

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM MARION COUNTY
COURT OF COMMON PLEAS

D. Craig Brown, Circuit Court Judge

Case No. 2011-CP-33-598

Ashlie Outing Appellant

v.

Velmetria Chante Weeks. Respondent,

RECORD ON APPEAL

Everett Hope Garner
Holler, Garner, Corbett, Ormond,
Plante & Dunn
P.O. Box 11006
Columbia, SC 29211
(803) 765-2968
Attorney for Appellant

J. David Banner
Aiken Bridges
P.O. Drawer 1931
Florence, SC 29503
(843) 669-8787
Attorney for Respondent

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SC Court of Appeals

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STATE OF SOUTH CAROLINA

COUNTY OF MARION

Ashley Outing,

Plaintiff,

vs.

Velmetria Chante Weeks,

Defendant.

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

CASE NO.: 2011-CP-33-598

ORDER AFFIRMING THE
MAGISTRATE'S COURT RULING

THIS MATTER is before the Court upon Motion by the Plaintiff appealing the verdict of the Marion County Magistrate's Court. The trial of this matter was conducted on July 20, 2011 in front of a Marion County jury with Magistrate Judge Mackey D. Hayes presiding.

At the close of the Defendant's case, the Plaintiff made a motion for directed verdict on the issue of negligence, which was denied. After the jury verdict, the Plaintiff timely moved the Court for a judgment notwithstanding the verdict or in the alternative, a new trial, which was denied by the Magistrate's Court.

The Plaintiff timely filed a Notice of Appeal with this Court respectfully submitting that the trial judge erred in failing to grant the Plaintiff's Motion for Directed Verdict on the issue of negligence and/or failed to grant the Plaintiff's Motion for Judgment Notwithstanding the Verdict or alternatively, a new trial.

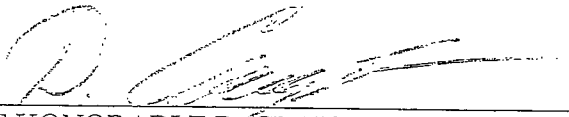
Subsequent to the Notice of Appeal, the Magistrate filed a Return with this Court on September 7, 2011.

The parties presented before this Court for oral argument on April 22, 2013. § 18-7-170 (1976, as amended) of the *Code of Laws of South Carolina*, addresses judgment on appeal to the Circuit Court which provides as follows:

Upon hearing the appeal the Appellant court shall give judgment according to the justice of the case, without regard to technical errors and defects which do not affect the merits. In giving judgment the court may affirm or reverse the judgment of the court below, in whole or in part, as to any or all the parties and for errors of law or fact.

Based on this Court's review, it is hereby ORDERED that the ruling in the magistrate's Court is AFFIRMED and the verdict in favor of the Defendant is hereby AFFIRMED.

AND IT IS SO ORDERED.



THE HONORABLE D. CRAIG BROWN
CHIEF ADMINISTRATIVE JUDGE FOR THE
TWELFTH JUDICIAL CIRCUIT

Florence, South Carolina
May 17, 2013

Marion County Summary Court

2715 East Highway 76, Suite B

Mullins, SC 29574

August 31, 2011

State of South Carolina

County of Marion

Ashlie Outing

Plaintiff

Vs.

Velmetria Chante Weeks

Defendant

2011-CP-33-518

FILED
CLERK OF COURT
MARION COUNTY
SOUTH CAROLINA

2011 SEP - 7 A 11:14

BOOK _____ PAGE _____

FILED

in this case the defendant admitted they were negligent in the present of the court. Therefore the Motion for directed verdict on the issue of negligence was denied.

Marion County Magistrate

Macka Hayes

STATE OF SOUTH CAROLINA) IN THE MAGISTRATE'S COURT
)
COUNTY OF MARION)

Ashlie Outing) No:
3913 Cherry Court)
Mullins, SC 29574)

Plaintiff,)

vs.)

COMPLAINT
(Jury Trial Demanded)

Velmetria Chante Weeks)
115 Jeffs Pl.)
Mullins, SC 29574)

Defendant.)

Plaintiff complaining of the Defendant, would respectfully show unto this Court that:

1. Plaintiff is a citizen and resident of the County of Marion, State of South Carolina.

2. Plaintiff is informed and believes that the Defendant, is a citizen and resident of the County of Marion, State of South Carolina.

