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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
In the Court of Common Pleas

R. Knox McMahon, Presiding Judge

Case No. 2012-212487

Mariko Marie Clack.....Respondent,

v.

Eddie Arnold Smith, d/b/a the Lawn Doctor.....Appellant.

RECORD ON APPEAL

RECEIVED

MAR 20 2013

SC Court of Appeals

S. Jahue Moore, Esquire
John C. Bradley, Jr., Esquire
MOORE, TAYLOR & THOMAS, P.A.
1700 Sunset Boulevard
P.O. Box 5709
West Columbia, South Carolina 29171
(803) 796-9160
ATTORNEYS FOR APPELLANT

Donald E. Jonas, Esquire
P.O. Box 99 (29071)
142 A.B. Frye Road
Lexington, South Carolina 29073
(803) 309-2483
ATTORNEYS FOR THE RESPONDENT

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ORIGINAL

SCANNED

LMC

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Mariko Marie Clack,

Plaintiff,

vs.

Eddie Arnold Smith, d/b/a the Lawn
Doctor,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2010-CP³²-05211

**ORDER DENYING MOTION TO
VACATE JUDGMENT AND BE
RELIEVED FROM DEFAULT**

BETH A. CARRIG
CLERK OF COURT
LEXINGTON SC
2012 JUN 20 AM 11:19

FILED

The Defendant seeks to vacate default, prior judgments, and allow the filing of a late Answer. For the reasons following, that motion is **DENIED**.

This matter was argued before the Court at the Lexington County Courthouse on January 31, 2012, pursuant to a motion by Plaintiff's UIM carrier, Allstate Insurance Company ("Allstate"). Plaintiff was represented by Donald E. Jonas, Esquire. Allstate was represented by S. Jahue Moore, esquire.

The facts of this matter do not appear to be in dispute. On January 24, 2011, the Honorable Scott Richardson, S.C. Dept. of Insurance, designated agent for service for Allstate, accepted service of the Plaintiff's summons and complaint. On April 12, 2011, Plaintiff filed an Affidavit of Default and Motion for Default Judgment attesting that Allstate had not appeared or filed a responsive pleading. On October 26 2011, the Court granted summary judgment on all issues of liability. On November 4, 2011, more than nine months after service, Allstate filed a motion to vacate any judgments in this matter and be allowed to file a late answer.

Allstate advances two arguments in favor of its motion. First, Allstate argues that the Answer provided in the name of the Defendant by State Farm Insurance Company, the primary



UIM carrier, is sufficient to prevent default as to Allstate. Alternately, Allstate argues that it had "good cause" for its late Answer and should therefore be relieved from default. Neither argument is persuasive.

As to the first argument, there is no caselaw to indicate that the answer or notice of appearance of one insurer is sufficient to preserve the right of appearance of any or all other interested insurers. The UIM statute states that "[t]he insurer has the right to appear and defend in the name of the underinsured motorist in any action which may affect its liability and has thirty days after service of process on it in which to appear." S.C. Code Ann. § 38-77-160. A plain reading of the statute indicates a right available to each insurer (the right to appear) and the method by which that right is preserved (notice of appearance within thirty days). Allstate did not appear, give notice of appearance, or do any other thing to indicate its interest in the case. Allstate does not present, nor can this Court find, any case or reason why Allstate should be allowed to attach itself to and subsequently benefit from the procedural diligence of a wholly separate company.

As to the second argument, Allstate fails to present a sufficient argument in favor of setting aside either the entry of default or the order of summary judgment. South Carolina Rule of Civil Procedure 55(c) states that "[f]or good cause shown the court may set aside an entry of default and, if a judgment of default has been entered, may likewise set it aside in accordance with Rule 60(b)." In determining whether "good cause" exists, the court must consider "(1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted." Sundown Operating Co., Inc. v. Intedge Industries, Inc., 383 S.C. 601, 607-08, 681 S.E.2d 885, 888 (2009) (citing Wham v. Shearson Lehmon Bros., Inc., 298 S.C. 462, 465, 381 S.E.2d 499, 501-02 (Ct.App. 1989)). SCRPC 60(b)

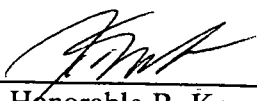
provides for relief from a judgment in the event of, among other things, “mistake, inadvertence, surprise, or excusable neglect.” These four factors act both independently in Rule 60(b) and as factors for considering “good cause” under Rule 55(c). Sundown, 383 S.C. at 608, 681 S.E.2d at 889. Once a judgment has been entered, Rule 60 is the only manner in which it may be set aside. Id., 681 S.E.2d at 888. “The standard for granting relief . . . under Rule 60(b) is more rigorous than the “good cause” standard established in Rule 55(c).” Id. (citing Ricks v. Winrauch, 293 S.C. 372, 374, 360 S.E.2d 535, 536 (Ct.App. 1987)). Allstate’s motion implicates both the entry of default, governed by Rule 55(c), and this Court’s order of summary judgment on issues of liability, governed by Rule 60(b).

There is no “good cause” to vacate either default or judgment. Allstate argues that its failure to answer was due to “excusable neglect.” Critically, Allstate does not claim that it did not receive the proper documents from the Department of Insurance, but only that it has found no record of receipt. Allstate motioned more than nine months after proper service without notice of appearance or other activity, but promptly after the order of partial summary judgment. Allstate has demonstrated no meritorious defense. Finally, the Plaintiff would be forced to retry the entire case at substantial expense. All these factors considered, this Court must conclude that there is no “good cause” under Rule 55(c), let alone grounds to set aside the summary judgment under the more stringent analysis of Rule 60(b).

IT IS THEREFORE ORDERED that the motion by Allstate Insurance Company to vacate any judgments in this matter and allow the filing of a late answer is **DENIED**. Further, the Lexington County Clerk of Court is ordered to set a damages hearing and notify the parties.

IT IS SO ORDERED.

Lexington, S.C.
June 19, 2012


The Honorable R. Knox McMahon

- FORM 4 -

**STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS**

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2010CP3205211

Mariko Michelle Clack	Eddie Arnold Smith Lawn Smith
PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☐ **ends** ☐ **does not end the case.**

Additional Information for the Clerk:

INFORMATION FOR THE JUDGMENT INDEX

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

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

If applicable, describe the property, including tax map information and address, referenced in the order:

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

Circuit Court Judge**Judge Code****Date****For Clerk of Court Office Use Only**

This judgment was entered on n/a, and a copy mailed first class or placed in the appropriate attorney's box on 27th day of June, 2012, to attorneys of record or to parties (when appearing pro se) as follows:

Donald E. Jonas
PO Box 99
Lexington, SC 29071

Robert Charles Brown
PO Box 7966 Columbia, SC 29202
S. Jahue Moore Sr.
PO Box 5709 West Columbia, SC 29171

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/lc

Beth A. Carrigg - Clerk of Court**Court Reporter**

ORIGINAL
FILED

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

MARIKO MARIE CLACK,

Plaintiff,

-vs-

EDDIE ARNOLD SMITH, D/B/A THE
LAWN DOCTOR,

Defendants.

)
) IN THE COURT OF COMMON PLEAS
)

2011 OCT 26 P 4: 15

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

**ORDER GRANTING PARTIAL
SUMMARY JUDGMENT**

Case Number: 2010-CP-35-05211

SCANNED

LMC

The plaintiff seeks partial summary judgment, which is granted, but not to the full extent requested.

WPK
#1

Ms. Clack was a passenger in a vehicle that was struck by the defendant's vehicle. In the Answer, a general denial was asserted, as well as an assertion that negligence should be attributed to the driver of the vehicle in which the plaintiff was a passenger. Discovery has been undertaken, and the plaintiff has settled with State Farm Insurance Company concerning the liability claim and underinsured claim, though there is alleged to be a claim that Allstate Insurance Company has an obligation to pay funds and/or defend. The plaintiff apparently has not been successful in getting Allstate to respond to the litigation. None of those insurance coverage issues are deemed by the court to be relevant issues on the pending summary judgment motion.

Plaintiff's counsel has done an excellent job of amassing materials to support his position. Included in the plaintiff's submissions are affidavits, medical bills, and deposition testimony. Rule 59(e), SCRPC provides:

(e) Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

Having considered the submissions, the court finds that there is no genuine issue of material fact as to the following items, and the plaintiff is entitled to partial summary judgment as to the issue of liability, as described in the itemized list below. This in no way prohibits the plaintiff from seeking punitive damages or damages attributable to the conduct of the defendants not covered in this order. At a minimum, the plaintiff is entitled to summary judgment in her favor as to these items:

- 1) Eddie Arnold Smith was negligent in the operation of the motor vehicle that struck the vehicle occupied by the plaintiff. The negligence included, at a minimum, disregarding a traffic signal, failing to maintain his vehicle under proper control, failing to yield right of way, failing to keep a proper lookout, and failing to exercise the degree of care and skill that a reasonably prudent driver would have exercised under the circumstances. This finding does not in any way prohibit the plaintiff from seeking to establish other grounds of negligence or more egregious conduct, such as recklessness, willfulness, wantonness, or gross negligence.
- 2) The negligence of Eddie Arnold Smith is the proximate cause of the collision between the vehicle he was driving and the vehicle occupied by the plaintiff.

- 3) The negligence of Eddie Arnold Smith is the proximate cause of substantial physical injuries to the plaintiff.
- 4) The negligence of Eddie Arnold Smith is the proximate cause of actual damages to the plaintiff. The extent of actual damages shall be determined at trial.

Beyond these findings, the court believes that the extent to which the plaintiff seeks summary judgment requires an evaluation that the court deems too fact intensive for summary disposition. In so ruling, the court is aware that Rule 56(d), SCRCR allows for the types of relief that the plaintiff seeks. It reads:

*WPM
#3*

(d) Case Not Fully Adjudicated on Motion. If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It may thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

The amount of damages is an issue that is almost exclusively reserved for a fact-finder. If a jury is involved, the court is deeply concerned that the degree of fact-specific determinations requested by the plaintiff would appear to put the trial judge in a position where the jury would be led to believe that the court had prejudged ultimate issues of fact being considered by the jury. Therefore, the court does not find that summary determination of all the issues requested is necessary or appropriate. In doing so, the court recognizes the Rule 56(d) specifically mentions that summary judgment may be granted concerning "the extent to which the amount of damages or other relief is not in controversy" The phrase that follows indicates that the court can

direct "such further proceedings in the action as are just." Since it is apparent that a fact-finder will have to assess damages and other issues, it seems to this court that the "just" thing to do is to grant partial summary judgment on the issue of liability, which is a rather extraordinary step.

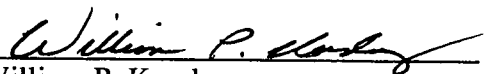
Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law. Rule 56(c), SCRPC. Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Brockbank v. Best Capital Corp., 341 S.C. 372, 534 S.E.2d 688 (2000). Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts. Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 534 S.E.2d 672 (2000).

#4
Furthermore, "[s]ummary judgment is a drastic remedy, which should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues." Id., citing, Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991). In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. "At the summary judgment stage of the proceedings, it is only necessary for the nonmoving party to submit a scintilla of evidence warranting determination by a jury for summary judgment to be denied." Hill v. York County's Sheriff's Department, 313 S.C. 303, 308, 437 S.E.2d 179, 182 (Ct. App. 1993)(cert. den. 1994).

THEREFORE, IT IS ORDERED that the motion for partial summary judgment is granted to the extent specified in this order.

AND IT IS SO ORDERED.

October 26, 2011


William P. Keesley
Judge

#13 on 10/25 CPNJ roster

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

FORM 4

JUDGMENT IN A CIVIL CASE

ORIGINAL

CASE NO. 2010 -CP- 32-0521

MARIKO MARIE CLACK

2011 OCT 26 P 4: 14

EDDIE ARNOLD SMITH D/B/A

THE LAWN DOCTOR

PLAINTIFF(S)

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

DEFENDANT(S)

Submitted by: JUDGE

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : #13 on 10/25 CPNJ roster

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.

William P. Keesley
Circuit Court Judge
SCRPC Form 4C (10/2011)

2050
Judge Code

Oct. 26, 2011
Date

For Clerk of Court Office Use Only

This judgment was entered on the N/A day of N/A, 20- and a copy mailed first class or placed in the appropriate attorney's box on this 3rd day of November, 2011 to attorneys of record or to parties (when appearing pro se) as follows:

DONALD E. JONAS, ESQUIRE

(803) 609-1484

P.O. Box 99, Lexington, SC 29071

ATTORNEY(S) FOR THE PLAINTIFF(S)

ROBERT C. BROWN, ESQUIRE

(803) 771-6600

P.O. Box 7966, Columbia, SC 29202

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: APRIL P. HERRON

COPY

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS

Mariko Michelle Clack,

Plaintiff,

vs.

Eddie Arnold Smith, d/b/a The Lawn Smith,
Defendant.

C/A #2010-CP-32-05211

ORDER SUBSTITUTING COUNSEL

It appearing that J. Austin Hood is the attorney of record for the Defendant, Eddie Arnold Smith, d/b/a The Lawn Smith, in the captioned action; and it further appearing that pursuant to S.C. Code Ann. § 38-77-160, the underinsured motorist carrier in an action has the right to assume control of the defense of that action; and it further appearing that S. Jahue Moore, as the attorney for the underinsured motorist carrier for the Plaintiff herein, has indicated his desire to assume control of the defense of this action;

NOW, THEREFORE, on motion of J. Austin Hood, and by consent of S. Jahue Moore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that J. Austin Hood be, and he hereby is relieved of any obligation and reasonability to serve as counsel for the Defendant in the captioned matter; and

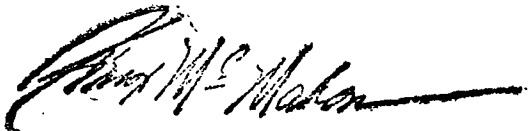
IT IS FURTHER ORDERED that S. Jahue Moore be, and he hereby is appointed to serve as counsel for the Defendant in the captioned action.

CLERK OF COURT
JAN 31 2012

2012 JAN 31 A 10:01

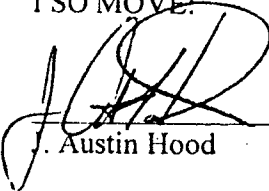
FILED

IT IS SO ORDERED.

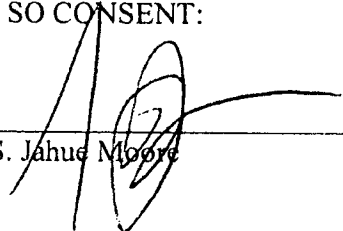

JUDGE, ELEVENTH JUDICIAL CIRCUIT

Lexington, South Carolina
January 30, 2012

I SO MOVE:


J. Austin Hood

I SO CONSENT:


S. Jahue Moore

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Mariko Michelle Clack

Plaintiff(s)

vs.

Eddie Arnold Smith, d/b/a The Lawn Smith

Defendant(s)

(Please Print)

Submitted By: Donald E. Jonas

Address: PO Box 99, Lexington, SC 29071

IN THE COURT OF COMMON PLEAS

ORIGINAL

CIVIL ACTION COVER SHEET

-CP- 2010 DEC -3 A 9:27

2010 CP 320521 1

SC Bar #: 3084

Telephone #: 803-609-1484/309-2483

Fax #: 803-957-3119

Other:

E-mail: jonastrialatty@netscape.net

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)

- | | | | |
|--|--|---|---|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20-CP-
☐ Notice/ File Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | 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)
☐ SCDOT (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 (510) | | |

Submitting Party Signature:

Date: Nov. 30, 2010

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

FOR MANDATED ADR COUNTIES ONLY

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

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

SCANNED

ORIGINAL

AM

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

2010 DEC -3 A 9:27

Mariko Marie Clack,
Plaintiff,

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

vs.

SUMMONS

Eddie Arnold Smith, d/b/a The
Lawn Doctor
Defendant.

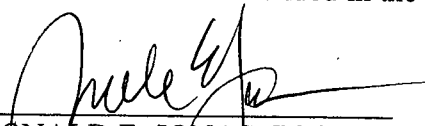
TO THE DEFENDANT ABOVE NAMED:

2010 CP3205211

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the complaint.

Lexington, South Carolina

Nov. 30, 2010


DONALD E. JONAS, ESQUIRE (#3084)
PO Box 99 (29071)
142 A.B. Frye Rd.
Lexington, SC 29073
Phone: (803) 609-1484/309-2483
Facsimile: (803) 957-3119
jonastrialatty@netscape.net
Attorney for the Plaintiffs

ORIGINAL

AM

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

2010 DEC -3 A 9:27

Mariko Michelle Clack,

Plaintiff,

vs.

Eddie Arnold Smith, d/b/a The Lawn
Smith,

Defendant,

COMPLAINT
(Jury Trial Requested)

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

2010CP3205211

The Plaintiff above named, complaining of the Defendant herein, would respectfully show unto the Court:

1. That the Plaintiff, Mariko Michelle Clack, is a citizen and resident of the State of South Carolina, and on July 13, 2009 was a passenger in a 1997 Ford SUV operated by Megan Ashley McNeil..

2. That, upon information and belief, the Defendant Eddie Arnold Smith, d/b/a The Lawn Smith is a citizen and resident of Lexington County, State of South Carolina and at the time of the occurrence herein mentioned was the owner and operator of Dodge Truck, S.C. License Tag Number #P108828.

3. That at approximately 5:00 p.m. on July 13, 2009 the Plaintiff's vehicle was traveling east on U.S. Highway 302 in the Town of South Congaree in Lexington County, State of South Carolina crossing the intersection of Pine Street when the Defendant, traveling north on Pine St. at an excessive rate of speed for the place and circumstances, on finding and perceiving that the Plaintiff's vehicle crossing the intersection, failed to stop his vehicle for the traffic signal controlling the intersection and collided with the passenger side door of the Plaintiff's vehicle causing it to turn over in the intersection.

4. That the Defendant had, or should have had, adequate opportunity to

perceive the Plaintiff's vehicle and that it was by and through the negligent, grossly negligent, careless, reckless, wilful and wanton acts or omissions of the Defendant that he failed to apply the brakes, thereby stopping his motor vehicle; and that he failed to steer either to the right or to the left, thereby avoiding the striking of the Plaintiff's vehicle; and that the Defendant.

5. That the Defendant, by his acts or omissions, was negligent, careless, reckless, wilful and wanton at the time and place previously mentioned in one or more of the following particulars, to-wit:

(a) In then and there failing to properly obey the stop light traffic control signal and in not bringing the aforesaid motor vehicle to a stop in response to such signal;

(b) In then and there failing to reduce the speed of his motor vehicle upon approaching and passing through an intersection;

(c) In then and there operating the said motor vehicle at a rate of speed which was excessive for the circumstances then prevailing;

(d) In then and there failing to properly observe the road and traffic conditions and failing to keep a proper lookout;

(e) In then and there failing to yield the right of way to the Plaintiff's vehicle;

(f) In then and there failing to maintain proper control over the aforesaid motor vehicle;

(g) In then and there failing to properly equip the said motor vehicle with adequate and safe brakes; and if so properly equipped, in failing to properly utilize them;

(h) In then and there failing to take advantage of any last clear chance to avoid striking the Plaintiff, when the Defendant saw, or should have seen, the Plaintiff in the roadway;

(i) In then and there failing to take any evasive action, by any means, to keep from striking the Plaintiff;

(j) In then and there colliding with the motor vehicle operated by the Plaintiff;

(k) In then and there failing to exercise that degree of care which a reasonable and prudent person would have exercised under the same or similar circumstances;

(l) In then and there operating a motor vehicle with a reckless disregard for the rights and safety of others, and especially the rights and safety of the Plaintiff;

(m) In then and there driving the said vehicle in utter and complete disregard of other motorists proceeding on the highway;

(n) In then and there violating the laws, statutes and ordinances in such cases made and provided, including those as follows:

(1) Section 56-5-730 - requiring obedience to traffic laws generally;

(2) Section 56-5-950 - requiring obedience to official traffic control devices;

- (3) Section 56-5-970(c) - requiring obedience to stop lights and requiring all vehicles to stop when a steady red indication is present;
- (4) Section 56-5-1520(a)(c)(1) - requiring all vehicles to be operated at a speed limit that is reasonable and prudent with regard to actual and potential hazards existing and in order to avoid a collision; also, to drive at a reduced speed when approaching and crossing an intersection, and when special hazard exists with respect to other traffic;
- (5) Section 56-5-4960 - requiring a driver to sound his horn when necessary to assure safe operation.

6. That as a direct and proximate result of the aforesaid negligent, grossly negligent, careless, reckless, wilful and wanton acts or omissions of the Defendant, the Plaintiff:

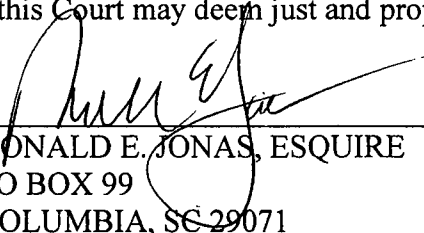
- (a) Was struck by the automobile driven by the Defendant;
- (b) Was seriously and painfully injured;
- (c) Suffered injuries, bruises, contusions, lacerations and scarring about various parts of the body including her head, neck, arm, hand, back, legs and foot;
- (d) Was subjected to the administration of strong and potent drugs and medications;
- (e) Suffered severe, serious, and painful injuries from which the Plaintiff is informed and believes she will have permanent adverse effect and disability; that the expected duration of her permanent disability is governed by Section 19-1-150, Code of Laws of South Carolina, 1976, as amended;
- (f) Has and will experience extreme pain, mental anguish, suffering and discomfort over a long period of time;
- (g) Was humiliated and embarrassed before her friends and neighbors;
- (h) Was unable to pursue her usual and normal vocation, thereby being deprived of her wages;
- (i) Is informed and believes that her earning capacity will be forever impaired;
- (j) Has been and will be prevented from attending to her usual and ordinary household duties;
- (k) Has incurred expenses for medical treatment as a result of her injuries;
- (l) Is informed and believes that she will incur expenses for medical treatment in the future as a result of this accident.

10. That the Plaintiff is informed and believes that she is entitled to judgment in this matter in such amount as a jury may award in an amount in excess of Twenty Five

Thousand (\$25,000.00) Dollars, actual and punitive damages.

WHEREFORE, Plaintiff demands judgment against the Defendant in an amount in excess of in such amount as a jury may award in an amount in excess of Twenty Five Thousand (\$25,000.00) Dollars, actual and punitive damages, for the costs of this action, and for such other and further relief as this Court may deem just and proper.

November 30, 2010



DONALD E. JONAS, ESQUIRE
PO BOX 99
COLUMBIA, SC 29071
(803) 609-1484/ 309-2483
Fax: (803) 957-3119
jonastrialatty@netscape.net

0
JM
SCANNED

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

2010 CP 32-05211

2010 DEC 31 A 11:43

Mariko Marie Clack,)
Plaintiff,)

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

vs.)

CERTIFICATE OF SERVICE

Eddie Arnold Smith, d/b/a The)
Lawn Doctor)
Defendant.)

The undersigned hereby certifies that a copy of the attached correspondence of Director Scott Richardson, S.C. Dept of Insurance, certifies that on December 9, 2010 State Farm Mutual Automobile Insurance Co., an underinsured insurance carrier, was served with a copy of the Civil Cover Sheet, Summons and Complaint in the above referenced matter, as provided by SC Code Ann. Sect 38-77-160..

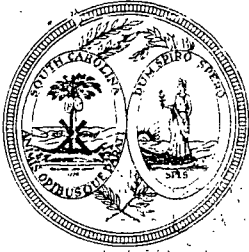


DONALD E. JONAS

Attorney for the Plaintiff

PO Box 99

Lexington, South Carolina 29071



South Carolina Department of Insurance

Capitol Center
1201 Main Street, Suite 1000
Columbia, South Carolina 29201

FILED

ORIGINAL

MARK SANFORD
Governor

SCOTT H. RICHARDSON
Director of Insurance

Mailing Address:
P.O. Box 100105, Columbia, S.C. 29202-3105
Telephone: (803) 737-6160

2010 DEC 31 A 11:43

TH A. CARRIGG
CLERK OF COURT
LEXINGTON SC.

December 9, 2010

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
STATE FARM MUTUAL AUTOMOBILE INS CO
VICE PRESIDENT - AGENCY
7 TECHNOLOGY CIRCLE, SUITE 400
COLUMBIA, SC 29203-0000

Dear Sir:

On December 9, 2010, I accepted service of the attached Summons and Complaint on your behalf. I am, hereby, forwarding that accepted process on to you pursuant to the provisions of S.C. Code Ann. § 38-5-70 (Supp. 2003). By forwarding accepted process on to you, I am meeting a ministerial duty imposed upon me by S.C. Code Ann. § 38-77-160 (Supp. 2003). I am not a party to this case. The State of South Carolina Department of Insurance is not a party to this case. It is important for you to realize that service was effected upon your insurer on my date of acceptance for service.

You must promptly acknowledge in writing your receipt of this accepted process. When replying, please refer to File Number 143610, Mariko M. Clack v. Eddie A. Smith, 2010-CP-32-05211.

By:

Sincerely Yours,

Jeff Jacobs
Chief Legal Counsel
(803)737-6200

Scott Richardson
Director
State of South Carolina
Department of Insurance

Attachment

CC: Donald E. Jonas
Post Office Box 99
Lexington, SC 29071

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
IN THE ELEVENTH JUDICIAL DISTRICT

Mariko Michelle Clack,
Plaintiff,

CIVIL ACTION NO.: 2010-CP-32-5211

v.

Eddie Arnold Smith, d/b/a The
Lawn Smith,

Defendant.

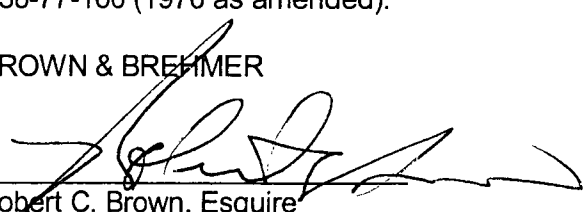
**NOTICE OF APPEARANCE
ON BEHALF OF
STATE FARM MUTUAL AUTOMOBILE INSURANCE
COMPANY**

TO: DONALD E. JONAS, ESQUIRE, ATTORNEY FOR THE PLAINTIFF

The undersigned, as attorneys for STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY hereby notify and advise this Court, the parties above-named and their attorneys, that they are appearing on behalf of STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, an insurance carrier which is alleged to provide underinsured motorist coverage to one or more parties to this action and that, in making this appearance, STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY specifically preserves and does not waive any rights pursuant to its policy of insurance including, but not limited to, the applicability of underinsured motorist coverage to this action and further intends to preserve all rights which it may have pursuant to South Carolina Code Section 38-77-160 (1976 as amended).

BROWN & BREHMER

By:


Robert C. Brown, Esquire
1720 Main Street, Suite 201
Post Office Box 7966
Columbia, South Carolina 29201
(803) 771-6600
Attorneys for State Farm Mutual Automobile
Insurance Company

Columbia, South Carolina
December 20, 2010

BETH A. CARRIG
CLERK OF COURT
LEXINGTON, SC

2010 DEC 22 12

FILED

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
IN THE ELEVENTH JUDICIAL DISTRICT

Mariko Michelle Clack,

Plaintiff,

v.

Eddie Arnold Smith, d/b/a The
Lawn Smith,

Defendant.

CIVIL ACTION NO.: 2010-CP-32-5211

CERTIFICATE OF SERVICE BY MAILING

I, Sharra L. Arnold, the undersigned employee of Brown & Brehmer, hereby certify that a copy of the following document has been served on the following individual by depositing same in the United States Postal Service with the proper amount of first-class postage duly affixed this 20th day of December, 2010.

PLEADING:

Notice of Appearance on Behalf of State Farm
Mutual Automobile Insurance Company

SERVED ON:

Donald E. Jonas, Esquire
P.O. Box 99
Columbia, SC 29071
Attorney for the Plaintiff


Sharra L. Arnold
Legal Assistant to Robert C. Brown, Esquire

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

2010 DEC 22 P 12:17

FILED

WFE

ORIGINAL LMC
SCANNED

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON) IN THE ELEVENTH JUDICIAL DISTRICT

Mariko Michelle Clack, 2010 DEC 29 CIVIL ACTION NO.: 2010-CP-32-5211

Plaintiff,

v.

