q. And did you do any research, look into any evidence  
10 as to what his future prospects would have been at Global  
11 Aeronautics; in other words, when he would have been up  
12 for promotions? Did you do any of that kind of analysis?

13 A. No, sir.

14 MR. WESTON: Thank you. That's all I have.

15 MR. ANASTOPOULO: Your Honor, at this time we'd  
16 like to introduce the report into evidence.

17 THE COURT: Any objection at this time, Mr. Weston?

18 MR. WESTON: No, except subject to I would preserve  
19 an argument that some of these items the plaintiffs have  
20 as damage are not appropriate, Your Honor, but as to the  
21 report itself I have no objection.

22 THE COURT: All right.

23 (WHEREUPON, Plaintiff's Exhibit Number 1, a  
24 Document, was marked and admitted into evidence.)

25 THE COURT: You may step down, Mr. Hiers. Thank

1 you.

2 MR. HIERS: Thank you.

3 THE COURT: Mr. Anastopoulo, call your next  
4 witness.

5 MR. ANASTOPOULO: Your Honor, his son did tell me  
6 yesterday he wanted to testify but let me just ask him.

7 (PAUSE)

8 MR. ANASTOPOULO: Your Honor, he does not.

9 THE COURT: All right. And with that, is there any  
10 further witnesses?

11 MR. ANASTOPOULO: Nothing, Your Honor.

12 THE COURT: All right. So plaintiff rests at this  
13 time?

14 MR. ANASTOPOULO: Yes.

15 THE COURT: Mr. Weston, do you have any witnesses  
16 or anything, any exhibits?

17 MR. WESTON: No, Your Honor.

18 THE COURT: All right. All right, Counsel. I'll  
19 be happy to hear from you regarding argument. And as you  
20 know, I'm going take this matter under advisement, and  
21 part of doing that is to allow Mr. Weston to schedule his  
22 motion and also to allow you to present to me proposed  
23 orders.

24 So with that in mind then, what that means,  
25 Mr. Anastopoulo, is I've heard the testimony and so

1 please keep it brief.

2 MR. ANASTOPOULO: Okay. Thank you, Your Honor.  
3 Your Honor, under the law they have not answered the  
4 complaint therefore everything in our complaint is deemed  
5 admitted, and Your Honor of course has that complaint.  
6 But number 15 also says that the plaintiff is entitled to  
7 an award of actual damages and punitive damages in this  
8 case.

9 Your Honor, there has been testimony in this case  
10 that the defendant was grossly negligent in the fact that  
11 he ran the red light, was driving without a license and  
12 shouldn't even have been driving to begin with.

13 We presented an expert report on the economic  
14 damages. Under the Wrongful Death Statute and all the  
15 case law in the State of South Carolina Ms. Bales is  
16 entitled to everything that she has lost, as well as the  
17 dependant of the deceased has lost.

18 Included in that is all damages proximately called  
19 by the wrongful act of the death of Mr. Bales, including  
20 the pecuniary loss, mental shock and suffering, wounded  
21 feelings, grief and sorrow, loss of companionship and  
22 depravation and the use of comfort of the deceased,  
23 including the loss of his experience, knowledge and  
24 judgment in managing the affairs of himself and of its  
25 beneficiaries.

1           Your Honor, in this case a 50-year-old man's life  
2 was cut short and due to -- because of the negligence and  
3 gross negligence of the defendant in this case. Because  
4 of that we have a young woman and young 11-year-old boy  
5 that will suffer for the rest of their lives.

6           The 11-year-old boy is left without the  
7 companionship of his father, the ability to do things  
8 with his father, the ability to just have someone there  
9 for father's day.

10           The wife is loss of her soulmate, her companion,  
11 someone that she could hold at night, as well as the  
12 economic damages. Not only is she suffering from the  
13 loss of her soulmate but she is under constant stress  
14 every day with the finances that he took care of. This  
15 family has gone from a happy family to it's sad because  
16 of this negligent and gross negligent act.

17           We have submitted the damages and are asking for in  
18 this case 4,000,000 in actual damages and 300,000 in  
19 punitives. And we'll submit a proposed order to that  
20 effect.