3. On or about January 30, 2006, Plaintiff was operating her vehicle on Highway 76 and was slowing down for traffic at a school crossing when the vehicle operated by the Defendant suddenly and forcefully struck the rear of Plaintiff's vehicle.

4. As a result of the above, the Plaintiff suffered physical harm and injury, as well as mental duress and loss of

enjoyment of life, all of which has and will in the future cause her to undergo physical and mental pain and suffering, has and will in the future cause her to have to spend money for medical services.

5. The accident and Plaintiff's damages, injuries and losses were the direct and proximate result of Defendant's negligence, gross negligence, carelessness, willfulness and wantonness in the following particulars, to wit:

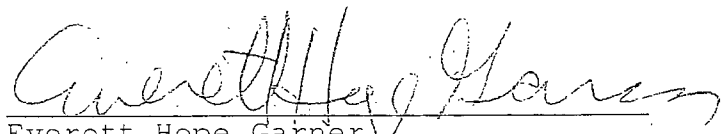
- a. In failing to maintain a proper look-out;
- b. In failing to keep her vehicle under proper control;
- c. In failing to apply her brakes if any he had;
- d. In driving too fast for conditions;
- e. In failing to use the care and caution that a reasonable person would have used under the circumstances then and there prevailing.

All of which were the direct and proximate cause of the injuries and damages suffered by the Plaintiff herein, said acts being in violation of the laws of South Carolina.

6. The Plaintiff is informed and believes that she is entitled to judgment against the Defendant for actual and punitive damages as may be established by a jury, as well as costs of this action and such other and further relief as this Court may deem just and proper.

WHEREFORE, the Plaintiff prays that she be awarded judgment

against the Defendant an amount to be determined by a jury for actual and punitive damages as well as the costs of this action and such other and further relief as this Court may deem just and proper.


Everett Hope Garner
HOLLER, DENNIS, CORBETT, ORMOND,
PLANTE & GARNER
P.O. Box 11006
Columbia, SC 29211

Columbia, South Carolina
5/4, 2006

A CERTIFIED COPY OF THE
ORIGINAL FILED IN THIS OFFICE
CASE# 01-0073-02
Rec'd 2-27-07
MAGISTRATE OF MARION COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF MARION)

IN THE MAGISTRATE'S COURT
TWELFTH JUDICIAL CIRCUIT
CASE NUMBER: 07-0073

Ashley Outing,)
Plaintiff,)
vs.)
Velmetria Chante Weeks,)
Defendant.)
_____)

ANSWER

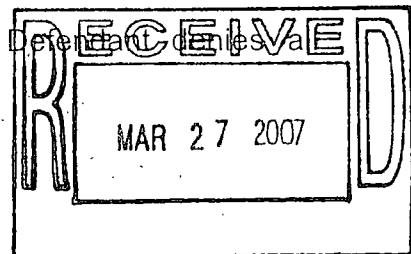
The Defendant, Velmetria Chante Weeks, without waiving any objection to venue and subject to any and all motions, answers the Complaint of the Plaintiff would allege as follows:

FOR A FIRST DEFENSE

1. That the Defendant denies all allegations contained in the Complaint which are not specifically admitted herein and demand strict proof hereof.
2. That the Defendant admits, based on information and belief, the allegations contained in Item 1.
3. That the Defendant admits, based on information and belief, the allegations contained in Item 2.
4. That the Defendant admits so much of Item 3 of the Complaint that may be construed to allege that a collision occurred, however, the Defendant denies a remaining or inconsistent allegations of Item 3.

A CERTIFIED COPY OF THE
ORIGINAL FILED IN THIS OFFICE
CASE# 07-0073

MAGISTRATE OF MARION COUNTY
SOUTH CAROLINA



5. That the Defendant is without sufficient information and knowledge to admit the allegations of Item 4 as to the damages and injuries of the Plaintiff, if any, and therefore the Defendant demands proof thereof and denies same.