Eddie Arnold Smith, d/b/a The
Lawn Smith,

Defendant.

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

DEFENDANT'S ANSWER
TO
PLAINTIFF'S COMPLAINT
(Jury Trial Demanded)

The Defendant, answering the Plaintiff's Complaint herein, would respectfully show unto the Court that:

FOR A FIRST DEFENSE

1. The Defendant would show that although he does business as The Lawn Smith, he was not doing business as The Lawn Smith at the time this accident occurred on July 13, 2009, and therefore the d/b/a portion of the Plaintiff's Complaint should be stricken and that aspect of the Plaintiff's Complaint should be dismissed.

FOR A SECOND DEFENSE

2. The Defendant denies each and every allegation of the Plaintiff's Complaint not hereinafter specifically admitted.

3. Paragraph 1 is admitted, upon information and belief.

4. Paragraph 2 is admitted with the exception that the Defendant denies that he was doing business as The Lawn Smith at the time this accident occurred on July 13, 2009, and therefore that assertion in Paragraph 2 should be dismissed or stricken.

5. As to Paragraph 3, the Defendant admits that on July 13, 2009, at approximately 5:00 p.m., the Plaintiff was riding as a passenger in a 1997 Ford SUV being driven by Megan Ashley McNeill in an easterly direction on U. S. Highway 302 in South Congaree, South Carolina, at its intersection with Pine Street and the Defendant was driving a

Dodge truck in a northerly direction on Pine Street and a collision occurred between the vehicles being driven by Megan Ashley McNeill and the Defendant at the intersection of U. S. Highway 302 and Pine Street in South Congaree, South Carolina, and that after this collision occurred, the vehicle being driven by Megan Ashley McNeill overturned; otherwise, Paragraph 3 is denied as stated.

6. Paragraphs 4 and 5 are denied as stated, upon information and belief.

7. The Defendant does not have sufficient knowledge or information to form a belief as to the exact nature or extent of any injuries or damages sustained by the Plaintiff, and therefore denies Paragraph 6 in its entirety and demands strict proof thereof.

8. Paragraph 10 is denied as stated, upon information and belief.

FOR A THIRD DEFENSE

9. The Defendant would show, upon information and belief, ant any injuries or damages sustained by the Plaintiff were due to the acts of omissions of Megan Ashley McNeill or others not within the employ or control of the Defendant and therefore, the Plaintiff cannot recover from the Defendant in any sum whatsoever.

FOR A FOURTH DEFENSE

10. The Defendant would show, upon information and belief, that the Plaintiff's claim for punitive damages violates the Fifth, Sixth, Seventh, Eighth and Fourteenth Amendments to the Constitution of the United States of America in that it violates the double jeopardy clause in that the Defendant could be subjected to multiple awards of punitive damages for the same set of facts, the self-incrimination clause is being violated because the Defendant can be compelled to give testimony against himself in a penalty situation such as punitive damages, the assessment of punitive damages by a burden of proof less than beyond a reasonable doubt is violative of the Sixth and Fourteenth Amendments in that punitive damages are a fine or penalty and are, therefore, quasi-criminal in nature, Plaintiff's claim for punitive damages violates the Defendant's right to access to the courts as guaranteed by the Seventh and Fourteenth Amendments because

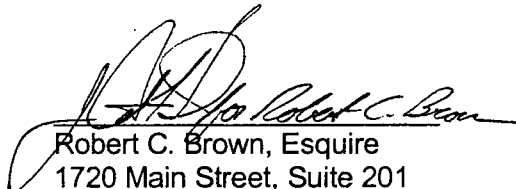
the threat of an award of punitive damages chills the Defendant's exercise of that right, the Plaintiff's claim for punitive damages violates the Eighth Amendment's guarantee that excessive fines shall not be imposed, and the Plaintiff's claim for punitive damages violates both the due process and equal protection clauses of the Fourteenth Amendment in that the standard for awarding either punitive damages is unduly vague and, therefore, violates both procedural and substantive due process safeguards and, therefore, the Plaintiff's claim for punitive damages should be dismissed.

WHEREFORE, having fully answered, the Defendant prays that the Plaintiff's Complaint be dismissed with costs.

The Defendant demands a jury trial.

BROWN & BREHMER

By:



Robert C. Brown, Esquire
1720 Main Street, Suite 201
Post Office Box 7966
Columbia, South Carolina 29202
(803) 771-6600
Attorneys for Defendant

Columbia, South Carolina
December 22, 2010

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
IN THE ELEVENTH JUDICIAL DISTRICT

Mariko Michelle Clack,)
Plaintiff,)

CIVIL ACTION NO.: 2010-CP-32-5211

v.)

CERTIFICATE OF SERVICE BY MAILING

Eddie Arnold Smith, d/b/a The)
Lawn Smith,)
Defendant.)

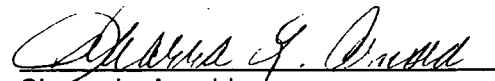
I, Sharra L. Arnold, the undersigned employee of Brown & Brehmer, hereby certify that a copy of the following document has been served on the following individual by depositing same in the United States Postal Service with the proper amount of first-class postage duly affixed this 22nd day of December, 2010.

PLEADING:

Defendant's Answer to Plaintiff's Complaint

SERVED ON:

Donald E. Jonas, Esquire
142 A.B Frye Road
P. O. Box 99
Lexington, SC 29071
Attorneys for the Plaintiff



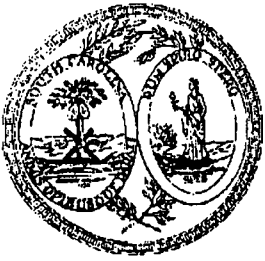
Sharra L. Arnold
Legal Assistant to Robert C. Brown, Esquire

LMC

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

2010 DEC 29 P 12:39

FILED



South Carolina
Department of Insurance

ORIGINAL

NIKKI R. HALEY
Governor

SCOTT RICHARDSON, CPCU
Director of Insurance

2011 MAR 17 P 4:35

January 24, 2011 BETH A. CARRIGS
CLERK OF COURT
LEXINGTON SC

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
ALLSTATE INS CO
c/o CT Corporation System
2 Office Park Court, Suite 103
Columbia, SC 29223-0000

Dear Sir:

On January 24, 2011, I accepted service of the attached Summons and Complaint on your behalf. I am, hereby, forwarding that accepted process on to you pursuant to the provisions of S.C. Code Ann. § 38-5-70 (Supp. 2003). By forwarding accepted process on to you, I am meeting a ministerial duty imposed upon me by S.C. Code Ann. § 38-77-160 (Supp. 2003). I am not a party to this case. The State of South Carolina Department of Insurance is not a party to this case. The claimant, within this service letter, provided the following additional information regarding this first party claim: Mariko Clack. It is important for you to realize that service was effected upon your insurer on my date of acceptance for service.

You must promptly acknowledge in writing your receipt of this accepted process. When replying, please refer to File Number 143963, Mariko Michelle Clack v. Eddie Arnold Smith, et al., 2010-CP-32-5211.

By:

Jeff Jacobs
Chief Legal Counsel
(803)737-6200

Sincerely Yours,

Scott Richardson
Director
State of South Carolina
Department of Insurance

Attachment

CC: Donald E. Jonas
Post Office Box 99
Lexington, SC 29071

ORIGINAL

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

Mariko Marie Clack,)
Plaintiff,)

vs.)

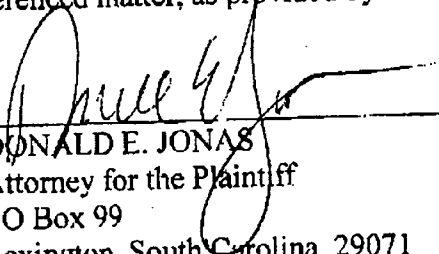
Eddie Arnold Smith, d/b/a The)
Lawn Doctor)
Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

2010 CP 32-05211

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the attached correspondence of Director Scott Richardson, S.C. Dept of Insurance, certifies that on January 24th, 2011 Allstate Insurance Co., an underinsured insurance carrier, was served with a copy of the Civil Cover Sheet, Summons and Complaint in the above referenced matter, as provided by SC Code Ann. Sect 38-77-160..


DONALD E. JONAS

Attorney for the Plaintiff

PO Box 99

Lexington, South Carolina 29071

KEITH A. CARRIG
CLERK OF COURT
LEXINGTON SC

2011 MAR 17 P 4: 35

FILED

COPY

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

FILED IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

Mariko Marie Clack,
Plaintiff,

2011 APR 12 2010 GA 32-05211

vs.

DETHA A. CARRIGG
CLERK OF COURT
LEXINGTON

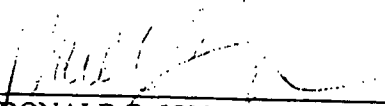
AFFIDAVIT OF DEFAULT

Eddie Arnold Smith, d/b/a The
Lawn Doctor

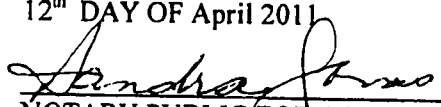
Defendant..

PERSONALLY APPEARED before me the undersigned attorney, who first being duly sworn, deposes and says that he is the attorney for the Plaintiff in this action;

1. That on December 15, 2010, a Summons and Complaint, were heretofore served upon Defendant in this action by the Lexington County Sheriff's Department;
2. On January 24, 2011, Plaintiff served a copy of the Summons and Complaint on the Honorable Scott Richardson, S.C. Dept. of Insurance, designated agent for service for Allstate Insurance Company, an underinsured carrier, as provided by S.C. Code Sect. 38-77-160;
3. That more than thirty (30) days have elapsed, exclusive of the day of service of the Summons and Complaint on the Defendant Eddie Arnold Smith and the UIM Carrier Allstate Insurance Company;
4. That Defendant has filed no Answer or responsive pleading on his own behalf and the said Defendant is in default;
5. That UIM carrier Allstate Insurance Company has filed no answer or response to the Summons and Complaint on behalf of the Defendant as allowed by S.C. Code Sect. 38-77-160.


DONALD E. JONAS, ESQUIRE
ATTORNEY FOR PLAINTIFF

SWORN TO BEFORE ME THIS
12th DAY OF April 2011


NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES 12-21-2019

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

COUNTY OF LEXINGTON

FILED

CASE NO.: 10-CP-32-05211

Mariko Marie Clack

2011 APR 12

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

vs.

Plaintiff,)
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

Eddie Arnold Smith, d/b/a The Lawn Doctor

Defendant.

PPB SCANNED

Plaintiff's Attorney:

Donald E. Jonas, Bar No. 3084

Address:

PO Box 99, Lexington, SC 29071

Phone: 803-609-1484/309-2483 Fax 803-957-3119

E-mail: jonastrialatty@netscape.net

Other: _____

Defendant's Attorney:

_____, Bar No. _____

Address: _____

Phone: _____ Fax: _____

E-mail: _____ Other: _____

- ☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Default- Damages

Estimated Time Needed: 1.5 hr.

Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached☐ 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 ☒ Plaintiff / ☐ Defendant

4/12/11

Date submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT: \$ _____☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support☐ Domestic Abuse or Abuse and Neglect☐ Indigent Status ☐ State Agency v. Indigent Party☐ Sexually Violent Predator Act ☐ Post-Conviction Relief☐ Motion for Stay in Bankruptcy☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)☐ 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: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: 4-12-2011

☒ MOTION FEE COLLECTED: \$ 25.00☐ CONTESTED - AMOUNT DUE: \$ _____

ORIGINAL

STATE OF SOUTH CAROLINA FILED IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON) FOR THE ELEVENTH JUDICIAL CIRCUIT

2011 APR 12 2010 CP 32-05211

Mariko Marie Clack,
Plaintiff,

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

SCANNED

vs.

NOTICE AND MOTION
FOR DEFAULT JUDGMENT

Eddie Arnold Smith, d/b/a The
Inc.
Defendant.

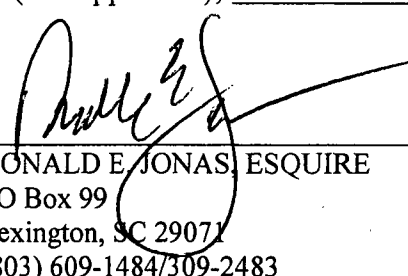
To: Defendant Eddie Arnold Smith, d/b/a The Lawn Doctor.

YOU WILL PLEASE TAKE NOTICE that Plaintiff, by its undersigned counsel, will move before the Judge, Eleventh Judicial Circuit, Court of Common Pleas, at the Lexington County Courthouse, 205 East Main St., Lexington, S.C., at 10:00 a.m. on the tenth (10th) day after service hereof or as soon thereafter as counsel may be heard for an Order adjudging the Defendant, to be in default. Plaintiff further motions that after a hearing that judgment be awarded the Plaintiff against the Defendant in such amounts as may be properly due.

That notice of the Motion For Judgment and Notice of Default Hearing shall be given the Defendant in accord with the requirements of law.

In support of such motion the Plaintiff shall rely on the pleadings and documents on file and such authorities and materials as may be properly presented including: Limehouse v. Hulsey, 4805 (SCCA, Mar. 10, 2011); Roche v. Young Bros. of Florence, 332 S.C. 75, 81-82, 504 S.E.2d 311, 314 (1998); Howard v. Holiday Inn, Inc., 238, 241, 246 S.E.2d 880, 882 (1978); Doe v. SBM, 327 S.C. 352, 356, 488 S.E.2d 878, 881 (Ct. App. 1997); Ammons v. Hood, 288 S.C.278, 282, 341 S.E.2d 816, 818 (Ct. App 1986).

April 12th, 2011


DONALD E. JONAS, ESQUIRE
PO Box 99
Lexington, SC 29071
(803) 609-1484/309-2483
jonastrialatty@netscape.net
ATTORNEY FOR PLAINTIFF

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

FILED
IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

2011 APR 12 2:05 PM

Mariko Marie Clack,
Plaintiff,

PPB

BETH A. CARRIGG
CLERK OF COURT

LEXINGTON, SC

vs.

SCANNED

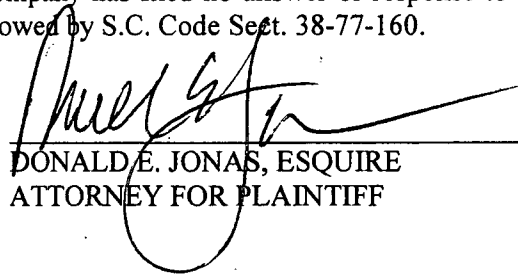
AFFIDAVIT OF DEFAULT

Eddie Arnold Smith, d/b/a The
Lawn Doctor

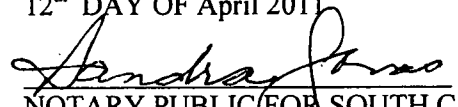
Defendant..

PERSONALLY APPEARED before me the undersigned attorney, who first being duly sworn, deposes and says that he is the attorney for the Plaintiff in this action;

1. That on December 15, 2010, a Summons and Complaint, were heretofore served upon Defendant in this action by the Lexington County Sheriff's Department;
2. On January 24, 2011, Plaintiff served a copy of the Summons and Complaint on the Honorable Scott Richardson, S.C. Dept. of Insurance, designated agent for service for Allstate Insurance Company, an underinsured carrier, as provided by S.C. Code Sect. 38-77-160;
3. That more than thirty (30) days have elapsed, exclusive of the day of service of the Summons and Complaint on the Defendant Eddie Arnold Smith and the UIM Carrier Allstate Insurance Company;
4. That Defendant has filed no Answer or responsive pleading on his own behalf and the said Defendant is in default;
5. That UIM carrier Allstate Insurance Company has filed no answer or response to the Summons and Complaint on behalf of the Defendant as allowed by S.C. Code Sect. 38-77-160.


DONALD E. JONAS, ESQUIRE
ATTORNEY FOR PLAINTIFF

SWORN TO BEFORE ME THIS
12th DAY OF April 2011


NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES 12-21-2019

COPIED JM ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

2010 CP 32-05211

Mariko Michelle Clack,)

Plaintiff,)

vs.)

Eddie Arnold Smith, d/b/a The
Lawn Smith,)

Defendant,)

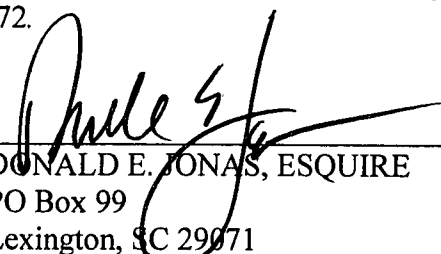
NOTICE OF HEARING
Defendant Eddie Arnold Smith,
d/b/a The Lawn Doctor

To: Defendant Eddie Arnold Smith.

TAKE NOTICE AND BE ADVISED:

A hearing has been scheduled in the above referenced case on June 16, 2011 at 9:30 a.m. at the Lexington County Courthouse April 12, 2011, regarding Plaintiff's Motion For Default Judgment against Defendant Eddie Arnold Smith, d/b/a The Lawn Doctor. The hearing is scheduled to be held at 9:30 a.m., or as soon thereafter as the matter may be heard before the Honorable Knox McMahon, as case # 3, on June 16, 2011 at the Lexington County Courthouse, 205 East Main St., Lexington, SC 29072.

May 31, 2011


DONALD E. JONAS, ESQUIRE
PO Box 99
Lexington, SC 29071

WV

NETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

2011 JUN - 1 A 10:46

FILED

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

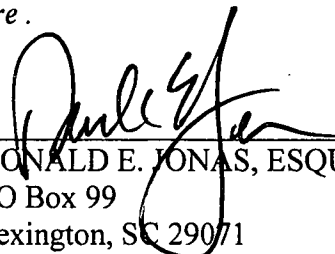
IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

2010 CP 32-05211

Mariko Michelle Clack,)
Plaintiff,)
vs.)
Eddie Arnold Smith, d/b/a The)
Lawn Smith,)
Defendant,)

Certificate Of Mailing To
Defendant Eddie Arnold Smith,
d/b/a The Lawn Doctor

The undersigned hereby certifies that a copy of the Motion For Default Judgment and Notice Of Hearing of Plaintiff's Motion For Default Judgment scheduled for 9:30 a.m. on June 16, 2011, were mailed to Defendant Eddie Arnold Smith, d/b/a The Lawn Doctor, in the above referenced case at the address(es) as shown below, by regular mail on May 31, 2011, by depositing said document in the United States Mail at Lexington, South Carolina, with postage duly affixed and a return address clearly indicated on the envelope; all in accordance with the *South Carolina Rules of Civil Procedure*.


DONALD E. JONAS, ESQUIRE
PO Box 99
Lexington, SC 29071

Addressee:
Eddie Arnold Smith, d/b/a The Lawn Doctor
116 Colony Lakes Ct.
Lexington, SC 29073

777

2011 JUN - 1 A 10:46
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

FILED

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS,
FOR THE ELEVENTH JUDICIAL CIRCUIT

2010 CP 32-05211

2011 SEP 27 A 9: 35

Mariko Marie Clack,)
Plaintiff,)

vs.)

Eddie Arnold Smith, d/b/a The)
Inc.)
Defendant.)

Notice and Motion For Summary Judgment

BETH A. CARRIGO
CLERK OF COURT
LEXINGTON SC

SCANNED

LMC

To: Robert C. Brown, Esquire, Brown & Brehmer, Attorneys For Defendant .

YOU WILL PLEASE TAKE NOTICE that the Plaintiff by and through the undersigned counsel, will move, on the tenth (10th) day following service hereof, or as soon thereafter as counsel may be heard, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, for summary judgment as to all issues raised in the complaint and answer and counterclaim, on the grounds that there is no genuine issue as to any material fact and that the Plaintiffs are entitled to judgment against the Defendant Eddie Arnold Smith, d/b/a The Lawn Doctor, as a matter of law as to the following matters:

1. That the Defendant was negligent and solely responsible for causing the automobile collision that occurred on July 13, 2009, in which the Plaintiff was a passenger in a Ford Explorer vehicle operated by Megan Ashley McNeill that was involved in a collision with the Defendant's vehicle at the intersection of U.S. Highway 302 and Pine Street in the Town of South Congaree in Lexington County when the Ford Explorer headed East on Hwy 302 in S. Congaree, SC was broadsided in the signaled intersection of Pine St. by the Defendant's vehicle headed North on Pine Street failed to stop for the controlling traffic signal, entered the intersection and collided with the passenger side of the Ford Explorer where Ms. Clack was seated.

2. That the Defendant admitted that he entered the intersection without the right of way and later appeared in City Court and plead guilty to a violation of S.C. Code Ann. Section 56-5-970(c) - requiring obedience to stop lights and which required all vehicles to stop when a steady red indication is present.

3. That the collision caused the Ford Explorer vehicle to roll over causing serious and disfiguring injuries to the Plaintiff.

4. That as a proximate result of the collision the Plaintiff suffered injuries including a degloving injury to the dorsum of the right dominant hand, left ankle sprain & pain, neck sprain and strain, pain in the thoracic spine, contact dermatitis, bacterial infection, acute upper respiratory infection.

5. That as a proximate result of the collision and her resulting injuries the Plaintiff underwent medical care at Lexington Medical Center, Lexington Orthopedics, Palmetto Baptist Pain and Orthopedic Care Ctr. and University Specialty Clinics.

6. That as a result of the accident the Plaintiff incurred medical expenses related to the necessary care of her injuries in the total \$31,516 and include:

	<u>Cost of Care</u>
Lexington Cty EMS-Acct # 802910.(7/13/09)	\$ 559
Lexington Cty Medical Center-Acct # H00040612368 .07/13/09-07/14/10	\$11,480
Lexington Orthopaedics, Dr. McIntosh (7/13/09-	\$ 3,423
Palmetto Health Baptist, Clare N. McGill, OTR/L,CHT	\$10,548
Dr. Harold I. Friedman MD,Ph.D., left knee dermabrasion (physician fee)	\$ 2,006
Outpatient hospital fee estimate-dermabrasion	<u>\$ 3,500</u>
	\$31,516

7. That as a result of the accident and her resulting injuries the Plaintiff was temporarily disabled from her employment as a cosmetologist and waitress from July 14, 2009-Sept.18, 2009, a period of approximately 10 weeks and when she was able to return to work continued to experience significant problems of pain in her ankle and back while standing for a prolonged period, a reduced grip and pinch strength while using her primary right hand

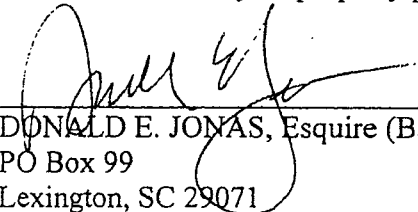
6. That as a result of the accident the Plaintiff (DOB 1/17/87) suffered permanent and disfiguring injury to her right hand and fingers including significant scarring and split nail deformity that cannot be corrected with surgery and which require regular and ongoing application and maintenance of cosmetic nails to cover the deformity and to prepare her for her work as a waitress and cosmetologist.

7. That the recurring cost of replacing and maintaining the cosmetic nails (3 replacements/yr and infills every 3-4 weeks) is approximately \$550/yr. and is expected to continue for Plaintiff's life expectancy.

8. That Plaintiff has suffered serious, lasting and permanent pain and suffering as a result of this accident.

In support of such motion the Plaintiff shall rely on the pleadings and attachments hereto, such affidavits as may be properly submitted, answers and materials submitted in response to discovery and depositions to be filed and other authorities as may be properly presented.

Sept.24, 2011


DONALD E. JONAS, Esquire (Bar# 3084)
PO Box 99
Lexington, SC 29071
(803) 609-1484/309-2535
ATTORNEY FOR PLAINTIFF

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

2010 CP 32-05211

Mariko Marie Clack,)
Plaintiff,)

2011 SEP 27 A 9:30

vs.)

Certificate of Service

BETH A. CARRIGS
CLERK OF COURT
LEXINGTON SC

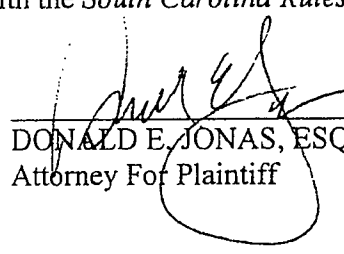
Eddie Arnold Smith, d/b/a The)
Inc.)
Defendant.)

The undersigned hereby certifies that a copy of the within :

The documents served included:

1. Plaintiff's Notice and Motion For Summary Judgment
2. Plaintiff's Notice of Deposition of Defendant Eddie Arnold Smith.

was/were duly served on Robert C. Brown, Esquire, attorney for Defendant Eddie Arnold Smith by depositing said document(s) in the United States Mail, at Lexington, South Carolina, on September 26, 2011, with first-class postage duly affixed and a return address clearly indicated on the envelope; all in accordance with the *South Carolina Rules of Civil Procedure*


DONALD E. JONAS, ESQUIRE
Attorney For Plaintiff

Attorney For Defendant
Robert C. Brown, Esquire
Brown & Brehmer
PO Box 7966
Columbia, SC 29202

COPY

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON) FOR THE ELEVENTH JUDICIAL CIRCUIT

2011 OCT 25 1:36 2010 CP 32-05211

Mariko Marie Clack,
Plaintiff,

vs.

Eddie Arnold Smith, d/b/a The
Lawn Smith,
Defendant.

PLAINTIFF'S MEMORANDUM
IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT

Background

1. The Summons and Complaint that was filed on December 3, 2010, seeking judgment against the Defendant Eddie Arnold Smith for negligence as a result of an automobile collision that occurred on July 13, 2009, in which the Plaintiff was a passenger in a vehicle operated by Megan Ashley McNeill that was involved in a collision with the Defendant's vehicle at the intersection of U.S. Highway 302 and Pine Street in the Town of South Congaree in Lexington County, South Carolina.
2. The original affidavit of service of the Summons and Complaint of Defendant Eddie Arnold Smith, attesting that the Defendant was served by the Lexington County Sheriff's Department on December 15, 2010. The Defendant filed an Answer by the Defendant dated December 22, 2010.
3. The Summons and Complaint was accepted for service by the Honorable Scott Richardson, S.C. Dept of Insurance, designated agent for service for State Farm Mutual Automobile Insurance Company, the underinsured carrier for Megan Ashley McNeil on December 9, 2010. State Farm entered a Notice of Appearance dated December 20, 2010.
4. The Summons and and Complaint was also accepted for service by the Honorable Scott Richardson, S.C. Dept of Insurance, designated agent for service for Allstate Insurance Company, the underinsured carrier for Mariko Clack on January 24, 2011.
5. Allstate Insurance Company has filed no Answer or responsive pleading to the Summons and Complaint as allowed by S.C. Code Sect. 38-77-160.
6. In support of the Motion for Summary Judgment the Plaintiff filed an Affidavit In Support of Summary Judgment on Oct. 14, 2011, the deposition of the Defendant taken on Oct. 21, 2011 and the Plaintiff's Answers To Defendant's Interrogatories and Responses To Defendant's Request For Production, served on Defendant's attorney on December 27, 2010. Defendant has presented no affidavit or materials in response.

Standard For Decision

SCRCP 56 (c) provides in part that summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

Argument

The Defendant filed an answer in this matter denying liability and alleging the intervening negligence of the vehicle driver, Megan Ashley McNeil. The allegations of that answer have been refuted by both the Plaintiff and Defendant and summary judgment as to all issues of liability should be granted.

1.. Plaintiff's affidavit states that on July 13, 2009, she was a passenger in a 1997 Ford Explorer being driven by Megan Ashley McNeil, headed East on Hwy 302 in South Congaree, SC. As the McNeil vehicle entered the intersection at Pine St. with the green signal and right-of-way, the Defendant headed North on Pine Street, failed to stop for the red light controlling traffic from Pine Street entering Hwy 302 and collided with the passenger side of the Ford Explorer where Ms. Clack was seated, causing the vehicle to roll over.