21           THE COURT: Okay. Mr. Weston?

22           MR. WESTON: Your Honor, as to the economic loss  
23 issues, in questioning both Mrs. Bales and Mr. Hiers I  
24 believe there's been first off a lack of documentation as  
25 to a lot of the damages that were being claimed, and if I

1 could take those one at a time, Your Honor.

2 In terms of the lost wages that -- both present  
3 lost wages and future lost wages that Mr. Hiers and  
4 Mrs. Bales discussed, there was a figure added in there  
5 for interest but, Your Honor, it was developed through  
6 the testimony that some portion, Mr. Hiers did not know  
7 how much, of Mr. Bales' income was being used to pay  
8 household expenses.

9 He didn't try to determine what percentage was  
10 being used for the household expenses versus what was  
11 being left over for investment but he added interest on  
12 top of the entire amount and, Your Honor, I don't believe  
13 that would be a proper measure of damages. The income  
14 may be a proper measure of damages but not interest on  
15 top of income.

16 With respect to the loss of services, Your Honor,  
17 there was testimony about them having a small farm and  
18 that Mrs. Bales had to make -- had to hire some  
19 replacement services, but again, there was no  
20 documentation as to any of that.

21 There were no receipts, no bills, no anything to  
22 allow the Court to make a determination as to the actual  
23 out-of-pocket expenses incurred by Mrs. Bales in terms of  
24 the farm nor was there any testimony as to what this  
25 small farm meant to the family in terms of income -- an

1 income producing matter, rather simply that they grew  
2 some crops on it and had some livestock but nothing to  
3 indicate that they sold those crops or had any economic  
4 -- outside economic interest in the livestock.

5 Your Honor, with respect to a very large item in  
6 the damages being presented, this life value figure,  
7 Mr. Hiers testified that it's a standard calculation not  
8 based upon any statute. He's basing it upon some case  
9 law which I have to frankly admit, Your Honor, I'm not  
10 familiar with. One was a New Hampshire case, and he also  
11 mentioned a South Carolina case in terms of deciding this  
12 life value.

13 But again, Your Honor, I don't believe that's an  
14 appropriate item of damage in this type of case and I say  
15 that without benefit of having seen the case that  
16 Mr. Hiers is referring to. So, Your Honor, I would ask  
17 the Court to certainly disregard the life value figure  
18 being presented by the plaintiff as well as these other  
19 items that I talked about.

20 With respect to punitive damages, Your Honor, there  
21 was testimony from Mrs. Bales that my client did not have  
22 a license and pleaded guilty to not having a license, and  
23 also pleaded guilty to something else, but not having a  
24 license does not mean that you are a bad driver or that  
25 you did something wrong. Somebody can not have a license

1 and be an extremely good driver. That's not a basis for  
2 awarding damages simply because of someone not having a  
3 license.

4 Your Honor, to the extent that they are asking for  
5 \$300,000 in punitive damages based upon no evidence as to  
6 how the accident occurred, no evidence or any witnesses  
7 as to what transpired during the accident, no evidence as  
8 to speed on the part of Mr. Martinez or who had that  
9 traffic controls, I believe just there's just been  
10 completely insufficient evidence presented to the Court  
11 by which to make any kind of calculation as to punitive  
12 damages. There's simply nothing to indicate that -- what  
13 Mr. Martinez's level of culpability was, if any, in  
14 connection with this accident.

15 So, Your Honor, we would also ask that you deny the  
16 plaintiff's request for the punitive damages and base  
17 your decision in this case, Your Honor, instead solely  
18 upon the damages that have been recognized by the South  
19 Carolina Supreme Court and the Legislature.

20 THE COURT: All right. And any brief response?

21 MR. ANASTOPOULO: Just briefly, Your Honor. Just  
22 once again, everything in our complaint is deemed  
23 admitted. And second of all, as far as Mr. Hiers'  
24 report, it's -- to me it's conservatively done  
25 considering that the life expectancy was another 26

1 years. Mr. Hiers did it on 16 years on the fact that he  
2 would probably only work until 66.

3 He also did not take into account any pay raises,  
4 and he deducted for even things such as that he didn't  
5 have to -- Mr. Bales would not have to eat. He even  
6 deducted things like that from report.

7 In our opinion, it's very conservatively done and  
8 that the figure from his testimony could actually even be  
9 higher based on his report. Thank you, Your Honor.

