

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
In the Court of Common Pleas for the Ninth Circuit

Kristi Lea Harrington, Circuit Court Judge

Appellate Case No. 2018-001158

RECEIVED
JUL 03 2019
SC Court of Appeals

Curtis Mills Respondent

v.

The South Carolina State Ports Authority Appellant

RECORD ON APPEAL

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Charleston, SC 29492
(843) 619-4426

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***Counsel for Appellant South Carolina State
Ports Authority***

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PO Box 1896
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Counsel for Respondent Curtis Mills

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
In the Court of Common Pleas for the Ninth Circuit

Kristi Lea Harrington, Circuit Court Judge

Appellate Case No. 2018-001158

Curtis Mills Respondent

v.

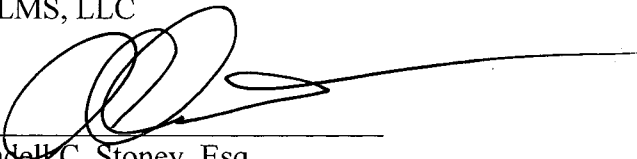
The South Carolina State Ports Authority Appellant

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Record on Appeal contains all materials proposed by the parties to be included in the Record on Appeal and does not include any other materials.

June 21, 2019

BARNWELL WHALEY PATTERSON &
HELMS, LLC

By: 
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*Counsel for Appellant South Carolina State
Ports Authority*

2016-CP-10-5892

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Curtis Mills,)
)
Plaintiff,)
)
South Carolina State Ports Authority,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
Case No.: 14-CP-10-2908

CONSENT ORDER TO RESTORE
40(j)

FILED
2016 NOV -2 PM 12:11
JULIE J. ARMSTRONG
CLERK OF COURT

The Plaintiff, by and through their undersigned Counsel and with the Consent of the Defendant, hereby moves this Court , pursuant to South Carolina Rules of Civil Procedure 40(j), for an Order restoring this case to the trial roster.

IT IS HEREBY ORDERED that this case be restored to the trial roster pursuant to Rule 40(j), SCRPC.

IT IS SO ORDERED.

This 28 day of Oct., 2016

T. L. Hyatt
Acting CHIEF ADMINISTRATIVE JUDGE
NINTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Curtis Mills,

☐ Plaintiff

v.

The South Carolina State Ports Authority,

☐ Defendant.

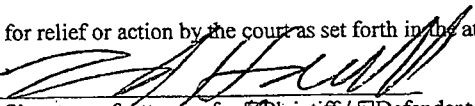
IN THE COURT OF COMMON PLEAS

2016-CP-10-5892

CASE NO.
14-CP-10-2908

MOTION AND ORDER INFORMATION

FORM AND COVER SHEET

Plaintiff's Attorney: Ladson F. Howell, Jr., Bar No. 66282 Address: Howell & Christmas, LLC P.O. Box 1896 Mt. Pleasant, SC 29465 phone: 843-849-2800 (843) 884-2007 e-mail: lad@howellandchristmas.com		Defendant's Attorney: Randell C. Stoney, Jr., Esquire Barnwell, Whaley, Patterson & Heir Address: 288 Meeting Street, Ste. 200 Charleston, SC 29401 phone: 843-577-770 fax: 843-577-7708 email: rstoney@barnwell-whaley.com other:	
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: Motion to Have Case Stricken From Docket by Agreement (SCRCP 40(j)) Estimated Time Needed: n/a Court Reporter Needed: ☐ YES / ☒ NO			
SECTION II: Motion/Order Type ☐ Written motion attached ☒ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☒ Plaintiff / ☐ Defendant April 15, 2016 Date submitted			
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$25.00 ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE _____ CODE: _____ Date: _____	

CLERK'S VERIFICATION

Date Filed: _____

Collected by: _____

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED - AMOUNT DUE: _____

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2016-CP-10-5892

CURTIS MILLS

SOUTH CAROLINA STATE PORTS
AUTHORITY

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: **We, the jury, find for the Plaintiff Curtis Mills against South Carolina State Ports Authority.**

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

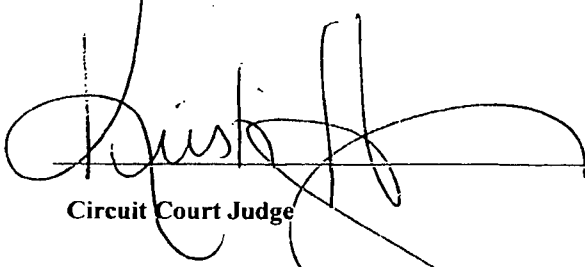
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Curtis Mills	South Carolina State Ports Authority	\$616,710.07 Actual Damages
		\$

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest

or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**


Circuit Court Judge

2151
Judge Code

6/1/18
Date

For Clerk of Court Office Use Only

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

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: Denise Lauder

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
CURTIS MILLS,)
)
Plaintiff,)
)
v.)
)
)
SOUTH CAROLINA STATE PORTS)
AUTHORITY,)
)
Defendant.)
)
)
_____)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO. 2016-CP-10-5892

Verdict Form

1. Was the Defendant negligent?

☒ YES – Go to Question 2.

☐ NO – STOP deliberations.

2. Was the Defendant's negligence a proximate cause of the Plaintiff's injuries?

☒ YES – Go to Question 3.

☐ NO – STOP deliberations.

3. Please state the amount of damages, if any, sustained by the Plaintiff.

\$ 616,710.07 Actual Damages

I certify that this decision is the unanimous decision of the jury.


Michelle Turner, Foreperson

~~May~~ June 1, 2018

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016- CP-10-5892

CURTIS MILLS,

THE SOUTH CAROLINA STATE PORTS AUTHORITY

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Post-trial Motions were heard on June 8, 2018. Defendant's Motion for New Trial Upon Failure to Charge Comparative Negligence, Motion for J.N.O.V., New Trial, or New Trial Nisi Remittitur Because the Jury's Verdict Was Excessive and Not Supported by the Evidence, and the Motion for J.N.O.V. or a New Trial Under the "Thirteenth Juror" Doctrine Because There is No Evidence Supporting the Jury's Liability Verdict are denied. The Defendant's Motion to Reduce the Verdict to Reflect the Caps Set Forth in the South Carolina Tort Claims Act is granted with the concession of the Defendant. The verdict is reduced to \$300,000.00, pursuant to the South Carolina Tort Claims Act, S.C. Code 15-78-120(a).

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
CURTIS MILLS	SOUTH CAROLINA STATE PORTS AUTHORITY	\$300,000.00
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest

Circuit Court Judge

Judge Code

Date

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

CLERK OF COURT

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

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

CURTIS MILLS,

Plaintiff(s)

vs.

THE SOUTH CAROLINA STATE PORTS
AUTHORITY,

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

14- CP - 10 - 2908

(Please Print)

Submitted By: Ladson F. Howell, Jr.

Address: 250 Mathis Ferry Rd. Ste. 102
Mt. Pleasant, SC 29464

SC Bar #: 66282

Telephone #: 843-849-2800

Fax #: 843-884-2007

Other:

E-mail: lad@howellandchristmas.com

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

DOCKETING INFORMATION (Check all that apply)

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

☒ **JURY TRIAL** demanded in complaint.

☐ **NON-JURY TRIAL** demanded in complaint.

☐ This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.

☐ This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.

☐ This case is exempt from ADR (certificate attached).

NATURE OF ACTION (Check One Box Below)

Contracts

- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ Employment (120)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Other (199)

Torts - Professional Malpractice

- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)
- ☐ Notice/ File Med Mal (230)
- ☐ Other (299)

Torts - Personal Injury

- ☐ Assault/Slander/Libel (300)
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☒ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Other (399)

Real Property

- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499)

Inmate Petitions

- ☐ PCR (500)
- ☐ Sexual Predator (510)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

Judgments/Settlements

- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Other (799)

Administrative Law/Relief

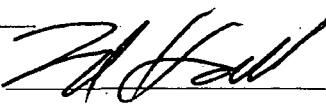
- ☐ Reinstate Driver's License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture (840)
- ☐ Other (899)

Appeals

- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Administrative Law Judge (980)
- ☐ Public Service Commission (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

Special/Complex /Other

- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)

Submitting Party Signature: 

Date: May 5, 2014

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

FOR MANDATED ADR COUNTIES ONLY

Florence, Horry, Lexington, Richland, Greenville and Anderson

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

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

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

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

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Curtis Mills,

Plaintiff,

v.

The South Carolina State Ports
Authority,

Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO: 14-CP-10-2908

JULIE J. ARMSTRONG
CLERK OF COURT

BY _____

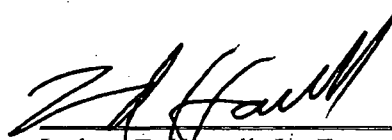
SUMMONS

(Breach of Implied Warranty of Workmanlike
Performance, Negligence: S.C. Tort Claims
Act)

TO THE ABOVE NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the Plaintiff or his attorney, Ladson F. Howell, Jr., with Howell and Christmas, LLC, at 250 Mathis Ferry Road., Ste. 102, Mt. Pleasant, South Carolina 29464 within thirty (30) days from the date of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for judgment by default for the relief demanded in the Complaint.

HOWELL AND CHRISTMAS, LLC



Ladson F. Howell, Jr., Esq
Reese M. Stidham, IV, Esq.
250 Mathis Ferry Rd., Ste. 102
Mt. Pleasant, SC 29464
ATTORNEYS FOR PLAINTIFF

Mt. Pleasant, South Carolina
May 5, 2014

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Curtis Mills,

Plaintiff,

v.

The South Carolina State Ports
Authority,

Defendant.

FILED
IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO: 14-CV-00228 PM 3:46

JULIE J. ARMSTRONG
CLERK OF COURT

BY _____

COMPLAINT

(Breach of Implied Warranty of
Workmanlike Performance,
Negligence: S.C. Tort Claims Act)

TO THE ABOVE NAMED DEFENDANT:

NOW COMES the Plaintiff, above named, complaining of the Defendant, above named, and would respectfully allege and show unto this Honorable Court as follows:

1. That the Plaintiff, Curtis Mills, is a citizen and resident of the County of Charleston, South Carolina.

2. That the Defendant, The South Carolina State Ports Authority ["SCSPA"], upon information and belief, is a political subdivision of the State of South Carolina and, as such, is subject to this action under the provisions of the South Carolina Tort Claims Act.

3. That this Honorable Court has jurisdiction of the parties and subject matter herein set forth.

4. That included among the activities of the Defendant SCSPA is the operation and maintenance of a public port facility known as the "Wando Terminal" on the Cooper River in the County of Charleston, State of South Carolina.

5. That among the equipment owned, maintained and operated by the Defendant SCSPA at the aforesaid terminal on October 4, 2012, at approximately 3:16p.m., was a yard caterpillar used for the loading and unloading of containers aboard vessels over which the Defendant SCSPA, its agents, employees, representatives and servants had exclusive maintenance and operational responsibility.

6. That said yard caterpillar was used by the Defendant SCSPA to load and unload cargo containers to and from trucks transporting containerized cargo in interstate and foreign commerce.

7. That Plaintiff pulled his truck up to be unloaded by the yard caterpillar, which was operated by an employee of Defendant SCSPA, in order for the yard caterpillar to lift the container off the chassis attached to the truck. That the yard caterpillar approached Plaintiff's truck from the side and attached to the container and then fully accelerated its hoisting mechanism to hoist the box quickly from the chassis. The yard caterpillar struck Plaintiff's container causing the container to shift back into a locked position,

8. The yard caterpillar picked up the truck along with the container still attached to the chassis. When Plaintiff's truck, along with trailer and container, was lifted in the air, the yard caterpillar operator did not blow his horn as is required to alert the Plaintiff that he was going to be lowered back down to the ground to unlock the container from the chassis so that the container could be properly removed.

9. The caterpillar operator instead kept the truck, trailer and container lifted in the air approximately six (6) to eight (8) feet from the ground and began shaking the container until it finally broke loose from the chassis, causing the truck and chassis to fall violently to the ground.

That, as a result, the Plaintiff was thrown about of the cab of the truck when it fell to the ground.

10. That Plaintiff then moved his truck to assure that the container did not fall from the yard caterpillar and land on him or his truck. The yard caterpillar operator ignored Plaintiff's attempts to try and flag him down, and left the scene. Plaintiff then notified the port supervisor of the incident and that he was injured and the supervisor sent the port police to get the yard caterpillar operator and bring him to the office.

8. That as a direct and proximate result, the Plaintiff suffered grievous bodily and personal injuries as set forth more fully herein.

**FOR A FIRST CAUSE OF ACTION
BREACH OF IMPLIED WARRANTY OF WORKMANLIKE PERFORMANCE**

9. Each and every allegation contained in this Complaint which is not inconsistent with this cause of action is hereby incorporated in this cause of action as if repeated verbatim herein.
10. That at all times material hereto, the Defendant warranted to all those persons using the cargo container facility at the Wando Terminal and the yard equipment therein, that it would provide adequate equipment and a qualified equipment operator for conducting container handling activities at said facility. Pursuant thereto, the Defendant impliedly warranted that its equipment, including the yard caterpillar in question, would be safe and fit for its intended purpose of discharging container cargo on and off trucks.
11. That the Defendant's implied warranty of workmanlike performance extended to the longshoremen, such as Plaintiff, lawfully working at the Wando Terminal for the purpose of loading and discharging containerized cargo and utilizing equipment provided by the Defendant for that purpose.
-

12. That the Defendant SCSA charged and was paid certain fees, for the use of the container handling equipment in question, and in consideration for said fees, warranted that its equipment would be safe and fit for its intended purposes.
13. That the Defendant breached its implied warranty of workmanlike performance owed to the Plaintiff by failing to operate its yard caterpillar in a workmanlike manner.
14. That as a result of said accident, the Plaintiff suffered grievous bodily and personal injuries, all of which has and may in the future cause him to undergo much physical pain and suffering; has and may in the future cause him to have to spend money for medical services; has and may in the future cause him to lose money in the nature of wages, earnings, profits, and earning capacity; has and will in the future cause him trauma, anxiety, annoyance, mental anguish, loss of enjoyment of life, permanent impairment, inconvenience, and travel expenses related to medical care – all to his general damage and detriment.
15. That as a result of the actions and/or inactions of the Defendant SCSA, the Plaintiff is informed and believes that he is entitled to judgment against the Defendant, along with an appropriate amount of actual damages and punitive damages, the costs of this action, all applicable interest, and such other and further relief as the Court deems just and proper.

**FOR A SECOND CAUSE OF ACTION
NEGLIGENCE**

16. Each and every allegation contained in this Complaint which is not inconsistent with this cause of action is hereby incorporated in this cause of action as if repeated verbatim herein.

17. That pursuant to S.C. Code Ann. §15-78-40 (the S.C. Tort Claims Act), as an agency of the State of South Carolina, Defendant SCSPA has consented to be sued for its negligent and tortious conduct, as if a private individual, and is liable to the Plaintiff for his injuries resulting from the aforesaid negligent and tortious conduct.
18. That the Defendant was negligent, willful, wanton, careless, reckless, and grossly negligent at the time and place above mentioned, in one or more of the following particulars:
- a. In failing to properly maintain the aforesaid yard caterpillar;
 - b. In failing to properly inspect the aforesaid yard caterpillar to make certain that it was safe for use;
 - c. In failing to determine that the yard caterpillar was in a dangerous condition when performing the preventative maintenance that it did perform;
 - d. In failing to purchase and install devices on the yard caterpillar and the hustler to detect the improper lift of the chassis when they knew of and had been warned of dangers of lifting the cab and chassis with the container box and knew of the availability of economical electronic devices that would prevent the error by warning the yard caterpillar operator of an inadvertent lift of the cab and chassis, said error being the proximate cause of the subject accident;
 - e. In failing to undertake the necessary steps to make the yard caterpillar safe for use when SCSPA knew or should have known that it constituted an immediate hazard to those persons working below it;
 - f. In negligently assigning and entrusting equipment to one who is not competent to operate it;
-

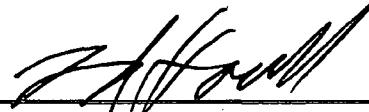
- g. In assigning an incompetent operator who had previous incidents of bad work;
- h. In lifting, prior to receiving a "lift" signal from the flagman.
- i. In disregarding the "all stop" signal given by the flagman;
- j. In failing to be attentive at all times during a lift;
- k. In fully accelerating the lift of the box before knowing that it was safe to do so when, in fact, it was not safe to do so;
- l. In failing to keep a proper lookout;
- m. In failing to use proper care and due diligence in the assembly and maintenance of a yard hustler, a dangerous instrumentality;
- n. In failing to maintain the proper degree of mental alertness required when operating a yard caterpillar so that the operator is alert;
- o. In requiring an unrealistic and unsafe rate of production;
- p. In encouraging and mandating work to be performed at unsafe speeds to increase productivity;
- q. In other manners to be proved at trial; and
- r. In generally failing to use the degree of care and caution that a reasonable and prudent 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 statutory and common laws of the State of South Carolina.

19. That as a result of said accident, the Plaintiff suffered serious bodily and personal injuries, all of which has and may in the future cause him to undergo much physical pain and

suffering; has and may in the future cause him to have to spend money for medical services; has and may in the future cause him to lose money in the nature of wages, earnings, profits, and earning capacity; has and will in the future cause him trauma, anxiety, annoyance, mental anguish, loss of enjoyment of life, permanent impairment, inconvenience, and travel expenses related to medical care – all to his general damage and detriment.

20. That as a direct and proximate result of the Defendant's actions and/or actions the Plaintiff is informed and believes that he is entitled to judgment against the Defendant in an appropriate amount of actual damages, together with punitive damages in an appropriate amount to be determined by the Court, the costs of this action and such other and further relief as this Court deems just and proper.

HOWELL AND CHRISTMAS, LLC



Ladson F. Howell, Jr., Esq.
Reese M. Stidham, IV, Esq.
250 Mathis Ferry Rd., Ste. 102
Mt. Pleasant, SC 29464
ATTORNEYS FOR PLAINTIFF

Mt. Pleasant, South Carolina
May 5, 2014

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CURTIS MILLS,)
Plaintiff,)

CASE NO.: 2014-CP-10-2908

v.)
SOUTH CAROLINA STATE)
PORTS AUTHORITY,)
Defendant.)

ANSWER
(JURY TRIAL DEMANDED)

FILED
2014 JUN 20 PM 3:40
JULIE J. STRONG
CLERK
COURT

TO: Ladson F. Howell, Jr., Esquire, Attorney for Plaintiff:

NOW COMES THE DEFENDANT SOUTH CAROLINA STATE PORTS AUTHORITY (hereinafter referred to as "Defendant SCSPA"), by and through its undersigned attorneys, and who reserving all rights to amend this Answer within thirty (30) days pursuant to Rule 15(a) of the South Carolina Rules of Civil Procedure, reserving all rights to include in the Answer any defenses and/or objections under Rule 12 of the South Carolina Rules of Civil Procedure, and reserving all rights to make any motions under Rule 12 of the South Carolina Rules of Civil Procedure, hereby answers Plaintiff's Complaint as follows that each and every allegation of the Complaint, not hereinafter specifically admitted is denied:

1. Defendant SCSPA will admit Plaintiff's Paragraph 1 upon information and belief;
2. Defendant SCSPA admits Plaintiff's Paragraph 2;
3. Defendant SCSPA admits Plaintiff's Paragraph 3;
4. Defendant SCSPA admits Plaintiff's Paragraph 4 as to operation and maintenance of the port facility but denies the remaining allegation that it is a public facility;

5. Defendant SCSPA admits so much of Plaintiff's Paragraph 5 as to the ownership, maintenance and operation of the machine in question on the date alleged but denies the remaining allegations regarding the specific use of this particular piece of equipment;

6. Defendant SCSPA admits Plaintiff's Paragraph 6 as to the usage specified but has insufficient information to admit or deny the remaining allegations and thereby denies same and demands strict proof thereof ;

7. Defendant SCSPA denies Plaintiff's Paragraph 7 and thereby denies same and demands strict proof thereof;

8. Defendant SCSPA denies Plaintiff's Paragraph 8 and thereby denies same and demands strict proof thereof;

9. Defendant SCSPA denies Plaintiff's Paragraph 9 and thereby denies same and demands strict proof thereof;

10. Defendant SCSPA denies Plaintiff's Paragraph 10 and demands strict proof thereof;

11. Defendant SCSPA denies Plaintiff's Paragraph 11 numbered therein as 8.

**FOR A FIRST CAUSE OF ACTION
BREACH OF IMPLIED WARRANTY OF WORKMANLIKE PERFORMANCE**

12. Responding to Plaintiff's Paragraph twelve numbered "9", all responses heretofore are incorporated as if repeated herein verbatim;

13. Defendant SCSPA denies Plaintiff's thirteenth paragraph numbered "10";

14. Defendant SCSPA denies Plaintiff's fourteenth paragraph numbered "11";

15. Defendant SCSPA denies Plaintiff's fifteenth paragraph numbered "12";

16. Defendant SCSPA denies the sixteenth Paragraph of Plaintiff's Complaint numbered "13";

17. Defendant SCSPA denies the seventeenth Paragraph of Plaintiff's Complaint numbered "14";

18. Defendant SCSPA denies the eighteenth Paragraph of Plaintiff's Paragraph numbered "15";

**FOR A SECOND CAUSE OF ACTION
NEGLIGENCE**

19. Responding to Plaintiff's nineteenth paragraph of Plaintiff's Complaint numbered "16" all responses heretofore are incorporated as if repeated herein verbatim.