2. On October 21, 2010, Defendant was deposed and stated that he recalled that he was stopped at the stop light at the intersection of Pine St., looked down and pulled forward into the intersection without checking the signal again. (Depo. Smith, p. 24, ll. 11-17) Later, when appearing at City Court, Mr. Smith admitted and agreed that he had entered the intersection under a red signal and had always accepted responsibility for the accident. (Depo. p. 16, ll. 1-8) When asked about the basis of the allegations made in the Answer denying liability and alleging the intervening negligence of Ms. McNeil, he stated that he did not recall previously seeing the document but was certain that he never claimed that Ms. McNeil caused the accident. (Depo. Smith, p. 17, ll. 11-25; 18, ll. 1-9)

There is no genuine issue as to any material fact regarding the Defendant's simple negligence and liability in this case and all issues of negligence and Defendant's liability for causing this collision should be granted to the Plaintiff.

Argument

There is no genuine issue as to any material fact that the Plaintiff experienced injuries, bruises, contusions, lacerations about various parts of her body including her head, neck, arm, hand, back, legs and foot as a direct and proximate result of the collision and the Defendant's negligence.

According to the Plaintiff's affidavit and discovery responses:

a. As a result of the roll over accident she was seriously injured and was transported by ambulance to the Lexington Medical Center. Dr. James McIntosh, (Lexington Orthopedics) was

called and she was treated for the degloving injury to her hand, neck and thoracic sprain/strain/lacerations to her head, face, shoulder, leg, foot, etc. She received 15-20 stitches to close the wound to her right arm and staples to close the wound to her head. Her hand was treated, splinted and she was confined to a wheel chair as a result of her ankle injury. Ms. Clack is a young woman (d.o.b. 01/17/87) and single mother and after her release from the hospital she was attended at home by her parents who took over the transportation and nursing duties and child care responsibility of her six year old daughter.

b. At the time of the accident she was employed as a cosmetologist and waitress and also had formal training and considerable experience as a model.

c. Following her emergency care Ms. Clack returned to Lexington Orthopedics and was treated for a degloving injury to the dorsum of the right dominant hand, neck sprain strain, pain thoracic spine, contact dermatitis, bacterial infection, acute upper respiratory infection, and left ankle sprain & pain.

d. On 8/10/09 Ms. Clack returned to Lexington Orthopedics and received further treatment for the degloving injury, continued in a walking boot and was referred to Palmetto Baptist Pain and Orthopedic Care Ctr. for therapy by occupational therapist Clare N. McGill. Ms. McGill supervised the aggressive rehabilitation of the hand to reduce the loss of range of motion associated with the degloving injury and scarring. On 8/17/09 Ms. Clack returned to Lexington Orthopedics and was referred for an MRI of her left foot that was read as indicating nonspecific marrow edema involving the mid and medial aspect of the entire talus bone, significant for the likelihood of early arthritis. On 8/27/09 Ms. Clack again returned to Lexington Orthopedics and was advised that she was likely not a candidate for scar revision and was likely to experience permanent "split nail deformities" a longitudinal split in the nail caused by an underlying axial scar dividing the nail plate formation from the germinal matrix or of the fingernail and causing the nail to grow in two or more separate plates.

e. Ms. Clack continued with her physical therapy and specific occupational therapy of the hand. By mid September, she was able to return to her work and partially perform her jobs as a cosmetologist/hairdresser and a second job as a waitress while wearing a Jobst glove but found it difficult and embarrassing to perform those jobs while standing for prolonged periods and gripping objects with the injured hand while wearing the glove. She was not able to perform that portion of her work as a stylist that included hair washing and application of hair care products while she was healing and wearing the glove. She also experienced difficulty performing her second job as a waitress and was not able to securely grip the items she was handling and was embarrassed to have to deal with customers' questions while wearing the glove.

f. Ms. Clack was also referred to surgeon Dr. Harold Friedman at the University Specialty Clinics for evaluation of her plastic surgery concerns. Following his evaluation Dr. Friedman advised that there was little chance to improve the hand scarring and nail deformity but did offer the prospect of improving the scar on the knee and estimated that the procedure, including a surgeon's fee of \$2,006 and outpatient hospital fees estimated to be approximately \$3,500. Dr. Friedman further advised that Ms. Clack's best course regarding the nail deformities was to use cosmetic nail replacements.

g. Ms. Clack was eventually released from orthopedic care in March 2010 with continuing problems with the right hand including injury to the articular cartilage of the PIP joint of her fingers of her right hand, most significantly the long finger of the right hand and continuing problems with the left ankle, back complaints and significant and deep scarring of the left leg and right hand, the biggest problem involving the long finger and a split nail deformity caused by the degloving injury.

h. Occupational Therapist Claire N. McGill, Palmetto Baptist Pain and Orthopedic Care Ctr. completed Ms. Clack's physical therapy and tested her right hand for flexibility and grip strength. She reported that Ms. Clack had experienced a significant loss of range of motion and loss of grip and pinch strength of her right hand.

i. Ms. Clack incurred actual medical expenses related to the injuries she received in this accident in the total amount of \$26,010. Those expenses include:

	<u>Cost of Care</u>
Lexington Cty EMS-Acct # 802910 (7/13/09)	\$ 559
Lexington Cty Medical Center-Acct # H00040612368 07/13/09-07/14/10	\$11,480
Lexington Orthopaedics, Dr. McIntosh (7/13/09-	\$ 3,423
Palmetto Health Baptist, Clare N. McGill, OTR/L,CHT	\$10,548

j. Ms. Clack also received estimates for scar revisions of her left knee from Dr. Harold I. Friedman MD,Ph.D., in the amount of \$5,506. Those expenses include:

left knee dermabrasion-(physician fee)	\$ 2,006
Outpatient hospital fee estimate-dermabrasion	\$ 3,500

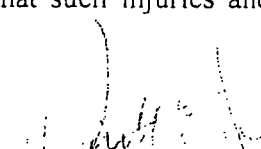
8. Based on the professional advice by both Lexington Orthopedics and Dr. Friedman at University Specialty Clinics that nothing can be done to correct Ms. Clack's nail deformities and that her only alternative is to wear cosmetic nails that allow her to perform her job as a hair stylist and waitress, she has presented. Various photos included in the Plaintiff's discovery responses demonstrate the extent of the split nail deformity and scarring of her right hand. The materials presented indicate that Ms. Clack will require a full set of nail replacement tips and acrylic overlay with buffing and polishing approximately three-four times yearly. Further, the information presented indicates that infills are required every 3-4 weeks for maintenance.

9. Ms. Clack was 22 years old at the time of this accident. At the time of the accident she was employed as a full time cosmetologist and a part-time waitress. Her employment involved interaction with the public at close proximity and particularly the use of her hands. As a result of the injuries she received in the accident she has experienced loss of function, scarring and deformity of her right hand and was not able to return to her work until Sept. 18, 2009, a period of approximately 10 weeks.

The Defendant's negligence was the proximate cause of the Plaintiff's damages and there is no genuine issue as to any material fact that the Plaintiff experienced serious, permanent and disfiguring injuries as a result of the collision for which she incurred and sustained necessary medical expenses, future medical expenses, permanent impairment, lost wages, scarring, disfigurement, nail replacement costs, pain and suffering, mental anguish, loss of enjoyment of

life, humiliation and embarrassment, and that such injuries and damages were the proximate result of the Defendant's negligence.

October 24, 2011


DONALD E. JONAS, Esquire (Bar# 3084)
PO Box 99
Lexington, SC 29071
(803) 609-1484/309-2535
ATTORNEY FOR PLAINTIFF

FILED

2011 OCT 25 3 1:36

COPY

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

2010 CP 32-05211

Mariko Marie Clack,)
Plaintiff,)

vs.)

Certificate of Service

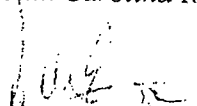
Eddie Arnold Smith, d/b/a The)
Inc.)
Defendant.)

The undersigned hereby certifies that a copy of the within :

The documents served included:

1. Plaintiff's Memorandum In Support Of Summary Judgment.

was/were duly served on J. Austin Hood, Esquire, attorney for Defendant Eddie Arnold Smith by
by depositing said document(s) in the United States Mail, at Lexington, South Carolina, on
October-24, 2011, with first-class postage duly affixed and a return address clearly indicated on
the envelope; all in accordance with the *South Carolina Rules of Civil Procedure*



DONALD E. JONAS, ESQUIRE
Attorney For Plaintiff

Attorney For Defendant
J. Austin Hood, Esquire
Brown & Brehmer
1720 Man St., Suite 201
Columbia, SC 29201

2011 OCT 25 3 1:36

FILED

SCANNED

ORIGINAL

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

FILED IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

2011 OCT 14 2010 ER-05211

Mariko Michelle Clack,
Plaintiff,

vs.

Eddie Arnold Smith, d/b/a The
Lawn Smith,
Defendant,

BETH A. CARRION
CLERK OF COURT
AFFIDAVIT OF PLAINTIFF

VW

Upon being duly sworn, I depose and state the following:

1. I am Mariko Michelle Clack (DOB 01/17/87) and on July 13, 2009, I was a passenger in a 1997 Ford Explorer being driven by Megan Ashley McNeil, headed East on Hwy 302 in S. Congaree, SC. As our vehicle passed through the signaled intersection of Pine St., the Defendant, Eddie Arnold Smith, headed North on Pine Street at the intersection of Hwy. 302, failed to stop for the controlling traffic signal, entered the intersection and collided with the passenger side of the Ford Explorer where I was seated. The "t-bone" caused the Explorer to roll over and come to rest on my side trapping my right arm and hand. I have attached photographs of the accident scene that were taken by the police and photos of the passenger side of the Explorer where I was seated and photos of Mr. Smith's truck showing the collision damage.

2. I am a single mother and at the time of the accident was employed as a cosmetologist working at Sports Clips, renamed as Too Hotties Hair Salon, now named "Hot Shots" in Irmo and was also waitressing at Hooters of Harbison six days /week.

3. I was transported by ambulance to the Lexington Medical Center and was treated for a degloving injury to my hand, neck and thoracic sprain/strain/lacerations to my head, face, shoulder, leg, foot, etc. I received 15-20 stitches to close the wound to my right arm and numerous staples to close the wound to my head. My hand was treated and splinted and I was confined to a wheel chair for a number of weeks as a result of the injury to my ankle. I underwent treatment at Lexington Orthopedics for my right hand, left ankle and upper back problems. I was also referred by Lexington Orthopedics to Palmetto Baptist Pain and Orthopedic Care Ctr. and underwent therapy to reduce the loss of range of motion associated with the degloving injury to my hand and to improve the grip strength of the hand. At the conclusion of my physical therapy it was reported that I had experienced a significant loss of range of motion and loss of grip strength of my right hand. I was also referred for an MRI of my L. foot that demonstrated large amounts of nonspecific marrow edema involving the mid and medial aspect of the entire talus bone and the likelihood of early arthritis.

4. I was also referred by Lexington Orthopedics to Dr. Harold Friedman at University Specialty Clinics for evaluation of the "split nail deformities" and scarring of my hand and knee. As a result of the consultation with Dr. McIntosh it is my understanding that there is no realistic chance that the split nail deformity and related scarring of the hand can be corrected because I have lost some of the germinal matrix of the nail bed as a result of the degloving injury and that my best course regarding the nail deformities is to use cosmetic nail replacements.

☒ cc: Box
☐ cc: Mail
☒ cc: Person *V.L.*

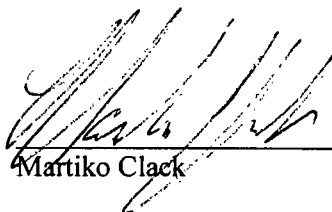
5. As a result of the injuries I received in the auto accident on July 13, 2009, I was unable to care for myself and my daughter and had to rely on my parents and friends for the daily care, feeding and transportation of both of us for at least the first month following the accident. Eventually, I was able to walk and take care of myself but still had to rely on my parents for the daily care, feeding and transportation of my daughter to and from school. By October 2009 I was able to return to my work and partially perform my jobs as a cosmetologist/hairdresser and a second job as a waitress while wearing a Jobst glove. I found it difficult and embarrassing to perform my job as a cosmetologist/hairdresser and having to explain the glove and appearance of my hand and to stand for prolonged periods and to grip objects with the injured hand while wearing the glove. I had similar problems with my job as a waitress was not able to securely grip the items I was handling and was embarrassed to have to deal with customers questions about the glove and appearance. I continue to be embarrassed by the appearance of my hand and regular questions by customers concerning the appearance, etc.

6. As a result of the injuries I received in the auto accident on July 13, 2009, I have experienced a permanent loss of sensation, strength and flexibility of the use of my right hand, significant and deep scarring of the hand and left leg and significant and limiting back and ankle pain.

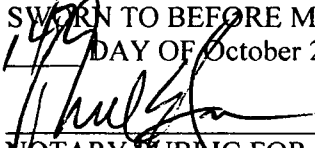
7. As a result of the injuries I received in the auto accident on July 13, 2009, I have incurred actual and estimated future medical expenses including:

Lexington Cty EMS-Acct # 802910 (7/13/09)	\$ 559
Lexington Cty Medical Center	\$11,480.15
Lexington Orthopaedics	\$3,423.00
Palmetto Health Baptist (Hand Therapy & Evaluation)	\$10,548.00
Dr. Harold I. Friedman MD,Ph.D.	\$2,006.00
Palmetto Health Baptist Pain and Orthopedic Care Ctr.-wheelchair	\$ 150.00

Cosmetic Nails for life DOB (1/17/87) life expectancy 59.31 yrs.
Replacement-3-4/yr @ current cost (\$50-60) including full set of tips and acrylic overlay, buff and polish.
Infills (\$35-\$40) are required every 3-4 weeks for maintenance.
Cosmetic nail replacements for life


Martiko Clack

SWORN TO BEFORE ME THIS
14th DAY OF October 2011


NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 11-17-2020

2011 OCT 14 2 1:40
JETTIA CARBON
1100 GARDNER
COLUMBIA, SC 29201

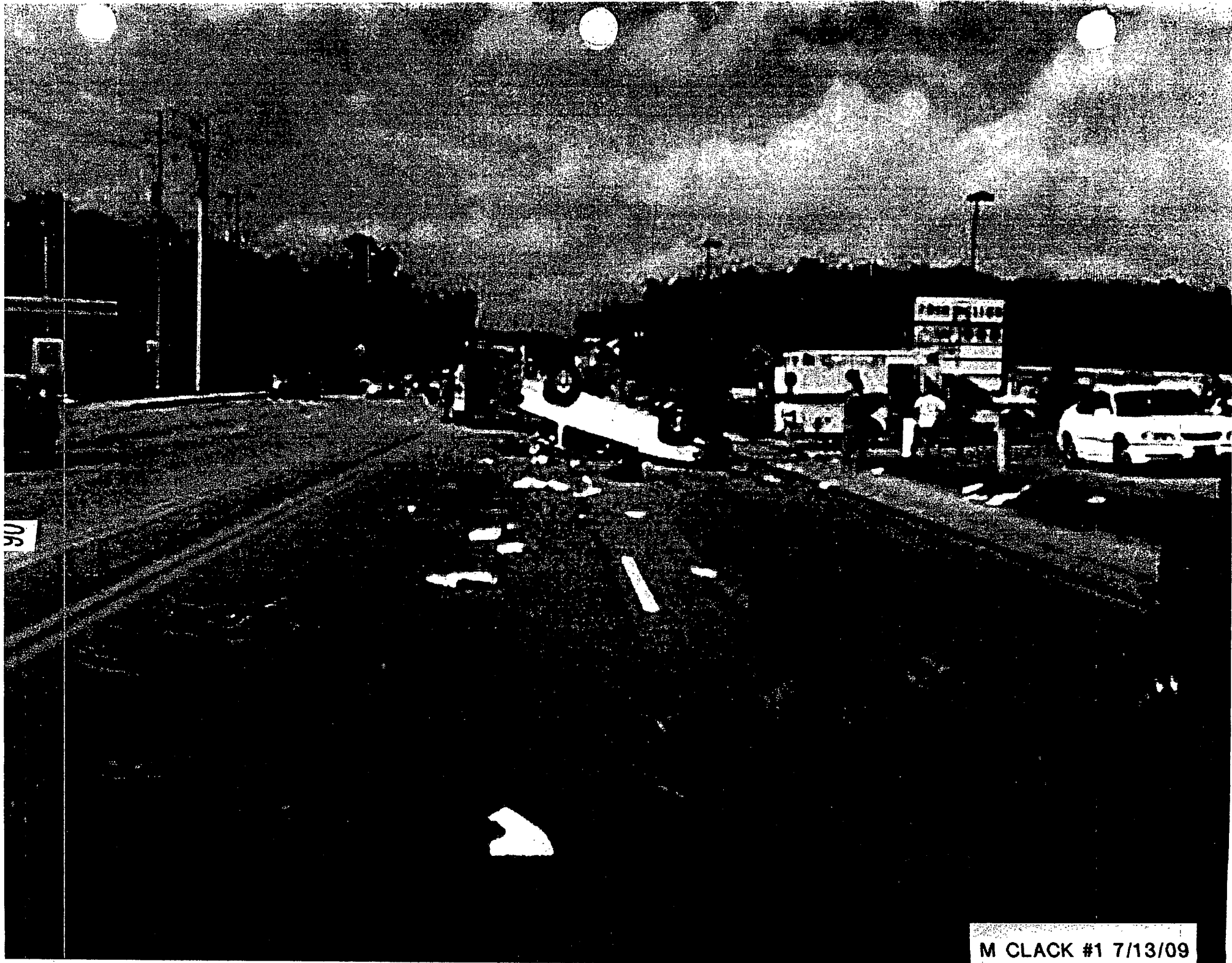
FILED

CASE # 2010-CP-32-05211

DOCUMENTS NOT
SCANNED

-

PHOTOGRAPHS



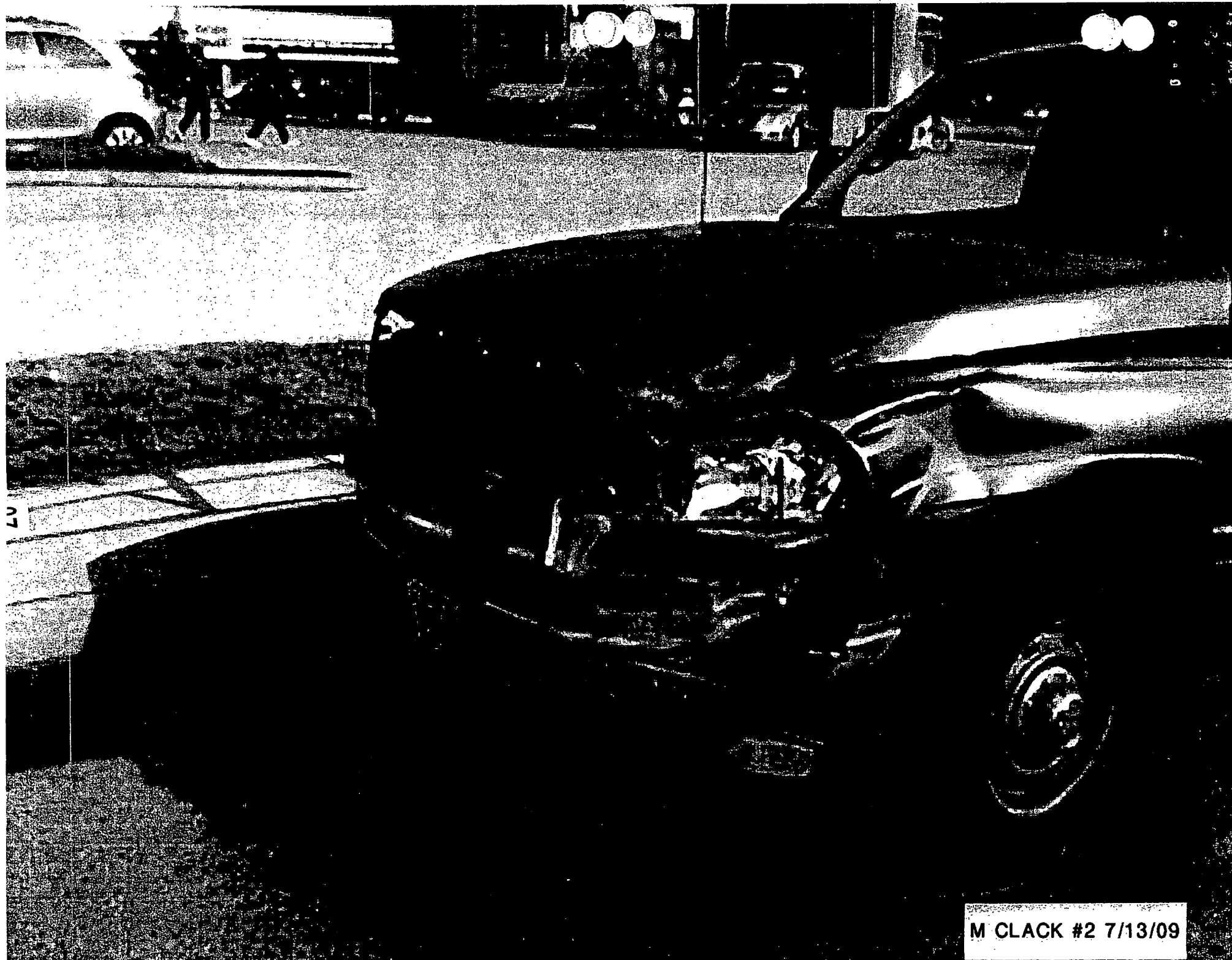
M CLACK #1 7/13/09

M CLACK #16



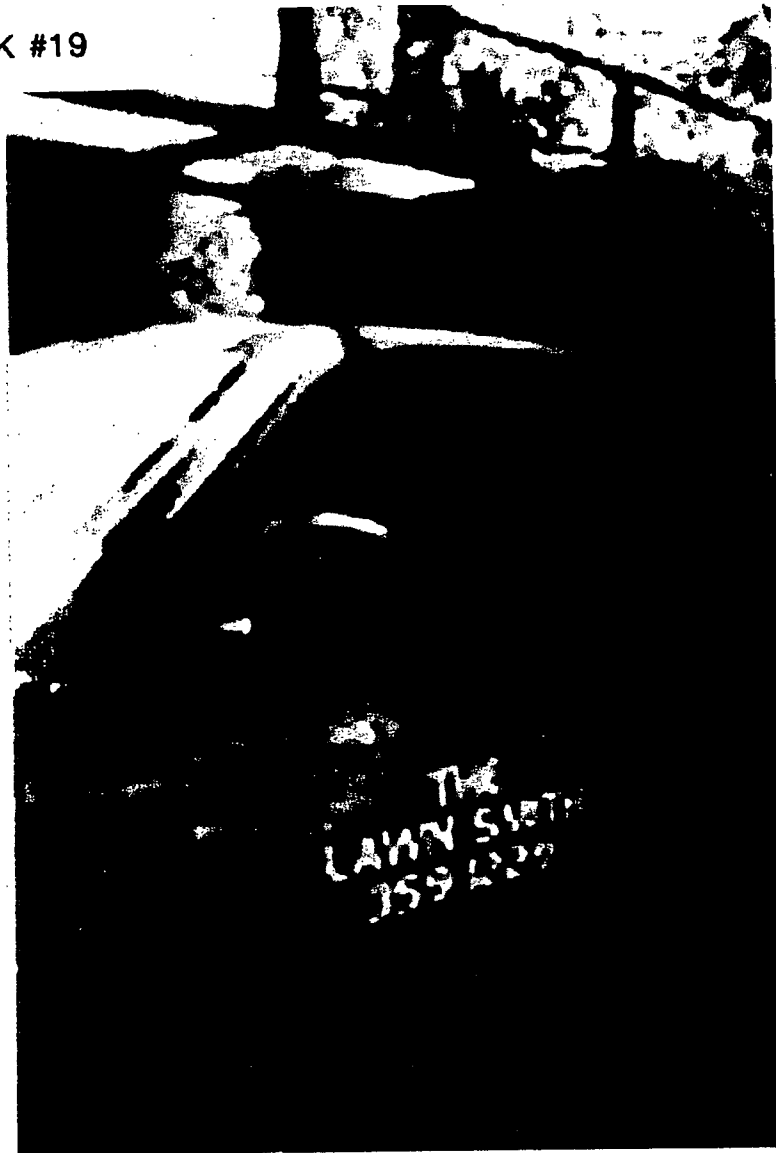
M CLACK #17





M CLACK #2 7/13/09

M CLACK #19



M CLACK #20



ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

2010 CP 32-05211

Mariko Marie Clack,)
Plaintiff,)

vs.)

Certificate of Service

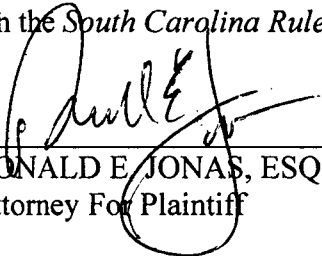
Eddie Arnold Smith, d/b/a The)
Inc.)
Defendant.)

The undersigned hereby certifies that a copy of the within :

The documents served included:

1. Plaintiff's Affidavit, Oct. 14, 2011.

was/were duly served on J. Austin Hood, Esquire, attorney for Defendant Eddie Arnold Smith by delivering said document(s) to the Offices of Brown & Brehmer at the address listed below on October 14, 2011; all in accordance with the *South Carolina Rules of Civil Procedure*


DONALD E. JONAS, ESQUIRE
Attorney For Plaintiff

Attorney For Defendant
J. Austin Hood, Esquire
Brown & Brehmer
1720 Man St., Suite 201
Columbia, SC 29201

FILED
2011 OCT 14 2 1:40
JETHA, CAROL
CLERK OF COURT
LEXINGTON, SC

COPY

STATE OF SOUTH CAROLINA)
 COUNTY OF LEXINGTON)

IN THE ■ COURT OF COMMON PLEAS
☐ FAMILY COURT

Mariko Michelle Clack,
☐ Plaintiff

v.

Eddie Arnold Smith, d/b/a The Lawn Smith,
☒ Defendant
 check box above indicating submitting party

CASE NO. 2010-CP-32-05211

2011 NOV -8 P 3: 05

**MOTION INFORMATION FORM
 AND COVER SHEET**

DETH A. CARRIGG
 CLERK OF COURT
 LEXINGTON SC

<u>name, S.C. Bar no. and address of plaintiff's attorney</u> Donald E. Jonas P. O. Box 99 Lexington, SC 29071 telephone: 803-609-1484 fax: 803-957-3119 e-mail: other:	<u>name, S.C. Bar no. and address of defendant's attorney</u> S. Jahue Moore - SC Bar No. 4063 P. O. Box 5709 West Columbia, SC 29171 telephone: 803-796-9160 fax: 803-791-8410 e-mail: other:																
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)																	
SECTION I: Hearing Information																	
Nature of Motion: <u>Motion to Vacation Default and Allow Late Answer</u> Estimated Time Needed: _____ Court Reporter Needed: YES / NO																	
SECTION II: Motion Type																	
☒ Written motion attached ☐ Form Motion -- I hereby move for relief or action by the court as set forth in the attached proposed order.																	
SECTION III: Motion Fee																	
☒ PAID - AMOUNT: <u>\$25.00</u> ☐ EXEMPT: (check reason) <table style="width: 100%; border: none;"> <tr> <td>☐ Rule to Show Cause in Child or Spousal Support</td> <td>☐ State Agency v. Indigent Party</td> </tr> <tr> <td>☐ Domestic Abuse or Abuse and Neglect</td> <td>☐ Post-Conviction Relief</td> </tr> <tr> <td>☐ Indigent Status</td> <td>☐ Motion for Stay in Bankruptcy</td> </tr> <tr> <td>☐ Sexually Violent Predator Act</td> <td>☐ Motion for Publication</td> </tr> <tr> <td>☐ Motion for Execution (Rule 69, SCRCP)</td> <td>☐ Proposed order submitted at request of the court; or,</td> </tr> <tr> <td colspan="2">reduced to writing from motion made in open court per judge's instructions</td> </tr> <tr> <td colspan="2">Name of Court Reporter: _____</td> </tr> <tr> <td colspan="2">☐ Other: _____</td> </tr> </table>		☐ Rule to Show Cause in Child or Spousal Support	☐ State Agency v. Indigent Party	☐ Domestic Abuse or Abuse and Neglect	☐ Post-Conviction Relief	☐ Indigent Status	☐ Motion for Stay in Bankruptcy	☐ Sexually Violent Predator Act	☐ Motion for Publication	☐ Motion for Execution (Rule 69, SCRCP)	☐ 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: _____		☐ Other: _____	
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☐ Sexually Violent Predator Act	☐ Motion for Publication																
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reduced to writing from motion made in open court per judge's instructions																	
Name of Court Reporter: _____																	
☐ Other: _____																	
JUDGE'S SECTION																	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE: _____ CODE: _____ Date: _____																
CLERK'S VERIFICATION																	
Collected by: <u>ma</u> (print name) ☒ MOTION FEE COLLECTED: <u>25.00</u> ☐ CONTESTED - AMOUNT DUE: _____	DATE FILED <u>11-8-11</u> <u>OK # 26477</u>																

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS FILED

Mariko Michelle Clack,

Plaintiff,

vs.