10 THE COURT: All right. Mr. Anastopoulo, please  
11 come get the photo that was not admitted. The report was  
12 admitted into evidence.

13 Counsel, I am scheduling Mr. Weston's motion to be  
14 back in Charleston, we'll schedule it on Wednesday,  
15 January 25th at 9:30 a.m., and we will hear motions as  
16 such. You have until that time to bring me your proposed  
17 orders. All right?

18 MR. WESTON: Yes.

19 THE COURT: Thank you.

20 MR. POULIN: Thank you, Your Honor.

21 THE COURT: Good luck to you, ma'am. Ms. Bales,  
22 good luck to you and your son.

23 MS. BALES: Thanks.

24 (WHEREUPON, the hearing was concluded.)

25

C E R T I F I C A T E

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I, Sharon L. Vizer-Hanks, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned case in Circuit Court on the 11th day of January 2012.

I do further certify that I am neither of kin, counsel nor have an interest to any party hereto.

September 1, 2012



SHARON L. VIZER-HANKS  
CIRCUIT COURT REPORTER

**Preliminary Calculation of Economic Loss**

**Cynthia D. Bales**  
**As Personal Representative of The Estate of Frank R. Bales**

**v.**

**Abel Martinez Martinez et al**

**In The Court of Common Pleas**  
**For The Ninth Judicial Circuit**

**Civil Action No.: 2010-CP-10-8631**

**Clyde L. Hiers, CPA, CFP, CFFA, M.S. (Tax)**

**January 10, 2012**

**CLYDE L. HIERS, CPA, CFP, CFFA, M.S. (Tax)**

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This report had been prepared in accordance with the Federal Rules of Civil Procedures 26 (a)(2)(B) for the confidential use of the litigants, their attorneys, the applicable trial forum, and any appellate courts having jurisdiction over this matter. This report is in no way intended to indicate legal liability on behalf of either party. The ultimate liability, if any, is a question of law which will be determined by this proceeding.

In connection with these calculations and proceedings, I certify that I do not have any past, present, or contemplated future interest in the litigants or their attorneys, or any other interest in this litigation that might tend to prevent the rendering of a fair and unbiased determination of the alleged economic damages. Additionally, I declare that my fee for this engagement is in no way contingent upon the outcome of the litigation or the amount of the monetary award received.

Expert Report of Clyde L. Hiers

I, Clyde L. Hiers, am a Certified Public Accountant who specializes in the provision of damage analyses in commercial and personal litigation matters. I have been retained by Akim A. Anastopoulo, Esquire of the Anastopoulo Law Firm to calculate the economic loss of The Estate of Frank R. Bales resulting from a wrongful death occurring on October 15, 2008.

Qualifications

I am a Certified Public Accountant licensed in South Carolina and California. I am also a Certified Financial Planner and a Certified Forensic Financial Analyst and have had extensive training in business valuations and forensic analysis. I have a Bachelors Degree in Accounting from Charleston Southern University and a Masters Degree in Federal Taxation from California State University. In addition to being a practicing CPA for over 35 years, I have also been a Professor at The Citadel and the College of Charleston for over 20 years.

I have been qualified to testify as an expert witness by report, affidavit, deposition, and trial testimony in numerous venues including Family Court, Probate Court, Small Claims Court, The Court of The Master in Equity, Court of Common Pleas, United States District Court, and the United States Bankruptcy Court. I have testified in these various courts in South Carolina, Georgia, North Carolina, Virginia, Arizona and Massachusetts.

My Curriculum Vitae and my case matrix are attached hereto as Exhibits 1 and 2. My fee for this engagement is \$206 per hour.

Personal Character

As detailed in my Curriculum Vitae, I am Past President of the National Association of Accountants and Past President of the Daniel Island Rotary Club. I was a two time member of the Year of the NAA and was also Rotarian of the Year. Other Rotary honors include the designation of the Paul Harris Fellow.

I am also an Elder in the Presbyterian Church and have been the Treasurer of the Second Presbyterian Church for the past 9 years. I am also a Commissioner of the Charleston Atlantic Presbytery. Additionally, I am active in Habitat for Humanity, Special Olympics, and the Susan Komen Breast Cancer Foundation.