20. In responding to the twentieth Paragraph of the Plaintiff's Complaint numbered "17" the Defendant SCSPA admits the applicability of the South Carolina Tort Claims Act as governing;

21. The Defendant SCSPA denies Plaintiff's twenty-first paragraph of Plaintiff's Complaint numbered "18" including subparts a, b, c, d, e, f, g, h, i, j, k, l, m, n, o, q, and r and demands strict proof thereof;

22. The Defendant SCSPA denies Plaintiff's twenty-second paragraph of Plaintiff's Complaint numbered "19" and demands strict proof thereof;

23. The Defendant SCSPA denies Plaintiff's twenty-third paragraph of Plaintiff's Complaint numbered "20" and demands strict proof thereof.

FIRST AFFIRMATIVE DEFENSE

The Defendant SCSPA pleads sole negligence in that the Plaintiff herein failed to safely and adequately disengage the pins securing the container on the chassis which is his responsibility, thereby preparing the load for safe lifting by the top handler herein, said failure constituted sole negligence on the Plaintiff thereby precluding any recovery;

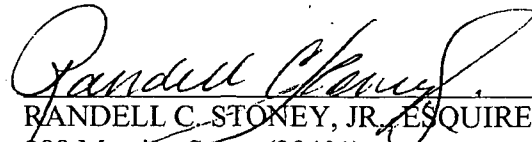
SECOND AFFIRMATIVE DEFENSE

Comparative negligence that the failure of the Plaintiff to completely disengage the locking mechanisms securing his load to his chassis thus preparing for a clean and safe lift constitutes negligence of an amount greater than any which would be assigned to the SCSPA top handler operator as any allegations of negligence against said operator for his actions occurring in the process of the lifting.

WHEREFORE, Defendant SOUTH CAROLINA STATE PORTS AUTHORITY having fully answered the Plaintiff's Complaint, Defendant prays:

- (a) That the Complaint against it be dismissed with prejudice at the cost of the Plaintiff;
- (b) That it recover costs, attorneys' fees and expenses herein incurred;
- (c) For leave to amend its pleadings to include any and all affirmative defenses that may arise and become applicable during the course and development of the lawsuit;
- (d) For a trial by jury on all issues properly so triable;
- (e) For any and all other proper relief to which this Defendant may be entitled.

**BARNWELL WHALEY PATTERSON &
HELMS, LLC**



RANDELL C. STONEY, JR., ESQUIRE
288 Meeting Street (29401)
Post Office Drawer H
Charleston, South Carolina 29402
Phone: (843) 577-7700 Facsimile: (843) 577-7708
Attorney for Defendant

June 20, 2014

Charleston, South Carolina

CERTIFICATE OF SERVICE

I certify that on June 20, 2014, I mailed or delivered a true copy of the foregoing pleading to counsel of record.

Ladson F. Howell, Jr.
Howell and Christmas, LLC
250 Mathis Ferry Road, Suite 102
Mt. Pleasant, South Carolina 29464
Attorney for Plaintiff

BARNWELL WHALEY PATTERSON & HELMS, LLC



BY _____

JULIE J. ARMSTRONG
CLERK OF COURT

2014 JUN 20 PM 3:40

FILED

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

Curtis Mills,

CASE NO.
14- CP-10-2908

☐ Plaintiff

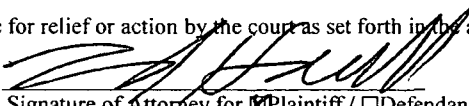
v.

MOTION AND ORDER INFORMATION

The South Carolina State Ports Authority,

FORM AND COVER SHEET

☐ Defendant.

Plaintiff's Attorney: Ladson F. Howell, Jr., Bar No. 66282 Address: Howell & Christmas, LLC P.O. Box 1896 Mt. Pleasant, SC 29465 phone: 843-849-2800 (843) 884-2007 e-mail: lad@howellandchristmas.com		Defendant's Attorney: Randell C. Stoney, Jr., Esquire Barnwell, Whaley, Patterson & Heir Address: 288 Meeting Street, Ste. 200 Charleston, SC 29401 phone: 843-577-770 fax: 843-577-7708 e-mail: rstoney@barnwell-whaley.com other:	
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: Motion to Have Case Stricken From Docket by Agreement (SCRCP 40(j)) Estimated Time Needed: n/a Court Reporter Needed: ☐ YES / ☒ NO			
SECTION II: Motion/Order Type ☐ Written motion attached ☒ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☒ Plaintiff / ☐ Defendant April 15, 2016 Date submitted			
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$25.00 ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE _____ CODE: _____ Date: _____	

CLERK'S VERIFICATION

Collected by: _____

Date Filed: _____

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED – AMOUNT DUE: _____

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Curtis Mills,

Plaintiff,

v.

The South Carolina State Ports
Authority,

Defendant.

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

CASE NO: 14-CP-10-2908

**MOTION TO HAVE CASE STRICKEN
FROM DOCKET BY AGREEMENT
RULE 40(J)**

FILED
2016 APR 22 PM 4:28
JULIE J. ARMSTRONG
CLERK OF COURT

Counsel for Plaintiff, pursuant to Rule 40(j) of the South Carolina Rules of Civil Procedure, has moved this Court for, and counsel for Defendant consents to, an Order striking this case from the docket. With the attached written consent of all parties adverse to the claims set forth in Plaintiff's Complaint, this Court finds this motion proper. It is, therefore,

ORDERED that this action shall be stricken from the trial docket of this circuit. It is, further

ORDERED that if these claims are restored to the docket upon motion of Plaintiff within one year of the date of this Order, the statute of limitations shall be tolled as to all consenting parties during the time this case is stricken. It is, further

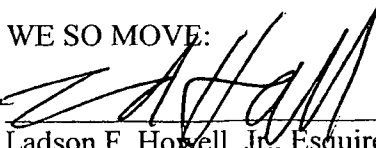
ORDERED that the party moving to restore this case to the docket shall provide all parties notice of the motion to restore at least 10 days before it is heard.

IT IS SO ORDERED.

Presiding Judge, Ninth Judicial Circuit

Charleston
Mt. Pleasant, South Carolina
Dated: 4/21/16

WE SO MOVE:



Ladson F. Howell, Jr., Esquire
HOWELL & CHRISTMAS, LLC
250 Mathis Ferry Rd., Ste. 102
P.O. Box 1896 (29465)
Mt. Pleasant, SC 29464
843-849-2800

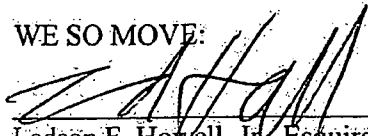
ATTORNEYS FOR PLAINTIFF

WE CONSENT:

Randell C. Stoney, Jr., Esquire
Barnwell, Whaley, Patterson & Heir
288 Meeting Street, Ste. 200
Charleston, SC 2941
843-577-7700

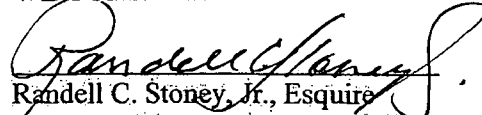
ATTORNEYS FOR DEFENDANT

WE SO MOVE:


Ladson F. Howell, Jr., Esquire
HOWELL & CHRISTMAS, LLC
250 Mathis Ferry Rd., Ste. 102
P.O. Box 1806 (29465)
Mt. Pleasant, SC 29464
843-849-2800

ATTORNEYS FOR PLAINTIFF

WE CONSENT:


Randell C. Stoney, Jr., Esquire
Barnwell, Whaley, Patterson & Heir
288 Meeting Street, Ste. 200
Charleston, SC 29401
843-577-7700

ATTORNEYS FOR DEFENDANT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO: 2016-CP-10-5892
	)	
Curtis Mills,	)	
	)	
Plaintiff,	)	PLAINTIFF'S PROPOSED
	)	REQUEST TO CHARGE
v.	)	NO. 2
	)	
The South Carolina State Ports	)	
Authority,	)	
	)	
Defendant.	)	

REQUEST TO CHARGE NO. 2

S.C. Requests to Charge, Civil -§ 23-8 Elements

Negligence means that a person did not use the same amount of care that a person of ordinary reason and prudence would exercise in the same circumstance. The word "careless" means the same thing.

To prevail in a cause of action against a defendant for negligence, the plaintiff must prove three essential elements by the greater weight or preponderance of the evidence.

First, he must show that the defendant was negligence, that is, that he did not use the same amount of care that a person ordinarily would have exercised in the same circumstances then existing.

Second, the plaintiff must prove that he was personally injured.

Third, he must prove that the defendant's negligence was a proximate cause of the plaintiff's injuries.

Respectfully Submitted,

HOWELL LAW GROUP, LLC



Ladson F. Howell, Jr., Esq

250 Mathis Ferry Rd., Ste. 102

P. O. Box 1896

Mt. Pleasant, SC 29464

843-849-2800

ATTORNEY FOR PLAINTIFF

May 25
Date: ~~March 13~~, 2018
Mt. Pleasant, South Carolina

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO: 2016-CP-10-5892

Plaintiff,

**PLAINTIFF'S PROPOSED
REQUEST TO CHARGE
NO. 3**

Defendant.

Respectfully Submitted,

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250 Mathis Ferry Rd., Ste. 102
P. O. Box 1896
Mt. Pleasant, SC 29464
843-849-2800

ATTORNEY FOR PLAINTIFF

May 25
Date: ~~March 15~~, 2018
Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Curtis Mills,

Plaintiff,

v.

The South Carolina State Ports
Authority,

Defendant.

) IN THE COURT OF COMMON PLEAS

) NINTH JUDICIAL CIRCUIT

) CASE NO: 2016-CP-10-5892

)
)
) **PLAINTIFF'S PROPOSED**
) **REQUEST TO CHARGE**
) **NO. 4**
)
)
)

REQUEST TO CHARGE NO. 4

S.C. Requests to Charge, Civil - §24-5 Burden of proof

The plaintiff has the burden of proving his damages by the greater weight of the evidence, but this does not mean that he must prove them to a mathematical certainty, or produce evidence of the precise amount of damages he has suffered - rather the evidence put forth by the plaintiff should be such as to enable you, the jury, to determine what amount of damages if fair, just and reasonable.

Respectfully Submitted,

HOWELL LAW GROUP, LLC



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250 Mathis Ferry Rd., Ste. 102
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Mt. Pleasant, SC 29464
843-849-2800

ATTORNEY FOR PLAINTIFF

May 25
Date: ~~March 13~~, 2018
Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Curtis Mills,

Plaintiff,

v.

The South Carolina State Ports
Authority,

Defendant.

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

CASE NO: 2016-CP-10-5892

**PLAINTIFF'S PROPOSED
REQUEST TO CHARGE
NO. 5**

REQUEST TO CHARGE NO. 5

S.C. Requests to Charge, Civil - § 24-10 Factors to consider

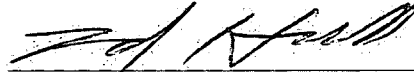
When one person is injured by the negligent acts of another, the injured person shall be entitled to be fully compensated for all injuries directly and proximately resulting from any negligent acts or omissions. In determining the amount of compensation for injuries suffered by the plaintiff, as a result of the defendant's negligence, it is proper to consider:

- (1) The expenses incurred for all necessary medical treatment;
- (2) The loss of time from work and income which resulted therefrom;
- (3) The impairment of the injured person's ability to work and earn a livelihood;
- (4) The character of the injury and the amount that would be necessary to make the injured person whole as respects permanent injuries;
- (5) The physical and mental pain and suffering endured by the injured party;
- (6) Such pain and suffering as it is reasonably certain will, of necessity, result in the

future from the injury: *Baldowski vs. United States*, 111 F. Supp. 653 (D/S.C. 1953);
McNeill vs. United States, 519 F. Supp. 284 (D.S.C. 1981).

Respectfully Submitted,

HOWELL LAW GROUP, LLC



Ladson F. Howell, Jr., Esq
250 Mathis Ferry Rd., Ste. 102
P. O. Box 1896
Mt. Pleasant, SC 29464
843-849-2800
ATTORNEY FOR PLAINTIFF

May 25
Date: ~~March 13~~, 2018
Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Curtis Mills,

Plaintiff,

v.

The South Carolina State Ports
Authority,

Defendant.

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

CASE NO: 2016-CP-10-5892

**PLAINTIFF'S PROPOSED
REQUEST TO CHARGE**

NO. 6

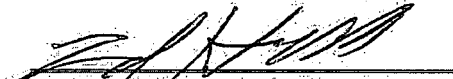
REQUESTS TO CHARGE NO. 6

S.C. Requests to Charge, Civil - §24-11 Future damages

A plaintiff is never entitled to recover conjectural or speculative damages. However, if you find that he is entitled to a verdict for actual damages, your verdict should include an amount to cover any damages that the evidence shows will be reasonably certain to occur in the future. These future damages must, of course, be the result of the defendant's negligence. Also, any future damages that you award must be reduced to their present-day value.

Respectfully Submitted,

HOWELL LAW GROUP, LLC

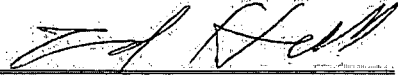


Ladson F. Howell, Jr., Esq
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843-849-2800

ATTORNEY FOR PLAINTIFF

May 25
Date: ~~March 13~~, 2018
Mt. Pleasant, South Carolina

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Mt. Pleasant, SC 29464
843-849-2800

ATTORNEY FOR PLAINTIFF

May 25
Date: ~~March 13~~, 2018
Mt. Pleasant, South Carolina

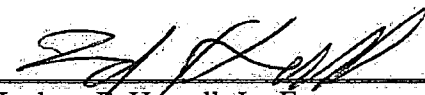
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO: 2016-CP-10-5892
	)	
Curtis Mills,	)	
	)	
Plaintiff,	)	PLAINTIFF'S PROPOSED
	)	REQUEST TO CHARGE
v.	)	NO. 18
	)	
The South Carolina State Ports	)	
Authority,	)	
	)	
Defendant.	)	

REQUEST TO CHARGE NO. 18
(Negligence)

The elements of the cause of action in negligence are (1) duty of care; (2) breach of that duty - i.e., negligence; (3) injury; and (4) causal relationship between that injury and negligence such that the negligence "proximately caused" the injury.
Snipes vs Piggly Wiggly St. Andrews, Inc., 269 S.C. 479, 238 S.E.2d 167 (1977)

Respectfully Submitted,

HOWELL LAW GROUP, LLC


 Ladson F. Howell, Jr., Esq
 250 Mathis Ferry Rd., Ste. 102
 P. O. Box 1896
 Mt. Pleasant, SC 29464
 843-849-2800
ATTORNEY FOR PLAINTIFF

May 25
 Date: ~~March~~ 13, 2018
 Mt. Pleasant, South Carolina

2

;

3

2

)

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)

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CASE NO: 2016-CP-10-5892

NO. 8

REQUESTS TO CHARGE NO. 8

Jury Consideration

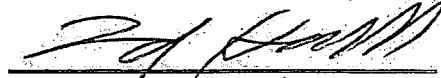
Any evidence tending to establish the nature, character, and extent of the plaintiff's alleged injuries, which are the natural and proximate consequences of the defendant's acts, are to be considered and weighed appropriately by you.

In personal injury actions, great latitude is allowed in the introduction of evidence to aid in determining the extent of damages; and as a broad general rule, any evidence which tends to establish the nature, character, and extent of injuries which are the natural and proximate consequences of the defendant's acts can be considered.

Martin vs. Mobley, 253 S.C. 103, 169 S.E.2d 278 (1969).

Respectfully Submitted,

HOWELL LAW GROUP, LLC



Ladson F. Howell, Jr., Esq
250 Mathis Ferry Rd., Ste. 102
P. O. Box 1896
Mt. Pleasant, SC 29464
843-849-2800

ATTORNEY FOR PLAINTIFF

May 25
Date: ~~March 13~~, 2018
Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO: 2016-CP-10-5892
	)	
Curtis Mills,	)	
	)	
Plaintiff,	)	PLAINTIFF'S PROPOSED
	)	REQUEST TO CHARGE
v.	)	NO. 9
	)	
The South Carolina State Ports	)	
Authority,	)	
	)	
Defendant.	)	
_____	)	

REQUESTS TO CHARGE NO. 9

General Measure of Recovery

A plaintiff is entitled to recover past and future medical expenses, disfigurement, loss of income, loss of earning capacity, pain and suffering, and future damages resulting from permanent injuries, if the plaintiff's alleged injuries flow from the defendant's wrongful act(s).

A plaintiff in a personal injury action is entitled to recover past and future medical expenses, disfigurement, loss of income, loss of earning capacity, pain and suffering, and future damages resulting from permanent injuries.

Gasque vs. Heublein, Inc., 315 S.E.2d 556 (S.C. App. 1984); *Watson vs. Wilkinson*

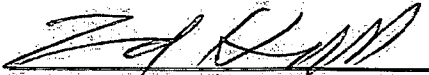
Trucking Company, 244 S.C. 217, 136 S.E.2d 286 (1964); *Baldowski vs. United States*,

11 F. Supp. 653 (D.S.C. 1953); *Martin vs. Fleissner GmbH*, 741 F.2d 61 (4th Cir. 1984);

Faust vs. South Carolina State Highway Dept., 527 F. Supp. 1021 (D.S.C. 1981).

Respectfully Submitted,

HOWELL LAW GROUP, LLC



Ladson F. Howell, Jr., Esq
250 Mathis Ferry Rd., Ste. 102
P. O. Box 1896
Mt. Pleasant, SC 29464
843-849-2800

ATTORNEY FOR PLAINTIFF

May 25
Date: ~~March 13~~, 2018
Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO: 2016-CP-10-5892
	)	
Curtis Mills,	)	
	)	
Plaintiff,	)	PLAINTIFF'S PROPOSED
	)	REQUEST TO CHARGE
v.	)	NO. 10
	)	
The South Carolina State Ports	)	
Authority,	)	
	)	
Defendant.	)	

REQUESTS TO CHARGE NO. 10

Medical expenses

The plaintiff is entitled to receive money damages for past and future medical expenses, if the plaintiff's alleged injuries flow from the defendant's wrongful act(s).

The general rule in personal injury actions is that the plaintiff may recover for the necessary and reasonable expenses caused by the injury such as amount necessarily paid for medicine, medical attendance, hospital expense, and care and nursing.
Sossamon vs. Nationwide Mutual Ins. Co., 243 S.C. 552, 135 S.E.2d 87, 91 (1964)

Respectfully Submitted,
HOWELL LAW GROUP, LLC

 Ladson F. Howell, Jr., Esq
 250 Mathis Ferry Rd., Ste. 102
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 Mt. Pleasant, SC 29464
 843-849-2800
ATTORNEY FOR PLAINTIFF

May 25
 Date: ~~March 13~~, 2018
 Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO: 2016-CP-10-5892
	)	
Curtis Mills,	)	
	)	
Plaintiff,	)	PLAINTIFF'S PROPOSED
	)	REQUEST TO CHARGE
v;	)	NO. 11
	)	
The South Carolina State Ports	)	
Authority,	)	
	)	
Defendant.	)	

REQUESTS TO CHARGE NO. 11

Future damages

A plaintiff is entitled to receive future damages for an injury if you are reasonably certain that the plaintiff will suffer future injury, reasonably flowing from the defendant's conduct. While you should not guess or speculate as to the amount of such future damages, the plaintiff need not prove future damages to a mathematical certainty.

Future damages in personal injury cases need not be proved to a mathematical certainty.
Haltiwanger vs Barr 258 S.C.27, 186 S.E.2d 819 (1972)

An injured party is not barred from a reasonable recovery merely because the party is unable to prove his damages to a degree of absolute certainty.
Thompson vs. Brotherhood of Sleeping Car Porters, 367 F.2d 489 (4th Cir. 1966)

Mere fact that the determination of future damages may be surrounded with difficulties does not render courts incompetent to grant relief but proof must establish, with reasonable certainty, probability that damage will result in a person wronged.
Winchester vs United Insurance Company, 231 S.C. 462, 99 S.E.2d (1957)

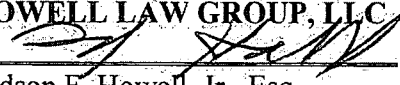
While proof with mathematical certainty of amount of loss or damages is not required in order for damages to be recoverable, evidence should be such as to enable court or jury to

determine amount with reasonable certainty or accuracy; neither existence, causation, nor amount of damages may be left to conjecture, guess or speculation.