Eddie Arnold Smith, d/b/a The Lawn Smith,

Defendant.

C/A #2010-CP-32-05211

2011 NOV -8 P 3: 05

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

**MOTION TO VACATE DEFAULT
AND ALLOW LATE ANSWER**

TO: DONALD E. JONAS, ESQUIRE, COUNSEL FOR THE PLAINTIFF:

YOU WILL PLEASE take notice that on the tenth day after service hereof or as soon thereafter as counsel can be heard, the undersigned, as counsel for the Defendant and Allstate Insurance Company, will move before the Court for an Order vacating any judgment in this matter and allowing the filing of a late Answer.

This Motion shall be based upon the fact that the Defendant's failure to answer was based upon excusable neglect.

MOORE, TAYLOR & THOMAS, P.A.

BY:

S. Jahue Moore

1700 Sunset Boulevard

P. O. Box 5709

West Columbia, SC 29171

(803) 796-9160

ATTORNEYS FOR DEFENDANT

West Columbia, South Carolina
November 3, 2011

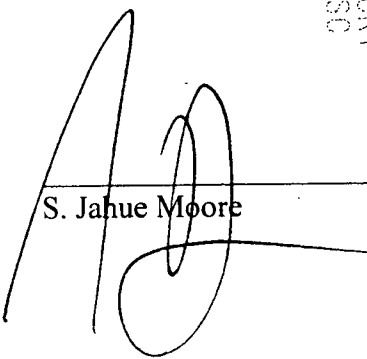
STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

AFFIDAVIT OF SERVICE BY MAIL

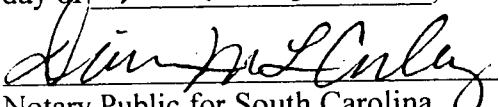
PERSONALLY appeared before me S. Jahue Moore who, on oath, says he is the attorney for the Defendant in this action; and that he has this day effected service of the **MOTION INFORMATION FORM AND COVER SHEET AND MOTION TO VACATE DEFAULT AND ALLOW LATE ANSWER** upon the attorneys for the Plaintiff, by placing a copy of said **MOTION INFORMATION FORM AND COVER SHEET AND MOTION TO VACATE DEFAULT AND ALLOW LATE ANSWER** in an envelope in the United States Mail, with sufficient postage affixed thereto, addressed as follows:

Donald E. Jonas, Esquire
Attorney at Law
142 A.B. Frye Road
P. O. Box 99
Lexington, SC 29071

FILED
2011 NOV - 8 P 3:00
BETH A. DARRIG
CLERK OF COURT
LEXINGTON SC


S. Jahue Moore

SWORN to before me this 7th
day of November, 2011.

 (SEAL)
Notary Public for South Carolina
My Commission Expires: 3-31-2018

COPY

FILED

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS

2011 NOV -8 P 3: 02

Mariko Michelle Clack,

C/A #2010-CP-32-05211

Plaintiff,

DETHA A. CARRIGG
CLERK OF COURT
LEXINGTON SC

vs.

ANSWER

Eddie Arnold Smith, d/b/a The Law Smith,

Defendant.

The Defendant above-named Answers the Complaint of the Plaintiff herein as follows:

FOR A FIRST DEFENSE

1. The Defendant hereby denies each and every allegation set forth in the Complaint except for those allegations hereinafter specifically admitted, qualified or explained.

2. The allegations set forth in paragraphs one (1) and two (2) of the Complaint are admitted.

3. The allegations set forth in paragraph three (3) of the Complaint are denied, except it is admitted that a collision occurred.

4. The allegations set forth in paragraphs four (4), five (5) and six (6) of the Complaint are denied.

5. There are no paragraphs seven (7), eight (8) or nine (9) in the Complaint.

6. The allegations set forth in paragraph ten (10) of the Complaint are denied.

FOR A SECOND DEFENSE

7. The Defendant hereby reasserts and realleges each and every allegation set forth above as fully as if set forth verbatim.

8. The collision and any and all injuries or damages sustained by the Plaintiff, if any, were the result of an unavoidable accident and the Defendant pleads an unavoidable accident as a complete bar to this action.

FOR A THIRD DEFENSE

9. The Defendant hereby reasserts and realleges each and every allegation set forth above as fully as if set forth verbatim.

10. At all times set forth in the Complaint, the Plaintiff's vehicle was being operated by the Plaintiff's agent, who at all times was acting within the scope and course of her agency.

11. If the Defendant was in any form or fashion negligent or reckless, which is denied, then Plaintiff was guilty of contributory negligence and recklessness in one or more of the following particulars:

- a. in failing to maintain a proper lookout;
- b. in failing to yield the right-of-way;
- c. in creating an obstruction in the roadway;
- d. in failing to properly maintain control of the vehicle;
- e. in failing to properly signal her intentions upon the roadway; and
- f. in failing to take appropriate evasive action in order to avoid the collision.

All of which were a direct and proximate cause of the injuries or damages complained of herein.

12. The Defendant pleads contributory and/or comparative negligence and recklessness as a complete bar to this action.

FOR A FOURTH DEFENSE

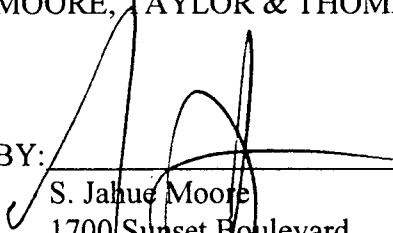
13. The Defendant hereby reasserts and realleges each and every allegation set for above as fully as set forth verbatim.

14. The collision and any and all injuries or damages, if any, were the result of the sole negligence of the Plaintiff either directly or through the acts of her agent.

15. The Defendant pleads the sole negligence of a third party as a complete bar to this action.

WHEREFORE, having fully Answered the Complaint of the Plaintiff herein, the Defendant prays that the Complaint be dismissed with costs; and for such other and further relief as this Court might deem just and proper.

MOORE, TAYLOR & THOMAS, P.A.

BY: 

S. Jahue Moore
1700 Sunset Boulevard
P. O. Box 5709
West Columbia, SC 29171
(803) 796-9160

ATTORNEYS FOR DEFENDANT

West Columbia, South Carolina
November 3, 2011

COPY

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

AFFIDAVIT OF SERVICE BY MAIL

PERSONALLY appeared before me S. Jahue Moore who, on oath, says he is the attorney for the Defendant in this action; and that he has this day effected service of the **ANSWER** upon the attorneys for the Plaintiff, by placing a copy of said **ANSWER** in an envelope in the United States Mail, with sufficient postage affixed thereto, addressed as follows:

Donald E. Jonas, Esquire
Attorney at Law
142 A.B. Frye Road
P. O. Box 99
Lexington, SC 29071

S. Jahue Moore

SWORN to before me this 7th
day of November, 2011.

Diana M. L. Culley (SEAL)
Notary Public for South Carolina
My Commission Expires: 3-31-2018

BETH A. CAMPBELL
CLERK OF COURT
LEXINGTON, SC

2011 NOV - 8 P 3: 01

FILED

COPY

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

2010 CP 32-05211

2012 JAN 31 A 8:57

Mariko Marie Clack,)
Plaintiff,)

vs.)

Eddie Arnold Smith, d/b/a The)
Lawn Smith,)
Defendant.)

Memorandum In Response
To Motion By UIM Carrier Allstate Insurance Co
To Be Relieved From Default

LEITH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

This action was initiated by the Plaintiff, an Allstate insured under a policy providing underinsured policy benefits, by filing the Summons and Complaint on December 3, 2010, seeking judgment against the Defendant Eddie Arnold Smith for negligence as a result of an automobile collision that occurred on July 13, 2009, in which the Plaintiff was a passenger in a vehicle operated by Megan Ashley McNeill that was involved in a collision with the Defendant's vehicle at the intersection of U.S. Highway 302 and Pine Street in the Town of South Congaree in Lexington County, South Carolina. The Defendant was insured by State Farm Mutual Automobile Insurance Co. with minimum limits coverage. The Plaintiff reported the claim to the liability carrier and her insurer Allstate Insurance Company and provided extensive information regarding the cause of the accident and her injuries. See attached correspondence to Allstate adjuster Deborah Boggs.

November 7, 2009 Correspondence and case review sent to Allstate adjuster.

November 24, 2010 Correspondence and case materials sent to Allstate adjuster.

October 29, 2010 Correspondence with Allstate adjuster including demand on State Farm for liability policy limits.

December 3, 2010 Suit filed and copy sent to Allstate adjuster.

Dec. 15, 2010 The Defendant Eddie Arnold Smith, was served with the summons and complaint by the Lexington County Sheriff's Department.

Dec. 20, 2010 Attorneys for State Farm entered a Notice of Appearance on behalf of State Farm

Dec. 22, 2010 Attorneys for State Farm appeared through counsel and filed an answer denying liability and alleging the intervening negligence of the vehicle driver, Megan Ashley McNeil.

January 24, 2011 Plaintiff's attorney served a copy of the Summons and Complaint on the Honorable Scott Richardson, S.C. Dept of Insurance, designated agent for service for Allstate Insurance Company, the underinsured carrier for Mariko Clack.

February 1, 2011 Plaintiff's attorney notified Allstate Adjuster Boggs that State Farm had paid policy liability limits and had forwarded the pleadings to the SC Dept Insurance for service on Allstate as UIM carrier.

March 17, 2011 The Affidavit/Acceptance of Service of the Summons and Complaint by the SC Dept of Insurance on behalf of Allstate was filed with the clerk of court.

April 12, 2011 The Plaintiff's attorney filed an Affidavit of Default attesting that Allstate Insurance Company had filed no Answer or responsive pleading to the Summons and Complaint as allowed by S.C. Code Sect. 38-77-160.

Sept. 27, 2011 Plaintiff's attorney filed a Motion For Summary Judgment supported by various documents and the deposition of the Defendant.¹

Oct. 11, 2011 Plaintiff's attorney deposed the Defendant who admitted his responsibility for causing the accident.

Oct. 26, 2011 Court granted summary judgment on all issues of liability.

Nov. 7, 2011 Plaintiff's attorney received a motion from Allstate's attorney dated Nov. 3, 2011, to vacate default and Allow Late Answer with an attached draft of an Answer presumably claiming to be "meritorious" that denying all liability and alleged unavoidable accident and that the Plaintiff-passenger was contributorily negligent.

LEGAL ISSUE-SERVICE OF PROCESS AND WAIVER OF RIGHT TO APPEAR

¹ The documents filed by Plaintiff in support of summary judgment included: (1) the Plaintiff's Affidavit In Support of Summary Judgment (10/14/11). Plaintiff's affidavit states that on July 13, 2009, she was a passenger in a 1997 Ford Explorer being driven by Megan Ashley McNeil, headed East on Hwy 302 in South Congaree, SC. As the McNeil vehicle entered the intersection at Pine St. with the green signal and right-of-way, the Defendant headed North on Pine Street, failed to stop for the red light controlling traffic from Pine Street entering Hwy 302 and collided with the passenger side of the Ford Explorer where Ms. Clack was seated, causing the vehicle to roll over; (2) the Deposition of the Defendant taken on October 21, 2011; (3) the Plaintiff's Answers To Defendant's Interrogatories and Responses To Defendant's Request For Production, served on Defendant's attorney on December 27, 2010. On October 21, 2010, Defendant was deposed and stated that he recalled that he was stopped at the stop light at the intersection of Pine St., looked down and pulled forward into the intersection without checking the signal again. (Depo. Smith, p. 24, ll. 11-17) Later, when appearing at City Court, Mr. Smith admitted and agreed that he had entered the intersection under a red signal and had always accepted responsibility for the accident. (Depo. p. 16, ll. 1-8) When asked about the basis of the allegations made in the Answer denying liability and alleging the intervening negligence of Ms. McNeil, he stated that he did not recall previously seeing the document but was certain that he never claimed that Ms. McNeil caused the accident. (Depo. Smith, p. 17, ll. 11-25; 18, ll. 1-9)

The UIM statute S.C. Code Ann. Sect 38-77-160 provides that the UIM insurer has "the right to appear and defend" an action and protect its interests if it is properly served as strictly provided by the statute. That "right", as all rights, can be waived. The UIM carrier Allstate had every opportunity to participate in the litigation after the pleadings were filed and served on the S.C. Dept of Insurance, the duly designated agent for service. There is no possible claim by Allstate that they were not on notice of this suit and that they were properly and timely serve. The significant reported cases in this state are claims by UIM insurers for strict application of the statute. See: Broome v. Watts, 319 S.C. 337, 461 S.E. 2d 46 (1995) [Plaintiff Broome, a USAA insured timely filed a Notice of Appearance and Motion for Intervention in the Plaintiff's case against defendant Watts. Plaintiff tried the case and a verdict was rendered in excess of the limits of Watts' liability carrier. USAA demanded set off in the amount of the liability limits. The Supreme Court held USAA had timely exercised their rights according to the provisions of SC Code Ann. Sect 38-77-160 and was entitled to setoff in the amount of the liability limits.] Ex Parte Allstate v. Trixier, 339 S.C. 202, 528 S.E.2d 769 (SC App. 2000) [Citing Broome v. Watts, supra., the Ct. of Appeals.] held that the Plaintiff's attempt to serve the UIM carrier by delivering the summons and complaint to the SC Dept of Insurance after a verdict was issued and while post trial motions were being considered did not comply with the strict requirements of Sect. 38-77-160 and that the late service did not provide the UIM carrier the opportunity "to protect itself during the early stages of a lawsuit" and the carrier was not liable for the verdict in excess of the liability limits]; Loudan v. Moragne, 327 S.C. 465, 486 S.E. 2d 525 (SC App. 1997) [citing Broome v. Watts, and the requirement of service according to SC Code Ann. Sect 38-77-160]; Crawford v. Henderson, 356 S.C. 389, 589 S.E. 2d 204 (SC App. 2003) [Citing Broome v. Watts, supra., the Ct. of Appeals held that an attorney appearing on behalf of the UIM carrier does not have an attorney client relationship with the Defendant].

The UIM insurer has waived its right to appear by not filing a Notice of Appearance in a timely fashion.

LEGAL ISSUE-SCRPC 55 AND CLAIM OF EXCUSABLE NEGLIGENCE

Although Allstate's motion claiming to be based on excusable neglect is insufficient on its face, assuming it is proceeding in accord with SCRPC, 55 (c), the uninformed and bad faith intent of the allegations of the proposed answer against their own insured in this clear liability case do not meet the necessary showing under Rule 55. Richardson as Personal Representative of the Estate of Dominik Richardson v. P.V. and Harbor Inn, Inc., 383 S.C. 610, 682 S.E. 2d 263 (2009). The issue decided by the Supreme Court in the Richardson case (J. Toal) involved an appeal by an insurance company from a lower court decision that they failed to show good cause to set aside the entry of default, specifically as Allstate in this case claims, that the insurance company's failure to respond was inadvertent and constitutes good cause to justify setting aside the entry of default. The Court rejected the argument and reviewed the standard for granting relief from an entry of default.

"The standard for granting relief from an entry of default is good cause under Rule 55(c), SCRPC, while the standard is more rigorous for granting relief from a default judgment under Rule 60(b), SCRPC. Sundown Operating Co., Inc. v. Intedger Indus., Inc., Op. No. 26700(S.C.

Sup. Ct. Filed August 17, 2009). In deciding whether good cause exists, the trial court should consider the following factors: (1) the timing of the defendant's motion for relief, (2) whether the defendant has a meritorious defense, and (3) the degree of prejudice to the plaintiff if relief is granted. *Wham v. Shearson Lehman Bros.*, 298 S.C. 462, 465, 381 S.E.2d 499, 502 (Ct. App. 1989)." Richardson at 682 S.E. 2d 266.

(1) Allstate filed this motion more than two years after it had notice and specific details of the Plaintiff's claim, extent of injuries and expected UIM involvement. The motion to be relieved from default and allowed to answer was made more than nine months after service of the summons and complaint on the Department of Insurance.

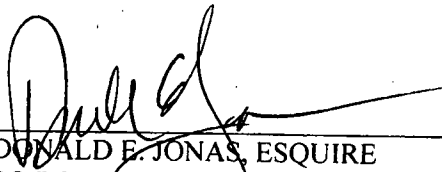
(2) The so called meritorious defense posed by Allstate is a sham and iscompletely and absolutely without merit and comes after this court granted summary judgment based on the Defendants admission of liability. Further, as in the Richardson case, Allstate has presented nothing in any record or affidavit explaining why it failed to enter a Notice of Appearance or other pleading and that, "even if the failure to respond was due to negligent oversight, this did not constitute good cause". Richardson at 682 S.E.2d 266. The Court further noted that delay in consideration to allow the insurer further opportunity to support its unsupported motion was not appropriate and that "Appellants had the opportunity to present evidence of improper service and good cause at the hearing". Richardson at 682 S.E.2d 266.

(3) Finally, as noted by the Richardson Court "Moreover, the *Wham* factors do not weigh in favor of lifting the entry of default. Appellants filed the motion to set aside over two months after the entry of default, and Appellants have not asserted a meritorious defense or argued that Respondent will not be prejudiced if the entry of default is lifted. Accordingly, we hold that Appellants have not established good cause to justify lifting the entry of default." Richardson at 682 S.E.2d 267.

CONCLUSION

The Plaintiff-UIM insured timely and regularly communicated with Allstate and provided details of her claim and the severity of her injuries that would likely exceed available insurance coverages. Plaintiff's counsel provided notice of the lawsuit and the progress of the liability claim settlement. The summons and compliant were properly and timely served on Allstate on January 24, 2011, and Allstate failed to enter a Notice of Appearance or any other pleading in this case until November 2011 when it filed the current unsupported motion to be relieved from default based on "excusable neglect". Allstate has waived its right to appear and has failed to provide any "good cause" basis for granting the relief requested in the motion and being allowed to enter its proposed sham answer.

January 29, 2011


DONALD E. JONAS, ESQUIRE
PO BOX 99
Lexington, SC 29071
(803) 609-1484 / 309-2483
Fax: (803) 957-3119

COTTY and JONAS
ATTORNEYS AND COUNSELLORS AT LAW
1328 Blanding St.
Columbia, S.C. 29201

Reply To Donald E. Jonas:
Phone: 803-309-2535/254-1570
Fax: 803-254-7522/957-3119
jonastralatty@netscape.net

November 7, 2009

Allstate Insurance Company
Deborah Lynn Boggs, Staff Claims Adjuster
1400 Browning Rd.
Columbia, SC 29210

Date of Loss: 07/13/09
Allstate Claim #: 0143273043
Allstate Policy # 055 241438 06/14
055 2411438 06/14
At fault driver-State Farm insured-Eddie Arnold Smith

Dear Deborah:

As I previously advised, Ms. Clack has retained me to represent her in her claim for injuries following that automobile accident with your insured on 07/13/09. Ms. Clack is progressing in her treatment and recovery and I take this opportunity to update you. As you may determine from the enclosed photos this was a very serious collision in which the vehicle in which Ms. Clack was a passenger, rolled over on her side and crushed the passenger side roof, windshield and door. I enclose a copy of the accident report and various photos (1-7). She has been treated and continues treatment for the variety of orthopedic issues, lacerations, and a serious injury of the right hand that was exposed to the rollover event and passenger side vehicle crush. I investigated this case and interviewed the investigating officer who assured me Mr. Smith admitted liability the day of the accident and went on to pay his fine. He also indicated the collision was witnessed by many people including a town councilman listed on the accident report.

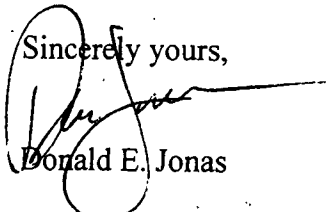
Ms. Clack is a young woman, single mother and recent graduate of Lacy School of Cosmetology. Her injuries were so significant that she was unable to care for her pre-school daughter and had to rely on her parents for that care. She has been treated and continues treatment for the variety of orthopedic issues, lacerations and treatment of the hand. I enclose a note from her occupational therapist, Claire McGill-Palmetto Baptist Pain and Orthopaedic Care Center, indicating that she lacks grip strength and flexion of the right hand and fingers, particularly the second/long finger. She also continues under the care of her orthopedic surgeon, Dr. James McIntosh, Lexington Orthopaedics, for her continuing complaints. You should also note that Ms. Clack has consulted a plastic surgeon to seek advice as to what may be the best opportunity to repair the degloving injury of her hand. The information provided to her is that it

is too early to attempt such a procedure but that surgery for this attractive young woman will certainly be part of her recovery plan. From a vocational perspective she has attempted to return to work wearing a Jobst glove but has found it difficult to perform her jobs as a cosmetologist/hairdresser and a second job as a waitress. The expectation is that she will have a permanent loss of strength and flexibility of the use of the right hand that will likely make her significantly less competitive in her career as a stylist. I am advised that she will be referred to a vocational expert for a vocational evaluation and disability rating when she reaches MMI.

I understand the State Farm liability limits may be \$35k and unless those limits are tendered, I expect to file suit in this case very soon. I expect that there will be a UIM claim filed at some point.

Thanking you for your assistance in this matter, I am

Sincerely yours,


Donald E. Jonas

DEJ/sl
Enclosure

Damages Mariko Michelle Clack

Date of Accident 7/13/09

Mariko Michelle Clack
406 Cranewater Ct.
Columbia, SC 29212-8214

Medical care cost
Future medical care cost
Pain and suffering
Disfigurement and impairment of right hand
Vocational disability
Temp. lost wages 7/13/09-9/09
Future lost wages based on vocational
disability

Medical Expenses

Cost of Care

Lexington Cty EMS-Acct # 802910 (7/13/09)
5005 Sunset Blvd.
Lexington, SC 29072-9154

\$ 559

Lexington Cty Medical Center-Acct # H00040612368
PO Box 100273
Columbia, SC 29202-3273

(7/13/09)

(9/02/09)

\$ 278

Lexington Orthopaedics- Acct # 1485796 [Phone 936-7230]
Dr. James C. McIntosh, Jr.
Lexington Medical Park 2
146 N. Hospital Dr.
West Columbia, SC 29169

(9/16/09)

\$2,821

Palmetto Health Baptist Acct # B092850 1533 [Phone 243-7711]
Clare N. McGill, OTR/L, CHT
293 Greystone Blvd.
First floor
Columbia, SC 29212-8214

(9/01/09-9/30/09)

\$1,180

(10/12/09)

\$ 155

Future Medical Expenses

University Specialty Clinic
Chief, Division of Plastic and Reconstructive Surgery
Dr. Harold I. Friedman MD, Ph.D.
2 Medical Park Rd., Suite 300
Columbia, SC 29203

DONALD E. JONAS
ATTORNEY AND COUNSELLOR AT LAW

1328 Blanding St.
Columbia, S.C. 29201

Reply To Donald E. Jonas:
Phone: (803) 309-2535/309-2483
Fax: (803) 957-3119
jonastrialatty@netscape.net

October 29, 2010

Allstate Insurance Company
Deborah Lynn Boggs, Staff Claims Adjuster
PO Box 7068
Columbia, SC 29202

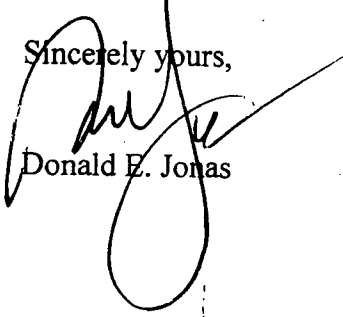
Date of Loss: 07/13/09
Allstate Claim #: Allstate Claim #: 0143273043
Allstate Policy # 055 241438 06/14
055 2411438 06/14
At fault driver-State Farm insured-Eddie Arnold Smith

Dear Ms. Boggs:

Please find enclosed a copy of my case summary that I recently forwarded to State Farm to support Ms. Clack's demand for the SF policy limits. I will advise you when that matter is concluded.

Thanking you for your assistance in this matter, I am

Sincerely yours,


Donald E. Jonas

DEJ/sl
Enclosure

DONALD E. JONAS
ATTORNEY AND COUNSELLOR AT LAW

PO Box 99 (29071)
142 A.B. Frye Rd.
Lexington, S.C. 29073

Reply To:
Phone: (803) 609-1484/309-2483
Fax: (803) 957-3119
jonastrialatty@netscape.net

Nov. 24, 2010

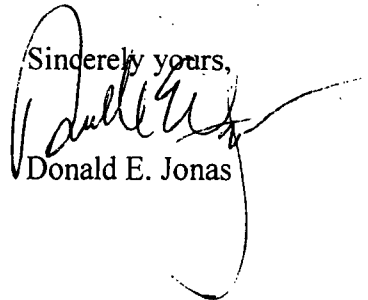
Allstate Insurance Company
Deborah Lynn Boggs, Staff Claims Adjuster
PO Box 7068
Columbia, SC 29202 Allstate Claim #: Allstate Claim #: 0143273043

Date of Loss: 07/13/09
Allstate Policy # 055 241438 06/14
055 2411438 06/14
At fault driver-State Farm insured-Eddie Arnold Smith

Dear Ms. Boggs:

Please find enclosed a copy of a package of materials and photographs documenting Ms. Clack's injuries and damages. We have made a demand on State Farm for their limits based on a covenant. Unless that matter is resolved within the next few days we will file suit. I will advise you when that matter is concluded

Please again note my change of address and phone #.

Sincerely yours,

Donald E. Jonas

DEJ/sl
Enclosure

DONALD E. JONAS
ATTORNEY AND COUNSELLOR AT LAW

PO Box 99 (29071)
142 A.B. Frye Rd.
Lexington, S.C. 29073

Reply To:
Phone: (803) 609-1484/309-2483
Fax: (803) 957-3119
jonastralatty@netscape.net

December 3, 2010

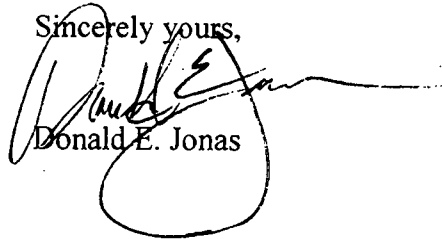
Allstate Insurance Company
Deborah Lynn Boggs, Staff Claims Adjuster
PO Box 7068
Columbia, SC 29202

Date of Loss: 07/13/09
Allstate Policy # 055 241438 06/14
055 2411438 06/14
At fault driver-State Farm insured-Eddie Arnold Smith

Dear Ms. Boggs:

Please find enclosed a copy of the civil cover sheet, summons and complaint that is being forwarded to the Lexington County Sheriff for service on Mr. Smith.