6. That the Defendant denies allegations of Item 5.

7. That the Defendant denies allegations of Item 6.

FOR A SECOND DEFENSE

8. That the Defendant realleges the allegations of the First Defense above as fully as if repeated verbatim herein.

9. The Defendant alleges that if any injuries and damages were sustained by the Plaintiff, said injuries and damages were caused by the greater negligence and/or willfulness of the Plaintiff which exceeds the negligence and/or willfulness, if any, on the part of the Defendant, without which greater negligence and/or willfulness on the part of the Plaintiff, said alleged injury or damage would not have occurred or been sustained and for that reason, the Plaintiff is totally barred from recovery.

10. Alternatively, the Defendant alleges that if any injuries and damages were sustained by the Plaintiff, said injuries and damages were caused by the negligence and/or willfulness of the Plaintiff combining, concurring and contributing with the negligence and/or willfulness, if any, on the part of the Defendant, and for that reason the recovery of the Plaintiff, if any, shall be reduced in proportion to the amount of the Plaintiff's negligence.

FOR A THIRD DEFENSE

11. That the Defendant realleges the allegations of the First and Second Defenses above as fully as if repeated verbatim herein.

12. The evidence of recklessness and/or any degree of fault as alleged by the Plaintiff seeking punitive damages from this Defendant would not be, upon information and belief, clear and convincing as required by §15-33-135 of the 1976 South Carolina Code of Laws Ann. Further the imposition of punitive damages against this Defendant in the context of this lawsuit is unconstitutional under both the South Carolina and United States Constitutions. Therefore, the Plaintiff's request for punitive damages should be stricken from the Complaint.

WHEREFORE, the Defendant prays that the Complaint be dismissed with prejudice and that she be awarded judgment for the costs and disbursements of this action and for other and further relief as this Court may deem just and proper.



WILLIAM H. SEALS, JR.
Seals Law Firm, P. A.
P. O. Box 143
208 West Dozier Street
Marion, South Carolina 29571
Attorney for Defendant

Marion, South Carolina

March 27, 2007.

STATE OF SOUTH CAROLINA)
COUNTY OF MARION)

IN THE MAGISTRATE'S COURT
TWELFTH JUDICIAL CIRCUIT
CASE NUMBER: 07-0073

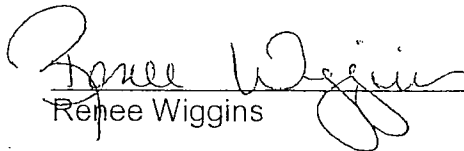
Ashley Outing,)
Plaintiff,)
vs.)
Velmetria Chante Weeks,)
Defendant.)

CERTIFICATE OF MAILING

I, Renee Wiggins, as an employee for William H. Seals, Jr., Attorney at Law, and counsel for the Defendant in the above captioned matter, do certify that I have served (all) counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of same by United States Mails, postage prepaid, to the following address(es):

PLEADINGS: **Answer**

COUNSEL SERVED: Mr. Everett Hope Garner
Attorney at Law
P. O. Box 11006
Columbia, South Carolina 29211


Renee Wiggins

Marion, South Carolina

March 27, 2007.

