

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas
Sixth Circuit Court

J. Ernest Kinard, Jr., Chief Administrative Judge

Case No. 2013-002677

T. B. Patterson, Jr.,

Appellant,

v.

Justo Carmona Ortega,

Respondent.

RECORD ON APPEAL

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Lancaster, South Carolina 29721-0340
(803) 286-6999
Attorney for Appellant, Pro Se

Mr. Michael S. Traynham
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MAY 19 2014
SC Court of Appeals

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STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTER)

IN THE COURT OF COMMON PLEAS
SIXTH CIRCUIT COURT
C/A NUMBER: 2013-CP-12-00267

T.B Patterson, Jr.,

Appellant,

vs.

Justo Carmona Ortega,

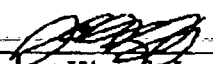
Respondent.

FINAL ORDER

2013 SEP 23 P 3:32
FILED
CLERK OF COURT
SIXTH CIRCUIT
SOUTH CAROLINA

This matter was heard on July 7, 2012, on appeal from a bench trial before the Honorable Yale Zamore in Great Falls, South Carolina that was held on April 12, 2013. Following trial on May 15, 2013, Judge Zamore issued an order finding for the Plaintiff in the amount of \$706.39. Following that order, on June 12, 2013, the Plaintiff (hereinafter "Appellant") filed this appeal, alleging that the trial order in this matter failed to utilize the proper measure of damages both as to the loss of use of his vehicle and the loss of time dealing with the consequences of the accident. Having heard the arguments of Appellant and Respondent at the hearing of this matter, and after considering the Briefs of both parties and the Final Order of Judge Zamore, along with his findings of fact and conclusions of law, I uphold the decision of the magistrate court and deny the Appellants request for relief.

IT IS SO ORDERED.


J. Ernest Kinard, Jr.
Chief Administrative Judge
For the Sixth Circuit

9/14, 2013
Camden, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTER)

IN THE COURT OF COMMON PLEAS
SIXTH CIRCUIT COURT
C/A NUMBER: 2013-CP-12-00267

T.B Patterson, Jr.,

Appellant,

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Justo Carmona Ortega,

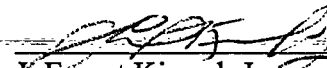
Respondent.

PROPOSED ORDER

This matter was heard on July 7, 2012, on appeal from a bench trial before the Honorable Yale Zamore in Great Falls, South Carolina that was held on April 12, 2013. Following trial on May 15, 2013, Judge Zamore issued an order finding for the Plaintiff in the amount of \$706.39. Following that order, on June 12, 2013, the Plaintiff (hereinafter "Appellant") filed this appeal, alleging that the trial order in this matter failed to utilize the proper measure of damages both as to the loss of use of his vehicle and the loss of time dealing with the consequences of the accident. Having heard the arguments of Appellant and Respondent at the hearing of this matter, and after considering the Briefs of both parties and the Final Order of Judge Zamore, along with his findings of fact and conclusions of law, I uphold the decision of the magistrate court and deny the Appellants request for relief.

IT IS SO ORDERED.

7/29, 2013
Camden, South Carolina



J. Ernest Kinard, Jr.
Chief Administrative Judge
For the Sixth Circuit

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHESTER)
 T.B. Patterson, Jr.,)
)
 Plaintiff,)
)
 -vs-)
)
 Justo P. Carmona Ortega,)
)
 Defendant.)
 _____)

IN THE MAGISTRATES COURT
 Case No.: 2013-CP-12-00267
 2012CV1210100749

MAGISTRATE'S RETURN ON APPEAL

FILED

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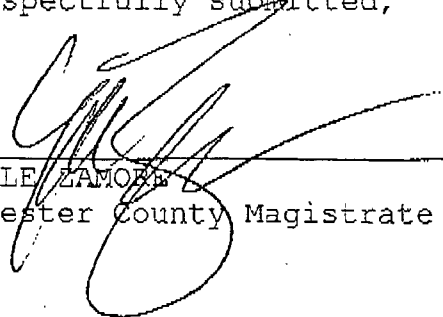
CLERK OF COURT
 CHESTER CO S.C.

The above-referenced matter was heard in a Bench proceeding before me in Great Falls on April 12, 2013. Following the trial, the Court took the case under advisement and issued a Judgment and Final Order signed by me on May 15, 2013 and clocked on May 16, 2013. Attested copies of the Court's 7-page Judgment and Final Order were made and mailed by USPS with appropriate postage that day. An attested copy of that same Judgment and Final Order is attached hereto and incorporated herein by reference. As the Judgment and Final Order serve as a complete and comprehensive record of the evidence, the proceedings, and the Court's reasoning and judgment, only brief supplemental information is now required. It should be noted that at no time and in no manner did the Plaintiff cite or present to the Court any authority for his position that "loss of use" alone, with no tangible proximate damages is compensable. Similarly, at no time and in no manner did the Plaintiff cite or present to the

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Court any authority for his position that his time, at the rate of \$300.00 per hour should be compensated when no tangible proximate damages were demonstrated.

Respectfully submitted,



YALE ZAMORE
Chester County Magistrate

June 26, 2013

Great Falls, South Carolina

93. AZ

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHESTER)
 T.B. Patterson, Jr.,)
)
 Plaintiff,)
)
 -vs-)
)
 Justo P. Carmona Ortega,)
)
 Defendant.)
 _____)

IN THE MAGISTRATES COURT
 Case No. 2012CV1210100749
RECEIVED

2013 MAY 16 PM 4 08

CHESTER COUNTY
 MAGISTRATE OFFICE
 JUDGMENT AND FINAL ORDER
 CHESTER, SC 29706

This matter came before me for a Bench Trial upon the merits in Great Falls on April 12, 2013. The Plaintiff appeared and represented himself. The Defendant did not appear but his legal counsel, Michael Traynham, was present and represented Mr. Ortega. The case was originally set for Jury Trial before Judge Underwood but at that time, during Jury Selection, Judge Underwood dismissed the panel and directed that the case be rescheduled. Subsequently, the Action was transferred to this Court and a pre-trial conference was conducted at which time both parties appeared along with a Spanish language translator for the Defendant. Ultimately, the parties decided to waive Jury Trial in favor of a bench proceeding before this Court. Prior to the commencement of the within proceedings, the Court inquired of those present. The Jury Trial waiver was ratified. Defense Counsel admitted liability in behalf of the Defendant and waived his presence for this proceeding. No issues were

Y. B. J. A. I.

Attest a True Copy of the Original

 Magistrate for Chester County

raised concerning any defects as to notice to the parties and the Court notes that the scheduling for April 12, 2013 was with the consent and at the request of both sides. The parties indicated that there had been sufficient time for settlement discussions and settlement was not possible. Finally, both sides indicated that there was nothing the Court could do that might facilitate settlement and that they were ready to proceed with trial.

Other than the Plaintiff who was representing himself no other witnesses were present and none testified. A motor vehicle accident had occurred in Lancaster County in which the vehicle being driven by the Defendant caused the Plaintiff to run off the road. Jurisdiction and venue in Chester County was not challenged by the Defense. Out of an abundance of caution the Court notes that the Defendant resides in Chester County such that this Court does have jurisdiction of the subject matter and this venue is proper.

The Plaintiff's vehicle was damaged during the course of the accident, which damage included a broken window that apparently shattered. Shards of glass were found in the Plaintiff's vehicle and on the Plaintiff's person. The ~~Plaintiff's vehicle was damaged and the Plaintiff personally~~ sustained minor cuts and scratches. As liability was not in issue, the only thing for the Court to determine was the

93. #2

allowable uncompensated damages sustained by the Plaintiff. The Plaintiff seeks compensation for the loss of use of his vehicle while it was being repaired and for lost time from his work. No claim was advanced for medical treatment or pain and suffering for injuries sustained.

The Plaintiff testified that he was without his vehicle for three weeks and two days. The Court received into evidence without objection Plaintiff's Exhibit 1 consisting of two pages. The first page is a vehicle leasing form by Enterprise Leasing Company. The second is a receipt showing total billing in the amount of \$526.39. Both show a period from September 24, 2009 to October 1, 2009, constituting one-week's rental cost. The receipt lists a 2009 Chevrolet Tahoe with a date and time out of September 24, 2009 at 1:41 P.M. with a date and time in of October 1, 2009 at 11:57 A.M. I note that this exhibit was the only one submitted by the Plaintiff. The vehicle itself was repaired at the expense of sources attributable to the Defendant such that no amount is specifically prayed for this.