Gray c. Southern Facilities, Inc., 256 S.C.; 558, 183 S.E.2d 438 (1971)

Respectfully Submitted,

HOWELL LAW GROUP, LLC


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Mt. Pleasant, SC 29464
843-849-2800

ATTORNEY FOR PLAINTIFF

Date: ~~March 13~~ ^{May 25}, 2018
Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Curtis Mills,)

Plaintiff,)

v.)

The South Carolina State Ports
Authority,)

Defendant.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO: 2016-CP-10-5892

**PLAINTIFF'S PROPOSED
REQUEST TO CHARGE
NO. 12**

REQUEST TO CHARGE NO. 12

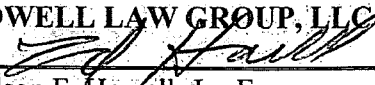
Loss of income

If you should find that the plaintiff is entitled to a verdict, then, in determining the plaintiff's loss of income, if any, I charge you that the plaintiff's income before the injury itself may afford a reasonable basis for you to award such damages.

Testimony as to earning for the ten month period immediately preceding the injury was admissible and afforded a reasonable basis upon which to determine loss of income. Loss of income or profits was therefore properly submitted as an element of damage.
Hicks vs. Battey, 259 S.C. 426, 192 S.E.2d 477, 480 (1972)

Respectfully Submitted,

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May 25
Date: ~~March 13~~, 2018
Mt. Pleasant, South Carolina

ATTORNEY FOR PLAINTIFF

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO: 2016-CP-10-5892
	)	
Curtis Mills,	)	
	)	
Plaintiff,	)	PLAINTIFF'S PROPOSED
	)	REQUEST TO CHARGE
v.	)	NO. 14
	)	
The South Carolina State Ports	)	
Authority,	)	
	)	
Defendant.	)	

REQUEST TO CHARGE NO. 14

Pain and suffering

1. Past

I charge you that pain and suffering in connection with a tort is a material element of damages. Pain and suffering have no market price. They are not capable of being exactly and accurately determined, and there is no fixed rule or standard whereby damages for them can be measured. Thus, if you should find that the plaintiff is entitled to a verdict, the amount which you may decide to award is left to your sound discretion.

Pain and suffering have no market price. They are not capable of being exactly and accurately determined, and there is no fixed rule or standard whereby damages for them can be measured. Hence, the amount of damages to be awarded for pain and suffering must be left to the judgment of the jury, subject only to correction by the courts for abuse. (Citations ommitted). *Edwards vs. Lawton*, 244 S.C: 276, 136 S.E.2d 708, 710 (1964).

2. Future

If you should find that the plaintiff is entitled to a verdict, you may consider physical pain and suffering as is reasonably certain will result in the future from the alleged injuries in

awarding damages to the plaintiff for personal injuries.

In arriving at a verdict in a personal injury action, the jury may include such damages for physical pain and suffering as is reasonably certain will of necessity result in the future from the injuries.

Campbell vs. Hall, 210 S.C. 423, 43 S.E.2d 129 (1947).

Respectfully Submitted,

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ATTORNEY FOR PLAINTIFF

May 25
Date: ~~March 13~~, 2018

Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO: 2016-CP-10-5892
	)	
Curtis Mills,	)	
	)	
Plaintiff,	)	PLAINTIFF'S PROPOSED
	)	REQUEST TO CHARGE
v.	)	NO. 15
	)	
The South Carolina State Ports	)	
Authority,	)	
	)	
Defendant.	)	

REQUEST TO CHARGE NO. 15

Mental anguish

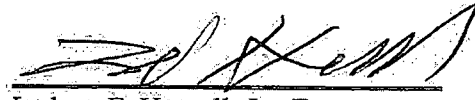
Mental anguish, in connection with a wrong caused by the defendant constitutes a separate element of actual damages apart from pain and suffering and is compensable if it is the natural and causally related consequence of the defendant's wrong.

Mental anguish, in connection with a wrong, constitutes a separate element of actual damages apart from pain and suffering where it is natural and proximate consequence fo wrong, and where an allowance is made for mental anguish, it is an element of actual as distinguished from exemplary damages.

Lanford vs. West Oakwood Cemetery Addition, 223 S.C. 350, 75 S.E.2d 865 (1953).

Respectfully Submitted,

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ATTORNEY FOR PLAINTIFF

May 25
Date: ~~March 15~~, 2018
Mt. Pleasant, South Carolina

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO: 2016-CP-10-5892

Plaintiff,

**PLAINTIFF'S PROPOSED
REQUEST TO CHARGE
NO. 16**

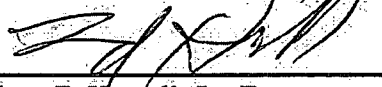
Defendant.

should give the most weight is that which convinces you of its truth, regardless of from whom or what source it comes from.

I will now explain the law that applies to this particular case:

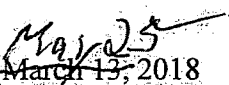
Respectfully Submitted,

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ATTORNEY FOR PLAINTIFF


Date: ~~March 13~~, 2018
Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Curtis Mills,

Plaintiff,

v.

The South Carolina State Ports
Authority,

Defendant.

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

CASE NO: 2016-CP-10-5892

**PLAINTIFF'S PROPOSED
REQUEST TO CHARGE
NO. 18**

**REQUEST TO CHARGE NO. 18
(Negligence)**

The elements of the cause of action in negligence are (1) duty of care; (2) breach of that duty - i.e., negligence; (3) injury; and (4) causal relationship between that injury and negligence such that the negligence "proximately caused" the injury.

Snipes vs Piggly Wiggly St. Andrews, Inc., 269 S.C. 479, 238 S.E.2d 167 (1977).

Respectfully Submitted,

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843-849-2800

ATTORNEY FOR PLAINTIFF

May 25
Date: ~~March 13~~, 2018
Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CASE NO.: 2014-CP-10-2908
	)	
CURTIS MILLS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
THE SOUTH CAROLINA STATE	)	
PORTS AUTHORITY,	)	
	)	
Defendant.	)	
	)	

**DEFENDANT THE SOUTH CAROLINA STATE PORTS AUTHORITY'S
PROPOSED JURY INSTRUCTIONS**

AND NOW COMES Defendant The South Carolina State Ports Authority ("Defendant"),
by and through its undersigned counsel, and files the following Proposed Jury Instructions:

1. **No Presumption of Fault/Plaintiff Bears Burden of Proof**

The mere fact that the Plaintiff has instituted this suit is not evidence that he is entitled to recover anything, nor does the mere bringing of a lawsuit create any presumption favorable to Plaintiff. Further, the fact that Plaintiff may have suffered some damages, standing alone, does not mean that the Defendant was negligent in any way.

To the contrary, Plaintiff bears the burden of proving all the elements of his claims against Defendant by greater weight or a preponderance of the evidence. You may not assume that Defendant breached the standard of care. You may not assume that Plaintiff suffered damages. Unless you find that the Plaintiff have carried his burden successfully, you shall return a verdict in favor of Defendant.

Sources: *Janasik v. Fairway Oaks Villas Horizontal Property Regime*, 307 S.C. 339, 415 S.E.2d 384 (1992); *Frazier v. Frazier*, 228 S.C. 149, 89 S.E.2d 225 (1955); *Ellis v. Union Pacific R.R.*, 329 U.S. 649, 653 (1947).

2. **Plaintiff's Burden – Preponderance of the Evidence**

The burden in this case is entirely on the Plaintiff, to prove every essential element of each of his claims by a preponderance of the evidence. If Plaintiff should fail to establish any essential element of any of his claims by a preponderance of the evidence, you should find for Defendant.

To “establish by a preponderance of the evidence” means to prove that something is more likely so than not so. In other words, a preponderance of the evidence in this case means such evidence as, when considered and compared with that opposed to it, has more convincing force and produces in your minds a belief that what is sought to be proved is more likely true than not true.

In determining whether any fact in issue has been proved by a preponderance of the evidence in the case, the jury may, unless otherwise instructed, consider the testimony of all witnesses, regardless of who may have called them, and all exhibits received in evidence, regardless of who may have produced them.

Sources: 3 Edward J. Devitt, et al., Federal Jury Practice and Instructions, § 72.01 (4th ed. 1987).

Negligence and Gross Negligence

3. Plaintiff claims that Defendant was negligent and should compensate him for the injuries he suffered as a result of Defendant’s negligence. In order to prove that Defendant was negligent, Plaintiff must prove by a preponderance, or greater weight, of the evidence four things.

First, Plaintiff must prove by a preponderance, or greater weight, of the evidence that Defendant owed Plaintiff a duty of care. Second, Plaintiff must prove by a preponderance, or greater weight, of the evidence that Defendant breached that duty by a negligent act or omission. In this case, negligence means that a person or entity has done something that a reasonable person or entity would not have done or has failed to do something that a reasonable person or entity would have done in the same situation.

Third, Plaintiff must also prove by a preponderance, or greater weight, of the evidence that he suffered damages as a result of Defendant’s breach of its duty. Finally, Plaintiff must prove by a preponderance, or greater weight, of the evidence that the damages were proximately caused by Defendant’s breach of duty.

Sources: *Thomasko v. Poole*, 349 S.C. 7, 11, 561 S.E.2d 597, 599 (2002); *Thomas v. Atlantic Greyhound Corp.*, 204 S.C. 247, 29 S.E.2d 196 (1944).

4. If you find that the plaintiff has proved that, in fact, the defendant was negligent, then your next inquiry would be whether the plaintiff has proved that such negligence so established was the proximate cause of the injury and damages.

I now define for you proximate cause. Proximate cause means the efficient cause, the direct cause, the cause without which the injury and damage would not have occurred. If you find the plaintiff has proved the defendant was negligent, but has failed to prove that such negligence was a proximate cause of the injury and damage, the plaintiff will have failed to make out his case and you would be required to bring in a verdict for the defendant. However, if the plaintiff has proved these two propositions, that is, that the defendant was negligent and that such negligence was the proximate cause of his injury and damages, then you would go to the third

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step, which are damages.

Negligence is not actionable unless it is a proximate cause of the loss or damage complained of. It may be deemed a proximate cause only when, without such negligence, the loss or damage would not have occurred or could have been avoided.

Proximate cause requires proof of both causation in fact and legal cause. Causation in fact is proved by establishing the plaintiff's injury would not have occurred "but for" the defendant's negligence. Legal cause is proved by establishing foreseeability.

The touchstone of proximate cause in South Carolina is foreseeability. That is, foreseeability of some injury from a negligent act or omission is a prerequisite to its being a proximate cause of the injury for which recovery is sought. The test of foreseeability is whether some injury to another is the natural and probable consequence of the complained of act. The defendant may be held liable for anything which appears to have been a natural and probable consequence of his negligence. . . .

Sources: Anderson, S.C. Requests to Charge – Civil § 32-15 (2002) (shortened).

5. **Comparative Negligence — General Charge**

Comparative negligence is the law in South Carolina. Under the doctrine of comparative negligence, the plaintiff's negligence does not automatically bar recovery unless such negligence exceeds that of the defendant. A plaintiff in a negligence action may recover damages if his negligence is not greater than that of the defendant. The amount of the plaintiff's recovery shall be reduced in proportion to the amount of his negligence.

You, the jury, must apportion fault between the plaintiff and defendant in a negligence action. The plaintiff may recover damages when his negligence is not greater than that of the defendant. The plaintiff's damages, however, are reduced in proportion to the amount of his negligence.

One of the defenses interposed by Defendant is that of comparative negligence. Defendant, by this defense, in essence says this: Even if the jury should find that we were at fault, Plaintiff was more at fault than we were and the fault of each of us combined and concurred with that of the other to act as the proximate cause of the accident and, without which, the accident would not have happened. In other words, it required the fault of each of us for the accident to have happened, but Plaintiff was more at fault than we were.

Plaintiff has the burden of proving the negligence and fault, if any, of Defendant. Defendant has the burden of proving the negligence and fault, if any, of Plaintiff and the degree of such.

Where negligence has been established on the part of both Defendant and Plaintiff, then you must weigh or compare the respective contributions of each to the occurrence. Considering the conduct of each person involved as a whole, you must determine whether one made a larger

contribution than the other.

In making this comparison, the degree of negligence attributable to a party is not to be measured solely by the character thereof, nor solely by the number of respects in which he is found to have been at fault. It is the conduct of a party considered as a whole which must be determined. That is to say, once it has been established that each has been at fault, it is then the jury's function to weigh their respective contributions to the result, which will, regardless of the nature of their acts or omissions, determine who made the larger contribution and to what extent it exceeds or is less than that of the other.

It is the conduct of the parties considered as a whole which is being measured by you in the form of a percentage.

If you find that the occurrence was proximately caused by negligence on the part of Defendant and not by negligence on the part of Plaintiff, then Plaintiff is entitled to recover the full amount of any damages you may find he has sustained as a result of the occurrence.

If you find the occurrence was proximately caused by the negligence of both Plaintiff and Defendant, then you must compare the percentages of that negligence. If the negligence of the Plaintiff is less than or equal to the negligence of Defendant, then Plaintiff is entitled to recover any damages which you may find it has sustained as a result of the occurrence after you have reduced his damages in proportion to the degree of Plaintiff's own negligence. On the other hand, if Defendant was not negligent or if the negligence of Defendant was less than the negligence of Plaintiff, then Plaintiff is not entitled to recover any damages. If you find the Plaintiff's negligence to be greater than that of Defendant against whom recovery is sought, then Plaintiff shall not recover and you will find for the Defendant.

Comparative negligence, if proven by Defendant, can have one of two possible effects. First, comparative negligence will totally defeat a recovery by an injured plaintiff if the negligence of the injured plaintiff was greater than that of Defendant. Another way of saying this is to say that Plaintiff can recover only when its negligence, if any, is equal to or less than that of Defendant. In order to prevent a verdict in favor of Plaintiff injured by the negligence of Defendant, Defendant has the burden of proving by the greater weight or preponderance of the evidence that Plaintiff was negligent and that Plaintiff's negligence was greater than that of Defendant.

The second possible effect of comparative negligence is that, if proven, it will reduce or partially defeat Plaintiff's recovery. This applies when Plaintiff's negligence is equal to or less than the negligence of Defendant. Such a reduction is made when the Defendant proves, by the preponderance or greater weight of the evidence, that Plaintiff was negligent but that the Plaintiff's negligence was equal to or less than Defendant's negligence.

Please remember that Plaintiff's negligence must have contributed proximately to his injury. If the negligence of Plaintiff operated only remotely and not proximately to cause the injury, Plaintiff is neither barred from recovery nor is his recovery reduced in any way.

Source: Anderson's South Carolina Requests to Charge § 23-1 (2002) (citing *Thomasko v. Poole*, 349 S.C. 7, 561 S.E.2d 597 (2002) (in comparative negligence case, trial court should grant motion for directed verdict if sole reasonable inference from evidence is non-moving party's negligence exceeded fifty percent; because term is relative and dependent on facts of particular case, comparing the negligence of two parties is ordinarily question of fact for jury); *Bloom v. Ravoir*, 339 S.C. 417, 529 S.E.2d 710 (2000) (ordinarily, comparison of plaintiff's negligence with that of defendant is question of fact for jury to decide; in comparative negligence case, trial court should only determine judgment as a matter of law if sole reasonable inference which may be drawn from evidence is that plaintiff's negligence exceeded fifty percent); *Davenport v. Cotton Hope Plantation Horizontal Property Regime*, 333 S.C. 71, 508 S.E.2d 565 (1998); *Creech v. South Carolina Wildlife and Marine Resources Dep't*, 328 S.C. 24, 491 S.E.2d 571 (1997) (comparison of plaintiff's negligence with that of defendant is question of fact for jury to decide; directed verdict is warranted only if the only reasonable inference that may be drawn from evidence is that plaintiff's negligence exceeded fifty percent); *Nelson v. Concrete Supply Co.*, 303 S.C. 243, 399 S.E.2d 783 (1991); *Weaver v. Lentz*, 348 S.C. 672, 561 S.E.2d 360 (Ct. App. 2002); *Trivelas v. South Carolina Dep't of Transp.*, 348 S.C. 125, 558 S.E.2d 271 (Ct. App. 2001); *Lydia v. Horton*, 343 S.C. 376, 395, 540 S.E.2d 102, 112-13 (Ct. App. 2000), *cert. granted*, July 18, 2001 ("Comparison of a plaintiff's negligence with that of the defendant is a question of fact for the jury to decide."); *Ross v. Paddy*, 340 S.C. 428, 532 S.E.2d 612 (Ct. App. 2000) (comparative negligence is an affirmative defense in South Carolina); *Reiland v. Southland Equip. Serv., Inc.*, 330 S.C. 617, 639-40, 500 S.E.2d 145, 157 (Ct. App. 1998) ("[A]ppportionment of negligence, which determines both whether a plaintiff is barred from recovery or can recover some of his damages and the proportion of damages to which he is entitled, is usually a function of the jury."); *Brown v. Smalls*, 325 S.C. 547, 481 S.E.2d 444 (Ct. App. 1997) (ordinarily, negligence of a party is a question of fact for the jury; generally, under a "less than or equal to" comparative negligence rule, determination of respective degrees of negligence attributable to plaintiff and defendant presents question of fact for jury, at least where conflicting inferences may be drawn; accordingly, apportionment of negligence, which determines both whether plaintiff is barred from recovery or can recover some of his damages and proportion of damages to which he is entitled, is usually function of jury); *Hopson v. Clary*, 321 S.C. 312, 468 S.E.2d 305 (Ct. App. 1996) (plaintiff's claim was barred under comparative negligence doctrine because plaintiff's own negligence was, as a matter of law, greater than any negligence attributable to defendant and the more determinative factor in causing the accident); *Ott v. Pittman*, 320 S.C. 72, 463 S.E.2d 101 (Ct. App. 1995)).

Damages

6. Damages — Damages Must Be Proven

Your verdict in this case must be based upon the evidence and these instructions of law. The same rule applies to damages being claimed in this case. Plaintiff has the burden of proving the damages, if any, that he should receive with reasonable certainty. Damages may not be based upon guesswork or speculation or presumed, but rather must be supported by a preponderance of the evidence which satisfies each of your minds that any such damages represent a just and reasonable compensation for the particular item of damage under consideration.

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Sources: *Messier v. Adicks*, 251 S.C. 268, 61 S.E.2d 845 (1968); *South Carolina Fed. Sav. Bank v. Thornton-Crosby Dev. Co., Inc.*, 303 S.C. 74, 78, 399 S.E.2d 8, 11 (Ct. App. 1990).

7. Damages — Actual Damages

Actual damages are properly called compensatory damages, meaning to compensate, to make the injured party whole, to put her in the same position he was in prior to the damages received insofar as this is monetarily possible. In other words, actual or compensatory damages include compensation for all injuries which are naturally the proximate result of the alleged wrongful conduct of the defendant.

Actual damages are awarded to a litigant in compensation for his actual loss or injury. Actual damages are such as will compensate the party for injuries suffered or losses sustained. They are such damages as will simply make good or replace the loss caused by the wrong or injury. Actual damages are damages in satisfaction of, or in recompense for, loss or injury sustained. The goal is to restore the injured party, as nearly as possible through the payment of money, to the same position he was in before the wrongful injury occurred.

The basic measure of actual damages is the amount needed to compensate the plaintiff for the losses proximately caused by the defendant's wrong so that the plaintiff will be in the same position he would have been in if there had been no wrongful injury. Actual damages include compensation for all injuries which are naturally the proximate result of the alleged wrongful conduct of the defendant.

The existence, causation, or amount of damages cannot be left to conjecture, guesswork or speculation. However, proof of amount of loss with absolute or mathematical certainty is not required. Damages must be proved with a reasonable degree of certainty. The evidence presented by the plaintiff must enable you, the jury, to determine what amount is fair, just and reasonable.

The plaintiff bears the burden of proving by the preponderance of the evidence that he is entitled to compensatory damages.

Sources: Anderson's South Carolina Requests to Charge § 13-2 (2002) (citing *Clark v. Cantrell*, 339 S.C. 369, 529 S.E.2d 528 (2000); *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991); *Barnwell v. Barber-Colman Co.*, 301 S.C. 534, 393 S.E.2d 162 (1989); *Whisenant v. James Island Corp.*, 277 S.C. 10, 281 S.E.2d 794 (1981) (in order for damages to be recoverable, evidence should enable jury to determine amount thereof with reasonable certainty and cannot be left to conjecture, guess, and speculation); *Piggy Park Enters., Inc. v. Schofield*, 251 S.C. 385, 162 S.E.2d 705 (1968); *Laird v. Nationwide Ins. Co.*, 243 S.C. 388, 134 S.E.2d 206 (1964); *Hutchison v. Town of Summerville*, 66 S.C. 442, 45 S.E. 8 (1903) (actual damages are when the wrongful act has caused loss or injury which can be assessed in money; universal and cardinal principle being that the person injured shall receive compensation commensurate with his loss or injury and no more); *Carrigg v. Blue*, 283 S.C. 494, 323 S.E.2d 787 (Ct. App. 1984); 22 Am. Jur. 2d Damages §§ 23, 24 (1988); Black's Law Dictionary 390 (6th ed. 1990)).