Sincerely yours,



Donald E. Jonas

DEJ/sl
Enclosure



South Carolina Department of Insurance

NIKKI R. HALEY
Governor

SCOTT RICHARDSON, CPCU
Director of Insurance

2011 MAR 17 P 4: 35

January 24, 2011

J. A. CARRIGG
CLERK OF COURT
LEXINGTON SC

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
ALLSTATE INS CO
c/o CT Corporation System
2 Office Park Court, Suite 103
Columbia, SC 29223-0000

Dear Sir:

On January 24, 2011, I accepted service of the attached Summons and Complaint on your behalf. I am, hereby, forwarding that accepted process on to you pursuant to the provisions of S.C. Code Ann. § 38-5-70 (Supp. 2003). By forwarding accepted process on to you, I am meeting a ministerial duty imposed upon me by S.C. Code Ann. § 38-77-160 (Supp. 2003). I am not a party to this case. The State of South Carolina Department of Insurance is not a party to this case. The claimant, within this service letter, provided the following additional information regarding this first party claim: Mariko Clack. It is important for you to realize that service was effected upon your insurer on my date of acceptance for service.

You must promptly acknowledge in writing your receipt of this accepted process. When replying, please refer to File Number 143963, Mariko Michelle Clack v. Eddie Arnold Smith, et al., 2010-CP-32-5211.

By:

Sincerely Yours,

Jeff Jacobs
Chief Legal Counsel
(803)737-6200

Scott Richardson
Director
State of South Carolina
Department of Insurance

Attachment

CC: Donald E. Jonas
Post Office Box 99
Lexington, SC 29071

COPY

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT
2010 CP 32-05211

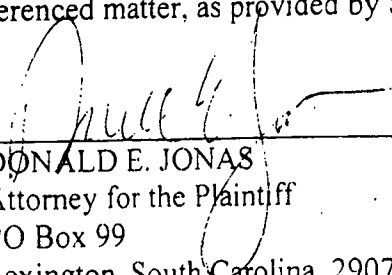
Mariko Marie Clack,
Plaintiff,

vs.

CERTIFICATE OF SERVICE

Eddie Arnold Smith, d/b/a The
Lawn Doctor
Defendant.

The undersigned hereby certifies that a copy of the attached correspondence of Director Scott Richardson, S.C. Dept of Insurance, certifies that on January 24th, 2011 Allstate Insurance Co., an underinsured insurance carrier, was served with a copy of the Civil Cover Sheet, Summons and Complaint in the above referenced matter, as provided by SC Code Ann. Sect 38-77-160..



DONALD E. JONAS
Attorney for the Plaintiff
PO Box 99
Lexington, South Carolina 29071

SETH A. CARLIS
CLERK OF COURT
LEXINGTON SC

2011 MAR 17 P 4: 31

FILED

DONALD E. JONAS
ATTORNEY AND COUNSELLOR AT LAW

PO Box 99 (29071)
142 A.B. Frye Rd.
Lexington, S.C. 29073

February 1, 2011

Reply To:
Phone: (803) 609-1484/309-2483
Fax: (803) 957-3119
jonastralatty@netscape.net

Allstate Insurance Company
Deborah Lynn Boggs, Staff Claims Adjuster
1400 Browning Rd.
Columbia, SC 29210

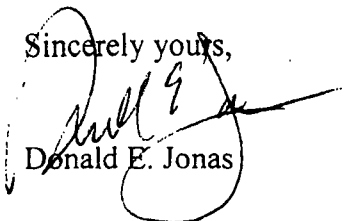
Date of Loss: 07/13/09
Allstate Policy # 055 241438 06/14
At fault driver-State Farm insured-Eddie Arnold Smith

Dear Ms. Boggs:

This will confirm that SF has now paid the liability limits of the at fault driver Smith and the UIM limits of the Explorer vehicle owner McNeill. I have now served Allstate as Ms. Clack's UIM carrier.

Thanking you for your attention, I am

Sincerely yours,


Donald E. Jonas

DEJ/sl

COPY

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

FILED IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

Mariko Marie Clack,
Plaintiff,

2011 APR 12 2010 GA 32-05211

vs.

Eddie Arnold Smith, d/b/a The
Lawn Doctor

Defendant..

DETHA A. CARRIGG
CLERK OF COURT
LEXINGTON

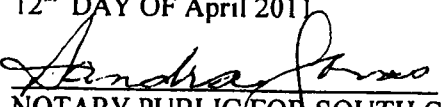
AFFIDAVIT OF DEFAULT

PERSONALLY APPEARED before me the undersigned attorney, who first being duly sworn, deposes and says that he is the attorney for the Plaintiff in this action;

1. That on December 15, 2010, a Summons and Complaint, were heretofore served upon Defendant in this action by the Lexington County Sheriff's Department;
2. On January 24, 2011, Plaintiff served a copy of the Summons and Complaint on the Honorable Scott Richardson, S.C. Dept. of Insurance, designated agent for service for Allstate Insurance Company, an underinsured carrier, as provided by S.C. Code Sect. 38-77-160;
3. That more than thirty (30) days have elapsed, exclusive of the day of service of the Summons and Complaint on the Defendant Eddie Arnold Smith and the UIM Carrier Allstate Insurance Company;
4. That Defendant has filed no Answer or responsive pleading on his own behalf and the said Defendant is in default;
5. That UIM carrier Allstate Insurance Company has filed no answer or response to the Summons and Complaint on behalf of the Defendant as allowed by S.C. Code Sect. 38-77-160.


DONALD E. JONAS, ESQUIRE
ATTORNEY FOR PLAINTIFF

SWORN TO BEFORE ME THIS
12th DAY OF April 2011


NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES 12-21-2019

PO Box 99
Lexington, SC 29071
(803)609-1484/ (803)309-2483
[fax] (803) 957-3119
jonastralatty@netscape.net

Donald E. Jonas

Fax

To: Terry Skipper-Allstate

From:

Fax: 866-467-2763

Pages:

Phone: 803-213-3742

Date:

Re: Mariko Clack, DOL 07/13/09

cc:

☐ **Urgent** ☐ **For Review** ☐ **Please Comment** ☐ **Please Reply** ☐ **Please Re,cy**

Policy # 055 241438 06/14
055 241143806/14

1 STATE OF SOUTH CAROLINA

2 COUNTY OF LEXINGTON

IN THE CIVIL COURT

3
4 MARIKO MICHELLE CLACK,

5 Plaintiff,

-vs-

6 EDDIE ARNOLD SMITH,
7 et al,

8 Defendants.

TRANSCRIPT OF RECORD

10-CP-32-5211

9
10 February 2, 2012
11 Lexington, South Carolina

12
13 B E F O R E:

14 HONORABLE R. KNOX MCMAHON, Judge.
15

16
17 A P P E A R A N C E S:

18 DONALD E. JONAS, Esquire
19 Attorney for the Plaintiff

20 S. JAHUE MOORE, Esquire
21 Attorney for the Defendants
22

23
24 L. COCONUT PANTSARI, R.P.R.
25 Circuit Court Reporter

INDEX

Motion Hearing 02/02/12	3
Certificate	21

INDEX OF WITNESSES

(Court Reporter's Note: There was no direct or cross examination of any witnesses).

INDEX OF EXHIBITS

(Court Reporter's Note: No exhibits were marked or received into evidence).

1 (The following proceedings are reported on
2 February 2, 2012.)

3 THE COURT: This is 2010-CP-32-5211, Clack
4 versus Smith. Mr. Jonas represents the plaintiff.
5 Mr. Moore represents the defendant.

6 Mr. Moore, this is your motion?

7 MR. MOORE: Yes, sir, Your Honor.

8 THE COURT: All right.

9 MR. MOORE: Your Honor, the case we have here
10 is interesting. There is an affidavit of default in the
11 file indicating that the defendant is in default even
12 though an answer had been timely filed.

13 Here is what basically happened. The
14 plaintiff in this case was a passenger in a vehicle that
15 had underinsured motorist coverage through State Farm
16 insurance company.

17 There was a collision which basically took
18 place, and in that collision the vehicle owned by
19 Mr. Smith was also insured by State Farm. So State Farm
20 had the liability coverage, and it had the primary
21 underinsured motorist coverage.

22 Allstate had secondary underinsured motorist
23 coverage. So the lawyer in the file was with Bob
24 Brown's firm and filed an answer, and he continued to
25 represent the defendant until about 30 days ago when an

1 order substituting me as counsel for the defendant was
2 entered.

3 So an answer was properly filed. Now, at some
4 point in time State Farm paid its primary limits -- its
5 liability limits rather -- and it apparently paid all or
6 part of its underinsured motorist's limits.

7 Apparently, Mr. Jonas served Allstate with
8 notice of the suit pursuant to the underinsured motorist
9 statute. Well, of course, we had secondary underinsured
10 motorist coverage, and we have filed an affidavit or
11 sent an affidavit -- I can hand it up for filing.

12 THE COURT: I have a copy of it. That's the
13 one of Mr. Johnson?

14 MR. MOORE: Yes, sir, Mr. Thompson.

15 THE COURT: I'm sorry, Mr. Thompson.

16 MR. MOORE: What it basically indicates is
17 that we don't have any indication that we can find
18 where the Department of Insurance ever sent the
19 paperwork to us. We are not saying that they didn't do
20 it. We are just saying if it showed up, we don't know
21 where it is.

22 Now, Brian, his job is basically to have the
23 intake and the assignment of pleadings, and he does a
24 really good job with that. Normally what happens when
25 the Department of Insurance accepts service, they send

1 it to the home office, which basically sends it back to
2 South Carolina. We have done an extensive search and
3 cannot find where the Department of Insurance ever sent
4 it to us.

5 There are two basic reasons for our motion
6 today, and obviously will have to address the summary
7 judgment or the summary judgment order at some time when
8 we get the issue of the default cleared up, but we don't
9 believe the defendant is in default.

10 The code section in question basically says
11 that the underinsured motorist carrier has the right to
12 defend. Well, what Allstate didn't do was to file the
13 official notice of appearance, which is to ensure that
14 you basically get notice. We didn't file it because
15 nobody from the Department of Insurance, as far as we
16 know, sent it to us.

17 But it's hard to understand how a defendant
18 who has an active answer in the file and who has an
19 ongoing active lawyer representing it could actually be
20 held to be in default. There was no order striking the
21 answer. There was nothing to indicate that the answer
22 was not valid.

23 The answer was timely filed, and the defendant
24 has had an active attorney defending him throughout the
25 entire proceeding. So he has been represented the whole

1 time with appearance.

2 The U.I.M. statute does not say that if you
3 haven't filed the notice of appearance that you are in
4 default. It simply says that you have the right to come
5 in and to defend.

6 The action was being defended and has been
7 defended in a constant chain all along here. So we
8 believe that the affidavit of default was improvidently
9 filed due to the fact that there was an answer in the
10 file.

11 Now, we acknowledge that there wasn't a notice
12 of appearance from Allstate. There was a notice of
13 appearance from State Farm, and the matter has been
14 actively defended from the time it was filed until
15 today.

16 There has never been any time when there
17 wasn't an attorney in the file appearing defending.
18 There has never been any time when the answer has been
19 withdrawn. There has never been any time when the
20 answer was untimely filed. So we have a situation where
21 we have a defendant who has properly answered, and yet
22 we have an affidavit of default in the file.

23 Mr. Jonas is a great lawyer and good lawyers
24 are aggressive at times, but I believe filing an
25 affidavit of default when there is a timely answer in

1 the file might be a tad on the aggressive side.

2 If the Court were to find that there were some
3 sort of a default by virtue of the fact that the notice
4 of appearance wasn't filed, then we would urge upon the
5 Court that we do not have any record where we were ever
6 officially given the documents from the Department of
7 Insurance. That would be the reason.

8 It would be our intent that, assuming the
9 motion for default were denied and the affidavit of
10 default or any default was vacated or declaration there
11 was no default, it would be our intent to then come in
12 and basically move to set aside the order in regards to
13 summary judgment. How we will fair on that is a whole
14 other story.

15 I went ahead and filed a second answer by
16 virtue of the fact that there was an affidavit of
17 default. I wanted to make positive that, you know, if I
18 had to file a second answer, even though there was an
19 answer in the file, we could do it. I filed an answer
20 so that we would have at least something saying, Well,
21 we answered.

22 I don't think the second answer was necessary
23 by virtue of the fact there was an answer. We may
24 ultimately be stuck with the summary judgment motion,
25 but I think that is for another day. The only thing

1 before the Court today is a question of whether we are
2 in default, and I respectfully submit that we are not in
3 default.

4 We may ultimately be stuck with summary
5 judgment -- I don't know -- but I simply believe that we
6 are not in default because there was an answer. If, in
7 fact, we are in default by not having filed a notice of
8 appearance, there was a notice of appearance filed by
9 State Farm.

10 Even if we are in default by not having filed
11 the second notice of appearance, I respectfully submit
12 that would be excusable neglect by virtue of the fact --
13 now, I will stipulate that Mr. Jonas' office did send
14 the adjustor an indication that he was filing with the
15 Department of Insurance. He did do that, but we never
16 got the official notification, as best we can determine,
17 that the paperwork had actually been accepted by the
18 Department of Insurance.

19 So it's a two-prong motion: Basically for a
20 declaration that we are not actually in default. And if
21 we are, that we be allowed to escape default by virtue
22 of the fact that it was properly served on the
23 Department of Insurance, but we just never got notice
24 of the fact that they had received it. Thank you so
25 much.

1 THE COURT: Thank you, Mr. Moore. Mr. Jonas.

2 MR. JONAS: Thank you, Your Honor. I think
3 counsel starts with July the 13th, 2009, when this
4 accident happened. I think over the course of the year
5 up until this suit was filed on December the 3rd of
6 2010, there were at least four or five extensive
7 communications with the Allstate adjustor discussing
8 State Farm's liability limits and the U.I.M. situation
9 with State Farm that Bob Brown had both appeared,
10 through his notice of appearance for the U.I.M. claim on
11 December 20, 2010, and two days later on December 22nd,
12 entered an answer denying all liability and alleging
13 intervening negligence on the part of the vehicle
14 driver, who was not my client.

15 Throughout the course of the next 30 days, it
16 occurred that State Farm tendered its liability limits
17 and paid its U.I.M. limits. So that by January 31,
18 2010, State Farm had exhausted all coverages that it
19 might have filed. While that was going on, in that
20 short space of a month --

21 THE COURT: 2011?

22 MR. JONAS: 2011. I'm sorry, Judge.

23 THE COURT: And State Farm had paid by that
24 time?

25 MR. JONAS: They paid their liability limits

1 of 25,000 and \$100,000 U.I.M. which exhausted their
2 coverage. I was advised that they were withdrawing
3 their answer, which they ultimately did not do. So
4 within 30 days State Farm had lost all interest in the
5 case.

6 THE COURT: Lost interest and money.

7 MR. JONAS: And money, and a pile of money.
8 So it came to my attention that Allstate, of course, had
9 been waiting and asked me to advise them when all that
10 would happen, and I did that by correspondence to
11 Ms. Boggs.

12 Ms. Boggs, I don't know where she went or what
13 she did, but we forwarded a copy of the pleadings to her
14 that we also served -- and Jake is right -- on the South
15 Carolina Department of Insurance pursuant to the
16 statute. So there has never been a question about all
17 that.

18 The Department did accept it. The affidavit
19 is regular on its face. Allstate can't find the
20 process. I don't know what to say about that, except
21 that they have appointed the Department as their agent
22 for service of process, and process has been
23 accomplished.

24 So what we end up with is that two and a half
25 months after I served it, waiting for Allstate to do

1 something, I finally filed an affidavit of default,
2 still under the impression that State Farm had withdrawn
3 this frivolous answer that they had interposed and
4 attesting that Allstate had filed nothing in response to
5 the summons and complaint.

6 The next two and a half months went without
7 Allstate lifting a finger. I didn't hear anything back
8 from any of that. Then finally on September 27th,
9 sometime in the intervening few months, we had a motion
10 for default hearing. State Farm showed up and argued
11 that they weren't in default, and I agreed that they
12 certainly weren't in default since they, unknown to me,
13 had decided to not withdraw their answer.

14 But at the point that we reached on
15 September 27th, not having accomplished anything as far
16 as resolving the case and State Farm now having admitted
17 that they no longer were willing to stand behind their
18 answer, I filed a motion for summary judgment and took
19 the deposition of the defendant, who admitted his
20 responsibility for causing this accident.

21 Based on that fact, of course, the Court
22 granted summary judgment on October 26th. A couple of
23 weeks thereafter, I received a motion from Jake's office
24 with another answer, this one not only claiming
25 unavoidable accident but actually alleging some

1 additional negligence on the part of Ms. Clack as a
2 passenger.

3 I think it attributes the driver's actions
4 back to Ms. Clack, and all this having been done after
5 the Court had already granted summary judgment, the
6 deposition had been taken, and all the documents in
7 support of the summary judgment were on file with this
8 Court.

9 All that, I contend, means that the answer
10 that was interposed in support of this good faith
11 defense was, in fact, a sham. There is no basis for the
12 allegations of the complaint -- or of the answer.

13 I don't think that when we look at the
14 specifics of what the Supreme Court has said is
15 necessary to be relieved from default -- and it is
16 essentially the case that is attached to my memorandum,
17 Richardson, as Personal Representative of the Estate of
18 Dominic Richardson, versus P.B. and Harbor Inn, Inc.

19 That's a case, 2009 case, in which Justice
20 Toal wrote a decision addressing an appeal by an
21 insurance company that they also had failed to show good
22 cause to set aside an entry of default. It specifically
23 turns out to be Allstate, as in this case.

24 But in that case, the Richardson case, the
25 insurance company's failure to respond they claim was

1 inadvertent, and good cause was shown to set aside the
2 entry of the default.

3 The case is important because it sets out what
4 essentially are the very specific requirements for
5 showing this good cause: The timing of the defendant's
6 motion for relief, whether the defendant has a
7 meritorious defense, and whether there is a degree of
8 prejudice to the plaintiff if relief is granted. That's
9 the Wham factors that I think we are all familiar with.

10 At some point in time in analyzing the
11 position that Allstate has taken, it's clear that they
12 waited, despite actual notice and, of course, service
13 through the Department, more than nine months to show up
14 and make any attempt to appear.

15 This notice of appearance thing that Jake
16 refers to, I think he's actual claiming -- if I
17 understand it -- that he wants to ape on to State Farm's
18 notice of appearance as a U.I.M. carrier. That is
19 original thinking, I think.

20 There is, of course, a serious -- and Bob
21 Brown's office, I think, were the primary attorneys in
22 Crawford versus Henderson where, of course, citing Broom
23 versus Watts the Court of Appeals held that an attorney
24 appearing on behalf of a U.I.M. carrier does not have an
25 attorney/client relationship with the defendant.

1 I don't know how they would have an
2 attorney/client relationship or any relationship with
3 Allstate. So I think that that claim that they can
4 ape on to State Farm's notice of appearance is
5 unsupported.

6 I have already addressed the meritorious
7 defense. It's completely a sham. It has no merit.
8 Clearly they did not address the affidavits and the
9 decision -- well, the decision granting summary
10 judgment, as well as the materials that were filed with
11 the Court when they filed their motion with this
12 proposed good faith answer.

13 As to the Wham factors, the Richardson court
14 said that this motion to set aside, after two months
15 after the entry of default, did not support a
16 meritorious defense. In fact, the Court went on to say
17 that the respondent in that case did not show sufficient
18 grounds to claim prejudice to them.

19 My position in the case, I think the statute
20 was clearly complied with. Allstate had actual notice
21 throughout this. They haven't shown they have a
22 meritorious defense. In fact, I am calling it a sham.

23 At this point the question really comes down
24 to the thing that Jake last addressed -- from my notes
25 at least -- the last point he made was the statute

1 itself. There are no cases I could find where the
2 U.I.M. statute itself has ever been the subject of a
3 default judgment against the carrier.

4 We have got the Richardson case. We have got
5 Broome versus Watts and all the cases after that. My
6 contention, of course -- and I say so in the
7 memorandum -- that that right to appear is either
8 consciously waived or inadvertently waived, however in
9 this case, and that any right can possibly be waived if
10 they are on notice of the right.

11 That right that we are talking about has to
12 relate back to the civil court rules and the process to
13 appear and file a notice of appearance. The Richardson
14 case actually involves -- and the other cases that I
15 have cited in the memorandum -- they all cite a
16 defendant insurance company or an insurance company that
17 essentially appears and makes sufficient notice to the
18 other side by notice of appearance or motion to
19 intervene.

20 Those issues are found throughout all the
21 cases that interpret that statute. Every one of those
22 cases is brought by insurance companies attempting to
23 have the Court determine that there is no U.I.M.
24 coverage because the plaintiffs had not followed the
25 statute.

1 What we have got with Jake's argument is that
2 even if they were served, that somehow they can then ape
3 on to either the continuing answer that Bob Brown filed
4 in the case, bogus or otherwise, or they can ape on to
5 the notice of intent to appear or the notice of
6 appearance either one.

7 My point, I guess, after the Crawford case --
8 and Karl Brehmer, I think, was the appellate's attorney
9 in this case, Karl established through that case -- that
10 Jake in this case by comparison -- that he has no
11 relationship with the defendant at all. He doesn't
12 represent anyone but Allstate.

13 He didn't do what all these other cases say
14 should have been done. It's not Jake's failures we are
15 talking about. We are talking about a series of actual
16 notices to Allstate internally, their process of
17 adjusting. I actually got phone calls throughout the
18 course of this year from Allstate denying that Allstate
19 had ever been served, and I sent them the notice of
20 appearance months before Jake shows up.

21 There is no question that Allstate throughout
22 the course of this had actual notice of all the details
23 of this, but the important date isn't whether or not the
24 adjustor made a mistake. It's whether during the course
25 of this nine months: What did Allstate do? Did they

1 take any of the options that they had a right to? It's
2 clear they did not.

3 My final point is that without any right to
4 represent the defendant in this case and without any
5 right to ape on to the notice of appearance filed by
6 State Farm, as was appropriate in December of 2010, Jake
7 is without a position.

8 All that we have got to decide, I think, is
9 new material here, and that is whether or not that
10 statutory language can be waived. My point in this case
11 is that it was waived repeatedly. That's all I have
12 got. Thank you, Judge.

13 THE COURT: Thank you Mr. Jonas. Mr. Moore.

14 MR. MOORE: Your Honor, the problem that
15 Mr. Jonas has is that the defendant never went into a
16 default. A default is a failure to file an answer.
17 Regardless who was representing what interest, the
18 filing of an answer is a jural act. An answer has
19 always existed in this file.

20 The affidavit of default reads that the
21 defendant has filed no answer or responsive pleading on
22 his behalf and said defendant is in default. The reason
23 why we now know -- and I appreciate Mr. Jonas's
24 honesty -- is that when he filed that affidavit, he
25 believed that State Farm had withdrawn its answer. We

1 know State Farm never withdrew an answer, which it had
2 filed on behalf of itself and on behalf of the
3 defendant.

4 So there was an answer which has been in this
5 file all along. So with all due respect to my good
6 friend Mr. Jonas, there has been no default. The
7 purpose of the U.I.M. statute is it says that once you
8 serve the U.I.M. carrier, the carrier has the right to
9 come in and to defend.

10 So upon the filing of the complaint, even if
11 we assume that the Department of Insurance gave it to
12 somebody from Allstate, Allstate had the right to come
13 in and to assume the defense from whoever was defending
14 it at that time.

15 The fact that they had the right to do it
16 doesn't mean they had to do it. The fact remains that
17 State Farm continued to provide a defense for whatever
18 reason until such time as they signed an order
19 transferring the file to me.

20 So there was an active answer being actively
21 defended until such time as it was given to me, at which
22 time we continued to basically undertake a defense.
23 There has been no time when this defendant has not had
24 an active answer in the file. There has been no time
25 when this defendant did not have an attorney.

1 There was a time when Mr. Jonas did not know
2 an actual attorney to communicate with in regard to the
3 second tier of underinsured motorist coverage, but with
4 all due respect to Mr. Jonas, there never has been a
5 time when there has been a default.

6 My understanding is a default is actually when
7 a defendant fails to file an answer. If we look at the
8 summons and the complaint, it basically says that if you
9 don't file an answer, if there is no answer, then you
10 will be held in default.

11 There has been an answer. Whatever confusion
12 may have taken place between the carrier and the
13 Department of Insurance, I respectfully submit is
14 irrelevant. There has been an answer in the file. The
15 defendant simply isn't in default.

16 There obviously was a mixup or confusion
17 somewhere between Allstate and the Department of
18 Insurance. I respectfully submit that Mr. Jonas may
19 have a summary judgment, and we will deal with that, but
20 I don't think he has a default. I do thank you for
21 listening to me.

22 THE COURT: Thank you. Anything in response,
23 Mr. Jonas?

24 MR. JONAS: I would just say briefly, Judge,
25 the concept of whether this defendant is in default or

1 whether Allstate has waived its right to appear is the
2 issue before the Court. Thank you, Judge.

3 THE COURT: Thank you. If you would submit
4 proposed orders within 15 days. I will take the matter
5 under advisement. E-mail them to each other and e-mail
6 them to my law clerk.

7 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
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C E R T I F I C A T E

I, the undersigned L. Coconut Pantsari, Official Reporter for the Eleventh 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 cause, relative to appeal, in the Civil Court for Lexington County, South Carolina on the 2nd day of February, 2012.

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

August 9, 2012

L Coconut Pantsari

Court Reporter

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS

Mariko Michelle Clack,

Plaintiff,

vs.

Eddie Arnold Smith, d/b/a The Law Smith,

Defendant.

C/A #2010-CP-32-05211

AFFIDAVIT OF BRYAN THOMPSON

PERSONALLY appeared before me Bryan Thompson who, upon first being duly sworn, states as follows:

I am the front line process expert for Allstate Insurance Company in Columbia, South Carolina. I am responsible for processing casualty claims as they come into the office.

Allstate Insurance Company had secondary underinsured motorist coverage for the Plaintiff. State Farm Insurance Company had primary underinsured motorist coverage for the Plaintiff.

It is also my understanding there was liability insurance coverage which covered the Defendant.

The Plaintiff was a passenger in an unowned vehicle. For that reason, the underinsured motorist coverage of Allstate was secondary coverage.

Apparently, the underinsured motorist pleadings were served on Allstate and State Farm through the Department of Insurance. There is no record that the Department of Insurance ever sent the papers to Allstate. There simply is nothing we have been able to find in the office to indicate we ever received the papers from the Department of Insurance.

I am not saying Allstate did not receive the papers from the Department of Insurance but we have looked any have found no record of receipt.

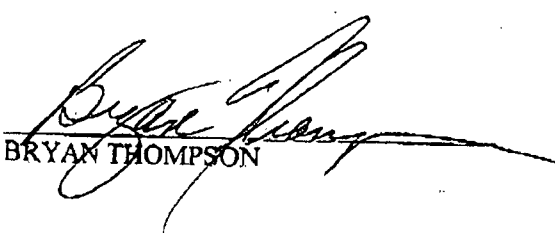
An Answer was timely filed in this action. Thus, it is our position there has been no default. Additionally, we knew nothing of this case at the time a Motion for Summary Judgment was apparently filed and argued.

I do not believe there has been a default in this case as there was an Answer filed. We have recently consented to have the defense undertaken by our counsel, Mr. S. Jahue Moore.

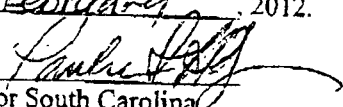
If there has been a default we do not believe prejudice has taken place to the Plaintiff as there was already an Answer filed.

This is a disputed red light case where liability is in dispute. The insured claims to have had the light. The Defendant claims otherwise.

FURTHER. Affiant sayeth not.


BRYAN THOMPSON

SWORN to before me this 1
day of February, 2012.


Notary Public For South Carolina

My Commission Expires: 6/25/21

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

2010 CP 32-05211

Mariko Marie Clack,)
Plaintiff,)

vs.)

PLAINTIFF'S MATERIALS
IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT

Eddie Arnold Smith, d/b/a The)
Lawn Smith,)
Defendant.)

1. Plaintiff's Affidavit with attachments, Oct. 14, 2011
2. Defendant's Deposition, Oct. 21, 2011
3. Plaintiff's Response To Request For Production with attachments pp. 1-159, 12/27/10
4. Plaintiff's Answers To Interrogatories, 12/27/10

Submitted By:

DONALD E. JONAS, Esquire (Bar# 3084)
PO Box 99
Lexington, SC 29071
(803) 609-1484/309-2535
ATTORNEY FOR PLAINTIFF

FILED

2011 OCT 25 2 1:37

COPY

STATE OF SOUTH CAROLINA) FILED IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON) ELEVENTH JUDICIAL CIRCUIT

2011 OCT 14 2010 CH 32-05211

Mariko Michelle Clack,

Plaintiff,

vs.