The Plaintiff is an attorney licensed in South Carolina and engaged in solo practice in Lancaster, which is his County of Residence. In addition to loss of use of his vehicle while it was being repaired, he seeks compensation for time lost from his law practice. The Plaintiff testified that he charges his clients \$300.00 per hour and he elaborated so as to demonstrate

93-8-#3

uncompensated time amounting to 16 hours and 25 minutes not counting the time invested in this trial. The breakdown included various activities involved in procuring repairs to his vehicle and arranging for a substitute vehicle, the Chevrolet Tahoe subject to his claim for loss of use of his own vehicle. It appears that the initial repair had to be re-done in part as the first replacement window was defective. No affidavit or other written itemization of time was submitted by the Plaintiff to supplement his testimony in this regard. The Plaintiff repeatedly referred to this lost time as time spent doing the Defendant's work.

On cross-examination the Defendant conceded his only actual out-of-pocket expense was the one-week rental of the Chevrolet Tahoe in the amount of \$526.39. The remaining claim for loss of use was based upon the quoted rental expense for the replacement vehicle for the remaining period but does not appear to have actually been incurred. He based his claim for lost time upon his hourly rate but did concede that he completed all his work in hand. The Plaintiff has a home office and did not quantify any overhead expenses, let alone any wasted or lost proximately resulting from this accident. He was unable to specify any case or cases or work he failed to obtain as a proximate result of this accident. No letters or statements complaining about his unavailability to clients or potential clients were submitted by

Y.B. #4

the Plaintiff so as to substantiate his claim for lost time with a demonstration of actual lost business.

The Plaintiff's total claim for loss of use of his vehicle for three weeks and two days was based upon three times \$526.39 plus two times the daily rental amount of \$98.55, which comes to a total of \$1,579.17 plus \$197.10, or a grand total of \$1,776.27. His total claim for lost time which he verbally itemized was 16 hours and 25 minutes at \$300.00 per hour for a total of \$4,800.00 plus \$125.00 for a grand total of \$4,925.00. Of course, the Plaintiff sought the costs of this Action, which amounts to \$80.00 such that his total claim before the Court stands at \$1,776.27 plus \$4,925.00 plus \$80.00 for a grand total of \$6,781.27. The Complaint, drafted by the Plaintiff, does not seek such additional compensation as the Court may deem just and proper although it does pray for total judgment in the amount of \$7,500.00 plus costs, or \$7,580.00. The Defense rested its case upon the completion of its cross-examination of the Plaintiff and the Court gave both sides leave for final argumentation, whereupon the record was closed and the matter was taken under advisement.

The Defendant having admitted and accepted liability and having already repaired the Plaintiff's vehicle, remains liable only for additional uncompensated allowable damages proximately caused by the accident. The Plaintiff has demonstrated he spent

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\$526.39 for a replacement vehicle for one week and he paid \$80.00 in Court Costs. I find him entitled to this.

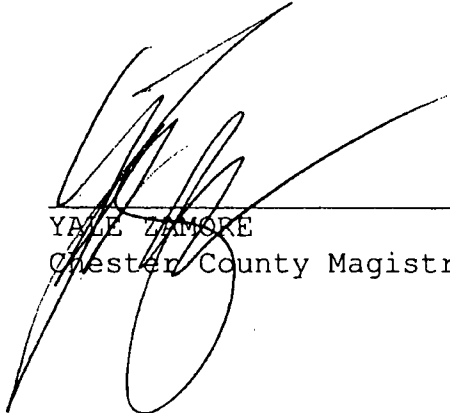
The term "loss of use" regarding the Plaintiff's vehicle while it was being repaired was clearly sustained by him and it was proximately caused by the accident. However, the record before the Court substantiates only the expense for a replacement vehicle for one week and not for the entire time for the repairs. It is fundamental that the Plaintiff needs to prove his claimed damages, not merely as to category and reality, but as to amount. In this regard, the Plaintiff has proven an amount equal to one-week's rental expense for a replacement vehicle but nothing more. There is no way to reliably quantify "loss of use" as a general circumstance under these conditions. Similarly, the Plaintiff has claimed \$300.00 per hour for his time but has not proven any tangible and quantifiable losses sustained as a result. These factors appear to fall into the general category of inconvenience. The Court has broad discretion but must be cautious not to abuse it. Accordingly, justice and fairness suggest a token award should be granted to the Plaintiff for these intangibles because they do exist and would not but for the accident. However, any amount beyond that would constitute an abuse of discretion in the Court's eyes. It seems reasonable to restrict these token damages to \$100.00. Thus the total award to the Plaintiff

G. J. #b

should be \$526.39 plus \$80.00 plus \$100.00 for a grand total of \$706.39. Now, therefore, it is

ORDERED that Judgment be, and the same is hereby, awarded to the Plaintiff in the amount of \$706.39.

AND IT IS SO ORDERED.



YALE ZAMORE
Chester County Magistrate

Great Falls, South Carolina

May 15, 2013

97
13-#7

2012 CV 1210100 749

CIVIL CASE NUMBER

STATE OF SOUTH CAROLINA)

COUNTY OF CHESTER)

T. B. PATTERSON, JR.)

PLAINTIFF)

P.O. BOX 340)

STREET ADDRESS)

LANCASTER, SC 29721-0340)

CITY, STATE ZIP)

803-286-6999)

TELEPHONE)

VS.)

JUSTO P. CARMONA ORTEGA)

DEFENDANT(S))

1698 CANAL ROAD)

STREET ADDRESS)

CATAWBA, SC 29704)

CITY, STATE ZIP)

803-235-2375)

TELEPHONE)

IN THE MAGISTRATE'S COURT

COMPLAINT

I, T. B. Patterson, Jr., the plaintiff in this civil action do make the following claims:

1. I believe the defendant, Justo P. Carmona Ortega, is a resident of Chester County, and resides at 1698 Canal Road, Catawba, SC, and this Complaint is properly filed in Chester County.

2. I make this complaint on the following:

On September 21, 2009, approximately three miles west of Lancaster, South Carolina, on South Carolina Highway 9 in Lancaster County, Mr. Carmona Ortega, driving a pickup truck toward Lancaster, made a lane change without checking for traffic and in violation of my right-of-way. I was forced off of the road and my truck was damaged by a collision with a sign; I lost the use of it for twenty-three days as a result. In addition, I lost approximately ten hours of work time. The truck has been repaired and those costs have been paid; I have not been reimbursed for my loss of use or my lost work time. The loss of use, based on the only comparable vehicle I could rent, was \$2,076.27; my lost time, before beginning this action, was ten hours, and my normal rate is \$300.00 per hour; I expect to lose at least five more hours because of this action.

AB

3. I believe, because of the above information, that I am entitled to and do request a judgment for \$7,500.00, ^{plus} including any costs resulting in this action.

I state under penalty of perjury that the above is correct and truthful, except those based on my information and belief.

Dated: September 10, 2012

AB

Signature of Plaintiff (or his attorney)

STATE OF SOUTH CAROLINA) IN THE MAGISTRATE COURT
)
COUNTY OF CHESTER) CA No.: 2012CV1210100749

T.B Patterson, Jr.,

Plaintiff,

vs.

Justo Carmona Ortega,

Defendant.

**ANSWER ON BEHALF OF
DEFENDANT**

Jury Trial Demanded

Defendant, by and through his undersigned attorney, answers the Complaint of the Plaintiff as follows:

FOR A FIRST DEFENSE

1. Each and every allegation contained in the Plaintiff's Complaint not hereinafter specifically admitted is denied, and strict proof is demanded thereof.
2. The Defendant admits the allegations of Paragraph One (1) of the Complaint.
3. The Defendant is without knowledge sufficient to admit or deny the allegations of Paragraph Two (2) of the Complaint and deny the same.
4. The Defendant denies the allegations contained in Paragraph Three (3) of the Complaint, and denies that the Plaintiff is entitled to any recovery whatsoever.