D.P.S. USE ONLY		Page #	SOUTH CAROLINA TRAFFIC COLLISION REPORT FORM TR-310 (Rev. 01/2001)		# Of Units	Amended - Attach Copy of Original Report		Notified	Arrived
1		1			2			752	755
Date: 1/30/06	Time: 7:55	County: 34	Collision Location (Rt. # / Name): Hwy 76		Miles: 0.5	Dir: N E	In / Near City or Town of: Marion		
Lane # / Dir: 050		Distance Offset: 050	Direction: N E	1- Interstate 4- Secondary	Base Intersection (Rt. # / Name): Bluff Road	2- Alternate 7- Business	5- Spur	ASRU code	MP/ Grid
R.R. Id.		From: 1- Entrance	Ramp Only: N E	To: 2- US Primary 5- County	Second Intersection (Rt. # / Name): Green St	2- Alternate 7- Business	5- Spur	Latitude: 34 10.485	Longitude: 079 23.305
Driver/Pedestrian's Full Name: Q-573298 Velmetria Chante Weeks		Unit # 1 Sex F Race B Street/R.F.D. 115 Jeffs pl.		Unit # 2 Sex B Race B Street/R.F.D. 3913 Cherry Court		Driver/Pedestrian's Full Name: Q-573299 Ashlie Laronne Outing			
Birth Date: 01/12/85		City, State, & Zip: Mullins SC 29574		Birth Date: 11/7-86		City, State, & Zip: Mullins SC 29574			
State: SC		Driver's License #: 011623294		State: SC		Driver's License #: 011639276		Insurance Company: Howard B Smith & P	
Year: 94		Body: 45		Year: 93		Body: 45		VIN #: 1FMDU32XKPD617753	
State: SC		Year: 06		State: SC		Year: 06		License Plate #: 238EPD	
Home Telephone: (843) 464 8459		Owner's Full Name: Velma Lee Godbold		Home Telephone: ()		Owner's Full Name: Cynthia G. Outing			
Bus. Telephone: ()		Street/R.F.D.: 115 Jeffs place		Bus. Telephone: ()		Street/R.F.D.: 3913 Cherry Court			
Contributed To Collision: Yes		City, State, & Zip: Mullins SC 29574		Contributed To Collision: No		City, State, & Zip: Mullins SC 29574			
Estimated Speed: 10		Speed Limit: 35		Estimated Speed: 05		Speed Limit: 30		C.D.L. Req: Yes No T/B S Req: Yes No Alc/Drg info (see back): Yes No	
C.D.L. Req: Yes No		T/B S Req: Yes No		C.D.L. Req: Yes No		T/B S Req: Yes No		Alc/Drg info (see back): Yes No	
Summons #: 1689904		Code: Summons #		Summons #: 05		Code: Summons #		Code Towed By	
Driver/Pedestrian's Full Name: Q-573300		Unit # 1 Sex Race Street/R.F.D.		Unit # 2 Sex Race Street/R.F.D.		Unit # 3 Sex Race Street/R.F.D.		Unit # 4 Sex Race Street/R.F.D.	
Birth Date: City, State, & Zip		Birth Date: City, State, & Zip		Birth Date: City, State, & Zip		Birth Date: City, State, & Zip		Birth Date: City, State, & Zip	
State: Driver's License # Insurance Company		State: Driver's License # Insurance Company		State: Driver's License # Insurance Company		State: Driver's License # Insurance Company		State: Driver's License # Insurance Company	
Year: Body: Vehicle Make: VIN #		Year: Body: Vehicle Make: VIN #		Year: Body: Vehicle Make: VIN #		Year: Body: Vehicle Make: VIN #		Year: Body: Vehicle Make: VIN #	
Dir. of Travel: Unit 1: N S E W Unit 2: N S E W Unit 3: N S E W		Unit 1 Dam. Unit 2 Dam. Unit 3 Dam. Prop. Dam. 1 Prop. Dam.		Unit 1 Dam. Unit 2 Dam. Unit 3 Dam. Prop. Dam. 1 Prop. Dam.		Unit 1 Dam. Unit 2 Dam. Unit 3 Dam. Prop. Dam. 1 Prop. Dam.		Unit 1 Dam. Unit 2 Dam. Unit 3 Dam. Prop. Dam. 1 Prop. Dam.	
Unit 1 Dam. Unit 2 Dam. Unit 3 Dam. Prop. Dam. 1 Prop. Dam.		Unit 1 Dam. Unit 2 Dam. Unit 3 Dam. Prop. Dam. 1 Prop. Dam.		Unit 1 Dam. Unit 2 Dam. Unit 3 Dam. Prop. Dam. 1 Prop. Dam.		Unit 1 Dam. Unit 2 Dam. Unit 3 Dam. Prop. Dam. 1 Prop. Dam.		Unit 1 Dam. Unit 2 Dam. Unit 3 Dam. Prop. Dam. 1 Prop. Dam.	
Property Owner/Witness Address State Zip Phone		Property Owner/Witness Address State Zip Phone		Property Owner/Witness Address State Zip Phone		Property Owner/Witness Address State Zip Phone		Property Owner/Witness Address State Zip Phone	
Photo: Describe What Happened (Refer to Units by Number)		Photo: Describe What Happened (Refer to Units by Number)		Photo: Describe What Happened (Refer to Units by Number)		Photo: Describe What Happened (Refer to Units by Number)		Photo: Describe What Happened (Refer to Units by Number)	
Unit # 1 H.t unit # 2 in the Rear while unit # 2 was slowing down		Unit # 1 H.t unit # 2 in the Rear while unit # 2 was slowing down		Unit # 1 H.t unit # 2 in the Rear while unit # 2 was slowing down		Unit # 1 H.t unit # 2 in the Rear while unit # 2 was slowing down		Unit # 1 H.t unit # 2 in the Rear while unit # 2 was slowing down	
Investigating Officer's Name: Rank: Badge #: Date: Reviewer's Name: Rank: Internal Agency Code:		Investigating Officer's Name: Rank: Badge #: Date: Reviewer's Name: Rank: Internal Agency Code:		Investigating Officer's Name: Rank: Badge #: Date: Reviewer's Name: Rank: Internal Agency Code:		Investigating Officer's Name: Rank: Badge #: Date: Reviewer's Name: Rank: Internal Agency Code:		Investigating Officer's Name: Rank: Badge #: Date: Reviewer's Name: Rank: Internal Agency Code:	