Eddie Arnold Smith, d/b/a The
Lawn Smith,

Defendant,

AFFIDAVIT OF PLAINTIFF

Upon being duly sworn, I depose and state the following:

1. I am Mariko Michelle Clack (DOB 01/17/87) and on July 13, 2009, I was a passenger in a 1997 Ford Explorer being driven by Megan Ashley McNeil, headed East on Hwy 302 in S. Congaree, SC. As our vehicle passed through the signaled intersection of Pine St., the Defendant, Eddie Arnold Smith, headed North on Pine Street at the intersection of Hwy. 302, failed to stop for the controlling traffic signal, entered the intersection and collided with the passenger side of the Ford Explorer where I was seated. The "t-bone" caused the Explorer to roll over and come to rest on my side trapping my right arm and hand. I have attached photographs of the accident scene that were taken by the police and photos of the passenger side of the Explorer where I was seated and photos of Mr. Smith's truck showing the collision damage.
2. I am a single mother and at the time of the accident was employed as a cosmetologist working at Sports Clips, renamed as Too Hotties Hair Salon, now named "Hot Shots" in Irmo and was also waitressing at Hooters of Harbison six days /week.
3. I was transported by ambulance to the Lexington Medical Center and was treated for a degloving injury to my hand, neck and thoracic sprain/strain/lacerations to my head, face, shoulder, leg, foot, etc. I received 15-20 stitches to close the wound to my right arm and numerous staples to close the wound to my head. My hand was treated and splinted and I was confined to a wheel chair for a number of weeks as a result of the injury to my ankle. I underwent treatment at Lexington Orthopedics for my right hand, left ankle and upper back problems. I was also referred by Lexington Orthopedics to Palmetto Baptist Pain and Orthopedic Care Ctr. and underwent therapy to reduce the loss of range of motion associated with the degloving injury to my hand and to improve the grip strength of the hand. At the conclusion of my physical therapy it was reported that I had experienced a significant loss of range of motion and loss of grip strength of my right hand. I was also referred for an MRI of my L. foot that demonstrated large amounts of nonspecific marrow edema involving the mid and medial aspect of the entire talus bone and the likelihood of early arthritis.
4. I was also referred by Lexington Orthopedics to Dr. Harold Friedman at University Specialty Clinics for evaluation of the "split nail deformities" and scarring of my hand and knee. As a result of the consultation with Dr. McIntosh it is my understanding that there is no realistic chance that the split nail deformity and related scarring of the hand can be corrected because I have lost some of the germinal matrix of the nail bed as a result of the degloving injury and that my best course regarding the nail deformities is to use cosmetic nail replacements.

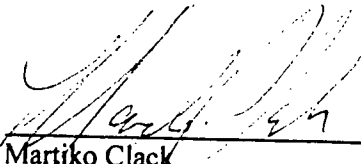
5. As a result of the injuries I received in the auto accident on July 13, 2009, I was unable to care for myself and my daughter and had to rely on my parents and friends for the daily care, feeding and transportation of both of us for at least the first month following the accident. Eventually, I was able to walk and take care of myself but still had to rely on my parents for the daily care, feeding and transportation of my daughter to and from school. By October 2009 I was able to return to my work and partially perform my jobs as a cosmetologist/hairdresser and a second job as a waitress while wearing a Jobst glove. I found it difficult and embarrassing to perform my job as a cosmetologist/hairdresser and having to explain the glove and appearance of my hand and to stand for prolonged periods and to grip objects with the injured hand while wearing the glove. I had similar problems with my job as a waitress was not able to securely grip the items I was handling and was embarrassed to have to deal with customers questions about the glove and appearance. I continue to be embarrassed by the appearance of my hand and regular questions by customers concerning the appearance, etc.

6. As a result of the injuries I received in the auto accident on July 13, 2009, I have experienced a permanent loss of sensation, strength and flexibility of the use of my right hand, significant and deep scarring of the hand and left leg and significant and limiting back and ankle pain.

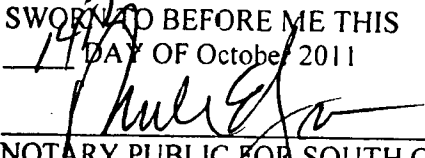
7. As a result of the injuries I received in the auto accident on July 13, 2009, I have incurred actual and estimated future medical expenses including:

Lexington Cty EMS-Acct # 802910 (7/13/09)	\$ 559
Lexington Cty Medical Center	\$11,480.15
Lexington Orthopaedics	\$3,423.00
Palmetto Health Baptist (Hand Therapy & Evaluation)	\$10,548.00
Dr. Harold I. Friedman MD,Ph.D.	\$2,006.00
Palmetto Health Baptist Pain and Orthopedic Care Ctr.-wheelchair	\$ 150.00

Cosmetic Nails for life DOB (1/17/87) life expectancy 59.31 yrs.
Replacement-3-4/yr @ current cost (\$50-60) including full set of tips and acrylic overlay, buff and polish.
Infills (\$35-\$40) are required every 3-4 weeks for maintenance.
Cosmetic nail replacements for life


Martiko Clack

SWORN TO BEFORE ME THIS
11 DAY OF October 2011


NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 11-17-2020

2011 OCT 14 2 14 1

FILED

Page 1

Page 3

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
COUNTY OF LEXINGTON) C/A #: 10-CP-32-5211
Mariko Michelle Clack,)
Plaintiff,)
v.)
Eddie Arnold Smith, d/b/a)
The Lawn Smith,)
Defendants.)

DEPOSITION OF
EDDIE A. SMITH

Friday, October 21, 2011
9:44 a.m. - 10:19 a.m.

The deposition of EDDIE A. SMITH, taken on behalf of the Plaintiff at the law offices of BROWN AND BREHMER, 1720 Main Street, Suite 201, Columbia, South Carolina, on the 21st day of October, 2011 before Carla S. Dominick, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition.

(Plaintiff's Exhibit Number One was marked for identification purposes prior to the deposition.)
EDDIE A. SMITH, having been duly sworn, deposes and testifies as follows:

MR. SMITH - EXAMINATION BY MR. JONAS:

Q: Good morning, Mr. Smith. My name is Don Jonas. I represent Ms. Clack, who is the plaintiff in the lawsuit that she brought against you, individually and doing business as The Lawn Smith. Obviously, that's been going on for some time. Are you familiar with the lawsuit? Have you ever had a chance to look at the papers?

A: Vaguely.

Q: All right. Well, I'm going to ask you a little bit about those and I've got a copy with me this morning, so if you need to refer to that, I have that available to you. But let me begin, of course, this deposition is a stage in the case. I get an opportunity to ask you questions. Sometimes they're a little less direct than maybe they should be, but the scope of what I'm going to ask you, there will be a little bit of background and then we'll get to the real issue about what happened. If I ask

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Page 4

APPEARANCES:

Donald E. Jonas, Esquire
Sandy Jonas, Paralegal
ATTORNEY AT LAW
Post Office Box 99
Lexington, South Carolina 29071
Attorney for the Plaintiff

J. Austin Hood, Esquire
BROWN AND BREHMER
1720 Main Street, Suite 201
Columbia, South Carolina 29201
Attorney for the Defendant

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MR. SMITH: PAGE:
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Certificate.....30

EXHIBITS

Plaintiff's Exhibit Number One.....3
(Photographs of Accident Scene)
Plaintiff's Exhibit Number Two.....17
(Def's Answer to Plt's Claim dtd 12/22/10)

STIPULATIONS

It is stipulated and agreed that this deposition is being taken pursuant to the South Carolina Rules of Civil Procedure.

It is stipulated by and between counsel and the witness that the reading and signing of the following deposition be, and the same are, hereby waived.

you a question this morning that you don't completely understand, I ask you to stop me and ask me to clarify that so that you can answer accurately. This is an important thing. It's obviously taken under oath and, of course, the purpose of this could be used in a court proceeding. And, of course, we want it to be reliable; do you understand that?

A: Yes.

Q: All right. Mr. Smith, as we go into this, as I said, I may ask you a little background. I just simply need to know some things about you and your business. How old are you?

A: Fifty-one.

Q: All right. What's your date of birth?

A: June 21, 1960.

Q: And are you a married person?

A: Yes.

Q: And where do you live?

A: Lexington.

Q: What is the address?

A: 116 Colony Lakes Court.

Q: And you've lived there for some time?

A: Almost nine years.

Q: All right. And how are you employed?

1 (Pages 1 to 4)

Page 5

1 A: Self-employed.
2 Q: And I see this morning you're dressed with a
3 shirt that says The Lawn Smith; is that your
4 business?
5 A: Yes, sir.
6 Q: All right. How long has that been your
7 business?
8 A: Since 1982.
9 Q: And what is that business?
10 A: I do lawn sprinkler repairs as well as backflow
11 preventer testing.
12 Q: You say you're self-employed, do you have any
13 employees?
14 A: No.
15 Q: And do you have any other business location
16 other than your personal residence?
17 A: None.
18 Q: Now, during the time that you've been the sole
19 proprietor of Lawn Smith in this business of
20 lawn sprinkler repair and backflow preventer
21 testing, I guess, is what you're saying?
22 A: Yes.
23 Q: All right. Have you filed separate tax returns
24 in the name of Lawn Sprinkler or Lawn Smith
25 rather? I mean, how do you handle your tax

Page 6

1 situation?
2 A: My wife takes care of all that.
3 Q: All right. And is there, do you know whether
4 or not Lawn Smith has a separate federal
5 identification number?
6 A: I do.
7 Q: All right. So as your tax consultant, your
8 wife, does she separately account for the
9 income of The Lawn Smith?
10 A: Yes.
11 Q: All right. And I suppose she takes the
12 appropriate deductions and files your taxes in
13 a joint fashion with you?
14 A: Yes.
15 Q: You wouldn't happen to know the federal ID
16 number, would you?
17 A: No.
18 Q: Does The Lawn Smith own or use any equipment
19 that's solely dedicated for the purpose of
20 performing your business?
21 A: Clarify, please.
22 Q: Well, in the way of doing your business, what
23 tools or equipment do you use?
24 A: Shovels, I've got locating equipment. I've got
25 all sorts of repair equipment. I've got a

Page 7

1 backflow testing kits.
2 Q: And that material or the equipment that you use
3 in your business, do you dedicate it solely for
4 the use of your business?
5 A: Yes.
6 Q: All right. So it's not something you keep for
7 general use in your personal life. This is
8 equipment just dedicated to The Lawn Smith?
9 A: I need more clarification.
10 Q: Yeah, it's kind of a --
11 A: Naturally, I work out of my home.
12 Q: Yes.
13 A: If I need a shovel, I'm going to get one out of
14 my truck.
15 Q: Yes, sir. I kind of do the same. But the
16 equipment that you actually use in the
17 business, the backflow preventers, testing
18 equipment and anything dedicated just solely to
19 the purpose of lawn sprinkler repair, other
20 than shovels and those common garden tools or
21 instruments that you might jointly use, you do
22 have equipment that is solely dedicated to your
23 business?
24 A: Yes, but I still use some stuff occasionally.
25 Q: Yes, sir, I understand. But in terms of your

Page 8

1 business -- well, let me ask. How do you
2 advertise your business?
3 A: I'm in the Yellow Pages.
4 Q: And how long have you maintained your ad there?
5 A: A long time.
6 Q: All right. And do you have any other
7 advertising?
8 A: The side of my truck.
9 Q: Now, the truck that you're apparently using
10 today, is this the same truck that was involved
11 in the accident involving Ms. Clack?
12 A: Yes.
13 Q: What model truck is that?
14 A: 1998.
15 Q: And what model?
16 A: It's a Dodge Ram 2500.
17 Q: Okay. Do you own other vehicles?
18 A: As a company?
19 Q: Well, in any capacity.
20 A: No.
21 Q: All right. Do you have a personal vehicle?
22 A: My wife does.
23 Q: Now, in your wife's role in The Lawn Smith,
24 other than preparing your taxes, does she do
25 anything else?

2 (Pages 5 to 8)

1 A: No.
 2 Q: So if your advertising directs a call to the
 3 house, I assume your house phone?
 4 A: Yes.
 5 Q: All right. Does she answer and represent
 6 herself as The Lawn Smith or --
 7 A: Sure.
 8 Q: And if you answer, you take the call and do the
 9 same?
 10 A: Yes.
 11 Q: So there's a certain amount of sharing there,
 12 where the house phone is your business phone
 13 and personal phone?
 14 A: Yes.
 15 Q: All right. And I'm not trying to delve into
 16 this too deeply, but what I'm trying to do is
 17 get a clear understanding of how you do your
 18 business. And I think you're making it
 19 clearer. You don't pay your wife, do you, for
 20 her time and efforts in The Lawn Smith?
 21 A: As far as I know, I don't.
 22 Q: Well, we all pay something, okay, but not in
 23 monetary terms. She doesn't get a paycheck?
 24 A: I don't think so.
 25 Q: Well, she gets the taxes, so you never know.

1 Do you maintain a separate bank account for The
 2 Lawn Smith?
 3 A: I do.
 4 Q: What type of arrangements? Is it just a
 5 checking account?
 6 A: I have a checking account, Visa card account.
 7 That's all the same account basically.
 8 Q: All right. So if I made the conclusion that
 9 The Lawn Smith has been in existence as an
 10 operating business in the Lexington area for
 11 about nine years, that it maintains certain
 12 equipment dedicated to its purpose, that is
 13 this lawn sprinkler repair and backflow testing
 14 and that it maintains separate bank accounts,
 15 that would be an accurate statement?
 16 A: You mentioned for nine years. The actual
 17 separate account was set up, if I recall
 18 correctly, it was either -- it was about three
 19 years ago.
 20 Q: I see.
 21 A: In other words, for a long time we had a d/b/a
 22 account which is basically the same account.
 23 Q: Yes, sir.
 24 A: When we changed it to an LLC, we had to get a
 25 separate account.

1 Q: All right. When did the LLC come into
 2 existence?
 3 A: If my memory is right, it was spring of, I
 4 guess, '09.
 5 Q: All right. And did you get some help in
 6 preparing the papers to form the LLC, like an
 7 attorney or a consultant of some sort?
 8 A: Yes.
 9 Q: And was it handled by an attorney?
 10 A: The LLC part, I believe, was handled by our tax
 11 person.
 12 Q: All right. But you did get at that time some
 13 recognition of a paper from the Secretary of
 14 State saying that the LLC had been formed?
 15 A: Yes.
 16 Q: So what is the appropriate name for The Lawn
 17 Smith at this point; what is the --
 18 A: It's The Lawn Smith, LLC.
 19 Q: All right. And prior to 2009 or thereabouts,
 20 it would have been The Lawn Smith d/b/a, your
 21 name, d/b/a The Lawn Smith?
 22 A: Correct.
 23 Q: All right, good. As to the matters that were
 24 going on on July 13th of 2009, and just using
 25 that as the date, do you know if the LLC was

1 formed before or after the accident?
 2 A: It was before.
 3 Q: All right. Now, on July the 13th of 2009,
 4 which I represent to you is the day of the
 5 accident, where were you going when this
 6 accident happened?
 7 A: Home.
 8 Q: Where is home in relation to where the accident
 9 happened? How many miles or feet or --
 10 A: Approximately seven miles.
 11 Q: All right. And where had you been coming from?
 12 A: My mother-in-law's.
 13 Q: Were you working that day?
 14 A: Yes.
 15 Q: Had you worked at your mother-in-law's?
 16 A: Yes.
 17 Q: And going home on that occasion, was that part
 18 of your work pattern that day?
 19 A: Yes.
 20 Q: All right. Now, I understand that -- and South
 21 Congaree is a place I'm fairly familiar with.
 22 Is that a route you would have normally taken
 23 and have taken in the past, certainly your
 24 mother-in-law's to your home?
 25 A: Yes.

1 Q: All right. So you are familiar with the
2 traffic conditions at approximately 5:00 in the
3 afternoon in South Congaree?
4 A: Yes.
5 Q: If you recall, what were the weather conditions
6 that day?
7 A: I don't remember.
8 Q: At the time that the accident happened, do you
9 recall any inclement weather, any rain or
10 adverse --
11 A: I don't think it was raining at all. I don't
12 know if it was cloudy or not, but it wasn't
13 raining.
14 Q: Now, what street were you actually driving on?
15 A: I was on Pine Street.
16 Q: And as I understand, Pine Street crosses 302,
17 correct?
18 A: Correct.
19 Q: And at that point, there is a traffic signal or
20 control?
21 A: Yes.
22 Q: What is the control at the intersection of Pine
23 Street and 302?
24 A: Clarify, please.
25 Q: Well, what type of traffic --

1 Q: All right. At the time, and you were, of
2 course, charged with failure to yield the right
3 of way or how were you charged?
4 A: Not yielding to traffic equipment or whatever
5 it's called.
6 Q: Okay. At some point, you appeared in City
7 Court.
8 A: We didn't actually make it to court. I came to
9 court but before court ever intervened, I spoke
10 to the officer and I also spoke to Ms. Clack
11 and her father and seems like the other driver
12 may have been there. I don't remember. But in
13 other words, we never actually entered traffic
14 court.
15 Q: All right. What did you say at that time?
16 A: I paid the fine.
17 Q: Well, did you have a discussion about how the
18 accident happened with the policeman? Did you
19 have a conversation with the policeman?
20 A: Yes.
21 Q: All right. What did you, if you can recall,
22 tell the policeman?
23 A: Well, I don't recall.
24 Q: As a result of the conversation and the
25 information that you apparently made your

1 A: It's a regular stoplight.
2 Q: All right. And is that stoplight on that day,
3 was it operating normally as far as you know?
4 A: Yes.
5 Q: How did the accident happen?
6 A: I pulled up to the stoplight. It was red. I
7 stopped. I looked down for some reason. I
8 don't remember why. I looked back up. I
9 thought the light was green. I proceeded
10 across the intersection. That's when I
11 encountered the other vehicle.
12 Q: Yes, sir. So is it your understanding that, in
13 fact, although you had stopped for the red
14 traffic signal, that you'd gone through what
15 essentially is the signal inadvertently, I
16 guess, because you didn't recognize it? Let me
17 restate the question. It was bad. Was the
18 traffic signal red when you entered the
19 intersection?
20 A: When I entered the intersection, I thought it
21 was green. According to witnesses, it was not.
22 Q: All right. At the time that -- and you
23 mentioned witnesses, what witnesses do you --
24 are you referring to?
25 A: The ones the police told me about.

1 decision on, did you admit and agree that you
2 had entered that intersection under a red
3 signal?
4 A: Yes.
5 Q: Now, and I don't want to belabor it, but you've
6 accepted responsibility for this accident from
7 the beginning, is that right?
8 A: Yes.
9 Q: All right. Did you, when you were served with
10 the lawsuit, did you ever have a conversation
11 with any of the attorneys that represented you?
12 A: Which lawsuit are we referring to?
13 Q: Okay. Well, I only know of one, but Ms. Clack
14 brought a lawsuit against you, naming you, and
15 it was filed on December 3, 2010. You would
16 have been served a few days after that. That's
17 the lawsuit.
18 A: So what is the question again?
19 Q: Well, my question is did you ever speak with an
20 attorney that represented you in response to
21 that lawsuit?
22 A: You know, I don't know if I talked to the
23 attorney or I talked to the State Farm
24 representative, who I kind of used as a go
25 between because he was the one that was my go

Page 17

1 between.
2 Q: Yes, sir.
3 A: And I asked him about it and he clarified it to
4 the best of his ability. Now, I don't remember
5 if I actually spoke to the attorney.
6 Q: Well, that was my question because there was an
7 answer prepared on your behalf. Have you ever
8 seen that document?
9 A: So what do you want to know about this
10 document?
11 Q: Have you ever seen that document before I've
12 shown it to you today?
13 A: You know, I don't remember.
14 Q: All right. Let's go ahead and have it marked
15 as an exhibit to your deposition.
16 (Plaintiff's Exhibit Number Two was marked for
17 identification purposes.)
18 Q: All right. Referring to the defendant's answer
19 to plaintiff's complaint, which is now marked
20 as Exhibit Two, there is what's referred to in
21 the second page for a third defense; do you see
22 what I'm referring to?
23 A: I see it.
24 Q: And it reads, "The Defendant would show upon
25 information and belief," and there's a

Page 18

1 misspelling there, "that any injuries or
2 damages sustained by the Plaintiff were due to
3 the acts or omissions of Megan Ashley McNeill
4 and others not within the employ or control of
5 the Defendant and, therefore, the Plaintiff
6 cannot recover from the Defendant in any sum
7 whatsoever." Did you ever claim that Megan
8 Ashley McNeill caused this accident?
9 A: No.
10 Q: All right. And as to paragraph one, did you
11 ever tell anybody that you weren't involved in
12 the operation of The Lawn Smith business at the
13 time this accident happened?
14 A: I don't remember that because I wasn't actually
15 working. I was coming from my last stop, which
16 is my mother-in-law's, going home. So I guess
17 you would say -- in other words, to answer
18 your question, I was heading home from work.
19 Q: I understand but it turns out your home is
20 where you work?
21 A: Yes.
22 Q: All right. Well, let's move on here. I'm
23 almost done frankly. I do want to go over some
24 photographs. If you would look at Plaintiff's
25 One to your deposition and I've got the

Page 19

1 original photographs here if you need to take
2 a look at those. Plaintiff's One and what's
3 marked at the bottom of the photograph, M Clack
4 Number One, 7/13/09, do you recognize that
5 photograph?
6 A: I do.
7 Q: How do you recognize it? What is it?
8 A: That was the aftermath of the accident.
9 Q: Is that a reasonable -- to the best of your
10 recollection, does that represent the condition
11 of the Clack or the vehicle Ms. Clack was in
12 after the accident?
13 A: Yes.
14 Q: All right. So it came to rest on its roof
15 eventually. What part of your car collided
16 with what part of the vehicle Ms. Clack was
17 involved in?
18 A: My front driver's side, I guess, glazed her
19 vehicle as it went by and I guess it hit it in
20 such a way that it caused it to flip into the
21 air and land upside down.
22 Q: All right. Now, let's look at the next
23 photograph, which is M Clack Number Two. What
24 is that photograph?
25 A: That's the front of my pickup.

Page 20

1 Q: All right. Now, I see that the damage appears
2 in the photograph to be the driver's side front
3 fender and bumper, is that --
4 A: Yes.
5 Q: And is that where the collision actually took
6 place?
7 A: Where it's at, no. On this picture, no.
8 Q: All right. What part of your car, and I'm
9 trying to, in my own mind, get clear about how
10 the impact occurred. As I understand from your
11 explanation, it was a T-bone collision, more or
12 less?
13 A: More or less.
14 Q: All right. But this would indicate that more
15 of the impact occurred with the driver's side
16 of your vehicle; is that how you saw it?
17 A: The driver's front side.
18 Q: Yes, sir. So would there have been some
19 attempt to avoid the accident, I mean, were you
20 turning into the vehicle or is that --
21 A: I was going straight across the intersection.
22 Q: So in the final instant before the collision
23 occurred, what do you recall of the parts of
24 the vehicles that were coming together, I mean,
25 what part of your vehicle and what part of the

5 (Pages 17 to 20)

Page 21

Page 23

1 Clack vehicle?
 2 A: My front driver's side hit her vehicle. I'm
 3 not sure where.
 4 Q: All right. Well, let's look at some other
 5 photographs, M Clack Number Three, which is
 6 part of Exhibit One, a different camera angle
 7 at the top photograph there. As I understand,
 8 this was a police photograph. This seems to
 9 indicate that this collision occurred or at
 10 least where the vehicle came to rest was in
 11 front of a gas station area, Burger King.
 12 A: Yes.
 13 Q: All right. How far from the intersection would
 14 you estimate the vehicle was when it came to
 15 rest?
 16 A: It was a good ways.
 17 Q: So it would have rolled more than once likely?
 18 A: Could have.
 19 Q: All right. Did you actually see it roll?
 20 A: It happened so fast. I think I saw it flip at
 21 least once. It could have been more.
 22 Q: All right. Let's look at the next photograph.
 23 This just shows some additional damage angles
 24 to the Clack vehicle. But at the bottom, M
 25 Clack Number 13, from the side view, it appears

1 A: Yes.
 2 Q: All right. Let's go to the last photograph.
 3 It's M Clack 19 and 20. Is that a view of your
 4 vehicle showing the damage that occurred or at
 5 least the truck after it was -- before it was
 6 repaired?
 7 A: Yes.
 8 Q: All right. Let me ask you about the vehicle,
 9 the operation of this vehicle. You'd had this
 10 vehicle for a number of years?
 11 A: Yes.
 12 Q: You're familiar with the operation of it,
 13 obviously drove it every day?
 14 A: Yes.
 15 Q: Was there anything wrong with the vehicle that
 16 day, I mean, the brakes worked?
 17 A: It was fine.
 18 Q: So if I understand, there's never been any
 19 contention on your part that any -- there was
 20 any malfunction of the vehicle that caused this
 21 collision?
 22 A: That's correct.
 23 Q: The policeman that you talked to that got there
 24 quickly after the accident, did you know the
 25 fellow?

Page 22

Page 24

1 that there's damage along the passenger side
 2 door and the rear door of the vehicle.
 3 A: Yes.
 4 Q: All right. Do you recall enough of the
 5 collision to know whether the impact was more
 6 at the passenger side door or more towards the
 7 rear door of the passenger side?
 8 A: I don't recall.
 9 Q: It's pretty clear that there's heavy damage in
 10 that area. Is that approximately where the
 11 damage or where your car or your truck came to
 12 collide with the Clack vehicle?
 13 A: Yes.
 14 Q: All right. Another view of the damage to the
 15 Clack vehicle, M14 and 15, is this consistent
 16 with what you recall of where the impact
 17 occurred on the Clack vehicle?
 18 A: Yes.
 19 Q: All right. Did you ever, after the accident,
 20 did you have any opportunity to speak with Ms.
 21 Clack?
 22 A: I did not. The police officer got there very
 23 quickly. They told me to stay in my truck.
 24 Q: This is -- the collision actually took place
 25 within a few blocks of the police department?