FOR A SECOND DEFENSE

5. Any injuries and damages sustained by the Plaintiff as set forth in the Complaint, upon information and belief, were due to and caused by the sole negligence, recklessness, willfulness and wantonness of the Plaintiff in one or more of the following particulars:
 - a. In failing to maintain a proper lookout;

- b. In failing to maintain proper control of his vehicle;
- c. In failing to maneuver his vehicle to avoid contact with any objects or animals in the roadway;
- d. In operating a vehicle with faulty equipment;
- e. In failing to use brakes properly;
- f. In driving at a speed that was too fast for conditions then and there existing;
- g. In failing to observe the road and traffic conditions then and there existing;
- h. In failing to exercise that degree of care and caution which a reasonable and prudent person would have exercised under the same or similar circumstances;
- i. In failing to take evasive action; and
- j. In additional particulars that may be revealed during discovery and/or in the evidence at trial.

All in violation of statutes and laws of the State of South Carolina, and by reason thereof, the Plaintiff is not entitled to recover from the Defendant.

FOR A THIRD DEFENSE

6. Any injuries and damages as were allegedly sustained by the Plaintiff at the time and place alleged in the Complaint, if any, upon information and belief, were due to and proximately caused by the negligence, recklessness, willfulness and wantonness of the Plaintiff, which contributed more than fifty (50%) percent to cause the accident and the Plaintiff's resulting injuries and damages, if any, in one or more of the following particulars as heretofore set forth in the Second Defense stated above, which allegations are realleged and incorporated herein by reference, and therefore the Defendant has no liability to the Plaintiff.

FOR A FOURTH DEFENSE

7. Even assuming the Defendant was careless, negligent, grossly negligent, willful, wanton or reckless in any respect, which is expressly denied, and even if any such conduct on his part operated as a greater than fifty (50%) cause of the accident and the Plaintiff's resulting injuries and damages, if any, which is also expressly denied, the Defendant is entitled to a determination as to the percentage which the Plaintiff's negligent, grossly negligent, reckless and willful conduct contributed to this accident and to a reduction of any amount awarded to them by an amount equal to the percentage of their own negligent, grossly negligent, reckless, willful and wanton conduct.

FOR A FIFTH DEFENSE

8. All risks and dangers, if any, connected with the accident referred to in the Complaint, were open, obvious and apparent and were known to or should have been known to the Plaintiff, and the Plaintiff was perfectly competent to judge the safety and risk arising out of or connected with operating a motorcycle, which risk was assumed and appreciated by the Plaintiff and for which the Defendant is not liable, and therefore, the Defendant affirmatively pleads assumption of the risk on the part of the Plaintiffs as a complete bar and defense to this action.

FOR A SIXTH DEFENSE

9. Any injury or damage sustained by the Plaintiff as a result of the matter alleged in the Complaint, upon information and belief, could not be avoided, and the Defendant pleads an unavoidable accident as a complete bar and defense to this action.

FOR A SEVENTH DEFENSE

10. Any injuries and damages sustained by the Plaintiff arising out of the incident referred to in the Complaint, resulted solely, upon information and belief, from the sole acts and omissions of a third party, which sole acts or omissions or intervening acts or omissions were the proximate cause of any injuries or damages sustained by the Plaintiffs, and therefore the Defendant has no liability to the Plaintiff, and the Complaint should be dismissed with prejudice.

FOR AN EIGHTH DEFENSE

11. The Defendant is informed and believes the Plaintiff had the last clear chance to avoid the accident and therefore plead the last clear chance as a defense to the Plaintiff's cause of action.

FOR A NINTH DEFENSE

12. To the extent that the Plaintiff is seeking punitive damages, the provisions of the United States and the South Carolina Constitutions bar any claim on behalf of the Plaintiff for punitive damages.

13. That Plaintiff's claim for punitive damages violates both the Fourteenth Amendment of the United States Constitution and Article 1, Section 3, of the South Carolina Constitution in that the jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of a meaningful standard and is inconsistent with due process guarantees

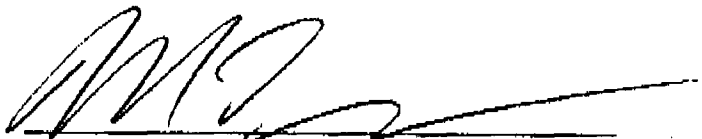
14. That Plaintiff's claim for punitive damages violates the Fifth, Sixth and Fourteenth Amendments of the United States Constitution and Article 1, Section 3 of the South Carolina Constitution, for even if it could be argued that a standard governing the imposition of punitive damages exists, this standard is void for vagueness.

15. That the Plaintiff's claim for punitive damages violates the equal protection clause of the Fourteenth Amendment of the United States Constitution and Article 1, Section 3 of the South Carolina Constitution, in that the amount of punitive damages is based upon the wealth of the Defendant.

16. That the Plaintiff's claim for punitive damages violates the Federal doctrine of separation of powers and Article 1, Section 8 of the South Carolina Constitution for the reason that punitive damages are a creation of the judicial branch of government which invades the province of the legislative branch of government.

WHEREFORE, having fully answered the Complaint, the Defendant demands that the Complaint of the Plaintiff be dismissed, with costs, and for such other and further relief as this Court deems just and proper.

HOWSER, NEWMAN & BESLEY, L.L.C.

BY: 

Michael S. Traynham
1508 Washington Street
Post Office Box 12009
Columbia, South Carolina 29211
(803) 758-6000
ATTORNEY FOR DEFENDANT

October 10, 2012

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2013 JUN 13 PM 4 19

CHESTER COUNTY
MAGISTRATE OFFICE

STATE OF SOUTH CAROLINA 29706)

COUNTY OF CHESTER)

T. B. PATTERSON, JR.)

APPELLANT)

VS.)

JUSTO P. CARMONA ORTEGA)

RESPONDENT)

2012CV1210100749

CIVIL CASE NUMBER

IN THE MAGISTRATE'S COURT

IN THE COURT OF COMMON PLEAS

NOTICE OF CIVIL APPEAL

FILED
2013 JUN 13 2 41 PM
CLERK OF COURT
CHESTER CO S.C.

The plaintiff, T. B. Patterson, Jr., hereby gives notice of appeal from the judgment of the magistrate's court in the above action, to the Circuit Court of Common Pleas, in the county of Chester.

This notice of appeal is made subsequent to personal notice of the judgment which was received on the 25th day of May, 2013.

The appellant's exceptions to the judgment of the magistrate are set forth as follows:

The magistrate court failed to utilize the proper measure of damages, both as to the loss of use of my vehicle while it was being repaired and my loss of time dealing with the consequences of the accident.

The court received in evidence a receipt for one week's rental along with the rental agreement that included details as to the rental cost for a daily rate and a weekly rate of the only comparable vehicle I could find within a reasonable distance, from which the court correctly calculated my claim for twenty-three days of lost use at \$1,776.27; however, the court instead measured damages by the out-of-pocket expense for the one week I actually rented a vehicle, in

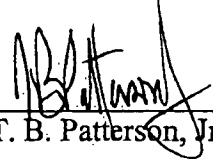
the amount of \$526.39, and awarded no compensation for the other sixteen days of loss of use, stating that there was “no way to reliably quantify ‘loss of use’ as a general circumstance under these conditions.” This calculation of damages for my loss of use failed to make me whole; the proper measure of damages for loss of use is the fair market rental value of a comparable vehicle for the entire period of the loss of use. The actual out-of-pocket cost for the rental vehicle for a week, together with the daily rate shown on the rental agreement, established a proper basis for the calculation of the total loss of use compensation due. The damaged vehicle was not available for use for twenty-three days; there is no justification for limiting loss of use compensation to the out-of-pocket amount for one week of rental replacement.

Likewise, there is not a basis for the court’s token award of compensation for loss of work time. The court noted that the time spent by me in dealing with the consequences of the accident, sixteen hours and twenty-five minutes, established by my sworn testimony, at my hourly rate of \$300.00 at that time would amount to \$4,925.00, and then awarded an amount of \$100.00, calling it a “token” to compensate me for inconvenience. The court noted that the time lost did not include time in the trial of the matter (which would have taken the claim well over the jurisdictional limit of the court). The court ignored my loss of time, apparently on the basis that I had not failed to obtain any work, had not failed to complete any other work, and had not demonstrated any other lost business. Thus, the court treated the loss of time as not worthy of compensation. The only measure an attorney typically has for his compensation is the time he spends working. When that time is taken from him, it is gone forever, just as certainly as if it had been cash. For the magistrate’s court to deny compensation for the time I lost as an attorney as the result of an accident on the basis that I did not fail in my other duties was a complete failure

of the that court to place me in the position in which I would have been had the accident not occurred, an accident for which the defendant admitted liability.