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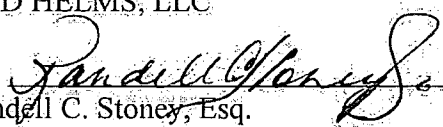
8. **Duty to Mitigate Damages**

A party who has suffered injury or damage from the actionable conduct of another is under a duty to make all reasonable efforts to minimize the damages incurred. To the extent that he reasonably could have so minimized those damages and failed to do so, he is not entitled to recover from the other party. In other words, one cannot recover any damages that might have been avoided by the use of reasonable care and diligence. A plaintiff's failure to mitigate damages allows the defendant to avoid only those damages that reasonably could have been avoided by the plaintiff.

An injured party is required to do that which an ordinary, prudent person would do under similar circumstances to mitigate his damages. However, the injured party is not required to unreasonably exert himself or incur substantial expense in an effort to mitigate damages.

Sources: *Alala v. Peachtree Plantations, Inc.*, 292 S.C. 160, 355 S.E.2d 286 (Ct. App. 1987); *Newman v. Brown*, 228 S.C. 472, 90 S.E.2d 649 (1955); *Du Bose v. Bullman*, 215 S.C. 468, 56 S.E.2d 95 (1949); *Currie v. Davis*, 130 S.C. 408, 126 S.E. 119 (1923); *Heath v. Postal Telegraph-Cable Co.*, 87 S.C. 219, 69 S.E. 283 (1910); *Genovese v. Bergeron*, 327 S.C. 567, 490 S.E.2d 608 (Ct. App. 1997); *Perry v. Green*, 313 S.C. 250, 437 S.E.2d 150 (Ct. App. 1993); *Chastain v. Owens Carolina, Inc.*, 310 S.C. 417, 426 S.E.2d 834 (Ct. App. 1993); *McClary v. Massey Ferguson, Inc.*, 291 S.C. 506, 354 S.E.2d 405 (Ct. App. 1987) (reasonableness of party's actions to mitigate damages is question of fact which cannot be decided as matter of law when there is conflicting evidence); *Tri-Continental Leasing Corp. v. Stevens, Stevens & Thomas, P.A.*, 287 S.C. 338, 338 S.E.2d 343 (Ct. App. 1985); 22 Am. Jur. 2d Damages §§ 495, 498, 525 (1988). Cf. *Cisson Constr., Inc. v. Reynolds & Assocs., Inc.*, 311 S.C. 499, 429 S.E.2d 847 (Ct. App. 1993) (there is no obligation to minimize avoidable damages where party has vested right to recover full amount sought).

BARNWELL, WHALEY, PATTERSON,
AND HELMS, LLC

By: 
Randall C. Stoner, Esq.

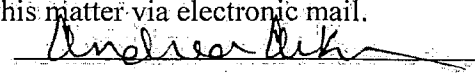
P.O. Drawer H (29402)
288 Meeting Street, Suite 200
Charleston, SC 29401
(843) 577-7700

Counsel for Defendant The South Carolina
State Ports Authority

Dated: May 25, 2018
Charleston, South Carolina

CERTIFICATE OF SERVICE

The undersigned does hereby certify that, on May 25, 2018, a true and correct copy of the foregoing was served upon counsel for the Plaintiff in this matter via electronic mail.



STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Curtis Mills

Plaintiff,

vs.

The South Carolina State Ports Authority

Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 2016-CP-10-05892

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:

Ladson F. Howell, Jr., Bar No.

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E-mail: rstoney@barnwell-whaley.com Other: _____

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**

☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**

☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Defendant The South Carolina State Ports Authority's Post-Trial Motions

Estimated Time Needed: 30 minutes

Court Reporter Needed: ☒ **YES** / ☐ **NO**

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

June 8, 2018

Date submitted

SECTION III: Motion Fee

☒ **PAID - AMOUNT: \$** _____

☐ **EXEMPT:**

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

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

☐ Other:

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

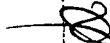
Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED – AMOUNT DUE: \$ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CASE NO.: 2014-CP-10-05892
	)	
CURTIS MILLS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
THE SOUTH CAROLINA STATE	)	
PORTS AUTHORITY,	)	
	)	
Defendant.	)	
	)	

FILED
2018 JUN -8 PM 12:09
JULIE J. ARMSTRONG
CLERK OF COURT
BY 

**DEFENDANT THE SOUTH CAROLINA STATE PORTS AUTHORITY'S
POST-TRIAL MOTIONS**

AND NOW COMES Defendant The South Carolina State Ports Authority ("Defendant"),
by and through its undersigned counsel, and makes the following Post-Trial Motions:

INTRODUCTION

On October 4, 2012, Plaintiff Curtis Mills was an over the road trucker who arrived at Defendant's terminal to have his load removed and claims to have disengaged all four locking pins securing the container to the chassis after entering the terminal. During the removal of the container by the top lifter, the front of the chassis was lifted indicating the locking pins either had not been disengaged in the first instance or had gotten jostled back into the engaged position during the transit once on the terminal. The crane operator testified the front pins were still engaged, which he noticed when Plaintiff pulled away. The motion allegedly caused Plaintiff's truck to bounce, jostling him inside. Plaintiff claimed the port operator made a rough landing with the spreader bar which caused the pins to re-engage and then continued to lift with the container still connected to the chassis; when it came loose, his truck fell and he sustained personal injuries.

After extensive discovery, this case was tried to a jury, which returned a verdict of \$616,710.07 on June 1, 2018. The trial judge granted Defendant leave until noon on June 5,

2018 to file its post-trial motions. Defendant hereby moves for judgment n.o.v., a new trial absolute, and a new trial *nisi remittitur* as set forth in detail below. Additionally, Defendant moves for the jury's verdict to be reduced in accordance with the South Carolina Tort Claims Act.

DISCUSSION

A. The Court Should Grant Defendant a New Trial Because It Erred When It Refused to Instruct the Jury Regarding Comparative Negligence

The Court should grant Defendant a new trial because it erroneously refused to instruct the jury on comparative negligence, a legal theory that has been raised by the pleadings and is fully supported by the evidence. There is substantial evidence establishing that Plaintiff either failed to disengage the locking pins securing the container to his trailer or should have checked to ensure that they were not inadvertently returned to the engaged position before the load was positioned to be lifted from his chassis. The jury should have had the opportunity to consider Plaintiff's comparative negligence in this case.

"It is well settled that jury instructions should be confined to the issues raised by the pleadings and supported by the evidence and *where an issue is implicitly suggested by the pleadings and supported by the evidence, the trial judge is obligated to instruct the jury concerning it.*" *Ellison v. Parts Distributors, Inc.*, 302 S.C. 299, 301, 395 S.E.2d 740, 741 (Ct. App. 1990) (emphasis added). "When instructing the jury, the trial court is required to charge only principles of law that apply to the issues raised in the pleadings and developed by the evidence in support of those issues." *Manios v. Nelson, Mullins, Riley & Scarborough, LLP*, 389 S.C. 126, 142, 697 S.E.2d 644, 652 (Ct. App. 2010) (quoting *Clark v. Cantrell*, 339 S.C. 369, 390, 529 S.E.2d 528, 539 (2000)).

"Where a request to charge is timely made and involves a controlling legal principle, a refusal by the trial judge to charge the request constitutes reversible error." *Carroll v. Smith-Henry, Inc.*, 281 S.C. 104, 106, 313 S.E.2d 649, 650 (Ct. App. 1984) (quoting *Baker v. Weaver*,

S.C., 309 S.E.2d 770, 771-72 (Ct. App. 1983)). "[W]hen general instructions to the jury are insufficient to enable the jury to understand fully the law of the case and issues involved, a refusal to give a requested charge is reversible error." *Brown v. Smalls*, 325 S.C. 547, 555, 481 S.E.2d 444, 448-49 (Ct. App. 1997). For the reasons that follow, the Court should have instructed the jury on comparative negligence.

"Under the comparative negligence doctrine, a plaintiff may only recover damages if his own negligence is not greater than that of the defendant." *Trivelas v. SCDOT*, 357 S.C. 545, 549, 593 S.E.2d 504, 506 (Ct. App. 2004); *Thomasko v. Poole*, 349 S.C. 7, 11, 561 S.E.2d 597, 599 (2002); *Bloom v. Ravoira*, 339 S.C. 417, 422, 529 S.E.2d 710, 712-13 (2000). "The amount of the plaintiff's recovery shall be reduced in proportion to the amount of his or her negligence." *Ritter & Assocs., Inc. v. Buchanan Volkswagen, Inc.*, 405 S.C. 643, 651, 748 S.E.2d 801, 805 (Ct. App. 2013) (quoting *Berberich v. Jack*, 392 S.C. 278, 286, 709 S.E.2d 607, 611 (2011)). "Generally, under a less than or equal to comparative negligence rule, determination of respective degrees of negligence attributable to the plaintiff and the defendant presents a question of fact for the jury, at least where conflicting inferences may be drawn." *Trivelas*, 357 S.C. at 549-550, 593 S.E.2d at 506; *Brown*, 325 S.C. at 559, 481 S.E.2d at 451; accord *Creech v. South Carolina Wildlife and Marine Res. Dept.*, 328 S.C. 24, 32, 491 S.E.2d 571, 575 (1997) (holding comparison of plaintiff's negligence with that of defendant is question of fact for jury). Therefore, under the comparative negligence doctrine, if the jury determined that Plaintiff's own negligence was 50.1% responsible for this accident, Plaintiff could not recover.

Defendant properly raised Plaintiff's comparative negligence as an affirmative defense in this matter in its Answer:

Comparative negligence that the failure of the Plaintiff to completely disengage the locking mechanisms securing his load to his chassis thus preparing for a clean and safe lift constitutes negligence of an amount greater than any which would be assigned to the SCSP A top handler operator as any allegations of negligence against said operator for his actions occurring in the process of the lifting.

(See Def.'s Ans., at 4). Additionally, Defendant requested an explicit, detailed jury instruction

on comparative negligence. (See Def.'s Proposed Jury Instr. ¶ 5). Therefore, if there was any evidence supporting this defense, the Court was obligated to instruct the jury about it; the Court denied Defendant's requested jury charges on comparative negligence because it determined that there was no evidence supporting that defense. As discussed below this determination was in plain error, as there was more than sufficient evidence to warrant the submission of comparative negligence to the jury.

The evidence presented at trial was clear that at least some of the locking pins on Plaintiff's chassis were engaged, causing his chassis to be moved when the container was lifted. Plaintiff claimed in his testimony that he did disengage those pins when he entered the port property. There was competent testimony at trial that truck drivers are obligated to make certain that all of the pins are disengaged upon presenting a load for removal. Even accepting Plaintiff's assertion that he disengaged the pins at the scales just after entering port grounds, there was also testimony that it is not uncommon for locking pins to be jostled back into the engaged position during transit to the location of the removal of the container. Plaintiff's witness Damien Solomon (and potentially other witnesses, as the trial transcript may disclose) acknowledged on cross-examination that a truck driver is responsible to make certain that the locking pins are disengaged. Mr. Solomon further testified that the safer procedure would be for the truck driver to recheck and verify that — during the course of traveling from the scales to the point of removal — the pins did not move back into an engaged position. The jury could have relied upon this evidence to conclude that the Plaintiff truck driver was comparatively negligent in failing to check the locking pins, knowing that they may have shifted after he unlocked them. Moreover, the jury could have disbelieved Plaintiff's testimony that he unlocked the pins in the first instance.

Respectfully, the Court should have instructed the jury on comparative negligence and allowed the jury to decide this issue. Therefore, this Court should grant Defendant a new trial, wherein the jury is properly instructed on the law of comparative negligence.

B. The Court Should Grant Defendant Judgment N.O.V., a New Trial or a New Trial *Nisi Remittitur* Because the Jury's Verdict Was Excessive and Not Supported by the Evidence

Additionally, for the reasons set forth below, the Court should grant Defendant judgment n.o.v., a new trial or new trial *nisi remittitur* because the jury's calculation of damages was excessive and is not supported by any evidence Plaintiff presented at trial.

"[A] motion for judgment n.o.v. must be denied when either the evidence yields more than one reasonable inference or its inferences are in doubt." *Smith v. Safeco Life Ins. Co.*, 303 S.C. 131, 136, 399 S.E.2d 427, 430 (Ct. App. 1990). Judgment n.o.v. is proper where there is no evidence in the record supporting the jury's verdict. *See Broom v. Marshall*, 284 S.C. 530, 536, 328 S.E.2d 639, 643 (Ct. App. 1984) ("The evidence at trial, therefore, proved an obligation by a partnership to construct a home in a good and workmanlike manner. The record is devoid of any evidence from which the jury could determine that any of the appellants contracted in his individual capacity to construct Broom's home; therefore, the appellants' motion for a directed verdict and judgment n.o.v. should have been granted.").

The Court may grant a new trial absolute based upon the excessiveness of a verdict when it is so excessive that it may be the result of unfair influences:

"When considering a motion for a new trial based on the inadequacy or excessiveness of the jury's verdict, the trial court must distinguish between awards that are merely unduly liberal or conservative and awards that are actuated by passion, caprice, or prejudice." *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 27, 602 S.E.2d 772, 781 (2004) [(further citation omitted)]. "If the amount of the verdict is grossly inadequate or excessive so as to be the result of passion, caprice, prejudice, or some other influence outside the evidence, the trial judge must grant a new trial absolute." *Harrison v. Bevilacqua*, 354 S.C. 129, 140, 580 S.E.2d 109, 115 (2003) (internal quotation marks omitted) (*quoting O'Neal v. Bowles*, 314 S.C. 525, 527, 431 S.E.2d 555, 556 (1993)).

See Proctor v. South Carolina Dep't of Health & Envtl. Control, 368 S.C. 279, 320–21, 628 S.E.2d 496, 518 (Ct. App. 2006).

Alternatively, if the Court determines that the verdict is merely excessive, but that a new trial absolute is not warranted, it may grant a new trial *nisi remittitur* and reduce the verdict:

The trial court has wide discretionary power to reduce the amount of a verdict which in his or her judgment is excessive. [Citation omitted.] Indeed, when the verdict indicates the jury was unduly liberal in determining damages, the trial court alone has the power to reduce the verdict by the granting of a new trial nisi remittitur. [Citation omitted.] A motion for new trial nisi remittitur asks the trial court in its discretion to reduce the verdict because it is merely excessive, although not motivated by considerations such as passion, caprice or prejudice.

See Welch v. Epstein, 342 S.C. 279, 303, 536 S.E.2d 408, 420 (Ct. App. 2000). "A new trial nisi is one in which a new trial will be granted unless the party opposing it complies with a condition set by the court." *See Proctor*, 368 S.C. at 319-21, 628 S.E.2d at 518. "'A motion for a new trial nisi because of excessiveness of the verdict contemplates not the striking down of the verdict in toto, but remission of part of it and the granting of a new trial in default thereof.'" *Howard v. Roberson*, 376 S.C. 143, 155, 654 S.E.2d 877, 883 (Ct. App. 2007) (quoting *Elliott v. Black River Elec. Coop.*, 233 S.C. 233, 104 S.E.2d 357, 372 (1958)).

Defendant respectfully submits that — upon consideration of the evidence presented to the jury — it is entitled to judgment n.o.v, a new trial absolute or a new trial *nisi remittitur*. The jury in this case returned a verdict in the precise amount of \$616,710.07. Unlike most cases, the parties have not been left to speculate about how the jury arrived at that verdict. In fact, the jury attached to its verdict — and the Court has made its Exhibit 9 — the jury's express calculations supporting the verdict. In that handwritten document, the jury identified the following components of the "total [a]ctual damages" it awarded:

- \$50,157.07 "Bills" (reflecting the amount of medical bills that Plaintiff placed into evidence)
- \$12,000 "9 week" "comp" (reflecting "out of work" for the period of October to December of 2012, *per* the jury's calculation)
- \$80,888.00 fourteen months of lost wages "(cleared)"¹
- \$398,665.00 "lost of wages" (described by the jury as "lost wages till ret."), broken down as follows:

¹ The jury arrived at this figure by extrapolating an annual salary of \$69,333 over the 14-month period of January, 2013 through February, 2014 when — by the jury's own statement — Plaintiff was "cleared to work." (*See* Ct. Ex. 9).

<u>TYPE SALARY</u>	<u>INEFFICIENCY</u>	<u>YEARS RETIREMENT</u>	<u>FEB. 2014</u>
\$69,333	X 25%	X 23	\$398,665

- \$75,000 (unexplained).

(See Ct. Ex. 9). The jury foreperson submitted this document to the trial judge to help to explain the jury's damage calculations. For the reasons set forth below, this verdict is facially excessive and is not supported by any evidence in the record.

The jury's verdict is comprised of the following elements: (a) actual lost wages through February, 2014 (\$92,888); (b) future lost wages, comprising the bulk of the verdict (\$398,665); (c) medical bills (\$50,157.07); and (d) an unknown component of \$75,000. The "lost wages" components of the verdict — particularly the calculation of lost wages after February, 2014 — are wholly without evidentiary support and constitute excessive speculation.

Plaintiff did not present a scintilla of evidence supporting any specific figures of damages, aside from his medical bills. Plaintiff has presented no competent evidence documenting alleged lost wages or lost earning capacity — aside from vague testimony that he was making approximately \$2,000 per week at some point during his career. He presented no tax returns, pay stubs or other documentation of his actual wages. He presented no evidence documenting that he was unable to work in another job. He presented no evidence of his actual impairment. He presented no evidence of his life expectancy. He presented no evidence of his vocational abilities after the accident. He presented no evidence from a vocational rehabilitation or other expert supporting his alleged inability to work and the amount of harm. Plaintiff offered absolutely no evidence as to future lost wages and no testimony that he was ever actually out of work. Any determination by the jury of lost wages or future reduced earning capacity was sheer speculation.

The bulk of the jury's verdict was based on unproven assumptions that Plaintiff was

totally disabled and had no income following his accident. There is no evidence supporting such a conclusion. Doctor Timothy Zgleszewski, Plaintiff's treating physician, testified that in February 2014 he was released to return to work at his full driving duties. Plaintiff has presented no evidence to establish that he did not, in fact, return to work then or that he was unable to work. The jury's verdict — which the jury has explained for the Court — is not based on actual evidence, but rather is the product of sheer speculation by the jury.

"Generally, in order for damages to be recoverable, the evidence should be such as to enable the court or jury to determine the amount thereof with reasonable certainty or accuracy. While neither the existence, causation nor amount of damages can be left to conjecture, guess or speculation, proof with mathematical certainty of the amount of loss or damage is not required." *Collins Entertainment, Inc. v. White*, 363 S.C. 546, 559, 611 S.E.2d 262, 269 (Ct. App. 2005) (quoting *Whisenant v. James Island Corp.*, 277 S.C. 10, 13, 281 S.E.2d 794, 796 (1981)). Respectfully, with regard to lost wages and future earning capacity (which comprised most of the verdict), the verdict was wholly inappropriate, based on the information from the jury as to the bases for its calculations. As a result, the jury's verdict is highly excessive, given the nature of Plaintiff's alleged injuries.

As a result, the Court should: (a) grant judgment n.o.v. as to the unsupported elements of damages; (b) grant a new trial absolute; or (c) grant a new trial *nisi remittitur*, reducing the verdict as to any improper elements of damages.

C. The Court Should Grant Defendant Judgment N.O.V. or a New Trial Under the "Thirteenth Juror" Doctrine Because There Is No Evidence Supporting the Jury's Liability Verdict

In addition to the foregoing, Defendant respectfully requests judgment n.o.v. or a new trial pursuant to the "Thirteenth Juror" rule, because there is no evidence supporting the verdict on liability. Defendant has set forth the standards governing a motion for judgment n.o.v. in the preceding section. "Under the 'thirteenth juror' doctrine, a trial judge may grant a new trial absolute when he finds the evidence does not justify the verdict." *See Vinson v. Hartley*, 324

S.C. 389, 402, 477 S.E.2d 715, 722 (Ct. App. 1996).

The effect is the same as if the jury failed to reach a verdict. The judge as the thirteenth juror "hangs" the jury. When a jury fails to reach a verdict, a new trial is ordered. Neither judge nor the jury is required to give reasons for this outcome. Similarly, because the result of the "thirteenth juror" vote by the judge is a new trial rather than an adjustment to the verdict, no purpose would be served by requiring the trial judge to make factual findings.

See Folkens v. Hunt, 300 S.C. 251, 254, 387 S.E.2d 265, 267 (1990), *quoted in Youmans ex rel. Elmore v. South Carolina Dep't of Transp.*, 380 S.C. 263, 272, 670 S.E.2d 1, 5 (Ct. App. 2008).

Defendant is entitled to either judgment n.o.v. or a new trial under the "Thirteenth Juror" doctrine, because there is no evidence supporting the jury's conclusion regarding liability. Plaintiff has not presented evidence showing how Defendant breached a duty of care to him. To the contrary, the only competent evidence establishes that Plaintiff's injuries were the result of his own negligence. Therefore, the Court should grant judgment n.o.v. or a new trial in this matter.