1 A: No.
 2 Q: All right. Did you speak to him on any more
 3 than one occasion?
 4 A: I spoke to him the day of the accident and I
 5 know I spoke to him the day that I paid the
 6 traffic fine. I don't remember speaking to him
 7 any other times. It's possible I called to try
 8 to check on, you know, where I was supposed to
 9 go, but it wasn't any details that I can
 10 recall.
 11 Q: All right. At the time of the accident, did
 12 you tell him at that time what you recalled and
 13 what you explained to us today, that you
 14 stopped, looked down and then proceeded ahead
 15 into the intersection without checking the
 16 signal again?
 17 A: Yes.
 18 Q: All right. So there's never been any confusion
 19 about what you said?
 20 A: Not that I know of.
 21 Q: All right. Thank you. That's all I've got.
 22 MR. SMITH - EXAMINATION BY MR. HOOD:
 23 Q: Mr. Smith, on that -- I'll tell you what, let's
 24 get the -- where's the answer? I want to talk
 25 about this third defense Mr. Jonas asked you

6 (Pages 21 to 24)

Page 25

Page 27

1 about.
 2 A: Okay.
 3 Q: Do you know who Megan Ashley McNeill is?
 4 A: Do I know her personally, no.
 5 Q: Do you know who she is in reference to this
 6 accident?
 7 A: I believe she was the driver of the other
 8 vehicle.
 9 Q: Okay. Now, I understand what you said about
 10 entering the intersection and about the issue
 11 with the light. When you looked up, you
 12 indicated earlier, you said you believed the
 13 light was green as you entered the
 14 intersection, is that right?
 15 A: Correct.
 16 Q: Do you know what speed Ms. McNeill was
 17 traveling as she passed by you?
 18 A: I have no idea, but it appeared that she was
 19 going pretty fast to end up as far down the
 20 road as she did.
 21 Q: When you said that earlier, you said that she
 22 landed a good piece from where the impact
 23 happened?
 24 A: A good piece.
 25 Q: Okay. The truck that you were driving, The

1 A: No.
 2 Q: You just did that for her for free?
 3 A: I do that because she's my mother-in-law.
 4 Q: Okay. So would that have been something that
 5 you were doing for the business or would that
 6 have been something you were doing as a good
 7 son-in-law?
 8 A: Well, that's one of those iffy questions, you
 9 could say, well, it could be one or the other.
 10 Q: It's kind of like what Mr. Jonas asked you
 11 about if you were doing work around your house
 12 and you used a shovel that's from work, that
 13 you have in your truck, you go get it out of
 14 your truck and use at your house, is that
 15 right?
 16 A: Certainly.
 17 Q: Were you getting paid for the time that you
 18 drove to your mother-in-law's house?
 19 A: No.
 20 Q: And you didn't get paid for the time you were
 21 there?
 22 A: No.
 23 Q: Did you get paid to drive home?
 24 A: No.
 25 Q: So would you have considered yourself to have

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Page 28

1 Lawn Smith truck, whose name is that in or
 2 whose name was it in at the time of the
 3 accident?
 4 A: At the time of the accident, I don't remember
 5 for sure whether it was in my personal name
 6 because that was originally the way it was
 7 titled. Since then, I say since then, at some
 8 point, it's been placed under The Lawn Smith,
 9 LLC.
 10 Q: Okay. But at the time of the accident, I'm
 11 looking at the police report, he has it -- the
 12 officer indicated the owner's full name was
 13 Eddie Arnold Smith, is that you?
 14 A: That's me.
 15 Q: Okay. The vehicle may still have been in your
 16 name at the time of the accident?
 17 A: Could have.
 18 Q: Okay. Now, at the time of the accident, you
 19 said you were driving home from your mother-in-
 20 law's house?
 21 A: Yes.
 22 Q: What work had you done at your mother-in-law's
 23 house?
 24 A: She had a sprinkler valve that needed repairs.
 25 Q: Okay. And did she pay you for that work?

1 been on the job at the time this accident
 2 happened, driving home from your mother-in-
 3 law's house?
 4 A: If you look at it that way, no.
 5 Q: Okay. And you haven't talked to Ms. Clack
 6 other than your conversation that you had with
 7 her or her dad, I guess you said, at the
 8 traffic court hearing, is that right? You said
 9 you approached and talked to them briefly.
 10 A: We did speak briefly. That's the only
 11 remembrance I have of speaking to her.
 12 Q: Have you ever spoken to Ms. McNeill, the driver
 13 of her car?
 14 A: No, I can't remember if she was at the court or
 15 not, but I remember speaking to Ms. Clack and
 16 her father. Seemed like very nice people.
 17 Q: Okay. Do you know how far down the road Ms.
 18 McNeill's vehicle came to rest in terms of
 19 feet, yards, car lengths?
 20 A: I have no idea. It was a long ways. To my
 21 guess, as far as how long it normally would,
 22 but, of course, they were going forward and my
 23 vehicle glazed them or pushed them or hit them
 24 and -- so in other words, I don't know how far
 25 it went, but it was a long ways.

7 (Pages 25 to 28)

1 Q: Do you know what the speed limit is on 302?

2 A: It's 35.

3 Q: Is this in the town of South Congaree?

4 A: Yes, it is.

5 Q: And the officer that responded to the scene,
6 was he a Town of South Congaree police officer?

7 A: Yes.

8 Q: Okay. That's all the questions I have. Thank
9 you, sir.

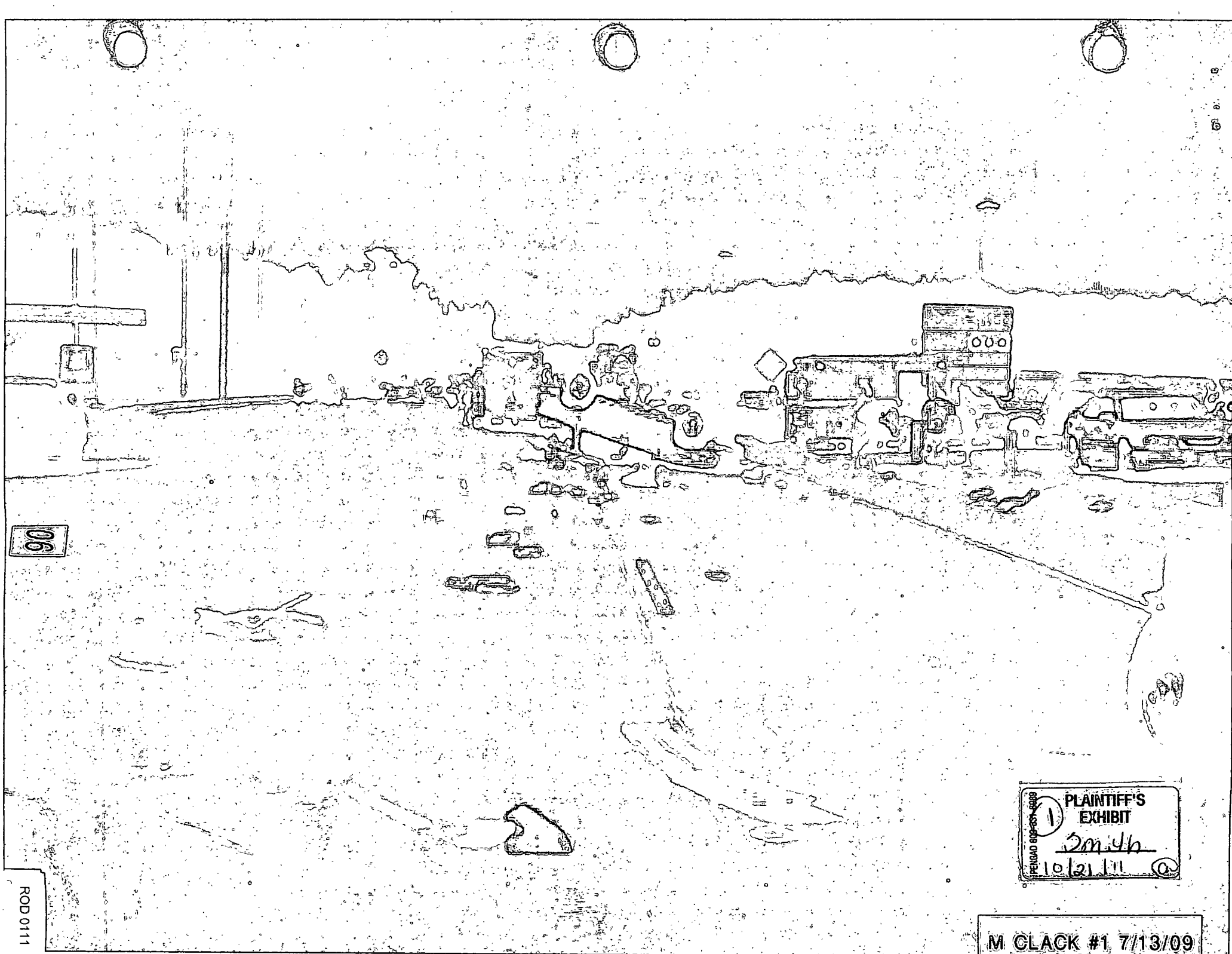
10 MR. SMITH - RE-EXAMINATION BY MR. JONAS:

11 Q: I think just to be clear, you actually didn't
12 see Ms. McNeill's Ford Explorer before this
13 accident happened?

14 A: That's correct.

15 Q: All right. Thank you.

16 (There being no further questions, the deposition
17 concluded at 10:19 a.m.)

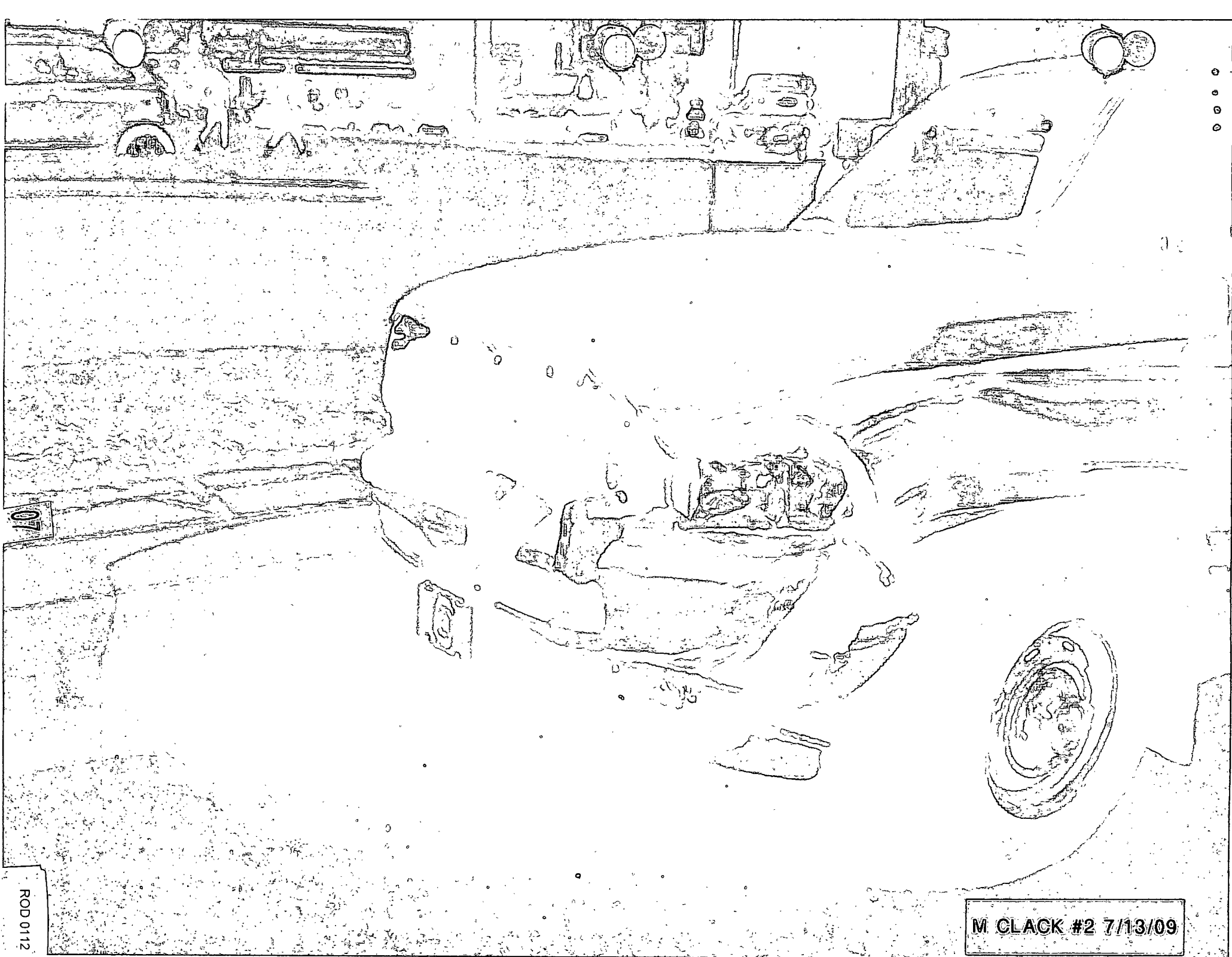


06

PLAINTIFF'S
EXHIBIT
2m.4h
10/21/11

M CLACK #1 7/13/09

ROD 0111



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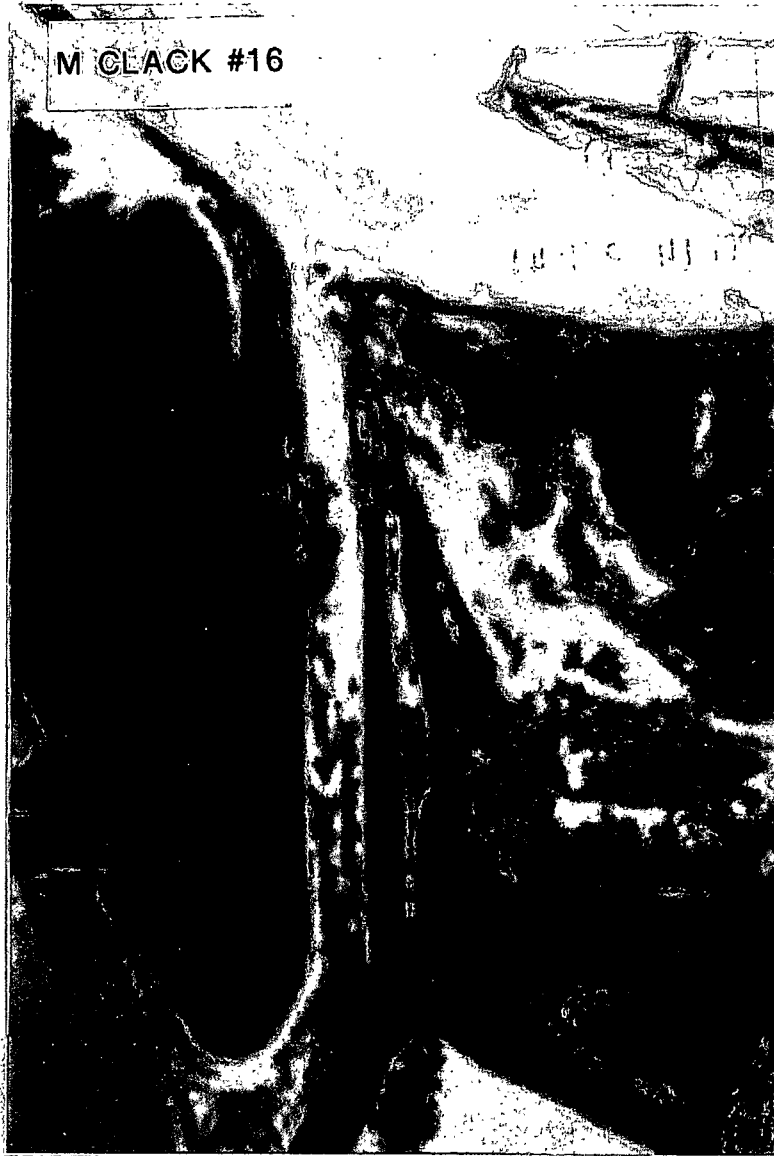
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07

ROD 0112

M CLACK #2 7/13/09

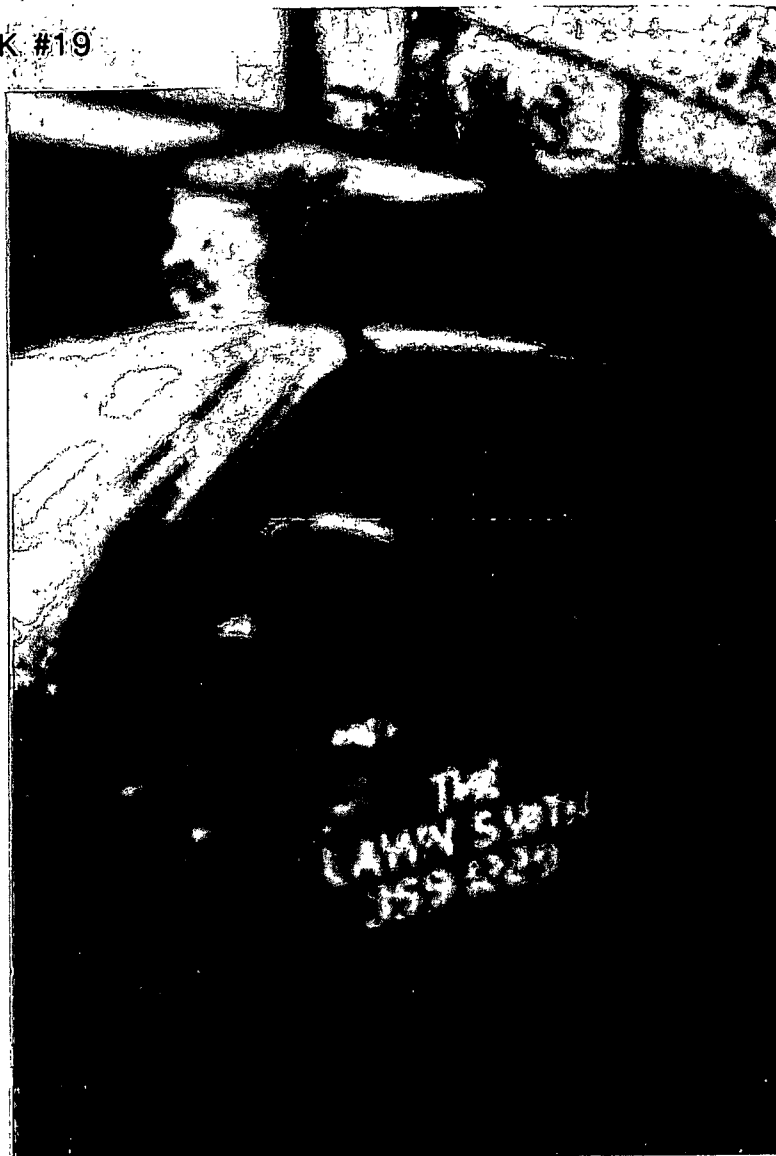
M CLACK #16



M CLACK #17



M CLACK #19



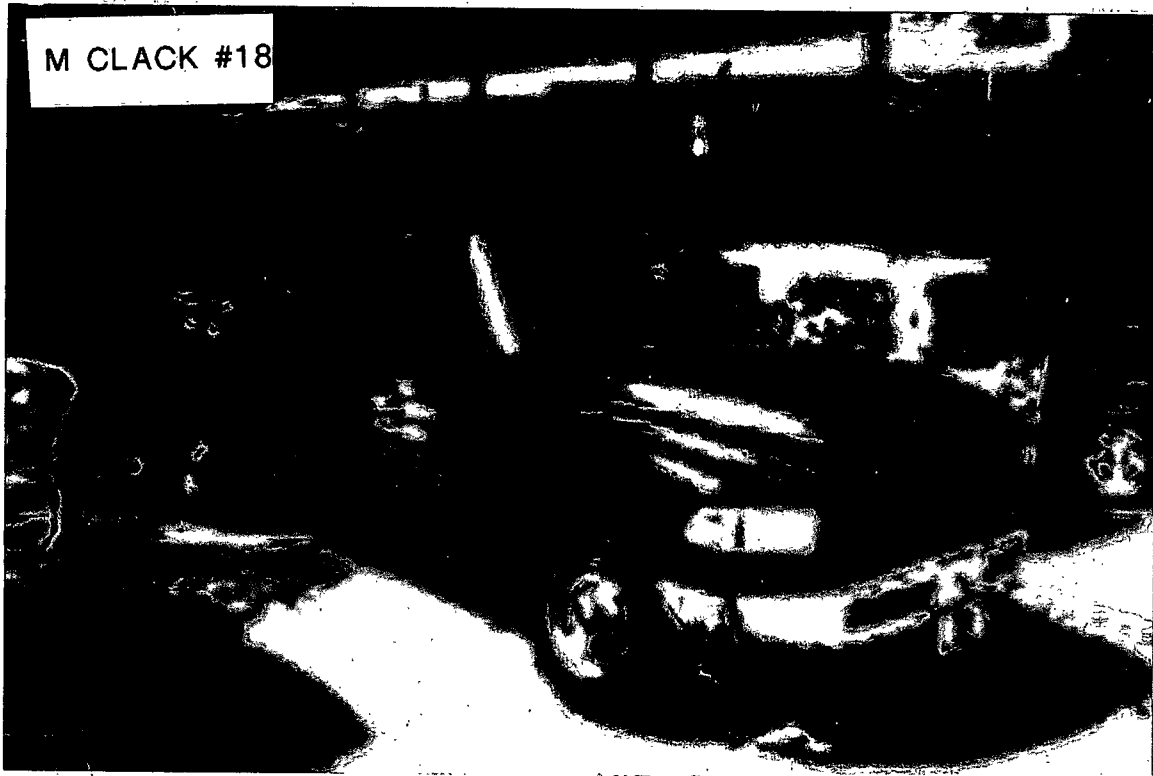
M CLACK #20



M CLACK #21



M CLACK #18





STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

Mariko Michelle Clack,
Plaintiff,

v.

Eddie Arnold Smith, d/b/a The
Lawn Smith,
Defendant.

IN THE COURT OF COMMON PLEAS
IN THE ELEVENTH JUDICIAL DISTRICT

CIVIL ACTION NO.: 2010-CP-32-5211

**DEFENDANT'S ANSWER
TO
PLAINTIFF'S COMPLAINT
(Jury Trial Demanded)**

The Defendant, answering the Plaintiff's Complaint herein, would respectfully show unto the Court that:

FOR A FIRST DEFENSE

1. The Defendant would show that although he does business as The Lawn Smith, he was not doing business as The Lawn Smith at the time this accident occurred on July 13, 2009, and therefore the d/b/a portion of the Plaintiff's Complaint should be stricken and that aspect of the Plaintiff's Complaint should be dismissed.

FOR A SECOND DEFENSE

2. The Defendant denies each and every allegation of the Plaintiff's Complaint not hereinafter specifically admitted.

3. Paragraph 1 is admitted, upon information and belief.

4. Paragraph 2 is admitted with the exception that the Defendant denies that he was doing business as The Lawn Smith at the time this accident occurred on July 13, 2009, and therefore that assertion in Paragraph 2 should be dismissed or stricken.

5. As to Paragraph 3, the Defendant admits that on July 13, 2009, at approximately 5:00 p.m., the Plaintiff was riding as a passenger in a 1997 Ford SUV being driven by Megan Ashley McNeill in an easterly direction on U. S. Highway 302 in South Congaree, South Carolina, at its intersection with Pine Street and the Defendant was driving a

Dodge truck in a northerly direction on Pine Street and a collision occurred between the vehicles being driven by Megan Ashley McNeill and the Defendant at the intersection of U. S. Highway 302 and Pine Street in South Congaree, South Carolina, and that after this collision occurred, the vehicle being driven by Megan Ashley McNeill overturned; otherwise, Paragraph 3 is denied as stated.

6. Paragraphs 4 and 5 are denied as stated, upon information and belief.

7. The Defendant does not have sufficient knowledge or information to form a belief as to the exact nature or extent of any injuries or damages sustained by the Plaintiff, and therefore denies Paragraph 6 in its entirety and demands strict proof thereof.

8. Paragraph 10 is denied as stated, upon information and belief.

FOR A THIRD DEFENSE

9. The Defendant would show, upon information and belief, ant any injuries or damages sustained by the Plaintiff were due to the acts of omissions of Megan Ashley McNeill or others not within the employ or control of the Defendant and therefore, the Plaintiff cannot recover from the Defendant in any sum whatsoever.

FOR A FOURTH DEFENSE

10. The Defendant would show, upon information and belief, that the Plaintiff's claim for punitive damages violates the Fifth, Sixth, Seventh, Eighth and Fourteenth Amendments to the Constitution of the United States of America in that it violates the double jeopardy clause in that the Defendant could be subjected to multiple awards of punitive damages for the same set of facts, the self-incrimination clause is being violated because the Defendant can be compelled to give testimony against himself in a penalty situation such as punitive damages, the assessment of punitive damages by a burden of proof less than beyond a reasonable doubt is violative of the Sixth and Fourteenth Amendments in that punitive damages are a fine or penalty and are, therefore, quasi-criminal in nature, Plaintiff's claim for punitive damages violates the Defendant's right to access to the courts as guaranteed by the Seventh and Fourteenth Amendments because

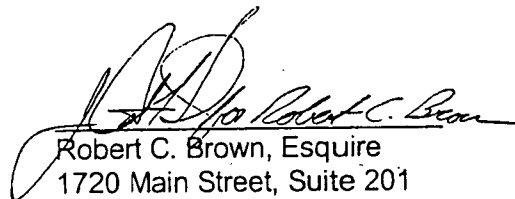
the threat of an award of punitive damages chills the Defendant's exercise of that right, the Plaintiff's claim for punitive damages violates the Eighth Amendment's guarantee that excessive fines shall not be imposed, and the Plaintiff's claim for punitive damages violates both the due process and equal protection clauses of the Fourteenth Amendment in that the standard for awarding either punitive damages is unduly vague and, therefore, violates both procedural and substantive due process safeguards and, therefore, the Plaintiff's claim for punitive damages should be dismissed.

WHEREFORE, having fully answered, the Defendant prays that the Plaintiff's Complaint be dismissed with costs.

The Defendant demands a jury trial.

BROWN & BREHMER

By:



Robert C. Brown, Esquire
1720 Main Street, Suite 201
Post Office Box 7966
Columbia, South Carolina 29202
(803) 771-6600
Attorneys for Defendant

Columbia, South Carolina
December 22, 2010

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

2010 CP 40-05211

Mariko Michelle Clack,

Plaintiff,

vs.

Eddie Arnold Smith, d/b/a The Lawn
Smith,

Defendant,

RESPONSE TO REQUEST FOR PRODUCTION

TO: Robert C. Brown, Esquire, Attorney For Defendant.(

Documents referred to in Plaintiff's Responses To Defendant's Request for Production and Plaintiff's Answers To Defendant's Interrogatories:

Summary of Items Produced:

Accident Report	01
Accident scene and vehicle photos	03
Photos of Plaintiff's injuries	12
Lexington Cty. EMS Statement (7/13/09) \$559.00	17
Lexington Med. Ctr. Charges (7/13/09-7/14/09) \$11,480.15	18
Lexington ER Dept. Record (7/13/09)	23
Lexington Med. Ctr. Admission/Discharge (7/14/09)	39
Lexington Orthopedics-Dr. McIntosh (7/13/09-3/29/10) \$3,423.00	61
Palmetto Health Baptist Statements (7/15/09-1/13/10) \$10,548.00	77
Palmetto Health Pain and Orthopedic Care Ctr. treatment records	88
Dr. Harold Friedman-University Specialty Clinics (06/09/10) \$2,006.00 est.	155
Wage info.- Too Hotties Hair Salon and Hooters of Harbison	158
Recent Photos of hand/fingers with nails removed	160

1. All medical reports, bills, hospital records or any other bills, reports or records relating to any alleged personal or other type of injury.

Response-Answer:

See pages 1-157.

2. All repair bills, estimates, reports or other written or prepared documents relating to any claimed damages to personal or real property.

Response-Answer:

The Ms. Clack was a passenger in a 1997 Ford Explorer owned by Stephen Richard McNeill. The vehicle photos are included as pages 3-11. Ms. Clack had no personal or real property involved.

3. Any and all statements or any other written or prepared documents concerning any claims for lost wages, income , or for any other damages allegedly resulting from the incident set forth in the complaint.

Response-Answer.

See page 158.

4. All photographs, diagrams, drawings or other similar material related to the claim set forth in the complaint.

Response-Answer.

Attached pages 1-168.

5. Any and all statement given by either eye witness or other possible witnesses to the incident and matters complained of in the complaint which are in possession of the or reasonable available to the Defendants or his attorney, whether written, oral or summarized, recorded on a tape recorder, or otherwise reproduced in any manner relating to the incident as set forth in the complaint.

Response-Answer.

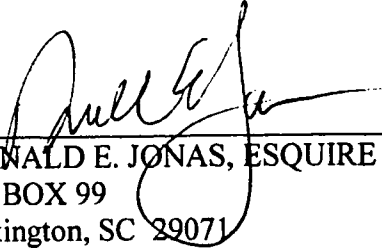
Accident report. Mr. Smith advisedly told the investigating officer he failed to stop for the light and later plead guilty in City Court (S. Congaree) to violation of SC Code Ann. Sect. 56-5-970.

6. If a claim for lost wages is made, please produce any and all State and federal Tax Returns of the Plaintiff for the five years preceding the incident - - - .

Response-Answer.

Available tax returns will be produced. The Plaintiff was a recent graduate of Lacy School of Cosmetology, 2361 Augusta Hwy, Lexington, SC and was working evenings at Hooters of Harbison.