The court failed to compensate me properly for my losses by using an improper set of calculations and assumptions. This court should modify the award to grant me \$1,776.27 for loss of use of my vehicle, \$5,723.73 for my lost time (maximizing the amount for lost time to the jurisdictional limit), \$80.00 for costs in the magistrate's court, and my costs on this appeal.

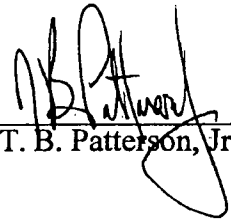
Dated: June 12, 2013


T. B. Patterson, Jr., Plaintiff

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2013 JUN 13 P 4:37
CLERK OF COURT
CHESTER CO. S.C.

CERTIFICATE OF SERVICE

I hereby certify that a copy of this notice was delivered by electronic mail to Mr. Michael S. Traynham, 1508 Washington Street, P.O. Box 12009, Columbia, South Carolina 29211, on June 12, 2013.


T. B. Patterson, Jr.

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2013 JUN 13 PM 4 18
CHESTER COUNTY
MAGISTRATE OFFICE
CHESTER, SC 29706

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTER) IN THE COURT OF COMMON PLEAS
) SIXTH CIRCUIT COURT
) C/A NUMBER: 2013-CP-12-00267

T.B Patterson, Jr.,

Appellant,

vs.

Justo Carmona Ortega,

Respondent.

RESPONDENT'S BRIEF ON APPEAL

This matter was heard in a bench trial before the Honorable Yale Zamore in Great Falls, South Carolina on April 12, 2013. Following trial on May 15, 2013, Judge Zamore issued an order finding for the Plaintiff in the amount of \$706.39. Following that order, on June 12, 2013, the Plaintiff (hereinafter "Appellant") filed this appeal, alleging that the trial order in this matter failed to utilize the proper measure of damages both as to the loss of use of his vehicle and the loss of time dealing with the consequences of the accident. Judge Zamore's Return on Appeal was filed with this court on July 9, 2013. The Respondent provides this separate brief for the convenience of the court and to reassert the legal authority and arguments made on behalf the Respondent at the trial of this matter.

BRIEF STATEMENT OF FACTS

As noted in the Final Order of this matter, liability for the underlying accident was undisputed at trial. Appellant's vehicle was damaged after running off the road to avoid a collision with Respondent. At trial, Appellant argued for damages based on lost use of his

vehicle, and lost time, which he asserts should be compensated at his standard civil attorney rate of \$300.00 per hour.

Appellant testified he was without his vehicle for twenty-three days, at least part of which was attributable to defective repairs by the auto shop Appellant selected. Those repairs had to be redone. Appellant calculated his lost use based on the daily rental rate for a comparable vehicle (Appellant's vehicle was a Chevrolet Suburban; the rental vehicle was a Chevrolet Tahoe) for the twenty-three day period, or \$1776.27. His actual out-of-pocket rental expense was \$526.39, since he only rented a replacement vehicle for a single week.

Appellant testified that he had spent 16 hours and 25 minutes of his time, (exclusive of time spent at trial) in dealing with the consequences of the accident – i.e. dealing with repairs, picking up his vehicle, speaking with insurance adjusters, cleaning out the vehicle following the accident, preparing for trial, etc.). He calculated this “lost time” at a value of \$4,925.00 based on the above-cited hourly rate.

As reported in Judge Zamore's final order and return, Appellant failed to provide any evidence of lost business, lost business opportunities, or even detrimental effect on existing clients. Appellant similarly failed to cite or offer a single legal authority in support of either his lost use or lost time claims.

STANDARD ON APPEAL

A Circuit Court, hearing an appeal from a Magistrates Court, may make its own finding of fact. See A&I, Inc. v. Gore, 366 S.C. 233, 239, 621 S.E.2d 383, 386 (Ct. App. 2005) (citing S.C. Code Annotated Section 18-7-170).

ARGUMENT

As a preliminary matter, we note that Appellant failed in his Notice of Appeal to cite a single legal authority in support of his assertion that the Magistrate Judge made an error of law in calculating damages. This failure compounds the issues presented by Appellant's failure to provide any authority at trial in his original argument for these damages. Such conclusory arguments, unsupported by precedent or statute, are generally deemed abandoned on appeal. See Judy v. Judy, 384 S.C. 634, 644, 682 S.E.2d 836, 841 (Ct. App. 2009); See also Mulherin-Howell v. Cobb, 362 S.C. 588, 600, 608 S.E.2d 587, 593-94 (Ct. App. 2005) (finding party abandoned an issue on appeal due to failure to cite any supporting authority and making only conclusory arguments). Nonetheless, we address the merits of Appellants contentions below.

Appellant first contends the trial court erred in calculating his loss of use, and that the court should have awarded loss of use for the entire time he was without his vehicle, and not merely the actual out of pocket expense of renting a vehicle for a week. As the court noted in the Final Order for this matter, at least part of the time Appellant was without a vehicle was attributable to faulty workmanship and repairs which had to be re-performed by the auto shop Appellant selected. Although not expressly stated, the trial court could reasonably have concluded that this period of time was not proximately related to the underlying accident. What the court did expressly conclude was that Appellant "has proven an amount equal to one-week's rental expense for a replacement vehicle but nothing more."

A Plaintiff's burden to prove his damages is not lessened because fault for an underlying accident is conceded. See Jackson v. Midlands Human Resources Center, 296 S.C. 526, 529, 374 S.C. 505, 506 (Ct. App. 1988) ("In a default case, the plaintiff must prove by competent evidence the amount of his damages, and such proof must be made by a preponderance of the evidence.")

Although not strictly applicable to this Court's review of a magistrate's decision, Rule 220 SCACR is instructive in advising that an appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal. As the record indicates, the Appellant failed to meet his burden of proving damages beyond those awarded by the trial court. This finding should be upheld.

Appellant further asserts that he is entitled to compensation for his lost time dealing with the consequences of this accident, asserting that "the only measure an attorney typically has for his compensation is the time he spends working." In this, Appellant not only failed to assert any legal authority at trial or on appeal, but he also argues squarely against precedent. As argued by Respondent at trial, our Supreme Court has previously determined that:

Where the rights, or asserted rights, of parties are in conflict, it is inevitable that each party desiring to protect his rights must give time and attention to that end. To do so is not generally an element of damage[.]

See Rimer v. State Farm Mut. Auto. Ins. Co., 248 S.C. 18, 27, 148 S.E.2d 742, 746 (1966). See also Prickett v. A&B Elec. Service, Inc., 280 S.C. 123, 125, 311 S.E.2d 402, 403 (Ct. App. 1984).

Absent discernible, tangible lost earnings, this is the law of the land. Prickett at 125, 311 S.E.2d at 403. Appellant's contention that his time spent dealing with the everyday headaches following an accident are compensable in the absence of evidence of a discrete loss is utterly without merit.¹

¹ Respondent argued a secondary argument at trial against the "lost time" damages" which will not be repeated in this Return in its entirety. In sum, this argument contends that Appellant failed to mitigate his damages, either by having someone compensable at less than \$300 per hour handle his various accident-related errands or by hiring an attorney to represent him in this lawsuit who, on a contingency basis, would have been compensated no more than \$2500 - significantly less than the compensation for lost time sought by the Appellant. This argument was made principally to illustrate the public policy concerns in recognizing the type of damages prayed for by Appellant.

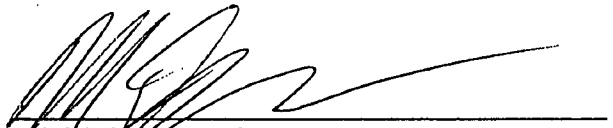
CONCLUSION

Based on the foregoing, the Respondent respectfully requests this court affirm the Final Order of the magistrate in this matter and for such other relief as the court deems appropriate.

Respectfully Submitted,

HOWSER, NEWMAN & BESLEY, L.L.C.