D. The Court Should Reduce the Verdict to Reflect the Caps Set Forth in the South Carolina Tort Claims Act

Under the South Carolina Tort Claims Act, Plaintiff's total recovery in this case is limited to \$300,000.00:

(1) Except as provided in Section 15-78-120(a)(3), no person shall recover in any action or claim brought hereunder a sum exceeding three hundred thousand dollars because of loss arising from a single occurrence regardless of the number of agencies or political subdivisions involved.

(2) Except as provided in Section 15-78-120(a)(4), the total sum recovered hereunder arising out of a single occurrence shall not exceed six hundred thousand dollars regardless of the number of agencies or political subdivisions or claims or actions involved.

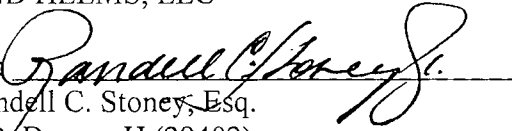
See S.C. Code § 15-78-120(a)(1) & (2). The term "occurrence" under the Tort Claims Act means "an unfolding sequence of events which proximately flow from a single act of negligence." *See* S.C. Code § 15-78-30(g). Therefore, in the event the Court denies Defendant's above motions for a new trial absolute or new trial *nisi remittitur* and allows the jury's verdict to remain in

place, it should reduce the verdict to \$300,000.00 in accordance with the South Carolina Tort Claims Act.

CONCLUSION

For the foregoing reasons, the Court should grant these Post-Trial Motions of Defendant and: (a) grant Defendant a new trial because of its failure to instruct the jury on comparative negligence; (b) grant Defendant judgment n.o.v. or a new trial under the "Thirteenth Juror" doctrine because the evidence does not support the jury's verdict; (c) grant a judgment n.o.v., new trial absolute or new trial *nisi remittitur* because the jury's verdict is plainly excessive and is not supported by the evidence; and/or (d) reduce the amount of the jury's verdict to \$300,000 pursuant to the South Carolina Tort Claims Act.

BARNWELL, WHALEY, PATTERSON,
AND HELMS, LLC

By: 

Randall C. Stoney, Esq.

P.O. Drawer H (29402)

288 Meeting Street, Suite 200

Charleston, SC 29401

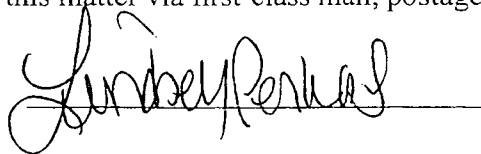
(843) 577-7700

*Counsel for Defendant The South Carolina
State Ports Authority*

Dated: June 5, 2018
Charleston, South Carolina

CERTIFICATE OF SERVICE

The undersigned does hereby certify that, on June 5, 2018, a true and correct copy of the foregoing was served upon counsel for the Plaintiff in this matter via first-class mail, postage prepaid.



the injury, and any other losses which are reflected by the character of the injury.¹

Prior to submitting the case to the jury to begin deliberations, the Court granted ample opportunity to all parties to object to any charges given, and Defendant voiced no objection to this charge.

B. The Court Charged Future Lost Wages Twice

The Court charged the jury on the issue of future lost earnings as follows:

Actual damages for a Plaintiff who has been physically injured include pain and suffering, past and future, as well as mental anguish, impairment of health or physical condition, or disfigurement. **The plaintiff may also claim reduced earning ability for the future.**²

The Court charged the jury a second time on the issue of lost earnings as follows:

The injured party may also recover for those future damages that are reasonably sure to result from the injury. The principle underlying compensation for future damages is that only one action can be brought and, therefore, only one recovery had. **It is proper to include in the estimate of future damages compensation for loss of the capacity for work or attention to the plaintiff's ordinary business,** future medical expenses, and pain and suffering which will, with reasonable certainty, result.³

The Court also charged:

¹Transcript, p. 13. ll. 21-25, p. 14, ll. 1-6 [emphasis added].

²Transcript, p. 13. ll. 15-20 [emphasis added].

³Transcript, p. 14. ll. 7-17 [emphasis added].

Actual damages need not be proven to a mathematical certainty or be based on evidence of the precise amount of damages the plaintiff has suffered.⁴

As with all jury charges related to past and future earning capacity, and after ample opportunity to object to any of these charges, Defendant voiced no objections to any of these charges. Further, any information relied upon by Defendant in its arguments which was obtained post-verdict, and outside the presence of attorneys and the Court reporter, is improperly relied upon, cannot be considered, and should not be a basis for any ruling in this matter.

II

DEFENDANT WAS NOT ENTITLED TO A CHARGE ON THE ISSUE OF COMPARATIVE NEGLIGENCE IN THIS CASE.

At trial Defendant presented zero evidence of negligence on the part of Plaintiff in this case.⁵ Accordingly, this Court correctly declined to charge the jury on the issue of comparative negligence.

III

PLAINTIFF CONCEDES THIS CASE IS GOVERNED BY THE LIMITS ON DAMAGES IMPOSED BY THE SOUTH CAROLINA TORT CLAIMS ACT.

Defendant moves this Court for a reduction of the verdict to the sum of \$300,00.00 as required by the SCTCA. Plaintiff concedes this argument.

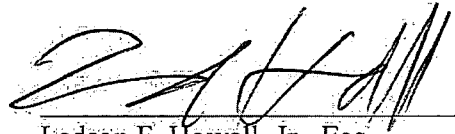
⁴Transcript, p. 15. ll. 1-6.

⁵Plaintiff hereby adopts his arguments at trial on this issue as if included verbatim herein.

CONCLUSION

Because past and future income was charged to the jury, and because Defendant entered no objection to same, Defendant has no standing to argue lost wages as a basis to reduce, overturn, or supplant the findings of fact by this properly seated jury. Accordingly, this Court should not invade the sacred province of the finders of fact in this case.

HOWELL LAW GROUP, LLC



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250 Mathis Ferry Rd., Ste. 102
P. O. Box 1896
Mt. Pleasant, SC 29464
843-849-2800
ATTORNEY FOR PLAINTIFF

Date: June 7, 2018
Mt. Pleasant, South Carolina

1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
2 COUNTY OF CHARLESTON) CASE NO. 2016-CP-10-05892
3 CURTIS MILLS,)
4 Plaintiff,) Transcript of Record
5 vs.) JURY CHARGE
6 SOUTH CAROLINA STATE) Date: May 31, 2018
7 PORTS AUTHORITY,)
8 Defendant.)

* * * * *

B E F O R E:
The Honorable Kristi Harrington

* * * * *

Denise J. Lauder, RPR
Ninth Judicial Circuit



1 in this case.

2 Mental suffering, apprehension, shock,
3 fright, emotional upset, humiliation and anxiety,
4 either present or expected in the future, can be
5 properly considered as elements of damages. The
6 amount of damages for mental suffering cannot be
7 exactly measured.

8 Loss of enjoyment of life compensates
9 the plaintiff for limitations on the plaintiff's
10 ability to participate in, and derive pleasure
11 from, the normal activities of daily life.

12 The plaintiff must prove that the
13 expenses caused by the injury were necessary and
14 reasonable.

15 Actual damages for a plaintiff who has
16 been physically injured include pain and suffering,
17 past and future, as well as mental anguish,
18 impairment of health or physical condition, or
19 disfigurement. The plaintiff may also claim
20 reduced earning ability for the future.

21 In determining the amount of
22 compensation for personal injuries, it is proper to
23 consider past and present aspects to the injury.
24 This would include physical and mental pain and
25 suffering, expenses incurred for necessary medical

1 treatment, loss of time and income which resulted
2 from the impairment of the ability to work and earn
3 a livelihood, the loss of enjoyment of life
4 suffered as a result of the injury, and any other
5 losses which are reflected by the character of the
6 injury.

7 The injured party may also recover for
8 those future damages that are reasonably sure to
9 result from the injury. The principle underlying
10 compensation for future damages is that only one
11 action can be brought and, therefore, only one
12 recovery had. It is proper to include in the
13 estimate of future damages compensation for loss of
14 the capacity for work or attention to the
15 plaintiff's ordinary business, future medical
16 expenses, and pain and suffering which will, with
17 reasonable certainty, result.

18 A plaintiff is never entitled to
19 recover speculative damages, but if you find that
20 the plaintiff is entitled to a verdict for actual
21 damages, your verdict should include an amount to
22 cover any past, present, and future damages which
23 were proximately caused by the defendant. Any
24 future damages must be reasonably certain to occur
25 in the future as a result of the defendant's acts.

1 Actual damages need not be proven to a mathematical
2 certainty or be based on evidence of the precise
3 amount of damages the plaintiff has suffered.

4 Instead, the evidence must allow you to
5 determine what amount of damages is fair, just, and
6 reasonable. Any future damages must be reasonably
7 calculated to have resulted from the alleged injury
8 or damage sustained in this case.

9 Any future damages must be reduced to
10 the present cash value. If you find that the
11 plaintiff was permanently injured as a result of
12 the defendant's actions, you must decide how, if at
13 all, the injury will affect the rest of the
14 plaintiff's life.

15 A person's life expectancy is
16 determined by a life expectancy table as part of
17 the laws of this state. The life expectancy table
18 is only an estimate of the probable -- of the
19 probable average remaining length of the life of
20 all persons in our state -- everybody good?

21 It's only an estimate of the probable
22 average remaining length of the life of all persons
23 in our state of a given age. The plaintiff --

24 At least one of you -- and I really
25 have poor eyesight. At least one of you, I think,

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
In the Court of Common Pleas for the Ninth Circuit

Kristi Lea Harrington, Circuit Court Judge

Case No. 2016-CP-10-5892

Curtis Mills Respondent

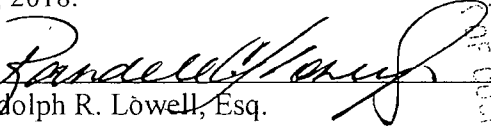
v.

The South Carolina State Ports Authority Appellant

NOTICE OF APPEAL

Defendant/Appellant The South Carolina State Ports Authority appeals: (a) the jury verdict and Judgment of the Honorable Kristi Lea Harrington, dated and filed June 1, 2018 (attached hereto as Exhibit A); and (b) the order of Judge Harrington dated and filed June 8, 2018 ruling on Appellant's post-trial motions and entering judgment against Appellant (attached hereto as Exhibit B). Appellant received written notice of entry of the ruling on its post-trial motions on June 8, 2018.

June 18, 2018

By: 
Randolph R. Lowell, Esq.
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***Counsel for Appellant The South Carolina
State Ports Authority***

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
In the Court of Common Pleas for the Ninth Circuit

Kristi Lea Harrington, Circuit Court Judge

Case No. 2016-CP-10-5892

Curtis Mills Respondent

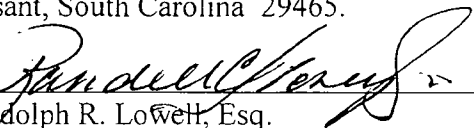
v.

The South Carolina State Ports Authority Appellant

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the above-referenced Respondent by depositing a copy of it in the United States Mail, postage prepaid, on June __, 2018, addressed to his attorney of record, Ladson F. Howell, Jr., Esq., Howell & Christmas, LLC, PO Box 1896, Mount Pleasant, South Carolina 29465.

June 18, 2018

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***Counsel for Appellant The South Carolina
State Ports Authority***

FILED
CLERK OF COURT
2018 JUL 20 AM 11:57

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2016-CP-10-5892

CURTIS MILLS

SOUTH CAROLINA STATE PORTS
AUTHORITY

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: **We, the jury, find for the Plaintiff Curtis Mills against South Carolina State Ports Authority.**

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

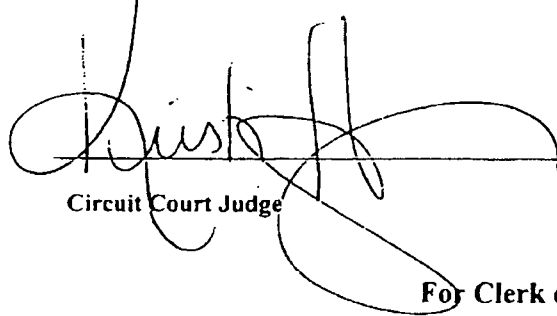
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Curtis Mills	South Carolina State Ports Authority	\$616,710.07 Actual Damages
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to Rule 60. Amounts to be computed such as interest



or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.


Circuit Court Judge

2151
Judge Code

6/1/18
Date

For Clerk of Court Office Use Only

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

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: Denise Lauder

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

CURTIS MILLS,)

Plaintiff,)

v.)

SOUTH CAROLINA STATE PORTS)
AUTHORITY,)

Defendant.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO. 2016-CP-10-5892

Verdict Form

1. Was the Defendant negligent?

☒ YES – Go to Question 2.

☐ NO – STOP deliberations.

2. Was the Defendant's negligence a proximate cause of the Plaintiff's injuries?

☒ YES – Go to Question 3.

☐ NO – STOP deliberations.

3. Please state the amount of damages, if any, sustained by the Plaintiff.

\$ 616,710.07 Actual Damages

I certify that this decision is the unanimous decision of the jury.


Michelle Turner, Foreperson

~~May~~ June 1, 2018

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016- CP-10-5892

CURTIS MILLS,

THE SOUTH CAROLINA STATE PORTS AUTHORITY

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Post-trial Motions were heard on June 8, 2018. Defendant's Motion for New Trial Upon Failure to Charge Comparative Negligence, Motion for J.N.O.V., New Trial, or New Trial Nisi Remittitur Because the Jury's Verdict Was Excessive and Not Supported by the Evidence, and the Motion for J.N.O.V. or a New Trial Under the "Thirteenth Juror" Doctrine Because There is No Evidence Supporting the Jury's Liability Verdict are denied. The Defendant's Motion to Reduce the Verdict to Reflect the Caps Set Forth in the South Carolina Tort Claims Act is granted with the concession of the Defendant. The verdict is reduced to \$300,000.00, pursuant to the South Carolina Tort Claims Act, S.C. Code 15-78-120(a).

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
CURTIS MILLS	SOUTH CAROLINA STATE PORTS AUTHORITY	\$300,000.00
		\$
		\$

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the South Carolina Rules of Civil Procedure. Amounts to be computed such as interest

Circuit Court Judge

Judge Code

Date _____

1.

2 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 3 COUNTY OF CHARLESTON) FOR THE NINTH CIRCUIT
) CASE NO. 2016-CP-10-05892

4 CURTIS MILLS,)
)
 5 Plaintiff,) Transcript of Record
)
 6 vs.)
)
 7 SOUTH CAROLINA PORTS) Date: May 29, 2018 -
 8 AUTHORITY,) June 1, 2018
)
 Defendants.

9

* * * * *

10

11

B E F O R E:

12

The Honorable Kristi Harrington

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19

20 * * * * *

21

22

Denise J. Lauder, RPR

23

Ninth Judicial Circuit

24

25

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

2

3 REPRESENTING THE PLAINTIFF:

4 LADSON FISHBURNE HOWELL, ESQUIRE

5 Howell & Christmas

6 250 Mathis Ferry Road, Suite 102

7 Mt. Pleasant, SC 29464

8

9 REPRESENTING THE DEFENDANT:

10 RANDELL CROFT STONEY, ESQUIRE

11 Barnwell Whaley Patterson & Helms, LLC

12 288 Meeting Street

13 Charleston, SC - 29401

14

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1 THE COURT: And was there anything
2 about that experience that will affect your ability
3 to be fair and impartial in this case?

4 PROSPECTIVE JUROR: No.

5 THE COURT: Your juror number?

6 PROSPECTIVE JUROR: 61.

7 THE COURT: Yes, sir.

8 PROSPECTIVE JUROR: 204. I was on a
9 jury when you were in North Charleston. I don't
10 remember the date. It was a criminal trial.

11 THE COURT: I was in North Charleston?

12 PROSPECTIVE JUROR: Oh, no.

13 THE COURT: Oh, when the old courthouse
14 was in North Charleston on Melbourne?

15 PROSPECTIVE JUROR: Yes. It was over
16 ten or 15 years ago.

17 THE COURT: That was a long time ago.

18 PROSPECTIVE JUROR: We were a hung
19 jury.

20 THE COURT: Criminal case?

21 PROSPECTIVE JUROR: Criminal.

22 THE COURT: Is there anything about
23 that experience that would affect your ability to
24 be fair and impartial in this case?

25 PROSPECTIVE JUROR: No.

1 THE COURT: And your number?

2 PROSPECTIVE JUROR: 204.

3 THE COURT: Thank you, sir.

4 Yes, sir.

5 PROSPECTIVE JUROR: Juror 172. I
6 served as a juror in a civil case in Charleston; it
7 was settled before the final determination by the
8 jury. And then I served as the jury foreman in
9 another civil case also in North Charleston.

10 THE COURT: On Melbourne, yes.

11 PROSPECTIVE JUROR: And that one did go
12 to trial and it settled and we resolved it.

13 THE COURT: Anything about those
14 experiences that would affect your ability to be
15 fair and impartial in this case?

16 PROSPECTIVE JUROR: Not at all.

17 THE COURT: Your number?

18 PROSPECTIVE JUROR: 172.

19 THE COURT: Thank you.

20 Yes, sir.

21 PROSPECTIVE JUROR: I served on a
22 criminal jury in Kalamazoo, Michigan in 2012.

23 THE COURT: Were you able to reach a
24 verdict?

25 PROSPECTIVE JUROR: Yes, we did.

1 instructions.

2 Ladies and gentlemen, just a few
3 preliminary matters I'm going to give you so that
4 you'll understand what is happening before you. I
5 have provided notepads for you, which means that
6 you may take notes throughout the progress of this
7 trial.

8 I caution jurors, some of us are much
9 better note-takers than others, so, please -- your
10 notes are exactly that; those are your notes. One
11 juror's notes are no more correct or accurate than
12 another juror's notes. We will lock those up
13 during the lunch hour and give them back to you,
14 and then lock them up over the evening hour and
15 give them back to you in the morning.

16 You will be allowed to take those notes
17 with you while you are retired to consider your
18 verdict; however, if at any time during your
19 deliberations you need testimony played back to
20 you, my court reporter will either come into your
21 jury room and play the audio back -- we don't have
22 -- it's not like on television.

23 We don't have a real time transcript to
24 print out for you, so we'll play that audio back
25 for you, or we may bring you back in the courtroom

1 A. Yes, sir.

2 Q. How long have you been driving a truck?

3 A. Since 2010.

4 Q. Okay. Do you remember -- I'm sure you
5 do -- the accident that happened on October 4 back
6 in 2012?

7 A. Yes, sir.

8 Q. Tell me about what happened on that
9 day.

10 A. On 2012, I think that was October --

11 Q. Yes, sir.

12 A. -- 4, I came in to the port. It was
13 around about 3:00 or 3 -- between 3 and 4. I don't
14 know the exact time because it was, like, six years
15 ago or so.

16 I came in -- I came off of a run
17 because I do long hauls; I go out of town and come
18 back. So I came in to the port, and I checked into
19 the lane. Before we check into the lane, each one
20 of the drivers usually get out and go around their
21 truck and inspect the chassis, tires and
22 everything, and unlock the box so we can come up on
23 the scale, the empty row, and come through and
24 check -- and get our ticket to go to which lane
25 that we need to drop these box off of.

1 Q. Okay. And so at the gate, did you get
2 out of your truck?

3 A. Yes.

4 Q. Okay. What do you do when you get out
5 of the truck?

6 A. I get out and, if I have ties on it, I
7 snip the ties and unlock the box, the locks --
8 there's four locks around the box. You walk around
9 and unlock it -- unlock it and make sure you tie is
10 good, and you wait to go in the lane and check in.

11 Q. And when you say locks, is that the
12 same thing as pins?

13 A. Pins, yeah. Locking pins.

14 Q. Okay. So did you on that day get out
15 and take the pins out?

16 A. Yes.

17 Q. All four?

18 A. Yes, all four. I walked around the
19 whole truck.

20 Q. What happened next?

21 A. I waited to check in. So they sent me
22 to -- to get your paperwork, and they send you to
23 -- back then they had guys out -- they done changed
24 the system -- they had guys that be out there and
25 write everything down and check you in manually.

1 They give you a ticket to go to what
2 lane you need to go to offload your load. So I
3 went there to C Row, and I came up, and I was
4 waiting on the radio operator to come there. And
5 so he came and he came, like, fast and clamped down
6 on the box.

7 Q. Okay.

8 A. You know, clamped down hard on the box,
9 and that's when he lifted the box up. And the box
10 and the chassis ties and the back of my truck ties
11 came off the ground. And that's when it -- I
12 guess, he -- I'd call it shake the box off, but, I
13 mean, and it came down. The box -- and the box
14 engaged and the chassis and the tires of my trucks
15 came down hard.

16 Q. Okay. So your truck, or your chassis
17 and your truck, went up in the air with the box?

18 A. Yes.

19 Q. Okay. And your truck came down out of
20 the air without the box?

21 A. Yes.

22 Q. Okay. What happened next?

23 A. I moved up to make sure that the box
24 don't fall, because sometimes they have accidents
25 like that, the box might try to fall on the truck,

1 you know. So I moved up a little bit and got out
2 of my truck, and I waved my hand to the radio
3 operator and he continued doing his job.