Form with multiple sections for accident reporting, including fields for Date of Birth, Sex, Race, Injury Status, Seating Location, and various checkboxes for vehicle types and collision details. Includes a diagram of vehicle positions and a section for contributing factors.

Mail FR-10 to: Office of Financial Responsibility

SC Department of Public Safety

PO Box 1498 Columbia SC 29216

SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY

FR-10 (REV. 01/01)

NOTICE OF REQUIREMENT



Date 6-30-06	Time 7:55	County 31	1-Interstate 2-US Primary 3-SC Primary	4-Secondary 5-County	Collision Location (Rt #, Name) 5 Hwy 76	0-Main line 2-Alternate 5-Spur	6-Connection 7-Business	Miles: Dir: N E S W	In / Near City or Town of: Marion
-----------------	--------------	--------------	--	-------------------------	---	--------------------------------------	----------------------------	------------------------------------	--------------------------------------

To Vehicle Owner/Operator: Failure to comply could result in appropriate action under 56-10-270 and 56-10-280 of the 1976 Code of laws of S.C. as amended, if vehicle subject to registration in S.C. and upon conviction thereof the Department must suspend your driving and/or registration privileges until all compliances have been met under the above sections of law.

Q-573298 Driver/Pedestrian's Full Name Velmetia Chanta Weeks				Q-573299 Driver/Pedestrian's Full Name Ashley Lavonne Outing			
Unit # 1	Sex F	Race B	Street/R.F.D. 115 Jells pl.	Unit # 2	Sex F	Race B	Street/R.F.D. 3413 Cherry Road
Birth Date		City, State, & Zip Mullins SC 29574		Birth Date		City, State, & Zip Mullins SC 29574	
State SC	Driver's License # 01163294	Insurance Company STAR FARM		State SC	Driver's License # 011639276	Insurance Company Howie's South	
Year 74	Body 15	Vehicle Make Ford	VIN # 1FA1P5240R A2380	Year 73	Body 15	Vehicle Make Ford	VIN # 1FMDU32X1P0117753
State SC	Year 06	License Plate # V65 KCP	Owner's D.L. #	State SC	Year 76	License Plate # 238 EPD	Owner's D.L. #
Home Telephone (73) 464 8457		Owner's Full Name Velma Lee Godbold		Home Telephone ()		Owner's Full Name Cynthia G Outing	
Bus. Telephone ()		Street/R.F.D. 115 Jells place		Bus. Telephone ()		Street/R.F.D. 3413 Cherry Road	
Contributed To Collision Yes		City, State, & Zip Mullins SC 29574		Contributed To Collision Yes		City, State, & Zip Mullins SC 29574	

Q-573300 Driver/Pedestrian's Full Name				State Year License Plate # Owner's D.L. #			
Unit #	Sex	Race	Street/R.F.D.	Home Telephone		Owner's Full Name	
Birth Date		City, State, & Zip		Bus. Telephone		Street/R.F.D.	
State	Driver's License #	Insurance Company		Contributed To Collision Yes No		City, State, & Zip	
Year	Body	Vehicle Make	VIN #	Accident Insurance Information for Unit # 2			
All Units Insurance Information (to be completed by Investigating Officer)				Company Name South Carolina PEE DEE			
				Area Code/Phone Number (823) 464 62			
				Agency Name Howard B. Smith			
				Policy Number 42-843 881-00			
Accident Insurance Information for Unit # 1				Accident Insurance Information for Unit #			
Company Name STAR FARM				Company Name			
Area Code/Phone Number (823) 464 8650				Area Code/Phone Number			
Agency Name W & MORALES				Agency Name			
Policy Number 734945-627-400				Policy Number			