December 27, 2010



DONALD E. JONAS, ESQUIRE
PO BOX 99
Lexington, SC 29071
(803) 609-1484/ 309-2483
Fax: (803) 957-3119
jonastrialatty@netscape.net

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

2010 CP 40-05211

Mariko Michelle Clack,

Plaintiff,

vs.

Eddie Arnold Smith, d/b/a The
Lawn Smith,

Defendant,

Answers To Plaintiff's Interrogatories

TO: Robert C. Brown, Esquire, Attorney For Defendant.(

Documents referred to in Plaintiff's Answers To Defendant's Interrogatories:

Summary of Items Produced:

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Wage info.- Too Hotties Hair Salon and Hooters of Harbison	158
Recent Photos of hand/fingers with nails removed	160

1. Give the names and addresses of persons known to the Defendant or its counsel to be witnesses concerning the facts of the case, and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

Answer:

a. Mariko Michelle Clack
406 Cranewater Ct.
Columbia, SC 29212

DOB 01/17/87

On July 13, 2009 Plaintiff, Ms. Clack, was a passenger in a 1997 Ford Explorer being driven by Megan Ashley McNeil, headed East on Hwy 302 in S. Congaree, SC, passing through the signaled intersection of Pine St. At the same time and place the Defendant Eddie Arnold Smith was headed North on Pine Street at the intersection of Hwy. 302. Defendant failed to stop for the controlling traffic signal, entered the intersection and collided with the passenger side of the Ford Explorer where Ms. Clack was seated. The collision caused the vehicle to roll over trapping Ms. Clack's right hand against the pavement. The accident was investigated by the South Congaree Police Dept. who determined that witnesses, including a Town Councilman had witnessed the Defendant's vehicle entering the intersection despite the red signal controlling his movements. Defendant admitted that he ran the light and later appeared in City Court and plead guilty to a violation of S.C. Code Ann. Section 56-5-970(c) - requiring obedience to stop lights and requiring all vehicles to stop when a steady red indication is present.

By way of background, at the time of this accident, Ms. Clack, a young woman and single mother of Maliyah Scott (age 6), was employed as a cosmetologist and waitress. She is a high school graduate and as a teenager had trained and appeared as a "Collins" model. At the time of the accident she had recently graduated from Lacy School of Cosmetology (July 2007-Oct. 2008) and had recently begun working at Sports Clips, renamed as Too Hotties Hair Salon, now named "Hot Shots" in Irmo. She was also waitressing at Hooters of Harbison six days /week.

Following the accident Ms. Clack was transported by ambulance to the Lexington Medical Center. Dr. James McIntosh, (Lexington Orthopedics) was called and she was treated for the degloving injury to her hand, neck and thoracic sprain/strain/lacerations to her head, face, shoulder, leg, foot, etc. She received 15-20 stitches to close the wound to her right arm and staples to close the wound to her head. Her hand was treated, splinted and she was confined to a wheel chair as a result of her ankle injury.

Ms. Clack returned to Lexington Orthopedics on 7/31/09 and was placed in a walking boot. On 8/10/09 she returned to Dr. McIntosh who evaluated the degloving injury, continued the hand dressing and splinting and boot and referred her to Palmetto Baptist Pain and Orthopedic Care Ctr. for therapy. OTR/L,CHT Clare N. McGill supervised the aggressive rehabilitation of the hand to reduce the loss of range of motion associated with the degloving injury and scarring. She was treated at Palmetto Health Baptist Pain and Orthopedic Care Ctr. until Jan. 2010. On 8/17/09 she was referred her for an MRI of her L. foot. The MRI results demonstrated large amounts of nonspecific marrow edema involving the mid and medial aspect of the entire talus bone and are significant for the likelihood of early arthritis. On 8/27/09 Ms. Clack returned to Dr. McIntosh who noted that she was likely not a candidate for scar revision for at least one year and that she was likely to experience "split nail deformities". Ms. Clack continued to be seen at Lexington Orthopedics until March 2010. Dr. McIntosh and therapist Claire McGill repeatedly noted progress in healing of the hand but wrote that Mariko was very conscious of the way the scars and nail deformities looked. Dr. McIntosh eventually referred her to Dr. Harold Friedman, University Specialty Clinics, for evaluation of her plastic surgery concerns. Following his evaluation Dr. Friedman agreed with Dr. McIntosh that the likelihood of improvement of the hand scarring and nail deformities was low and did not justify the related risks. He did offer a greater likelihood of success regarding the scarring of the knee when the scars "matured" and estimated that the procedure, excluding hospital fees, would be approximately \$2,000. Dr. Friedman agreed that Ms. Clack's best course regarding the nail deformities was to use cosmetic nail replacements. Ms. Clack was eventually released from

orthopedic care with continuing problems with the right hand and left ankle and upper back complaints. Dr. McIntosh noted that her biggest problem involved the long finger and a split nail deformity and opined that she is always going to have scars and nail deformities because she has lost some of the germinal matrix of the nail bed because of the degloving injury. The occupational therapist further tested and reported the significant loss of range of motion and loss of grip strength of Ms. Clack's right hand.

The injuries Mariko received in this "roll over" collision were so significant that she was unable to care for her daughter or herself and had to rely on her parents and friends for the daily care, feeding and transportation of both of them for at least the first month following her accident. Eventually, as she was able to walk and take care of herself but still had to rely on her and parents for the daily care, feeding and transportation of her daughter to and from school. By October, she was able to return to her work and partially perform her jobs as a cosmetologist/hairdresser and a second job as a waitress while wearing a Jobst glove but found it difficult and embarrassing to perform those jobs while standing for prolonged periods and gripping objects with the injured hand while wearing the glove, particularly shampooing and the application of hair care products. Her second job as a waitress was also severely handicapped because she was not able to securely grip the items she was handling and was embarrassed to have to deal with customers questions about the glove.

She has experienced a permanent loss of sensation, strength and flexibility of the use of the right hand and significant and deep scarring of the hand and left leg. She has significant and limiting back and ankle pain and has given up her job at Hooters and continues to work full time as a stylist. She continues to have deep concern regarding the disfiguring injury of her hand.

- b. Bud and Mitzi Clack
406 Winstaire Dr.
Columbia, SC 29210

Bud and Mitzi Clack are Mariko's parents. They are expected to testify regarding the Mariko's care and recovery beginning at the emergency room and continuing thereafter. They are also expected to testify as to their efforts to help with the care of Mariko's daughter, their granddaughter while Mariko was unable to care for her following the accident.

- c. Megan Ashley McNeil
1809 Woodvalley Ct.
Columbia, SC 29212

Ms. McNeil was the driver of the 1997 Ford Explorer that was involved in the collision with Mr. Smith. She is expected to testify as to the events and circumstances related to the collision. She is also expected to testify regarding her injuries and her observations of Mariko's condition and injuries.

- d. Edward Enfinger
1608 Pine St.
W. Columbia, SC 29172

Mr. Enfinger was a witness to the accident and is expected to testify that Mr. Smith failed to stop for the light at the intersection of Pine St and Hwy 302 and collided with the vehicle operated by Ms. McNeil.

- e. Lt. Josh Shumpert Badge # 882
S. Congaree Police Dept.

The patrolman is expected to testify regarding his observations of the accident scene and his investigation. He is also expected to testify that Mr. Smith admitted that he failed to stop for the light and later plead guilty to SC Code Sect 56-5-970.

- f. Eddie Arnold Smith
116 Colony Lakes Ct.
Lexington, SC 29073

Mr. Smith was the driver of the 1998 Dodge truck that collided with the vehicle operated by Ms. McNeil. He is expected to testify that he admitted that he failed to stop for the light and later plead guilty to SC Code Sect 56-5-970.

- g. Caroline Shumaker 477-5136
Lexington, SC

Ms. Shumaker is a friend of Mariko. She is expected to testify as to her observations of Mariko's condition at the hospital ER and after her return to home. She is also expected to testify regarding her efforts to assist Marko at home until she could walk and care for herself.

- h. Brittany Berger 206-9354
Lexington, SC

Ms. Berger is a friend of Mariko. She is expected to testify as to her observations of Mariko's condition at the hospital ER and after her return to home. She is also expected to testify regarding her efforts to assist Marko at home until she could walk and care for herself.

- i. Megan Carey 528-6540
Lexington, SC

Ms. Carey is a friend of Mariko. She is expected to testify as to her observations of Mariko's condition after her return to home. She is also expected to testify regarding her efforts to assist Marko at home until she could walk and care for herself.

- j. Gina Brakefield
Charleston, SC

Ms. Brakefield is a friend of Mariko. She is expected to testify as to her observations of Mariko's condition after her return to home. She is also expected to testify regarding her efforts to assist Marko at home until she could walk and care for herself.

k. Corey Aaron
Columbia, SC

Ms. Aaron is a friend of Mariko. She is expected to testify as to her observations of Mariko's condition at the hospital ER and after her return to home. She is also expected to testify regarding her efforts to assist Marko at home until she could walk and care for herself, change bandages, shower, etc.

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense in this case.

Answer:

See Response to Request for Production.

- a. accident report, pages 1-2.
- b. accident and vehicle photos, pages 3-11.
- c. accident injury photos, pages 12-16.
- d. healed hand photos-artificial nails on.
- e. healed hand photos-artificial nails off, pages 160-167.

3. Set forth the names and addresses of all physicians who have treated the party and all hospitals to which the party has been committed, and set forth a statement of all medical costs involved.

Answer:

Medical Expenses

Cost of Care

Lexington Cty EMS-Acct # 802910 (7/13/09)
5005 Sunset Blvd.
Lexington, SC 29072-9154

\$ 559

Lexington Cty Medical Center-Acct # H00040612368
PO Box 100273
Columbia, SC 29202-3273

07/13/09-07/14/10 \$11,480.15

Entries on 7/13/10-7/14/10:

Pharmacy	\$ 487.85
IV Therapy	\$ 278.00
Supply General	\$ 272.30
Laboratory	\$ 962.00
X-ray	\$1,275.00
CT-Brain	\$1,352.00
Occupational Therapy	\$ 303.00
Emergency Room	\$3,021.00
Drug-spec	\$ 68.00

Treatment-observation rm	\$1,364.00
Prof. fees	\$1,508.00
ER professional fees	<u>\$ 589.00</u>
TOTAL	11,480.15

Lexington Orthopaedics
 Dr. James C. McIntosh, Jr.
 Lexington Medical Park 2
 146 N. Hospital Dr.
 West Columbia, SC 29169
 Phone 936-7230

\$3,423.00

Entries on 7/17/09 by Dr. McIntosh

Diagnosis and Codes: degloving injury to dorsum of right dominant hand
 left ankle sprain & pain
 847.0 neck sprain and strain
 724.1 pain thoracic spine
 692.9 contact dermatitis
 041.86 bacterial infection
 465.9 acute upper resp. infection

Treatment: provided medications and placed in boot

Entries on 7/31/09 by T. Daley, PA-C/Dr. Dedmond

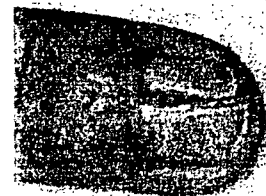
Continue aggressive rehab regarding ROM of R. hand.
 Continued pain left ankle-refer for MRI.

Entries on 8/10/09-8/17/09 by T. Daley, PA-C/Dr. McIntosh

Continue aggressive rehab regarding ROM of R. hand.
 Continued pain left ankle.

Entries on 8/27/09 by Dr. McIntosh

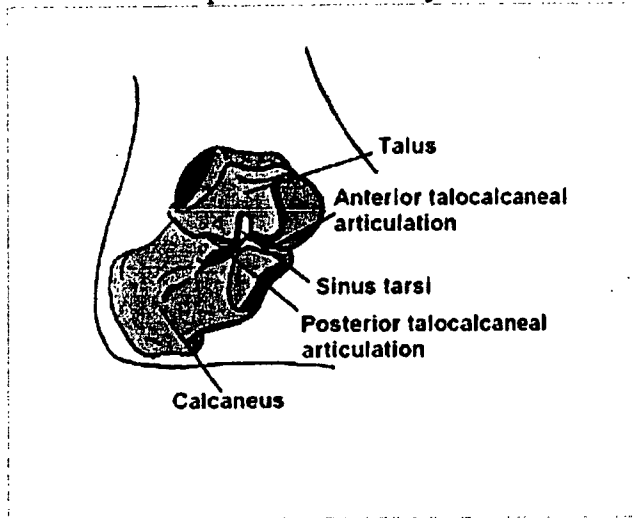
Improving ROM r. hand. Discuss scar revision advise wait at least 1 yr. Note that she is likely to have "split nail deformities" because she gouged skin at end of the nail. [Split nail deformities -- A longitudinal split in the nail is often the result of an underlying axial scar beginning in the germinal matrix of the nail bed. The scar divides the nail plate during formation. The nail plate grows out as 2 distinct plates.] Also see: Split Nail Deformities: A Surgical Approach, Edward Desciak, MD and Yehuda D. Eliezri, Md, Dermatologic Surgery, 7/18/08, Abstract attached.



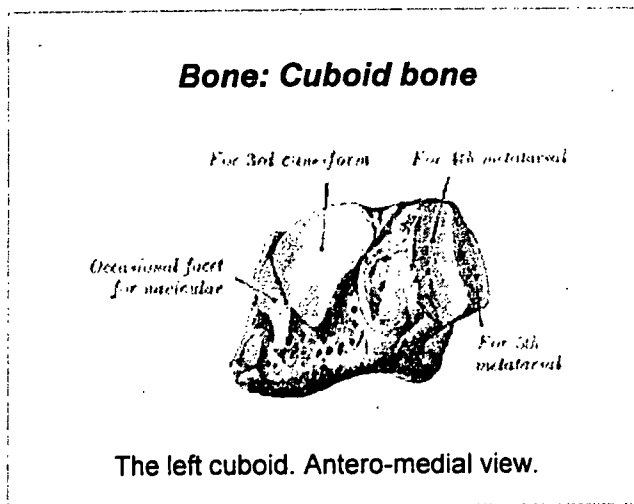
Entries on 9/02/09 by Dr. Keith McGuire

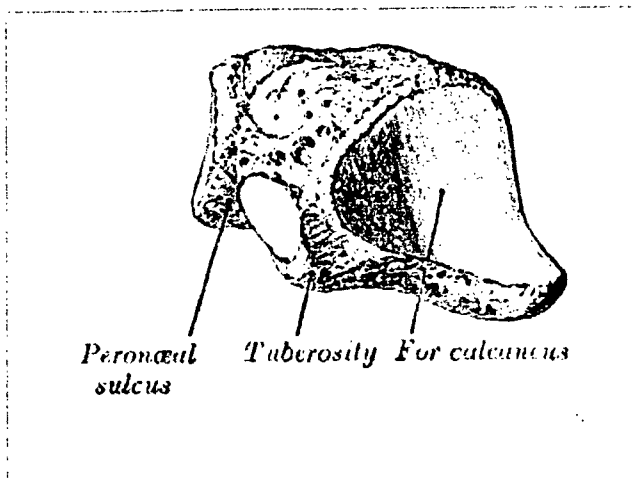
MRI of L. ankle- There is no definite fracture. Large amounts of nonspecific marrow edema involving the mid to medial aspect of the talus. In addition there is

subtle focal nonspecific marrow edema involving the anterior cuboid bone and far anterior portion of the calcaneus. Impression: Significant nonspecific marrow edema likely related to bone contusion involving the medial aspect of the distal tibia and mid and medial aspect of the entire talus bone. The talus bone in the tarsus of the foot forms the lower part of the ankle joint.



Other subtle areas of marrow edema involving the cuboid bone and anterior calcaneus are also noted but less conspicuous.





Entries on 9/9/09 by T. Dale, PA-C/Dr. Suarez

MRI results reviewed. She continues therapy for hand and back.

Entries on 10/8/09 by Dr. McIntosh

Continuing progress with the hand but is very conscious of the scarring. Do not recommend Z-plastes at this time. Continuing issues with ankle. Problems with back pain. She has seen Dr. Matison Boyer regarding the ankle issues.

Entries on 12/17/09 by Dr. McIntosh

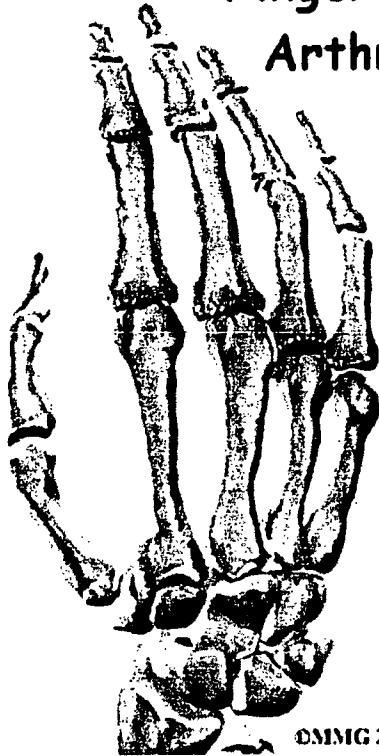
Entries on 3/28/10 by Dr. McIntosh

Continuing problems with hand. Biggest problem is the long finger and a split nail and nail damage on the index finger. She does not have complete motion of the PIP joint of the long finger.¹ She is always going to have scars and nail deformities. She has lost some of the germinal matrix because of the degloving injury and it is hard to replace that even with grafts from other digits.

Injury To PIP Joint- Each finger has three phalanges, separated by two *interphalangeal joints* (IP joints). The one closest to the MCP joint (knuckle) is called the *proximal IP joint* (PIP joint). The joint near the end of the finger is called the *distal IP joint* (DIP joint).

¹ Injury to a joint, such as a bad sprain or fracture, can cause damage to the articular cartilage. An injury to any of the joints of the fingers, even if it does not injure the articular cartilage directly, can alter how the joint works. After a fracture, the bone fragments may heal in slightly different positions. This may make the joints line up differently. When an injury changes the way the joint lines up and moves, force can start to press against the surface of the articular cartilage. This is similar to how a machine that is out of balance wears out faster. Over time, this imbalance in the joint can lead to damage to the articular surface. Since articular cartilage cannot heal itself very well, the damage adds up. Eventually, the joint can no longer compensate for the increasing damage, and symptoms begin. The damage in the joint starts well before the symptoms of arthritis appear

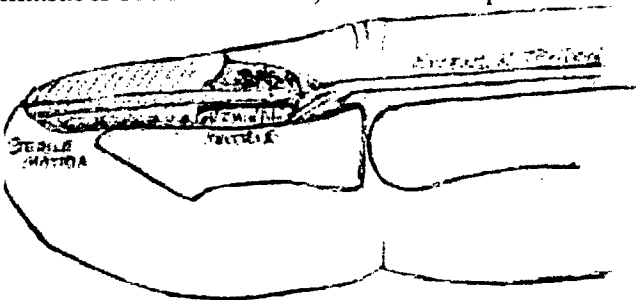
Finger Joint Arthritis



©NMG 2001

Germinal Matrix Injury

The fingernail is an important structure made of keratin that has 2 purposes. The fingernail acts as a protective plate and enhances sensation of the fingertip. The protection function of the fingernail is commonly known, but the sensation function is equally important. The fingertip has many nerve endings in it allowing us to receive volumes of information about objects we touch. The nail acts as a counterforce to the fingertip providing even more sensory input when an object is touched. The root of the fingernail is also known as the germinal matrix. This portion of the nail is actually beneath the skin behind the fingernail and extends several millimeters into the finger. The fingernail root produces most of the volume of the nail and the nail bed. This portion of the nail does not have any melanocytes, or melanin producing cells. The edge of the germinal matrix is seen as a white, crescent shaped structure called the lunula.



07/13/09

\$ 23.00

07/17/09	\$ 85.00
07/31/09	\$ 185.00
07/31/09	\$ 100.00
08/05/09	\$ 85.00
08/09/09	\$ 102.00
08/17/09	\$ 85.00
08/26/09	\$ 85.00
09/02/09	\$2,299.00
09/10/09	\$ 85.00
10/09/09	\$ 102.00
12/17/10	\$ 85.00
03/20/10	\$ 102.00
	<u>\$3,423.00</u>

Palmetto Health Baptist (Hand Therapy & Evaluation)
 Clare N. McGill, OTR/L,CHT
 293 Greystone Blvd.
 Columbia, SC 29212-8214
 Phone 243-7711

\$10,548.00

Oct. 9, 2009-Report on Progress from 9/01/09-9/30/09

Limited ROM of the long finger. Right hand (primary) grip strength weak
 Very concerned about scarring and finger nails.

	R Hand	L. Hand
Grip strength	62 lbs.	82 lbs.
Pinch Strength -tip	12 lbs.	14 lbs.
-key	16 lbs.	16 lb
-palmer	16 lbs.	18 lbs.

ROM-R	MP	PIP	DIP
Index	0-91	3-105	0-45
Long	0-105	5-75	0-60
Ring	0-103	0-86	3-55

Dec. 17, 2009- Report on Progress

Limited ROM of the long finger. Right hand (primary) grip strength weak. She is very concerned about scarring and finger nails. Greatest limitation of index distal interphalangeal, long proximal interphalangeal, and distal interphalangeal.

	R. Hand	L. Hand
long proximal interphalangeal	101	113
long distal interphalangeal	60	90

	R Hand	L. Hand
Grip strength	66 lbs.	70 lbs.
Pinch Strength -tip	12 lbs.	14 lbs.
-key	16 lbs.	16 lbs.

	-palmer	16 lbs.	18 lbs.
ROM-R	MP	PIP	DIP
Index	0-101	0-105	0-55
Long	0-95	5-86	0-66
Ring	0-106	0-101	0-60
Small	0-100	0-104	0-90

Dr. Harold I. Friedman MD,Ph.D. \$2,006.00
 University Specialty Clinic (Physician Fee only)
Chief, Division of Plastic and Reconstructive Surgery
 2 Medical Park Rd., Suite 300
 Columbia, SC 29203

<i>L. Knee Dermaabrasion</i>	<i>\$1,176</i>
L. Knee wound closure	<u>\$ 830</u>
	\$2,006

Assistive Devices:

Palmetto Health Baptist Pain and Orthopedic Care Ctr.-wheelchair 7/15/09 \$ 150.00

Cosmetic Nails

Most charge around \$50-60. This includes full set of tips and acrylic overlay, buff and polish.
 Infills are usually \$35-\$40 and are required every 3-4 weeks for maintenance.
 Cosmetic nail replacements for life DOB (1/17/87) life expectancy 59.31 yrs.

Costs /year assuming 3 replacements and infill replacement every 4 weeks

Jan. replacement	\$60
Feb. maintenance	\$40
March maintenance	\$40
April maintenance	\$40
May replacement	\$60
June maintenance	\$40
July maintenance	\$40
Aug. maintenance	\$40
Sept.replacement	\$60
Oct. maintenance	\$40
Nov. maintenance	\$40
Dec. maintenance	<u>\$40</u>
	\$540/yr

\$540/yr x 59.31 yrs= \$32,027

4. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim, and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

Answer:

The vehicle owned by Eddie Arnold Smith was insured with State Farm (#C352-709-40B). The liability limits of the policy are 25/50. The vehicle owned by Stephen Richard McNeil was insured by State Farm. UIM limits 150/300.

5. Set forth a statement of all damages claimed to have been sustained by the party.

Answer:

SUMMARY SPECIAL DAMAGES

Medical care cost	Currently-approx -	\$26,010
Future medical care cost	Plastic surgery-L. Knee-Dr. Friedman	\$ 2,006
Disfigurement of R. Hand		Serious
Vocational disability as stylist	Significant-limitation of motion R. Hand	Serious
Temp. lost wages 7/13/09-9/18/09	\$1,008/wk as stylist-"Hotshots, f/k/a Too Hotties Salon"	\$10,080
(10 weeks).	\$340/wk at Hooters of Harbison	\$ 3,400
Permanent Impairment R. Hand		Serious
Cosmetic nail replacements for life	DOB (1/17/87) life expectancy 59.31 yrs.	\$32,027

6. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

Answer:

Medical specialist providers referred to in Answers to Interrogatory #3. Plaintiff has not retained any expert witnesses but will promptly amend this response in the event that any medical, vocational or economic expert is retained to offer testimony.

7. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witness.

Answer:

See Answers To Interrogatory 1.

December 27, 2010



DONALD E. JONAS, ESQUIRE
PO BOX 99
Lexington, SC 29071
(803) 609-1484/309-2483
Fax: (803) 957-3119

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
In the Court of Common Pleas

R. Knox McMahon, Presiding Judge

Case No. 2010-CP-32-05211

RECEIVED

JUL 11 2012

SC Court of Appeals

RECEIVED

MAR 20 2013

SC Court of Appeals

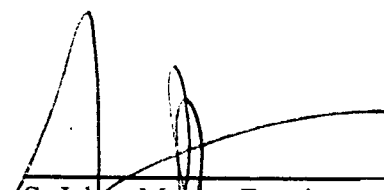
Mariko Marie Clack.....Respondent,

v.

Eddie Arnold Smith, d/b/a the Lawn Doctor.....Appellants.

NOTICE OF APPEAL

Defendant appeals the order of the Honorable R. Knox McMahon dated June 19, 2012, a copy of which is attached hereto and incorporated here. Appellants received written notice of entry of this order on June 28, 2012.


S. Jahue Moore, Esquire
John C. Bradley, Jr., Esquire
MOORE, TAYLOR & THOMAS, P.A.
P.O. Box 5709
West Columbia, South Carolina 29171
(803) 796-9160
ATTORNEYS FOR THE APPELLANTS

July 12, 2012

Other Counsel of Record:
Donald E. Jonas, Esquire
Post Office Box 99 (29071)
142 A.B. Frye Road
Lexington, South Carolina 29073
ATTORNEYS FOR THE RESPONDENT

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM LEXINGTON COUNTY
In the Court of Common Pleas

JUL 11 2012

SC Court of Appeals

R. Knox McMahon Circuit Court Judge

Case No. 2010-CP-22-01356

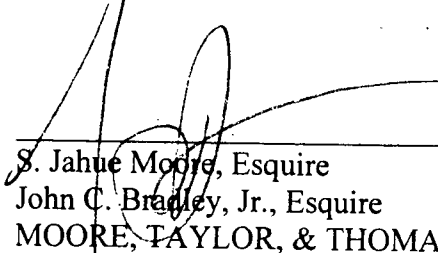
Mariko Marie Clark.....Respondent,

v.

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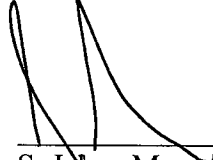
PROOF OF SERVICE

I certify that I have served the Notice of Appeal, by mail, to Donald E. Jonas, Esquire, at
Post Office Box 99, Lexington, South Carolina 29071 on July 12, 2012.


S. Jahue Moore, Esquire
John C. Bradley, Jr., Esquire
MOORE, TAYLOR, & THOMAS, PA
Post Office Box 5709
West Columbia, SC 29169
(803)-796-9160
(803)-791-8410
ATTORNEYS FOR APPELLANTS

CERTIFICATE OF COUNSEL

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



S. Jahue Moore, Esquire
John C. Bradley, Jr., Esquire
P.O. Box 5709
West Columbia, South Carolina 29171
(803) 796-9160
ATTORNEYS FOR APPELLANT

West Columbia, South Carolina
March 13, 2013

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
In the Court of Common Pleas

R. Knox McMahon, Presiding Judge

Case No. 2012-212487

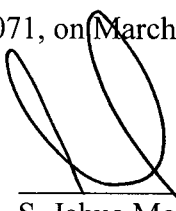
Mariko Marie Clack.....Respondent,

v.

Eddie Arnold Smith, d/b/a the Lawn Doctor.....Appellant.

PROOF OF SERVICE

I certify that I have served the Record on Appeal by mail, to Donald E. Jonas, Esquire,
Post Office Box 99, Lexington, South Carolina 29071, on March 20, 2013.



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John C. Bradley, Jr. Esquire
MOORE, TAYLOR, & THOMAS, PA
Post Office Box 5709
West Columbia, SC 29169
(803)-796-9160
(803)-791-8410

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SC Court of Appeals