4 He put the box up there and he kept
5 moving, you know, so I called my office.

6 Q. You said the radio operator. Is that
7 the same thing as a crane operator?

8 A. Yeah, Greg Spanbauer.

9 Q. Okay. Greg Spanbauer?

10 A. Yes, sir.

11 Q. So after your truck dropped, he just --
12 what happened?

13 A. He continued -- he continued to do his
14 job. I moved up forward so the box -- I didn't
15 think -- I thought the box would fall or something
16 on me. So I moved up forward to get clear out of
17 the box's way.

18 Q. Okay. So the jury will understand what
19 type of crane, is this one of the giant cranes that
20 put it on the ship?

21 A. No. It's the -- it's like the
22 wrangler. They got wheels like a caterpillar.

23 Q. So this crane has four wheels?

24 A. Yeah, four wheels.

25 Q. And it's mobile?

1 A. Yeah, it's mobile. They come into each
2 lane. The box that's not going on the ship right
3 there -- you know what I mean?

4 Q. All right. So it's Greg Spanbauer's
5 job to take the box out off of your chassis and
6 stack it?

7 A. Yes.

8 Q. Okay. All right. So you had gotten
9 out of the truck. He's dropped -- the truck has
10 dropped off the box, Greg Spanbauer takes off with
11 the box and leaves?

12 A. No. See, I'm in the lane right there
13 where he's got to stack the box there.

14 Q. Okay.

15 A. So I moved up.

16 Q. Okay.

17 A. Because I didn't know if the box was
18 going to fall or what.

19 Q. Okay.

20 A. So I moved up --

21 Q. Okay.

22 A. -- quickly to get out of his way. So I
23 engaged my brakes on my truck and got out. You
24 know, I need to go ask him who I needed to report
25 this to. He kept doing his job and ride -- and

1 ride out going to the next side of the port.

2 Q. Okay. So what --

3 A. Like ignoring me.

4 Q. Okay. Did he see -- did you perceive
5 him to see you --

6 A. Yeah.

7 Q. -- holding your arms like that?

8 A. I hold my arms out like this
9 (indicating) waving to him, got my vest on and
10 everything.

11 Q. Okay. And he left?

12 A. Yeah. Yes, sir.

13 Q. What did you do next?

14 A. I got on the phone with my office that
15 I worked for, and the lady -- I said I need to
16 report this. And she tell me to go up to driver's
17 assistance. That's when Damion -- because all of
18 us drivers, we be on the phone talking, you know,
19 and we're telling each other what lane we're coming
20 on and stuff. So he came on that lane --

21 Q. When you say Damion, are you talking
22 about Damion Solomon?

23 A. Solomon, yes.

24 Q. Okay. What is Damion's job, what does
25 he do?

1 A. He's a truck driver also.

2 Q. He does the same thing you do?

3 A. Yes, sir.

4 Q. Okay. So you called your office and
5 they told you to go to driver's services?

6 A. Driver's assistance.

7 Q. Driver's assistance.

8 A. Yes.

9 Q. And did do you that?

10 A. Yes, sir. I went there, and a
11 gentleman tell me, do you want to make an accident
12 report? You have to call the Port Authority
13 Police. So I tell him, yes, I need to make a
14 report. So the police came up there and me and the
15 police was talking, and then I guess they summoned
16 Greg's -- Greg to come up there.

17 Q. Greg Spanbauer?

18 A. Yes.

19 Q. Okay.

20 A. So Greg came up there. And he, like,
21 got in my face and was, like, if you would have did
22 your job, I wouldn't have dropped you like that, if
23 you had did your job. And the police officer, I
24 tell -- I be like, why you let this man come up in
25 my face like that?

1 So me and him started arguing. The
2 police officer said, if you-all gonna start
3 arguing, I'm going to take all two of you-all to
4 jail. So I backed up.

5 Q. You mentioned Damion, where is he at
6 this point?

7 A. Damion was -- when Damion was on the
8 lane that Greg Spanbauer picked the box up in, he
9 be like -- he saw when he had the box up there in
10 the air, and I got up. I came up to clear the box,
11 so I was out waving my hand.

12 And he got out of his truck and was
13 like, man, you all right? And I said, yeah, I all
14 right but my back is hurting and stuff. I mean, I
15 need to see what -- I gotta call my office, man,
16 and see where I need to report it, because he
17 wouldn't stop, you know.

18 Q. So Damion came up -- Damion was the
19 first person that you spoke to after this accident?

20 A. Yes.

21 Q. Okay. Even before you called your
22 office?

23 A. Cause he'd been on the lane. Yeah,
24 he'd been in that lane.

25 Q. Okay. Okay. After the port police

1 arrived and had left, what happened next?

2 A. The port police came up, and he asked
3 me if I needed to go to the EMS. If I needed EMS
4 to come and get me and stuff. So I asked him, man,
5 are they going to charge me? And he was, like, no,
6 they ain't going to charge you. He asked me again,
7 and I said, yes, I'll go to EMS, you know.

8 Q. Okay.

9 A. They had another driver that worked
10 with me came and got my truck and stuff. So I went
11 to the East Cooper Hospital, and they did all kind
12 of x-rays and stuff. They took me out in the EMS,
13 they strap me down and take me out because my neck
14 and my back was hurting.

15 MR. HOWELL: Your Honor, if I may mark
16 this next exhibit as Exhibit Number 1?

17 THE COURT: You may. Are you moving it
18 into evidence at this time?

19 (PLF. EXH. 1, Copy of medical records,
20 was marked for identification.)

21 MR. HOWELL: Not at this time, Your
22 Honor.

23 THE COURT: All right.

24 BY MR. HOWELL:

25 Q. So I believe, Curtis, you just

1 testified that you got taken to the East Cooper
2 Hospital. Is that what your recollection is?

3 A. Yes, sir.

4 Q. Do you remember what they did for you
5 there?

6 A. They did, I think, a CAT scan.

7 Q. Okay.

8 A. And gave me some medication and stuff.

9 Q. Okay. After your emergency room
10 treatment, did you go seek treatment elsewhere?

11 A. Yes. East Cooper referred me --
12 referred me to this Southeastern Spine.

13 Q. Okay. Do you remember the name of your
14 doctor at the Southeastern Spine?

15 A. Yeah, Dr. Poletti.

16 Q. Did he treat you over a course of
17 several months?

18 A. Yes.

19 Q. Okay. Do you remember what he told you
20 was wrong with you?

21 A. Something about a herniated disk,
22 bulging disk.

23 Q. Okay.

24 A. And, like, I think something like
25 tissues or something.

1 Q. Okay. I know you're not an orthopedic
2 surgeon, and we'll hear from Dr. Poletti later in
3 this trial. Did you get physical therapy as well?

4 A. Yes.

5 Q. Okay. And did you treat with another
6 doctor, Dr. Zgleszewski?

7 A. Zgleszewski. Dr. Zgleszewski --

8 Q. At Palmetto Spine and Sports Medicine?

9 A. That might be one of his doctors.

10 Q. Dr. Z?

11 A. Dr. Z. is -- Poletti. Dr. Z. is --

12 Q. Did you treat with Dr. Z?

13 A. Yes, Dr. Z. I don't know --

14 Q. It's hard to pronounce his name so he
15 just goes by Dr. Z.

16 A. Yeah, Dr. Z.

17 Q. Okay. All right. Curtis, have you
18 incurred medical bills as a result of your injuries
19 from this accident?

20 A. Yes.

21 Q. Okay. You mentioned you rode in the
22 EMS. Do you -- how much medical bills did you
23 incur for your EMS ride?

24 A. It's \$480.

25 Q. Okay. And how much medical bills did

1 you incur at your treatment with Southeastern Spine
2 Institute?

3 A. It's \$14,867.

4 Q. And how much did you incur with Imaging
5 Specialists of Charleston?

6 A. \$3,666.

7 Q. And East Cooper Hospital?

8 A. That's \$5,719.92.

9 Q. Okay. And East Cooper Emergency Room?

10 A. \$726.

11 Q. How about the Physical Rehab Group?

12 A. It's \$965.

13 Q. And Dr. Z. at Palmetto Spine and Sports
14 Medicine?

15 A. It's \$23,805.

16 MR. HOWELL: Your Honor, at this time I
17 would like to move Plaintiff's Exhibit Number 1,
18 Plaintiff's medical bills into evidence.

19 THE COURT: Any objection?

20 MR. STONEY: None, Your Honor.

21 THE COURT: Plaintiff's 1 admitted into
22 evidence without objection.

23 BY MR. HOWELL:

24 Q. Tell me about the kind of treatment you
25 got. What did Dr. Z. do for you?

1 A. Dr. Z, he gave me, like, injections
2 with a long needle, like, four on each side of my
3 spine. Each time I go in there, like -- like, I
4 think every month I had to got -- get injections on
5 my spine and medication.

6 Q. Now, did you miss some work because of
7 this medical treatment that you got?

8 A. Yes.

9 Q. About how much time did you miss from
10 work approximately?

11 A. Like, nine weeks or more.

12 Q. Do you have an idea of how much you
13 lost in wages?

14 A. Like, right about 12,000-something
15 dollars.

16 Q. Okay. Have you filed your tax returns
17 from that year?

18 A. No, I didn't file it. I'm a truck
19 driver, and we got up until five years. My tax
20 lady is preparing my tax. She got -- got it pushed
21 back to prepare my tax and get it ready for this
22 year, all of them.

23 Q. And I believe you said -- might have
24 said a tear in your spine. Is that the reason you
25 were getting the injections in the back?

1 A. Yes.

2 Q. And did it give you relief?

3 A. It gives some relief, but it's like a
4 Band-Aid, you know, it comes back. The pain is
5 still there.

6 Q. Did Dr. Polettii or any of your doctors
7 talk to you about surgery?

8 A. Yes. Dr. Polettii talked to me about
9 surgery, but it was like a 50/50 chance I would
10 walk out of surgery.

11 Q. Okay.

12 A. And, I mean, you know, I talked to my
13 family, and it was like, I mean, they was upset
14 because I was about to have the surgery.

15 Q. Did you get back in your truck as soon
16 as you could?

17 A. Not right then. Once I got my
18 treatments and stuff and things kind of fall by the
19 wayside for me, I started losing all my stuff. And
20 Dr. Z. helped me got -- got back to -- a little bit
21 of my health. And he did place me on light duty to
22 go back to work, but not so much lifting and stuff.
23 And he tell me to try to rehabilitate myself
24 because I didn't have no proper insurance or
25 nothing.

1 Q. All right. Are you back in the truck
2 now, are you driving?

3 A. Yes.

4 Q. Okay. Are you able to maintain a
5 regular schedule at this time?

6 A. Not really. I do frequent stops as I
7 go.

8 Q. Okay.

9 A. You know, I stop periodically and
10 stretch, and, you know, like that. But I don't do
11 no lifting or nothing like that.

12 Q. But you are back at work?

13 A. Yes, sir.

14 Q. How does your back feel now? And when
15 I say now, I don't mean necessarily this instant,
16 but just in general lately.

17 A. It's still -- I'm in pain, and, I mean,
18 I deal with pain medicine and stuff, but, you know,
19 it's going to be a lifetime, you know, pain.

20 Q. Are there any activities that you used
21 to do before this accident that you can't do
22 anymore?

23 A. Yeah. Like play basketball and, you
24 know, running with my children and stuff. You
25 know, like -- but I can't play basketball or

1 if you come in late, they don't want to do their
2 job, you know.

3 Q. Okay. Curtis, have you ever had your
4 truck lifted up off the ground before with pins
5 that have been reengaged, other than this one?

6 A. Not that high like that. But, you
7 know, the procedure for them, if they lift it up,
8 they'll lower it back down and blow the horn and
9 let you get out and disengage it.

10 Q. So if the pins have reengaged and they
11 jostle back in between the gate and the crane --

12 A. Yes.

13 Q. -- and then when the crane operator
14 lifts the box and notices that the chassis starts
15 to come up, the crane operator is supposed to lower
16 it back down?

17 A. Yes. And blow the horn and let you get
18 out and disengage.

19 Q. Okay. Do you know about how high Greg
20 Spanbauer lifted up your --

21 A. Like, four to six feet.

22 Q. And you dropped from that height?

23 A. Yes.

24 MR. HOWELL: That's all the questions I
25 have. Thank you, Curtis.

1 was working?

2 A. Yes, sir.

3 Q. And we know Mr. Spanbauer was -- was
4 working where you delivered your container?

5 A. Yes.

6 Q. So if C row was -- your space was
7 CA-28, would that sound reasonable to you?

8 A. I think C -- it was C row. C is the
9 only thing that I know.

10 Q. All right. Now, are you sure you
11 pulled your pins?

12 A. Yes, sir.

13 Q. And tell me, when you pulled those
14 pins, was there anything you did to make certain
15 that they were, in fact, disengaged?

16 A. Yes, sir. Because when you pull your
17 pins, you'll see when -- you've got something you
18 push in and you got something you pull out, and
19 it's a -- some of them have like a little thing to
20 keep it from going back in, but those be
21 malfunctioned.

22 Q. All right. And do I understand that
23 you -- your truck was lifted off the ground?

24 A. Yes, sir; the back tires of my truck
25 and the chassis.

1 Q. And the whole chassis was lifted off
2 the ground?

3 A. Yes.

4 Q. The entire four corners of the chassis
5 came up?

6 A. Yes, sir, and the back tires --

7 Q. And the back tires of the truck?

8 A. Yes, sir.

9 Q. And you believe that you were four feet
10 off the ground?

11 A. You know what I mean? To my knowledge,
12 you know what I mean?

13 Q. Okay. All right, sir.

14 A. I don't have no measuring tape to --

15 Q. All right. I understand that.

16 A. Yes, sir.

17 Q. When -- when the truck came down,
18 aren't there -- did it -- did it puncture the
19 airbags, the compression shock airbags on the
20 truck?

21 A. The airbags -- those trucks are, you
22 know what I mean? Airbags withstand, you know what
23 I mean? The truck is going to bounce.

24 Q. Okay. But because the airbag --

25 A. There's a lot of air in the truck

1 system.

2 Q. But the airbag didn't rupture, did it?

3 A. No, it didn't.

4 Q. And you drove back up to the top of the
5 road and called your office, and they told you to
6 call -- to go to driver's assistance?

7 A. I pulled up -- I pulled out, like some
8 containers forward from where I dropped mine from,
9 and got out to try to talk to him, you know, to see
10 why he did the operation like that.

11 Q. Okay. Now, he either didn't see you or
12 ignored you; is that correct.

13 A. He ignored me because --

14 THE COURT: Hold on one second. You
15 might have to -- can you yell them out?

16 MR. HOWELL: I'm sorry, Your Honor.
17 Objection, he's asking what Greg Spanbauer's point
18 of view was.

19 THE COURT: Overruled. You may answer.

20 BY MR. STONEY:

21 Q. You don't know what Mr. Spanbauer saw,
22 do you?

23 A. Yeah. He had to saw it, you know,
24 because he was operating the crane.

25 Q. But if he were going to land the box

1 MR. STONEY: Thank you, Your Honor.

2 May it please the Court.

3 BY MR. STONEY:

4 Q. Mr. Mills, I'm going to try to wrap
5 this up. I want to make sure that I'm clear on a
6 couple of things, and I apologize if I'm being
7 repetitious, but as I understand you testified all
8 four corners of the chassis came up, correct?

9 A. Yes, sir.

10 Q. And that the rear of your truck also
11 came up?

12 A. Yes, sir.

13 Q. Okay. Was there any damage to your
14 truck that you're aware of?

15 A. I don't know because, I mean, the
16 company had the truck. They -- I don't know what
17 happened to the truck.

18 Q. But you never -- you never got any
19 report of any damage to the truck?

20 A. No, I didn't get no report or nothing.

21 Q. All right. And you were driving for
22 TDL Logistics?

23 A. TLD.

24 Q. TLD. I don't know why I can't get
25 those straight. All right. And then we talked a

1 Naproxen, I think. Three different medications.

2 Q. All right. And while you were treating
3 with Southeastern Spine, at that same time you went
4 to Palmetto Spine for treatment also with Dr.
5 Zgleszewski?

6 A. I went -- I went -- like, the latter
7 part of my treatments were Poletti.

8 Q. Okay. So you were treating with two
9 different concerns at the same time?

10 A. I went -- yeah, I went to Dr. Z. for a
11 second opinion.

12 Q. All right. Now, Dr. Z, we've talked to
13 him, Dr. Zgleszewski, he released you to go back to
14 work in February of 2014; would that be accurate?

15 A. Yes, 2014.

16 Q. All right. And, again, I want to ask
17 you, when is the last time you filed any tax
18 returns?

19 A. My tax lady is getting my tax --
20 preparing it now, because truck drivers, you got up
21 to like five years to file taxes.

22 Q. So did you file tax returns in 2012?

23 A. No, sir.

24 Q. How about 2011?

25 A. I don't -- I don't -- I don't -- that's

1 far back.

2 Q. Well, what about 2013?

3 A. I didn't work in 2012.

4 Q. Okay.

5 A. After my accident in 2013, I didn't --
6 I didn't work.

7 Q. All right.

8 MR. STONEY: Indulge me just a minute,
9 Your Honor.

10 THE COURT: Take your time.

11 BY MR. STONEY:

12 Q. You had a slip-and-fall in a restaurant
13 in 2014, didn't you?

14 A. Yes, I slipped.

15 Q. Did you injure your back in that?

16 A. No. It just slipped, my ankle -- I
17 mean, my knee. I slipped, but it was okay.

18 Q. When you went to the hospital -- when
19 you went to the emergency room, you didn't tell
20 them you hurt your back?

21 A. I told them I had been having back
22 problems.

23 MR. STONEY: Okay. Thank you, Your
24 Honor. That's all I have.

25 THE COURT: Mr. Howell, redirect?

1 Washington, W-A-S-H-I-N-G-T-O-N.

2 DIRECT EXAMINATION

3 BY MR. HOWELL:

4 Q. Mr. Washington, as I think you know,
5 I'm Lad Howell, and I represent Curtis Mills in
6 this case. Where do you work?

7 A. South Carolina Ports Authority.

8 Q. Are you listed as a witness by the port
9 in this case?

10 A. Yes.

11 Q. Okay. And you work there now?

12 A. I do.

13 Q. How many years have you worked there?

14 A. 17 years.

15 Q. Okay. I want to get this out of the
16 way first, as well. You're a client of my law
17 firm, aren't you?

18 A. Yes.

19 Q. And I took your deposition in this
20 case, didn't I?

21 A. That's correct, yes.

22 Q. And when I took your deposition, you
23 were surprised to see me, weren't you?

24 A. Yes.

25 Q. And the reason why you were surprised

1 to see me is because I had never mentioned this
2 case to you before that deposition; isn't that
3 right?

4 A. That is correct, yeah.

5 Q. Okay. And, also, you and I have never
6 discussed this case since your deposition?

7 A. Also correct.

8 Q. Okay. And so the only time you and I
9 have ever talked about this case is in Mr. Stoney's
10 office at your deposition and in this courtroom,
11 correct?

12 A. That's correct.

13 Q. Okay. Now --

14 MR. STONEY: Your Honor, I'll certainly
15 concede that Mr. Howell has been professional in
16 his relationship with Mr. Washington; and he
17 examined him in the course of his discovery in this
18 case and I was present and everything was proper.

19 THE COURT: Okay. Thank you.

20 BY MR. HOWELL:

21 Q. Greg Spanbauer trained you, didn't he?

22 A. Yes, he did.

23 Q. What do you do at the port?

24 A. I'm an equipment operator.

25 Q. Okay. What kind of equipment do you

1 operate?

2 A. Equipment -- well, just about
3 everything they have, forklift, top lifter, empty
4 handler, rubber tires, gantry crane. Everything
5 that they have, I operate it.

6 Q. Including the type of crane that Greg
7 Spanbauer was using when this accident happened?

8 A. Yes, that would be correct.

9 Q. Okay. And, again, how long have you
10 been at the port?

11 A. 17 years.

12 Q. Okay. You've lifted a container that's
13 still been attached to the chassis before, haven't
14 you?

15 A. Yes.

16 Q. Okay. And what's the proper thing to
17 do when that happens?

18 A. The operator would notice that as the
19 chassis or the wheels would rise up, you put it
20 back on the ground and flag the driver, let him
21 know to come out and either slide his front pins or
22 twist his rear pins.

23 At the rear of the chassis the box
24 turns and the front pins they slide back and forth.

25 Q. And that's the safe way to handle it,

1 correct?

2 A. Yes.

3 Q. Is it at all safe to raise it up high
4 and jiggle it?

5 A. We don't jiggle containers at all.

6 Q. That would be dangerous, wouldn't it?

7 A. Yes.

8 Q. Now, just to be clear, you didn't
9 witness this particular accident, correct?

10 A. No, I did not.

11 Q. Okay. Now, one last thing, in your
12 experience in all the years you've been at the port
13 and as a crane operator and a gantry operator and
14 all the other equipment that you know how to use,
15 you know from your own experience that the pins --
16 you know what I'm talking about when I talk about
17 the pins?