BY:



Michael S. Traynham
1508 Washington Street
Post Office Box 12009
Columbia, South Carolina 29211
(803) 758-6000
ATTORNEY FOR DEFENDANT

July 12 2013

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTER)

IN THE COURT OF COMMON PLEAS
SIXTH CIRCUIT COURT
C/A NUMBER: 2013-CP-12-00267

T.B Patterson,

Plaintiffs,

vs.

Justo Carmona,

Defendant.

CERTIFICATE OF SERVICE

I, the undersigned employee of Howser, Newman & Besley, L.L.C., attorney for the Defendant, do hereby certify that I have served the foregoing **Respondent's Brief on Appeal** in the above-captioned case, by causing a copy of the same to be personally deposited in a United States Postal Service mail box, with the return address clearly visible, postage prepaid, addressed to the attorney(s) of record as indicated below:

PRO SE PLAINTIFF:
T.B. Patterson, Esquire
P.O. Box 340
Lancaster, SC 29721



Diane Crutchfield

July 12, 2013

		<u>IN THE COURT OF COMMON PLEAS</u> SIXTH CIRCUIT COURT C/A NUMBER 2013-CP-12-00267
STATE OF SOUTH CAROLINA)	
)	
COUNTY OF <u>CHESTER</u>)	
)	
<u>T. B. PATTERSON, JR.</u>)	APPELLANT'S BRIEF ON APPEAL
APPELLANT)	
)	
VS.)	
)	
<u>JUSTO P. CARMONA ORTEGA</u>)	
RESPONDENT)	

The appellant hereby submits his brief on appeal in response to the return of the magistrate's court and the respondent's brief on appeal.

As stated in the notice of appeal filed previously, the magistrate court failed to utilize the proper measure of damages, both as to the loss of use of my vehicle while it was being repaired and my loss of time dealing with the consequences of the accident.

CORRECTION OF STATEMENT OF FACTS

The respondent, in the "brief statement of facts," incorrectly stated that I based my loss of use on the daily rental rate of the comparable vehicle; the damages were calculated at the weekly rate for the three full weeks, and at the daily rate for the additional two days (three times \$526.39 plus two times \$98.55, for a total of \$1,776.27. The respondent also misstated that part of the twenty-three day loss of use period was caused by "defective repairs" that had to be re-done; the reason for the twenty-third day of loss of use was to replace a defective window originally used in the repairs (which was a salvage window as required by the respondent's insurer).

ARGUMENT

LOSS OF USE DAMAGES

While the court noted in its judgment and final order on page three that I submitted a contract (that included rates for hourly and daily rental as well, plus tax rates) and a receipt for a one-week rental of a Chevrolet Tahoe (the one most similar to my Chevrolet Suburban) and that I testified that I was without the use of my Suburban for twenty-three days in total due to the repairs necessitated by the damage to the truck caused by the accident for which the respondent admitted liability, it, on page six, stated that I had proved only the “amount equal to one-week’s rental expense for a replacement vehicle but nothing more.” It then stated that “There is no way to reliably quantify ‘loss of use’ as a general circumstance under these conditions.”

Our Supreme Court held long ago that “As bearing on the question of the value of the use of the property of which the owner was deprived, the **rental value or expense of hiring a substitute for that of which he was deprived is a pertinent consideration.**” *Coleman v. Levkoff*, 128 S.C. 487, 491, 122 S.E. 875, _____ (1924) (emphasis added). Citing that case sixty years later, the Court of Appeals noted that a daily rental was a proper measure of loss of use (a stipulated rental value). *Hutson v. Cummins Carolinas, Inc.*, 280 S.C. 552, 314 S.E.2d 19 (Ct.App. 1984). In *Newman v. Brown et al.*, 228 S.C. 472, 476, 90 S.E.2d 649, _____ (1955), the Supreme Court also cited *Coleman, supra*, in approving the charge of the trial court that included the following:

Now in addition to that, you could award a **reasonable sum of money to compensate the owner of the automobile for the loss of the use of her automobile for a reasonable length of time during which it would have taken her to have the same repaired.** (Emphasis added).

In addition, Ralph King Anderson, Jr., *South Carolina Requests to Charge—Civil*, 2009, § 13-14, Damages—Automobile—Negligence Cause of Action, in discussing loss of use, specifies that

“In other words, recovery for loss of use based on customary rental charges is allowable even though a substitute is not rented. Rental value is the amount for which the property in question could have been rented on the market.”

The magistrate made a fundamental misapplication of the law of South Carolina by deeming “loss of use” the same as incurred expense. The loss of use I suffered as a result of the accident was established by my sworn, uncontested testimony that I was deprived of the use of my vehicle for twenty-three days; the value of that loss of use was properly demonstrated by the contract for the rental expense for a comparable replacement vehicle. The magistrate awarded only one week of loss of use instead of the three weeks and two days actual loss of use; the loss of use award should have been \$1,776.27.

The contentions of the magistrate and the respondent that I offered no authority or precedent for my claim for loss of use damages, while correct in a technical sense, are inaccurate. At all times I insisted that my loss was measured by the time I was deprived of the use of my vehicle, not by the amount of time I had a substitute vehicle; that is the law of South Carolina, and neither the magistrate nor the respondent have shown any basis for disregarding it.

LOSS OF INCOME DAMAGES

The respondent argued that there is precedent to deny any damages to me for my lost time in dealing with the accident and its aftermath, citing *Rimer v. State Farm Mut. Auto Ins. Co.*, 248 S.C. 18, 148 S.E.2d 742 (1966); his brief even provided a quote, but omitted the final portion (in boldface below):

Where the rights, or asserted rights, of parties are in conflict, it is inevitable that each party desiring to protect his rights must give time and attention to that end. To do so is not generally an element of damage, **although it may be in some situations where loss of earnings is involved, which is not the case here.**

The omission in the quote changes the whole import of the cite. In this case, I had lost income and testified to establish it. The sixteen hours and twenty-five minutes that the accident took out of my time available for work should have been compensated in a damages award for loss of income at my then-standard rate of \$300.00 per hour.

Instead, the magistrate awarded an amount of \$100.00, calling it a “token” to compensate me for inconvenience. The court ignored my loss of time. Had I been an hourly employee at any business and able to produce time records from that employment demonstrating that I had taken time off in order to deal with the repairs to my truck, there would be little argument that I was not entitled to compensation for the lost income. The fact that I am self-employed should not preclude my claim for compensation. I am accustomed to keep my time, in minutes, when I am working on cases for my clients; I kept my time for dealing with the accident just as if I were working for someone else, yielding my claim for a loss of income.

Loss of income is a standard element of damages in any negligence action. See Ralph King Anderson, Jr., *South Carolina Requests to Charge—Civil*, 2009, § 13-3, Damages—Elements of Actual Damage in Negligence Cases. It is such an obvious element that there is not any expanded explanation of it included in the charges, while the loss of earning capacity, medical bills, loss of consortium, mental anguish, pain and suffering, and many others are discussed at length. While the amount I should have been awarded might have been a point of argument, there is no basis for the magistrate’s complete denial of compensation for the time I lost to the accident from which this matter arose.

The magistrate created additional criteria for proving loss of income that cannot be justified. For instance, the last sentence of his return noted “Similarly, at no time and in no manner did the Plaintiff cite or present to the Court any authority for his position that his time, at the rate of \$300.00 per hour should be compensated when no tangible proximate damages were

demonstrated.” That makes no sense; loss of income is never a “tangible” item. If the magistrate meant that there was no personal injury that prevented my working, he created a requirement out of thin air; there is no precedent or authority for such a criterion. On pages four and five of his judgment and final order, the magistrate went through a laundry list of things I did not have or show in justifying his ruling: I completed all my work in hand; I had a home office and did not quantify any overhead expenses; I did not show any wasted or lost (sic) proximately resulting from the accident; I was unable to specify any case or work I failed to obtain as a proximate result of the accident; and I submitted no letters or statements from clients about my unavailability to demonstrate actual lost business. There is no precedent or authority for the court to require any of these as a prerequisite for qualifying for lost income. More importantly, none of those things are really relevant to the issue of whether my lost time is compensable. The first, that I completed all my work in hand seemed to suggest that I could not present a claim for any loss of income unless I could show that I was unable to meet my obligations to do my work for my clients; the fourth, that I showed no case or work that I did not obtain because of the accident, imposed a requirement that I show a lost opportunity to have lost time; the fifth suggested that I needed to submit hearsay evidence from clients unhappy with my unavailability in order to justify a claim for lost income. The lack of demonstrated overhead has nothing to do with loss of income; overhead is an expense of business operations that can be relevant to loss on a contract, but not to a loss of income on the basis of lost time.