Anticipated Testimony

If called as a witness at deposition and/or trial, I will testify that The Estate of Frank R. Bales has sustained economic losses with a present value in the following amounts as of the anticipated trial date:

Lost Income-Pre Trial	\$136,579
Lost Fringe Benefits-Pre Trial	75,569
Historical Medical Costs	TBD
Lost Household Services	<u>31,206</u>
<b>Total Pre Trial</b>	<b>243,354</b>
Lost Income-Post Trial	430,329
Lost Fringe Benefits-Post Trial	223,341
Lost Household Services	241,527
Personal Consumption Abated	(53,431)
Life Value	<u>417,046</u>
<b>Total Post Trial</b>	<b>1,258,812</b>
<b>Total Economic Loss</b>	<b>\$1,502,166</b>

Reservation of Right to Amend

In the event additional documents and/or discovery material is made available to me after the submission of this report, I respectfully reserve the right to amend this writing, as appropriate.

Rebuttal Testimony

In addition to the substance of the foregoing discussion, my testimony at the hearing may also include rebuttal testimony, as required.

Trial Exhibits

Selective information from this report may be incorporated into demonstrative exhibits for the purposes of trial testimony.

Prior Testimony

Over the past four years, I have testified by deposition and/or trial in the following matters as shown on the Case Matrix, attached as Exhibit 2.

Publication

Publications within the past ten years are shown on the Curriculum Vitae, attached as Exhibit 1.

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Clyde L. Hiers, CPA, CFP, CFFA, M.S. (Tax)

### **Assumptions and Limiting Conditions**

#### **Estate of Frank R. Bales v. Abel Martinez Martinez**

The calculation of the economic loss is subject to the following assumptions and limiting conditions:

1. Information regarding lost wages, fringe benefits and medical impairment is based on information provided by the plaintiff, his attorney and/or other experts retained by the plaintiff.
2. No attempt has been made to verify the accuracy and/or authenticity of statements or documents.
3. The calculations are based upon the assumption that all relevant information has been provided to me. No liability is assumed for withheld information or information otherwise not made available, whether intentional or unintentional.
4. The calculations are valid only for the report date.
5. The calculations are based upon the best information available as of the report date. Calculations are subject to change if better and/or different information becomes available.
6. Possession of the report, or a copy thereof, does not carry with it the right of publication, nor may it be used for any purpose by anyone other than the litigants, their attorneys. The applicable trial forum, any appellate courts having jurisdiction over this matter.

Documents

In preparing this expert report, I have considered the following documents:

1. Life expectancy table from Title 19, South Carolina Code of Laws
2. 2011 Annual Yearbook of Ibbotson Associates, Stocks, Bonds, Bills and Inflation, Chicago, Illinois
3. Summons and Complaint filed by Akim A. Anastopoulo on October 7, 2010 with the Court of Common Pleas for the Ninth Judicial Circuit
4. Federal income tax returns filed for the years 2005, 2006, 2007 and 2008 for Frank R. Bales and Cynthia D. Bales

Estate of Frank R. Bales  
Economic and Financial Data

1. Date of Birth	09-10-1958
2. Gender	Male
3. Date of Death	10-15-2008
4. Age at Date of Death	50.10 years
5. Life Expectancy at Date of Death	28.96 years
6. Pre Accident Earnings	\$37,484
7. Post Accident Earnings	\$0

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Kristi L. Harrington, Circuit Court Judge

---

Case No. 2010-CP-10-8631

---

Cynthia D. Bales, as Personal Representative  
of the Estate of Frank R. Bales,

Respondent

v.

Abel Martinez Martinez and the  
South Carolina Department of Transportation,

Of whom Abel Martinez Martinez is Appellant,

Appellant

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CERTIFICATE OF APPELLANT

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

February 1, 2013



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R. MICHAEL ETHRIDGE  
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KATHERINE W. SULLIVAN  
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Attorneys for Appellant

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
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Cynthia D. Bales, as Personal Representative  
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Respondent

v.

Abel Martinez Martinez,

Appellant

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PROOF OF SERVICE

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

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**SIGNATURE PAGE TO FOLLOW**

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FEB 05 2013

**SC Court of Appeals**

**ORIGINAL**

February 1, 2013



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