18 A. Yes.

19 Q. Okay. The pins can become -- once
20 they're disengaged at the gate and the truck with
21 the box on it, on top of the chassis, drives
22 between the gate up to your crane, those pins can
23 and do jostle back into place, don't they?

24 A. I'm assuming, yes, they could.

25 Q. Okay. Well, more than assume, you know

1 that for a fact, correct?

2 A. I mean, yeah. Not all of them, but, I
3 mean, I'm sure one or two will do that.

4 Q. I didn't mean to imply it happens every
5 time.

6 A. Okay.

7 Q. But it is not unusual for pins to
8 jostle back into place between the gate and your
9 crane, correct?

10 A. Yes, that has happened. Yes.

11 Q. Okay. And it's not unusual, correct?

12 A. Not unusual, it happens, yes.

13 Q. And the proper -- when that does
14 happen, and you drop your spreader on that box and
15 you notice the chassis starts to come up with the
16 box, the safe thing to do is to lower it back down
17 slowly, right?

18 A. Well, you don't drop the bar on top of
19 the container. It's placed on top of there in a
20 fashion so that the spreader bar -- just so the
21 jury will understand, the spreader bar is the
22 mechanism we use to pick up the box. We carry that
23 at a 20-foot position, and then you spread it out
24 to a 40-foot position. It has four locking pins on
25 the corner of the bar which have to match up to the

1 A. Yeah. Uh-huh.

2 Q. So when Mr. Spanbauer picked up the
3 box, the chassis came with it?

4 A. The chassis and the box and then the
5 back of the truck, yeah.

6 Q. Okay. So the wheels on the cab itself
7 came up, too?

8 A. The back -- yeah, the back of the --
9 yeah, the eight tires on the back..

10 Q. Now, we've got the box and the chassis
11 and part of the cab up in the air and -- high
12 enough for you to walk under it?

13 A. Yeah. I'm short.

14 Q. What happened next?

15 A. Well, with hydraulics I'm not really
16 going to have a sudden shake. So some of the
17 operators they have a tendency of twisting their
18 boom. What happens is the chassis -- the box was
19 come free off the chassis and everything will fall.

20 Q. Is that what happened?

21 A. Yeah, that's what happened. And then
22 -- it always happen, always.

23 Q. Have you ever seen it happen that
24 badly?

25 A. It happened to me a couple of times,

1 A. I have seen it. I have seen the back
2 of them come up all the time. They always do it.

3 Q. Have you ever seen -- in your 17 years
4 of doing this, have you ever seen a crane operator
5 pick up a box with a chassis attached to it that
6 high?

7 A. Not that high, but I have --

8 Q. You've seen it come up, but not nearly
9 as high --

10 A. But not that high. Not nearly that
11 high.

12 Q. And did you see it crash down?

13 A. Yeah.

14 Q. Okay. And then what did you do after
15 that?

16 A. I went around to the operator and made
17 sure -- we pulled up and went around him to make
18 sure he was all right.

19 Q. Okay. Did you have any other
20 discussions with Curtis?

21 A. No. No. We actually went to the
22 driver's assistance.

23 Q. Okay. So when he went to driver's
24 assistance, you walked with him?

25 A. No, we drove. I drove my truck up

1 Q. And tell the jury, if you would, what
2 the procedure is for when you pull up to the gate.

3 A. Once we pull up, if there is a scale
4 available, we would pull on a scale, unlock the
5 pins, check the chassis because most of the time
6 we're taking the same chassis back out. We're
7 going to get another box.

8 And we give the checker out
9 information. The checker actually give you the
10 check-off. They check your license, check the
11 tires, and some of them will check the pins if we
12 have an empty, they check the box. And we sign the
13 bottom of the paper and we go to our row.

14 Q. Okay. And what is your duty with
15 regard to the pins when you pull up to the port at
16 the gate?

17 A. I unlock them; the front push in and
18 pull out, and the back, they twist.

19 Q. Okay. So you have to unlock four pins?

20 A. Yeah. Four pins, yeah.

21 Q. Okay. And in your -- in your
22 experience doing this job, is it ever the case
23 where the pins will jostle back into place while
24 the truck is driving across the yard to get from
25 the gate to where the cranes are?

1 A. Yeah, all the time.

2 Q. Has that ever happened to you?

3 A. Just happened last week.

4 Q. Okay. So just because you pull the
5 pins out at the gate doesn't always necessarily
6 mean they'll still be out when you get to the
7 crane?

8 A. No.

9 Q. Is that correct?

10 A. That's correct.

11 Q. Okay. Had you -- at the time of this
12 accident, before or since -- at any time since
13 you've been driving trucks around the grounds of
14 the port, do you know anything about Greg
15 Spanbauer?

16 A. Yeah, we had little words at one time.

17 Q. Okay. Do you know a lot of truckers
18 that have had words with him?

19 A. I know a lot of them.

20 Q. What was Mr. Spanbauer's reputation?

21 A. Nasty fellow.

22 Q. Okay. What do you mean by nasty?

23 A. Well, you pull up to his crane and he
24 pull up with the machine and sometimes he seemed
25 like he doesn't want to do his job. So sometimes

1 A. Yes.

2 Q. And, then, you acknowledge that it's
3 the driver's responsibility to make certain pins
4 are disengaged?

5 A. It is. It is.

6 Q. And before you were unloaded when you
7 got to the row, did you have a little time to wait
8 there?

9 A. Excuse me?

10 Q. When you got to where you were going to
11 have your box taken off, you were waiting, and you
12 were waiting to be unloaded, right?

13 A. I don't remember. It's according to
14 how many trucks in front of me and it's according
15 to what operator is assigned to that row.

16 Q. All right. Well, I just had a
17 question. You testified and I think Mr. Mills
18 testified, that it's not uncommon for pins to get
19 jostled back into a closed or semiclosed position;
20 isn't that right?

21 A. That's correct.

22 Q. Okay. And you acknowledge that it's
23 your responsibility to make certain that those pins
24 are pulled, right?

25 A. Yeah.

1 Q. What good does it do if the pins are
2 unlocked at the scale, but they're not unlocked
3 when you get to have it lifted off?

4 A. It's out of my control at that time.
5 From me driving from point A to point B, it's out
6 of my control.

7 Q. But is there anything stopping you when
8 get to point B from getting out and double checking
9 to make certain those pins are disengaged?

10 A. When you get to the gate -- when you
11 get to your location, your operator's ready to
12 connect and go.

13 Q. Is there any reason you can't tell that
14 operator, just hold on a minute and let me jump and
15 make certain, I went over some bumps getting here,
16 and I want to double check to make certain the pins
17 are pulled?

18 A. No driver do that.

19 Q. Is there anything stopping from doing
20 that?

21 A. Not stopping me, but no driver does it.

22 Q. Wouldn't that be safer?

23 A. It could be. It would be.

24 Q. Isn't it your responsibility to make
25 certain those pins are disengaged?

1 A. Once, again, once I leave the scale
2 they are disengaged. Once I get to where I'm
3 going, I don't know what he's doing. So once he
4 picked the box up, if the chassis and box aren't
5 together, then I know they locked back down.

6 Q. All right. So -- all right. So,
7 basically, what you're saying is that it's not your
8 responsibility when you get to the piece of
9 equipment -- when you get to the container handler,
10 your responsibility to make certain those pins are
11 pulled is no longer in play, is that --

12 A. No, I didn't say that. I just say I
13 just didn't check the second time, that's all.

14 Q. But you could have checked a second
15 time?

16 A. You could, but, you know, we don't.

17 Q. Do you remember whether or not you left
18 the port pulling a chassis that day or whether you
19 took the chassis to the yard?

20 A. I don't remember. Most of the time
21 when I go in with a chassis, I come out -- so it's
22 according to where my box is coming from. I could
23 have been going to North Charleston to pick up, I
24 don't remember.

25 Q. Okay. So if there's a -- there's a

1 Q. But a crane operator while he's on his
2 shift, he's seeing trucker after trucker after
3 trucker?

4 A. Yeah, he sees it all day.

5 Q. Is it the policy of the port over these
6 17 years for any trucker to get out once they get
7 to the scale?

8 A. It's not a policy or -- oh, you mean
9 once they get in?

10 Q. Yeah. Have you ever seen any truck
11 driver get -- out of the tens of thousands of
12 trucks you've seen come through the port in your
13 career, is it the policy of these truckers to check
14 the pins at the gate, and then once you pull up to
15 a crane or a big heavy spreader bar to get out and
16 check them the second time?

17 A. It's according to the driver. You have
18 some do it at the gate. You got some drivers who
19 actually wait until they get to the crane. So it's
20 according to the driver.

21 Q. When you get to the crane, does the
22 spreader bar almost always come straight down?

23 A. No, we're talking about two different
24 machines. The Cats, they have to put themselves in
25 position. The corning trays, we have to go under

1 negative, there really won't be much change or
2 there may be an increase in pain.

3 And this -- I'm getting ahead of
4 myself.

5 BY MR. HOWELL:

6 Q. No. No. But what is the purpose of
7 that?

8 A. The purpose is to diagnose from the
9 standpoint of needing to know what we're dealing
10 with before we can treat it, and this is the only
11 way to tell for sure if those joints are painful or
12 not.

13 Q. So do you do them one at a time or all
14 different ones?

15 A. One at a time.

16 Q. So you -- and how many joints did you
17 testify that you needed to diagnose with this
18 procedure?

19 A. Well, it would have been the right and
20 left sacroiliac joints, or SI joints, and then as
21 far as the facette joints, we'd do one side and
22 then the other. So it would have been -- if I
23 remember correctly -- L3-4, L4-5, and L5-S1;
24 basically, the bottom three on one occasion on one
25 side, and then he would come back and get the other

1 identification.)

2 THE COURT: You can mark it. We'll
3 take that up outside the presence of the jury.

4 BY MR. HOWELL:

5 Q. Dr. Z, is that needle that's just been
6 marked as a plaintiff's exhibit, is that a similar
7 needle, but shorter than the one you used on
8 Curtis?

9 A. That's correct.

10 Q. How long is that needle?

11 A. I believe it's a two-inch needle.

12 Q. How long?

13 A. About a two-inch.

14 Q. Okay. And how long was the needle you
15 used on Curtis?

16 A. It would have been five inches.

17 MR. HOWELL: Your Honor, the Plaintiff
18 moves that Plaintiff's Exhibit 4, the epidural
19 needle be moved into evidence.

20 THE COURT: I thought we already did
21 that. You said you didn't have any objection?

22 MR. STONEY: You're correct, Your
23 Honor.

24 MR. HOWELL: Thank you, Your
25 Honor.

1 (PLF. EXH. 4 in evidence.)

2 BY MR. HOWELL:

3 Q. Tell me about your next visit.

4 A. Are we talking about the epidural?

5 Q. Yes.

6 A. So based on the EMG test which was
7 positive for an acute or chronic pinched nerve or
8 radiculopathy, on September 13th, I did a bilateral
9 L5 and S1, what's called a transforaminal epidural
10 steroid injection, which basically -- so,
11 basically, that procedure -- do you want me to --

12 Q. Sure.

13 MR. HOWELL: If it pleases the Court,
14 you may.

15 THE COURT: As long as he keeps
16 speaking loudly.

17 THE WITNESS: Okay. So basically what
18 we did that day is what's called a bilateral, which
19 means both sides, L5, which would be this nerve
20 root here, and then S1, which would be the first
21 sacral nerve root which comes out though here,
22 (indicating) epidural steroid injection, which
23 means under x-ray guidance -- after numbing up the
24 skin and anesthetizing muscle, down under x-ray
25 guidance, placed the needle basically right through

1 And he stated at that point he was
2 basically just taking over-the-counter medication,
3 that he couldn't afford the basic doctor visits to
4 do anything further such as getting medications or
5 further procedures.

6 Q. Okay. Dr. Zgleszewski, are the
7 injuries that Curtis suffered to his spine, his
8 herniated disk, the annular tear, in your
9 professional medical opinion, is it your opinion
10 that -- or what is your opinion as to whether or
11 not those injuries in his spine, were they within a
12 reasonable degree of medical certainty most
13 probably caused by his accident on October 4, 2012?

14 A. In my opinion, yes.

15 Q. Okay. Based upon your review of all
16 the records in this case, including Dr. Poletti's
17 and your own records, was the treatment that Curtis
18 received as a result of his accident reasonable and
19 necessary?

20 A. Yes.

21 Q. Okay. And the medical bills generated,
22 were they reasonable within the medical community?

23 A. I believe so, yes.

24 Q. Including yours?

25 A. I believe so, yes.

1 A. That's correct. And I'm a physical
2 medicine and physical rehabilitation specialist.
3 So when I do administer basic home exercises, I'll
4 actually review that with the patients.

5 Q. Okay. And those exercises were
6 prescribed for Mr. Mills?

7 A. If I remember correctly, yes.

8 Q. Okay. And then your final treatment
9 for him was February 24th of 2014. Am I accurate
10 on that?

11 A. Let me double check, but that sounds --
12 February 24th?

13 Q. Yes.

14 A. What was the --

15 Q. 2014.

16 A. The last treatment or the last sort of
17 interventional type --

18 Q. Well, as I remember what you -- the way
19 you explained it is that that was the last
20 treatment, that you believed he can go back to
21 work, and that his pain was at a low level, you
22 felt like -- you were happy, he was happy, and he
23 went on a medical management plan from that point
24 on?

25 A. Yes. And then it would have been he

1 was happy so I was happy.

2 Q. And that was February 24th, 2014?

3 A. I believe so, yes.

4 MR. STONEY: Thank you. I have no
5 further questions.

6 THE COURT: Redirect?

7 MR. HOWELL: Yes, Your Honor, briefly.

8 REDIRECT EXAMINATION

9 BY MR. HOWELL:

10 Q. Mr. Stoney, some of his line of
11 questions was suggesting that Curtis was coming to
12 you to get drugs. You do drug screening on your
13 patients, don't you?

14 A. Yes.

15 Q. Okay. And is that a urine test?

16 A. Yes.

17 Q. If -- if Curtis was abusing drugs,
18 would that show up on a urine test?

19 A. What do you mean by abusing drugs?

20 Q. Let me put it this way: Can you
21 conclude from a negative urine test that the
22 patient has not taken drugs in X number of days
23 based on the signs of it?

24 A. Yes.

25 Q. Okay. And did Curtis often have

1 A. The map, yeah.

2 Q. Anything else?

3 A. No.

4 Q. All right. You remember this accident
5 that happened November 2, 2012, right?

6 A. Yes.

7 Q. And you probably have -- Randall has a
8 copy of this incident report, I believe. I can
9 offer this as Plaintiff's 1. Mr. Spanbauer, have
10 you looked at that document in the recent past?
11 And if you haven't -- or even if you have, please
12 feel free to take the time and look it over again.
13 I might go off the record and get a cup of coffee
14 and let you look at that for a minute.

15 Back on the record, Mr. Spanbauer.
16 Have you had a chance to look at the incident
17 report that's been marked as Plaintiff's Exhibit 1?

18 A. Yes.

19 Q. All right. And that document you're
20 looking at, is that a six-page document?

21 A. It is.

22 Q. Okay. All right. Tell me in your own
23 words, from start to finish, beginning with where
24 you want to start and where you want to end, what
25 happened on that day.

1 A. Well, we are trained as an operator
2 that when a driver pulls up to the stack, that
3 means he's ready to be taken off, his boxes are
4 ready to be taken off. So I -- when he pulled up
5 to the stack, I went to take off his box.

6 I lifted his box up. It came up about
7 two feet in the back, the back pins were unlocked,
8 but the front pins were fully engaged into the
9 front bolster. That's when -- as soon as he
10 realized that both his pins were in the front
11 bolster, he drove off. That's what caused him to
12 bounce up and down.

13 After he drove off, I could see both of
14 the pins sticking out of the bolster into the --
15 into the container, but he didn't stop. He just
16 drove all the way to the other end of the pad,
17 stopped, and sat there for about half an hour.

18 Then a couple of his buddies came by
19 there and talked to him, and then he went to 401,
20 which is driver's assistance, where he was in the
21 parking lot. That's when they called port police.
22 And he was asked several times if he wanted an
23 ambulance, and he said no.

24 Q. Okay. So when you lifted the box up,
25 you say the front pins were still engaged?

- 1 A. They were.
- 2 Q. The front pins being those closer to
3 the cab?
- 4 A. Correct.
- 5 Q. And you say it lifted, what, two feet
6 off the ground? What came two feet off the ground?
- 7 A. The container.
- 8 Q. The container.
- 9 A. Because the container came up at an
10 angle.
- 11 Q. Okay. Okay. And when you say that
12 Mr. Mills tried to drive away --
- 13 A. Oh, he did drive away.
- 14 Q. Did drive away and --
- 15 A. And then the time that he was driving
16 away is when his cab bounced up and down.
- 17 Q. Okay. Okay. So the back of the box is
18 two feet up in the air?
- 19 A. Well, approximately. I mean, it's
20 going to be at an angle, especially when both pins
21 are in the front bolster.
- 22 Q. Okay. Well, I'm trying to go by what
23 you're saying.
- 24 A. Right.
- 25 Q. I'm trying to be clear to what you're

1 testifying to here today. So the back of the
2 container is two feet up in the air?

3 A. From the chassis.

4 Q. From the chassis. And Mr. Mills does
5 drive away and bounce while he does it?

6 A. Correct.

7 Q. And what causes the bounce, if you
8 know?

9 A. Because the pins were locked. They
10 were -- if the pins are in here, and you can't --
11 and you have a container that's up like this, it
12 pinches it.

13 Q. Uh-huh.

14 A. So, therefore, I mean, I can't -- I
15 can't even take off. I can't even take that off
16 there because they're pinched in there. So that's
17 when he and so many drivers do that. Drivers --
18 it's like a game out there.

19 They all -- they all try and play the
20 game with you, but they know their pins are locked
21 in the front bolster and they try to slide out
22 before you -- before you have to get out and pull
23 them out.

24 Q. So the game is drivers will drive up to
25 you, drive up to the stack knowing their pins are

1 engaged. Is that what your testimony is?

2 A. Yes.

3 Q. In your opinion, what's the purpose of
4 the game?

5 A. Well, they don't -- they don't do their
6 job.

7 Q. Okay. But they know -- but these
8 drivers, they know that the pins are in place and
9 they drive up to the stack anyway?

10 A. Well, they might have. Sometimes there
11 might be one side or the other, but they don't --
12 they won't alarm me of it, and if I'm telling you
13 guys, let me know if they have a problem.

14 Q. Right. And they don't?

15 A. No.

16 Q. Okay. But they drive up knowing their
17 pins are engaged?

18 A. It's even worse when it's raining out.

19 Q. Okay. Okay. Because they don't want
20 to get out of their truck to disengage their pins?

21 A. Right.

22 Q. They've been doing this a long time?

23 A. I would say so, yeah.

24 Q. And that's been -- you've been working
25 there 15 years, right?

1 A. Right.

2 Q. All right. How long has the game been
3 going on?

4 A. Quite a while.

5 Q. The whole time you've been there?

6 A. I mean, at least six or seven years
7 that I can recollect.

8 Q. Okay. So even when it's not raining,
9 they'll drive up knowing that their pins are
10 engaged, right?

11 A. Right.

12 Q. Do you have any idea of your own
13 knowledge why they would do something like that?
14 Of your own knowledge?

15 A. No.

16 Q. Okay. What about during the rain, is
17 that because they don't want to get wet?

18 A. I have no idea.

19 Q. Okay. Is it dangerous to have your box
20 lifted off a chassis with the pins engaged?

21 A. It can be.

22 Q. Is it safe to have your box lifted off
23 the chassis with the pins engaged?

24 A. No.

25 Q. Is it ever safe to have a box lifted

1 off a chassis with the pins engaged?

2 A. It is if a driver lets me know
3 beforehand. It would be safe because I would lift
4 up the box and let them drive off.

5 Q. So as I understand your testimony, it's
6 safe to lift a box off a chassis that has pins
7 engaged if the driver tells you that the pins are
8 engaged?

9 A. Correct. If he can't -- if he can't
10 unlock them, then I would hope he would let me
11 know.

12 Q. Right. I want to focus on this for
13 just a second. You're saying that it's safe to
14 lift the box off the chassis with the pins engaged
15 if the driver tells you ahead of time that the pins
16 are engaged, right?

17 A. Well, it's -- yeah, it's safer.

18 Q. Does that ever happen?

19 A. That the drivers tell me that?

20 Q. Does the driver ever say --

21 A. Yes.

22 Q. -- hey, Mr. Spanbauer, my pins are
23 engaged, lift this box off anyway, I'm letting you
24 know?

25 A. Yeah. They let me know that the pins

1 that happen? All the time?

2 A. Once a week, twice a week.

3 Q. Okay.

4 A. I can't -- I can't --

5 Q. I understand. You don't keep account

6 of it, right? But you -- based on your own

7 experience, once or twice a week drivers will drive

8 up to you knowing that their pins are engaged and

9 not tell you, right?