My testimony of the time this accident cost me was not challenged on any factual basis, nor was there any suggestion that I exaggerated or misstated the time. The magistrate should have granted me judgment for my lost income caused by the accident if I was to be made whole after the accident caused by the negligence of the respondent.

Both the magistrate and the respondent argued that I did not cite any precedent or authority for my position that I was entitled to compensation for the time I lost because of this accident. As I noted at the beginning of this section, the only authority cited by respondent was misstated to eliminate the implication that my position is the correct one. In fact, neither the respondent nor I could find any South Carolina authority directly on point, except the very general duty of the courts to make a tort victim whole.

CONCLUSION

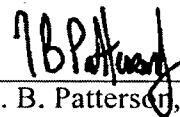
The magistrate failed to award a judgment that would compensate me for my losses and did so on the bases of incorrect interpretations of South Carolina law. This court should modify the award to grant me \$1,776.27 for loss of use of my vehicle, \$5,723.73 for my lost time (maximizing the amount for lost time to the jurisdictional limit), \$80.00 for costs in the magistrate's court, and my costs on this appeal, \$150.00.



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patterson@tbpattersonjrpa.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of this notice was delivered by electronic mail to Mr. Michael S. Traynham, 1508 Washington Street, P.O. Box 12009, Columbia, South Carolina 29211, on July 16, 2013.



T. B. Patterson, Jr.

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STATE OF SOUTH CAROLINA

-----x

T.B. PATTERSON, JR.,

Appellant,

Case No.

-against-

2013-CP-12-00267

JUSTO CARMONA ORTEGA,

Respondent.

-----x

July 17, 2013

Chester, S.C.

B E F O R E:

HONORABLE J. ERNEST KINARD, JR.

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

T.B. PATTERSON, JR., Esquire
Attorney for the Appellant

MICHEAL S. TRAYNHAM, Esquire
Attorney for the Respondent

Aileen Butler

Official Court Reporter

1 THE COURT: Patterson verses Traynham. Okay. Who
2 is doing what?

3 MR. PATTERSON: Yes, Your Honor I am not sure
4 exactly what the procedures you follow for an appeal
5 from Magistrate's Court.

6 I was told it was all done on the record. Do you
7 want argument? Do you want a chance to read the stuff
8 or what would you prefer.

9 THE COURT: Well, I represent to you and everybody
10 that has been around, I am a speed reader, so I have
11 read your brief you filed this morning.

12 MR. PATTERSON: Thank you, Your Honor.

13 THE COURT: That is all I read so far. Now I have
14 Respondent's brief that was filed July 15th.

15 Okay. What is your position? I read your brief.

16 MR. TRAYNHAM: Respondent's position?

17 THE COURT: Yes.

18 MR. TRAYNHAM: All right, Your Honor if it please
19 the Court do you have a copy of Judge Zamore's judgement
20 and Final Order in this matter? I don't know if that is
21 in front of Your Honor at this time.

22 THE COURT: All right.

23 MR. TRAYNHAM: I will hand that up along with his
24 return.

25 THE COURT: I got a copy of one from May 15th.

1 MR. PATTERSON: His return included a copy of
2 Final judgment and Order.

3 MR. TRAYNHAM: So your copy has a copy of the
4 Final Order.

5 THE COURT: Yes.

6 MR. TRAYNHAM: All right. Respondent's position
7 is essentially this. There is no question about
8 liability in this case. We conceded that for purposes
9 of trial. This accident was caused by Mr. Ortega. He
10 was driving negligently and as a result Mr. Patterson
11 ran off the road. The fact of liability has been
12 conceded doesn't change the plaintiff's burden at trial
13 for proving causation and the measure of any recoverable
14 damages.

15 Mr. Patterson has sought two basic types of
16 damages. Loss of use on the vehicle and loss of time is
17 how we described it and how Judge Zamore described it.
18 Your Honor, I will not stand here and pretend I am an
19 extremely experienced attorney who has been around for
20 decades, but I have handled a couple of car accident
21 cases and I have handled a lot of car accident cases
22 that involved loss of wages and I never handled a claim
23 whether from a pro se plaintiff or a represented party
24 where they were seeking damages for loss time
25 unaccompanied by provable loss wages. Which is exactly

1 what we have here and exactly why Judge Zamore ruled
2 against that measure of damages. We cited a decision
3 Rymer (phonetics) vs State Farm, and I did receive a
4 copy of Mr. Patterson's brief just this morning. I
5 haven't have time to prepare any kind of a concerted
6 legal research response to that brief, but he does take
7 issue that we don't go far enough into that Rymer vs.
8 State Farm decision. It does say that time spent by a
9 party in defending their rights is generally not a
10 recoverable element of damages accept in those areas
11 where there is a provable loss of earnings. But Judge
12 Zamore has found in his Final Order that there weren't
13 proven loss earnings here. He tries to you say it is
14 not fair that someone who is in an hourly wage position
15 or salaried position would be able to recover for loss
16 earnings but he as a solo practitioner can't do the
17 same. Well, Your Honor, the difference is a person in
18 an hourly position or a salaried position can prove
19 beyond that preponderance of the evidence standard that
20 they by missing time from work would have received a
21 wage or hourly payment. Mr. Patterson had the
22 opportunity at trial to prove that he lost some
23 discernable, definable, tangible amount money, or
24 business and earnings and failed to do so which is why
25 Judge Zamore found against him. And I will also point

1 out that Mr. Patterson failed to point out in the next
2 paragraph of the Rymer decision specifically addresses
3 the issue of attorney fees which is precisely what Mr.
4 Patterson is seeking here. His time as compensation at
5 his hourly attorney civil rate of \$300 an hour for
6 defending -- or pursuing this claim is for all intents
7 and purposes his own attorney fees. Those are not
8 recoverable under any circumstances unless provided by
9 case law or statute. He can't provide any authority for
10 that.

11 That is my position on the loss time portion of
12 things.

13 THE COURT: All right.

14 MR. TRAYNHAM: In terms of the loss use if Your
15 Honor if it pleases the Court I will address that very
16 briefly, Your Honor.

17 THE COURT: If you'll feel better you can address
18 it.

19 MR. TRAYNHAM: Well, I will sit down, Your Honor,
20 I think you probably heard enough from me at this point.

21 THE COURT: All right. Mr. Patterson.

22 MR. PATTERSON: Yes, sir. On the loss of use, you
23 already read the brief, I think it is clear that Judge
24 Zamore didn't follow the law of South Carolina or any
25 other place.

1 The loss of use is not equivalent to funds
2 expended. It is equivalent to the time you lost your
3 vehicle and that was 23 days and it comes to the sums
4 that are listed both in the judgement and then in my
5 brief as well.

6 THE COURT: Well, it looks like he should have
7 given you a little more money but I am not going to
8 reverse it. It is just like trying it in front of a
9 jury. They don't have to give you what you testified
10 to.

11 MR. PATTERSON: If I might finish Your Honor.

12 THE COURT: I'll let you finish.

13 MR. PATTERSON: On the loss of use the law
14 requires that I be given, and the jury instructions in
15 the State and every decision in the Court entitles me to
16 compensation. Judge Zamore specifically gave me only
17 out of pocket and that is not the correct measure of
18 damages Your Honor. I went to small claims court hoping
19 for a little measure of justice after all the time and
20 effort they put me through to get anywhere, but I didn't
21 even get the law and that is what I am asking this Court
22 to do is at least impose that part of it.

23 Now, as far as the loss time - -

24 THE COURT: All I can do is send it back down and
25 then he will give you ten more dollars and you will be

1 right back here again.

2 MR. PATTERSON: Well, Your Honor, I thought you
3 could actually - -

4 THE COURT: I am sorry it's a fact question. You
5 say you lost \$300 an hour. He can just say -- he can
6 find that you didn't do that.

7 MR. PATTERSON: Well then, that would be
8 appropriate, Your Honor, but he can't do it on the basis
9 of improper factors. He has got to look at it straight
10 up and say no, you didn't spend this time, or no, you
11 are not entitled to compensation.