Insurance Information

Notice of Requirement Accepted		Signature Velmetia Weeks		Y N Refused to Affix Signature?	
To Be Completed By Insurance Agency, Broker, Or Other Company Representative		Y N Vehicle Subject to Registration in SC?			
Reference to Unit # 2 I hereby affirm that to the best of my knowledge the vehicle described above was insured by the below stated insurance company on the date of the collision.					
Insurance Company		Policy # 4274388 100		Signature Cynthia G Outing	
Beginning Date 10-2-05		Ending Date 4-2-06		Policy Holder Cynthia G Outing	
NAIC# (Assigned by S.C. Dept. of Ins.) 327 00		Bus. Telephone ()			

Notice: Failure to have this form completed by your insurance broker, agent, or representative and returned to the South Carolina Department of Public Safety within 15 days may result in suspension of your driving and/or registration privileges.

If any of the below are applicable, disregard the above portion				Form FR-10 Not Issued: Section 56-10-271 56-10-521	
Check here if a Form SR-23, Fleet Policy of 25 or more vehicles is on file with the Department covering the vehicle.				No FR-10 Issued to Operator/ Owner of Unit #	
Check here if a certificate of self-insurance has been issued by the Department covering the vehicle and indicate the certificate number: SI				Summons Issued to:	
Check here if liability insurance was not in effect to comply with South Carolina statutory requirements.				For operating or allowing the operation of an uninsured vehicle	
Investigating Officer's Name Cynthia G Outing				Signature	
Rank 601				Internal Agency Code	
Badge # 22					
Code 34					
Date 6-30-06				Reviewer's Name	
13					

STATE OF SOUTH CAROLINA)
COUNTY OF MARION)

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT - MARION COUNTY

Ashlie Outing,)
Plaintiff,)
vs.)
Velmetria Chante Weeks,)
Defendant)

No: 2011-0233-518
Magistrate Court No: 07-0073-02
NOTICE OF APPEAL

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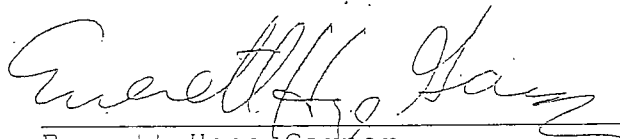
Plaintiff by and through her undersigned counsel, hereby
appeals from the Decision and Judgment of the Marion County
Magistrate's Court, Judge Mackie D. Hayes by trial by jury on
July 20, 2011. The appeal is based upon the following grounds:

1. It is respectfully submitted that the Trial Judge erred
in failing to grant Appellant's Motion for Directed Verdict on
the issue of negligence when the evidence clearly mandated such a
finding on the part of respondent as a matter of law.

2. It is respectfully submitted that the Trial Judge erred
in failing to grant Appellant's Motion for Judgment
Notwithstanding the Verdict or alternatively a new trial when the

evidence clearly mandated such.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Everett H. Garner", written over a horizontal line.

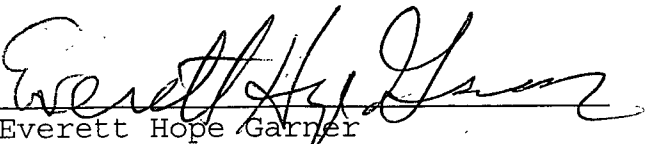
Everett Hope Garner
HOLLER, DENNIS / CORBETT, ORMOND,
PLANTE & GARNER
P.O. Box 11006
Columbia, SC 29211.
(803) 765-2968
Attorney for Plaintiff

Columbia, South Carolina
8/11/11, 2011

CERTIFICATE OF COUNSEL

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

Dated: 12/16/13


Everett Hope Garner

Holler, Garner, Corbett, Ormond,
Plante & Dunn

P.O. Box 11006

Columbia, SC 29211

(803) 765-2968

Attorney for Appellant