12 THE COURT: The fact that his Order does that, I'm
13 sorry.

14 MR. PATTERSON: Okay, but the loss of use part of
15 it he just flat missed and the case is fully developed
16 and you can award that, I think, plus my costs.

17 THE COURT: What kind of cost are you talking
18 about?

19 MR. PATTERSON: Well, he awarded the \$80 in costs
20 and then \$150 cost here.

21 THE COURT: What kind of law do you practice.

22 MR. PATTERSON: I am a sole practitioner, so
23 pretty much everything except bankruptcy.

24 THE COURT: Where do you practice?

25 MR. PATTERSON: Lancaster. And most of my cases

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most of my work in South Carolina has been appointed criminal and I do personnel injury work.

THE COURT: I have been chief judge there all year I have been chief judge there before. I have been there a lot and I have never seen you. That's all.

MR. PATTERSON: Yes, sir. Most of my work in Lancaster has been appointed criminal work and we have seen each other there. You may not remember me. I tend to -- obviously I get the leftovers from the public defender and then the other work that I do is in -- I came from Arkansas, so I still got clients that are all over the States. I got one client in particular that I represent all over the United States because he has got a national service company and I spend a lot of time with that, and then the other work I have done has been a couple -- I had a couple - - well, I had a wrongful arrest in Kershaw. I represented him in.

THE COURT: Property damage cases are the worst ones we deal with and there is not enough money involved for an attorney to get involved.

MR. PATTERSON: That is exactly right.

THE COURT: And you can't get compensated for your time in pursuing it.

MR. PATTERSON: Now, that is not what I asked for. I asked for the time I lost because of the accident, not

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doing legal work, but because of the accident. There is a difference, Your Honor.

THE COURT: I understand you differentiated that but the magistrate didn't find that. He found just like everybody else. You didn't lose any more than anybody in the normal circumstances would have.

MR. PATTERSON: But, Your Honor, the criteria he expressed which stated in his Order were wrong and they were wrong for the reasons I already gone through, but in particular there is no requirement for me to lose money. I lost time, which is my money. That is all I got. I am like every other person in the world. I got what is it, like 168 hours in a week and they take 16 of them. They taken that much time and money from me regardless of where I choose to spend it. Judge Zamore said I hadn't specified that I lost a particular case or I didn't get my work done. Judge Zamore was saying for that purpose that I had to commit malpractice or default in my obligations. The fact that I found the time, I made the time, still didn't detract from the fact that I had time taken from my work producing and income producing efforts taken away for this thing that was not my fault. I am not being made whole in any fashion.

THE COURT: You don't ever get whole in a wreck case where there is property damage. Nobody has ever

1 been made whole. Forget about it. I have been doing it
2 over 25 years. Property damages, nobody ever gets
3 whole. There is no way to get whole.

4 MR. PATTERSON: I could at least get whole in my
5 loss of use, Your Honor. That is the law.

6 THE COURT: He said you didn't convince him that
7 pre-existing problems didn't cause part of that. I am
8 paraphrasing what he said..

9 MR. PATTERSON: No, that is not in there, Your
10 Honor. You misread that.

11 THE COURT: Well, the Magistrate made more
12 findings then they normally make. He said you didn't
13 convince him you lost anything other than income.

14 MR. PATTERSON: That was the wages part of it or
15 the lost income part of it.

16 I am saying that while that is arguable and subject
17 to interpretation I think he has got it wrong, but the
18 part about the loss of use he absolutely got wrong. He
19 awarded the out of pocket only and that is not the
20 measure of damages required under South Carolina Law.
21 That you can fix without sending it back to the judge.
22 You can enter the Order in fact imposes the correct
23 amount for the loss of use by the law.

24 THE COURT: I think I just going to deny you.
25 Sorry.

1 His Order is much better than most. He makes all
2 kinds of findings in there.

3 MR. PATTERSON: Your Honor, verbiage doesn't
4 justify.

5 THE COURT: Yes, but he addresses them. Most
6 Magistrates don't. They would have just said, I find
7 for the plaintiff \$720. He went to the trouble saying
8 why he didn't order you -- give you \$300 per hour.

9 MR. PATTERSON: I don't accept that he is right --

10 THE COURT: I understand.

11 MR. PATTERSON: -- that he is right in any fashion
12 on the loss of use. You know, he has taken a per se
13 rule that a self-employed attorney can't be compensated
14 for the time he loses is what that is creating.

15 THE COURT: That is what you are saying. That is
16 not necessarily so, But in this case he made enough
17 factual findings to be sustained.

18 If he had ruled for you on all you wanted I mean I
19 would have left it like it was.

20 MR. PATTERSON: Well, Your Honor, if he had ruled
21 for me on all I wanted I wouldn't be up here.

22 THE COURT: I understand that.

23 MR. PATTERSON: On the other hand if he had also
24 given me the appropriate measure for my loss of use I
25 would have probably not been up here either because that

1 is not arguable. That is the law of South Carolina.
2 That is the law of every place in the land and right
3 now I am left with -- I still haven't been compensated.
4 That is what has brought this whole lawsuit by in first
5 place. Obviously I wasn't dealing with Mr. Carmona
6 Ortega. He appeared a couple of times. He has got an
7 insurance company. That is why there is a lawyer here
8 and that insurance company ran me through the hoops and
9 made jump over all their little rails and they wouldn't
10 help me get a car when I had to travel and so I rented a
11 car that was comparable and then they didn't want to
12 compensate that. And so that created this whole thing
13 and basically they are walking away without ever meeting
14 their legal obligations. Any of them. And that is what
15 is frustrating at this point.

16 THE COURT: I understand your frustration, but I am
17 not going to alter it. All right.

18 MR. TRAYNHAM: Your Honor, I don't want to beat a
19 dead horse but in anticipation of possible further
20 appeal may I make one or two points on the record?

21 THE COURT: You can prepare an Order.

22 MR. TRAYNHAM: All right. I will do that, Your
23 Honor. Thank you.

24 THE COURT: You can't put anything in the Order
25 that is not in your brief.

1 MR. TRAYNHAM: Very well, Your Honor.

2 THE COURT: Send it to Camden, self-addressed
3 stamped envelope.

4 MR. PATTERSON: Explain to me the process, of the
5 Order, Your Honor, and what you anticipate it will
6 contain.

7 THE COURT: He will copy you with it. If you
8 object to anything in it just write it.

9 MR. PATTERSON: I am going to be traveling starting
10 Friday.

11 THE COURT: Good.

12 MR. PATTERSON: And so if I can have maybe two
13 weeks after I get it from him.

14 THE COURT: You can do that. I will be at the
15 beach with my kids and grandkids next week.

16 MR. PATTERSON: Thank you, Your Honor.

17 THE COURT: And with a heavy heart, this is not
18 something I will be thinking about and researching while
19 I am down there.

20 MR. PATTERSON: I didn't expect anything different.

21 THE COURT: Once I get the Order you can object to
22 it.

23 MR. PATTERSON: Thank you.

24 MR. TRAYNHAM: Thank you, Your Honor.

25 MR. PATTERSON: May we be excused?

THE COURT: Sure.

(END OF TRANSCRIPT)

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C E R T I F I C A T E

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I, the undersigned Aileen Butler, Official Court Reporter for the Seventh 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 in the captioned case, in the Circuit Court for Chester County, South Carolina, on the 17th day of July, 2013.

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

December 30, 2013

Aileen Butler



1st 7:30 AM - 6:00 PM TU 7:30 AM - 6:00 PM
 WE 7:30 AM - 6:00 PM TH 7:30 AM - 6:00 PM
 FR 7:30 AM - 6:00 PM SA 7:00 AM - 12:00 PM
 SU CLOSED REF# 6E2C50

OWNER OF VEHICLE: ENTERPRISE LEASING COMPANY - SOUTHEAST
 BRANCH ADDRESS: 801 GOLD HILL RD., FORT MILL, SC. 29727 (803) 548-7966

RENTAL TYPE RETAIL		SOURCE # RETAIL REN		ID # 295	RENTAL AGREEMENT NO	D 362343
09/24/2009 1:41 PM		RENTER PATTERSON		THURMAN		VEHICLE \$24.75/HOUR \$87.99/DAY \$487.99/WEEK
START CHARGES IF DIFFERENT						
ORIGINAL VEHICLE						
COLOR SILVE	LICENSE NO TEMP					
MODEL TAHO	ECAR# 7867MS					
MILE-AGE	IN	OUT				
DRIVEN	AA					
CONDITION AND FUEL X LEVEL AGREED TO RENTER		BILL TO N COMPANY		REFERENCE NUMBER:		
		ATTN:		PHONE EXT		
NO GASOLINE REFUNDS		NO OTHER DRIVERS PERMITTED		ADDITIONAL AUTHORIZED DRIVER(S) - EXCEPT AS REQUIRED BY LAW, NONE PERMITTED WITHOUT OWNERS WRITTEN APPROVAL. REQUEST OWNERS PERMISSION TO ALLOW		
NO GASOLINE REFUNDS		NO OTHER DRIVERS PERMITTED		WHO IS UNDER MY CONTROL AND DIRECTION TO DRIVE VEHICLE FOR ME AND ON MY BEHALF. I AM RESPONSIBLE FOR THEIR ACTS WHILE THEY ARE DRIVING, AND FOR FULFILLING TERMS AND CONDITIONS OF THIS RENTAL AGREEMENT (AGREEMENT). USE OF VEHICLE BY AN UNAUTHORIZED DRIVER WILL AFFECT MY LIABILITY AND RIGHTS UNDER THIS AGREEMENT.		
NO GASOLINE REFUNDS		NO OTHER DRIVERS PERMITTED		PERMISSION GRANTED TO OPERATE VEHICLE ONLY IN THE STATE OF RENTAL AND THE FOLLOWING STATE(S): SC/GA/AL/NC		
NO GASOLINE REFUNDS		NO OTHER DRIVERS PERMITTED		OPERATION IN ANY OTHER STATE OR COUNTRY WILL AFFECT YOUR LIABILITY AND RIGHTS UNDER THIS AGREEMENT.		
NO GASOLINE REFUNDS		NO OTHER DRIVERS PERMITTED		RENTER DECLINES OPTIONAL DAMAGE WAIVER (DW) AND ASSUMES DAMAGE RESPONSIBILITY. SEE PAGE 2, PARAGRAPH 6. RENTER: X Declines DW		
NO GASOLINE REFUNDS		NO OTHER DRIVERS PERMITTED		RENTER ACCEPTS OPTIONAL DAMAGE WAIVER (DW) AT FEE SHOWN IN COLUMN TO RIGHT. SEE OPTIONAL PRODUCTS NOTICE TO LEFT AND PAGE 3, PARAGRAPH 16. DW IS NOT INSURANCE. State Accepts DW		
NO GASOLINE REFUNDS		NO OTHER DRIVERS PERMITTED		RENTER DECLINES OPTIONAL PERSONAL ACCIDENT INSURANCE (PAI) SEE PAGE 2, PARAGRAPH 9. RENTER: X Declines PAI		
NO GASOLINE REFUNDS		NO OTHER DRIVERS PERMITTED		RENTER ACCEPTS OPTIONAL PERSONAL ACCIDENT INSURANCE (PAI) AT FEE SHOWN IN COLUMN TO RIGHT. SEE OPTIONAL PRODUCTS NOTICE TO LEFT AND PAGE 3, PARAGRAPH 18. \$2000 Accepts PAI		
NO GASOLINE REFUNDS		NO OTHER DRIVERS PERMITTED		RENTER DECLINES OPTIONAL SUPPLEMENTAL LIABILITY PROTECTION (SLP) SEE PAGE 2, PARAGRAPH 7. RENTER: X Declines SLP		
NO GASOLINE REFUNDS		NO OTHER DRIVERS PERMITTED		RENTER ACCEPTS OPTIONAL SUPPLEMENTAL LIABILITY PROTECTION (SLP) AT FEE SHOWN IN COLUMN TO RIGHT. SEE OPTIONAL PRODUCTS NOTICE TO LEFT AND PAGE 3, PARAGRAPH 17. Accepts SLP		
ACKNOWLEDGMENT OF THE ENTIRE AGREEMENT WHICH CONSISTS OF PAGES 1 THROUGH 4. I HAVE READ AND AGREE TO THE TERMS AND CONDITIONS ON PAGES 1 THROUGH 4 OF THIS AGREEMENT AND BY MY SIGNATURE BELOW I AM THE "RENTER" UNDER THIS AGREEMENT. BY SIGNING BELOW, I AM AUTHORIZING OWNER TO PROCESS CHARGES ON MY CREDIT CARD(S) AND/OR DEBIT CARD(S) FOR ADVANCE DEPOSITS, INCREMENTAL AUTHORIZATIONS/DEPOSITS, AND CHARGES INCURRED, AS WELL AS PAYMENTS REFUSED BY A THIRD PARTY TO WHOM BILLING WAS DIRECTED. I CERTIFY THAT THE DRIVERS LICENSE(S) PRESENTED IS CURRENTLY VALID AND IS NOT SUSPENDED, EXPIRED, REVOKED, CANCELLED OR SURRENDERED.						
REPLACEMENT VEHICLE		RENTER: X		DATE 09/24/2009		FUEL CHARGE \$3.80/GALLON
OWNER REP X		EMPL # E790BV		SALES TAX 7.00%		SC RENTAL SURCHARGE 5.00%
COLOR	LICENSE NO.	I WILL RETURN CAR BY:		DEPOSIT(S):		
MODEL	ECAR#	DATE	TIME	AMOUNT	PAID BY	
MILE-AGE	IN	10/01/2009	1:30 PM	\$626.39	XXXXXXXXXXXX8706	09/24/2009
MILE-AGE	OUT	ADDITIONAL INFORMATION				
CONDITION AND FUEL X LEVEL AGREED TO RENTER		NO GASOLINE REFUNDS		TOTAL CHARGES		
		NO GASOLINE REFUNDS		DEPOSITS		
NO GASOLINE REFUNDS		NO GASOLINE REFUNDS		REFUNDS		
NO GASOLINE REFUNDS		NO GASOLINE REFUNDS		AMOUNT DUE		
NO GASOLINE REFUNDS		NO GASOLINE REFUNDS		CLOSED BY		
NO GASOLINE REFUNDS		NO GASOLINE REFUNDS		PAID BY CASH CHECK CHARGE		
NO GASOLINE REFUNDS		NO GASOLINE REFUNDS		RECEIPT OF CASH REFUND DATE AMOUNT RECEIVED BY		

OWNER IS AN AFFILIATE OF ENTERPRISE RENT-A-CAR COMPANY, WHICH OWNS ALL RIGHTS TO ENTERPRISE NAMES AND MARKS. © ENTERPRISE LEASING COMPANY - SOUTHEAST, 2009 520.37 520.39

ENTERPRISE LEASING COMPANY - SOUTHEAST, 597 LANCASTER BYPASS EAST, LANCASTER, SC 297204726 (803)
286-5322

RENTAL AGREEMENT REF#
362343 62ZCS0

SUMMARY OF CHARGES

RENTER
PATTERSON, THURMAN

DATE & TIME OUT
09/24/2009 01:41 PM
DATE & TIME IN
10/01/2009 11:57 AM

BILLING CYCLE
24-HOUR

VEH #1 2009 CHEV TAHO 2LT2
VIN# 1GNEC23389R242839
LIC# TEMP
MILES DRIVEN 1245

Charge Description	Date	Quantity	Per	Rate	Total
TIME & DISTANCE	09/24 - 10/01	1	WEEK	\$469.99	\$469.99
REFUELING CHARGE	09/24 - 10/01				\$0.00
Subtotal:					\$469.99
Taxes & Surcharges					
SC RENTAL SURCHARGE	09/24 - 10/01			5%	\$23.50
SC SALES TAX	09/24 - 10/01			7%	\$32.90
Total Charges:					\$526.39

Total Amount Due \$0.00

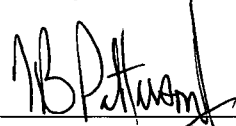
PAYMENT INFORMATION
AMOUNT PAID \$526.39
TYPE Visa

CREDIT CARD NUMBER
XXXXXXXXXXXX8706 PENDING

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 any other material.

May 1, 2014



T. B. Patterson, Jr.
Post Office Box 340
Lancaster, South Carolina 29721-0340
(803) 286-6999
Attorney for Appellant (Pro se)