10 A. Right, yes.

11 Q. That's not safe for the driver, is it?

12 A. It's not safe for anybody.

13 Q. Well, what happens when a driver rolls

14 up once or twice a week and his pins are engaged,

15 knows it, and doesn't tell you? What happens next?

16 A. Well, we just -- we do what we're

17 trained to do; we take the box off.

18 Q. Okay. The box doesn't come off,

19 though, right away when the pins are engaged, does

20 it?

21 A. Well, it goes back to that game I was

22 telling you about. They time it just right so they

23 can drive off when they know their pins are

24 engaged.

25 Q. Do you ever have a -- lift a box off a

1 chassis with the pins engaged and the chassis comes
2 up with the box? Has that ever happened?

3 A. I don't recall.

4 Q. Okay. Do you understand my question,
5 sir?

6 A. I didn't.

7 Q. My question is, have you ever had a box
8 with the pins still engaged to the chassis, you
9 lift the box and the chassis comes off the ground?

10 A. No.

11 Q. Excuse me? Oh, you understand the
12 question, but you just didn't --

13 A. I'm saying, no, I don't. I don't.
14 That doesn't happen to me.

15 Q. So in your 15 years of being an
16 operator -- of being -- operating top loaders,
17 you've never lifted a box with pins engaged high
18 enough to lift the chassis off the ground?

19 A. No.

20 Q. You never have?

21 A. No.

22 Q. Okay. Have you ever shaken a box
23 that's still attached to a chassis?

24 A. How do you --

25 Q. By one or more pins?

1 Q. What type of controls does the four
2 high CAT have to lift and lower?

3 A. A joystick.

4 Q. Okay. If you push the joystick away
5 from your body, does that lift it?

6 A. No.

7 Q. A container -- how does -- which way do
8 you push the joystick to lift the box?

9 A. Towards me.

10 Q. Okay. When you push the box -- excuse
11 me, the joystick away from you, does that lower the
12 box?

13 A. It does.

14 Q. Let's say that the box is in the air,
15 and I'll just randomly pick, you know, five feet
16 off the ground, if you were to take the joystick
17 and go up and down quickly, would that shake the
18 box?

19 A. No.

20 Q. No. What would happen?

21 A. It's hydraulic. It doesn't -- it
22 doesn't -- it doesn't operate like that.

23 Q. So it doesn't respond quickly enough --

24 A. No.

25 Q. -- to shake a box?

1 A. No, it does not.

2 Q. And, also, I'll try to --

3 MR. STONEY: And then there's some
4 dialogue, my asking the witness to allow the
5 question to be completed.

6 THE COURT: I just need you to read the
7 deposition.

8 MR. STONEY: I'm sorry --

9 MR. HOWELL: Your Honor, I would like
10 that included.

11 MR. STONEY: All right. I will go back
12 then so --

13 THE COURT: Once again, the entire
14 deposition needs to be read, is that correct, Mr.
15 Howell?

16 MR. STONEY: The only thing that I am
17 omitting --

18 THE COURT: I need you-all to approach.

19 (Bench conference)

20 THE COURT: So, ladies and gentlemen,
21 when I explained to you what a deposition was, I
22 indicated to you if objections were made, I would
23 rule on them. What we're attempting to do is --
24 there were objections made.

25 We're not trying to hide anything from

1 you. He's not going to read the objections. So
2 what that means is that he's reading, and then
3 he'll have to skip some lines.

4 So that's what the holdup is, is that
5 he doesn't introduce -- there's no need to have the
6 objections read into the record.

7 MR. STONEY: Thank you, Your Honor.

8 THE COURT: Thank you.

9 MR. STONEY: I'm going to start back at
10 the top of page 61.

11 CONTINUATION BY MR. STONEY:

12 Q. And the question was: So it doesn't
13 respond quickly enough --

14 A. No.

15 Q. -- to shake the box --

16 A. No, it doesn't.

17 Q. I inject, let him finish his question.

18 A. Okay.

19 Q. Wait until the question is completed
20 before you answer. And, also, then I'll try to
21 wait until you finish answering before I start the
22 next one. We'll make it as easy as we can on Madam
23 Court Reporter.

24 So it's your testimony that you didn't
25 leave the scene of this accident -- incident?

1 Q. Mr. Brown, what's your age?

2 A. I'm 37 years old.

3 Q. And how long have you been with the
4 State Ports Authority?

5 A. Approximately, 14 years.

6 Q. Okay. And tell the jury a little bit
7 about your background. Did you grow up in
8 Charleston?

9 A. Yes. I grew up in Mt. Pleasant, South
10 Carolina. I attended the public school systems
11 there in South Carolina. I joined the United
12 States Navy, served approximately eight years, came
13 back to Charleston after my honorable discharge
14 from the military and pretty much got hired at the
15 Ports Authority.

16 I completed my college degree at
17 Charleston Southern University, and I have served
18 as a container handler operator for more than 10
19 years, and now I'm in the capacity as a claims
20 examiner for the Ports Authority.

21 Q. And when you were in the U.S. Navy,
22 were you overseas?

23 A. Yes, I was. I served a tour in Japan
24 for four years, did some time in San Diego,
25 California, and I served as a naval recruiter in

1 will disengage first, because as the operator lifts
2 it up, it will begin to square itself up; thus, the
3 chassis is not level, but when the container
4 handler hoists it, it will be level.

5 So the back end comes off first. And
6 that's important because the rear pins of the
7 chassis do not engage as the front does. The rear
8 pins are twisted, which means they have two areas,
9 and the driver will pull around which engages the
10 chassis.

11 So there is no -- when the operator
12 hoists, if it's still engaged, the chassis as well
13 as the container will come up. If it's fully
14 disengaged, the forward, the back, the rear end of
15 the chassis will hoist up.

16 Q. Is it possible for the rear to be
17 disengaged and the rear come up, but the front
18 pins, if one or both of them are still engaged,
19 that the initial lift will appear to be a normal
20 safe lift?

21 A. That is correct. Because the lift --
22 the aft end of the container will lift off first,
23 and, therefore, if you -- in the video you saw it
24 came off, there was a gap in between it. And
25 that's that gap that was referenced in the readout

1 that you heard.

2 Q. Okay. Thank you.

3 A. (Video playing) And this is a steady
4 continuous process throughout the day. As you can
5 see, each stack that you see is representative of
6 typically a different discharge loading location.
7 It's going to go to a different country, but every
8 stack represents a different vessel, a different
9 load and size.

10 And this is another truck making an
11 approach. The driver has his window down, and he's
12 listening for that horn. And this is at the speed
13 where the driver will engage the top of the
14 container, will raise the box and hoist up. There
15 you can see the forward -- and the box liftoff on
16 the rear first.

17 You can see there are other drivers
18 there waiting to be serviced. Typically, varying
19 different rows and locations. You can watch how
20 this driver -- once the operator begins to hoist
21 the container, watch the profile in the lower end
22 of the chassis in relation to -- there you have it.

23 If there's any resistance, the operator
24 pretty much immediately knows, and he's taught and
25 trained to stop and lower the container and have

1 the driver check the equipment.

2 I would also like to point out that you
3 can see the cab where the operator sits, here.

4 (Indicating) There's -- the front window will
5 pretty much go from the top of this machine to the
6 bottom. So he has a full range of view on all
7 sides as well as in front of him.

8 So if the container is being hoisted at
9 any point, he would be able to visually see that.
10 And it is -- you can feel it, but there's also a
11 visual there. And the driver also can see in their
12 mirrors and they can feel it and they can also
13 signal as well.

14 Can we pause it for just one second,
15 please?

16 (Video paused.) Another -- in this
17 video right now the operator is attempting to land
18 his container on top of a three high container.
19 He's slightly off square, so he's having to
20 reposition himself in order to make the approach.

21 The container handler has limited
22 function and range of motion to be able to side
23 shift the container forward or to the rear, which
24 is limited in approximate -- inches. It's like six
25 inches forward and six inches back. Anything

1 the hydraulic cylinder in. That's the max speed.
2 He's going to attempt to skew, which essentially
3 rolls the container in either direction. And these
4 are the functions of that unit.

5 Q. So that movement as we're looking at it
6 right now --

7 A. Right.

8 Q. -- what -- how did you describe that?

9 A. That's a function where the operator is
10 -- maybe a stack is off, slightly off-kilter, and
11 he wants to be able to try to reposition himself
12 without backing away from the stack or making a
13 movement, but that function is not used in loading
14 or unloading of trucks.

15 Q. Okay. What about -- what about in a
16 circumstance where pins -- there may be a problem
17 with a pin?

18 A. You could -- you could make that
19 adjustment, but it would not disengage the pin
20 because a skew function does not release the pin.

21 Q. All right. Thank you for doing that.

22 In your experience, have you ever had a
23 circumstance where there's been a problem with the
24 pins?

25 A. I have.

1 Q. Tell the ladies and gentlemen of the
2 jury what that procedure normally involves.

3 A. Typically, when there is an engaged
4 pin, be it from the front or the rear pins, because
5 each one is handled differently, if the driver is
6 unable to disengage the pins on the rear of his
7 container, there is absolutely nothing the operator
8 can do to disengage those pins.

9 Essentially, the standard procedure for
10 the port is, you send that individual -- that truck
11 driver to container maintenance and they can either
12 disengage it, or the driver will essentially get a
13 hammer or whatever piece of equipment he has in his
14 truck and attempt to beat the pin into position so
15 it can be disengaged. The operator does not aid or
16 assist in any of those methods in disengaging the
17 rear pin from the chassis.

18 The forward pin, there is a technique
19 where you can slightly raise the container after
20 the driver is notified that he cannot disengage the
21 front pin, and they would do it in various
22 different ways. Essentially, when they pull in
23 front of the container handler, a driver will
24 simply pull alongside and he will give you the
25 international signal, which is this, (indicating)

1 meaning my pins are still engaged.

2 He gets acknowledgment from the
3 operator and he proceeds forward and he gets the
4 horn. The driver will lower the spreader, lock
5 onto it, and as he hoists there is a slight point
6 there where the operator will lift and the driver
7 can pull away and essentially disengage and drive
8 off from the piece of equipment.

9 Q. All right. And there has been some
10 testimony about drivers intentionally leaving their
11 front pins disengaged -- excuse me, leaving their
12 front pins engaged and then driving off. Have you
13 ever experienced that?

14 A. I have.

15 Q. And explain to the jury if you would
16 how that process would work.

17 A. The theory behind this, if a driver is
18 utilizing his chassis for a second mission, meaning
19 he's brought in his loaded container and he's going
20 to be picking up another import container from an
21 import row from an over high crane.

22 Essentially, the benefits of them is
23 they don't have to get out and disengage and
24 reengage the pins on the forward side once they
25 pick it up from a top handler, from the overhead

1 crane because he can drive his truck, once the pin
2 is still engaged -- if he gets it removed, and the
3 pins are still engaged, he can go to the RTG row to
4 be loaded, which is loaded as it's running, and he
5 can back into the next container that he's
6 receiving without having to disengage the forward
7 pins on the chassis that he's already had.

8 So if it makes any sense, to be clear,
9 if he's been unloaded by a top handler with the
10 pins engaged, he can then proceed to an overhead
11 crane to pick up an import load, which once that --
12 once that container is lowered to be loaded onto
13 that same chassis, they can back under it and the
14 pins will still be engaged; thus, one last thing
15 that the driver has to take care of.

16 Q. And also, is it possible once that lift
17 is begun and that pressure is taken off, that he
18 can simply drive forward and that pin will slide
19 out?

20 A. That's correct.

21 Q. So it's forward pressure coincidental
22 with the --

23 A. Lifting movement, exactly.

24 Q. All right. There's been some
25 testimony, and I think everybody has acknowledged

1 that when a driver presents a box and he's in
2 position to be off loaded, what does that tell the
3 operator?

4 A. It tells the operator that the
5 container that is presented is ready to be lifted
6 off of his chassis.

7 Q. Okay. And that's a safe lift?

8 A. That's a safe lift.

9 Q. And does the crane operator, the
10 equipment operator rely on the driver if there's a
11 problem with the pins?

12 A. That is correct. They do.

13 Q. In your experience, is there any way
14 that a crane operator understands or knows there
15 was a problem with the pins were there not some
16 communication?

17 A. No, not until the lift is begun.

18 Q. Mr. Brown, you were in the Navy, right?

19 A. That is correct.

20 Q. And there's been some testimony or some
21 suggestion that Mr. Spanbauer -- he was also in the
22 Navy?

23 A. That's correct.

24 Q. Did you know him?

25 A. I knew him. I knew him throughout --

1 productivity on the East Coast at the port which we
2 pride ourself upon, but it has nothing to do with
3 how fast we work or how efficient we work.

4 We are very efficient in what we do,
5 and we pride ourself upon that, but speed is not
6 something that we get paid a bonus based upon.

7 Q. All right. There's been testimony
8 about -- that Mr. Mills disengaged his pins and
9 then perhaps somewhere over the course of his
10 transit from the gate to be off loaded, that both
11 of his front pins became reattached in some
12 capacity. Is that something that in your
13 experience may happen?

14 A. It could happen. Very -- it's
15 unlikely. I have never seen all four pins engage
16 from the gate to the unload or loading location.

17 Q. All right. And there's been testimony
18 that this entire chassis was lifted four or five
19 feet off the ground. Is that possible in your
20 opinion?

21 A. Very, very unlikely. I mean, I don't
22 see how it could happen. The operator is sitting
23 there, he's got a window, he can see the entire
24 chassis. To be able to lift the chassis off of the
25 ground with the container still attached to it --

1 very unlikely.

2 Q. And if a container were lifted
3 completely off the ground, all four corners, would
4 that -- could that happen with just the front pins
5 engaged?

6 A. No, it could not. It would -- at some
7 point in the laws of physics because -- given the
8 angle of the container and the downward force of
9 the chassis -- the pin doesn't actually hook onto
10 the container. It rests inside of the hole on the
11 container.

12 So in the lifting motion the truck is
13 stationary. So if this hole represents the corner
14 casting of the container, but the pin is engaged,
15 if it's lifted at some point, the weight of the
16 truck -- it will eventually fall off. And that --
17 that -- that portion, I would not say -- it's not
18 going to be four to six feet. It's more like less.

19 MR. STONEY: Thank you. Would you
20 answer any questions, Mr. Howell has for you?

21 MR. HOWELL: Your Honor, may we
22 approach?

23 THE COURT: You may.

24 (Bench Conference)

25 THE COURT: All right. Ladies and

1 Sounding the horn with one blow for the drive to
2 stop in position. You latch onto the container and
3 put it into the stack; no problem.

4 If the driver pulls up with a 40-foot
5 container, you spread your bar out at the 40-foot
6 position, blow the horn one time, the driver stops,
7 if he goes too far, two times he backs up. If he
8 misses the mark again, you honk the horn one more
9 time, until you get reasonably close.

10 And you place the spreader bar on top
11 of the bar -- on top of the box, lift it, and put
12 it into the stack.

13 Q. Now, the jury saw a video that Jarod --
14 that he showed and explained. Was that an accurate
15 representation, in your opinion, as to how the
16 machines operate?

17 A. I would say so, yes.

18 Q. And as far as any rapid movement by the
19 spreader bar, is that something that can take
20 place?

21 A. No. There is no -- there's no rapid
22 movement. You can't really speed it up. It's only
23 going to go as fast as the hydraulic will push it
24 out or move it.

25 Q. All right. Now, as far as being able

1 to actually shake a box or shake a container, is
2 that something that, in your experience, you've
3 ever seen happen?

4 A. No.

5 Q. And when -- in a circumstance like
6 this, there's been testimony that -- from
7 Mr. Spanbauer that when Mr. Mills pulled away, he
8 could see his front pins were still engaged. Do
9 you understand that that was his testimony?

10 A. Yes, that's my understanding. Yes.

11 Q. Okay. If -- and I want to ask you a
12 hypothetical. In a circumstance like that, if --
13 when you began to lift --

14 MR. HOWELL: Your Honor, I don't
15 know --

16 THE COURT: Are you objecting?

17 MR. HOWELL: I am objecting. Would you
18 like me to approach the --

19 THE COURT: Sustained.

20 MR. HOWELL: Okay.

21 BY MR. STONEY:

22 Q. All right. Well, I'll ask it this way:
23 Have you ever had -- in your experience as an
24 operator, have you ever had a circumstance where
25 the front pins have been still engaged and the

1 driver drove off?

2 A. Yes.

3 Q. And isn't there a point where the --
4 during the lift -- right at the immediate beginning
5 of the lift that that pressure is off of those pins
6 so they would effectively slide out?

7 A. That is correct.

8 Q. And if the driver is driving forward,
9 under that circumstance, and begins driving away
10 and that pin for some reason catches on the
11 container, it could cause the rear of that truck to
12 bounce, couldn't it?

13 A. Yes.

14 Q. Have you ever seen that?

15 A. Have I ever seen it? Yes, I have.

16 Q. So when Mr. Mills described the rear of
17 his truck bouncing and Mr. Spanbauer describes the
18 rear of his truck bouncing as reflected in the
19 officer's report, that could have been because the
20 pins were engaged and he just pulled forward, and
21 it bounced on the way down the road, right?

22 MR. HOWELL: Objection, Your Honor.

23 THE COURT: What's the basis?

24 MR. HOWELL: He is not qualified as an
25 expert witness, and he's asking this witness to

1 A. I really don't know how they get paid.
2 Some get paid by the load, some get paid by the
3 hour, company drivers, independent. I'm not sure.
4 I never inquired.

5 Q. Is there any pressure or compulsion on
6 you as an operator, or any of the operators at the
7 port, to move cargo rapidly?

8 A. No; we're paid by the hour. One box or
9 a thousand boxes, we get paid the same money.

10 Q. Okay. But you want to do it safely,
11 don't you?

12 A. Yes.

13 Q. As a matter of fact, the port's got a
14 pretty good safety record, don't they?

15 A. Yes, that's my understanding. Yes.

16 MR. HOWELL: Objection to that, Your
17 Honor; lack of foundation.

18 THE COURT: Overruled.

19 BY MR. STONEY:

20 Q. There's been testimony about the fact
21 that pins can sometimes get jostled back into
22 place.

23 A. Yes.

24 Q. So is that something that -- how do you
25 typically deal with that when that occurs?

1 A. I guess, the video pretty much showed
2 the rear locks, they twist, and they may move
3 slightly. The front ones, they may slide in a
4 little, but it's not going to be a full engagement.
5 It's -- it's possible. It could happen, but it's
6 highly unlikely that it's going to push in the
7 whole three inches, or whatever the length is.

8 If you lift up and you see the chassis
9 twisting or contorted in any sort of way, you put
10 the box on the ground, or you put it back down,
11 take the pressure off the box, you signal the
12 driver -- you know, you'll do like that.

13 (Indicating) That's for the front pins, or like
14 that (indicating) for the rear pins, and you point
15 to wherever you notice the lock made.

16 Q. So is there a significant difference in
17 how the container and the machine reacts if its
18 front pins engaged versus the rear pins?

19 A. Yes. From the make of the machine
20 itself, the rear will always come up first. The
21 bar is going to try to level itself off. The rear
22 is going to rise first, then once it levels off,
23 it's going to pull equally in an upward manner.

24 If it's just the front pins, you will
25 get a lopsided box where it's way up in the air and

1 the front pins won't come undone, but you're gong
2 to know, you're looking for that. And you're
3 actually listening for a crack. That's when the
4 rear pins come from the hole that's on the bottom
5 of the box.

6 When the locking pins fall through that
7 hole, there's always a cracking or the passing of
8 metal; you're going to hear that. We listen for
9 that and then you immediately look to the front of
10 the chassis to see if it starts rising at an equal
11 speed.

12 Q. All right. If a chassis were to be
13 lifted with the box, all four corners off the
14 ground, all four areas, would that require that all
15 of the pins were still engaged?

16 A. Yes.

17 Q. In your opinion?

18 A. In my opinion, yes.

19 Q. So if it's lifted evenly, all four
20 corners are still engaged?

21 A. Yes.

22 Q. Have you ever had a situation where all
23 four pins were still engaged and you lifted
24 everything?

25 A. Yes. My time at the port, yes. On

1 several occasions all four pins have been locked,
2 but like I said, you're going to notice it because
3 you're looking for the rear to come off first, and
4 you're listening for that crack sound.

5 If you don't get the crack sound and
6 you've seen that chassis -- the wheels of the
7 chassis have constant contact with the ground, you
8 put -- you start lowering the bar back down to get
9 the pressure off and let the driver know one or all
10 of the pins -- there's something wrong, he needs to
11 check that. It's not our job to check it.

12 Q. So where does -- the indication from
13 the -- from the chassis standpoint is when that
14 rear comes up, because it's on a slight cant --

15 A. That's correct.

16 Q. So when you see the gap in that rear
17 being normal for a lift, that's your first
18 indication that everything is safe to proceed?

19 A. That is correct.

20 Q. If there is a problem with the pin, how
21 can the operator know it?

22 A. You'll see -- if it's a -- just for the
23 sake of what we're talking about. The part I can
24 see, I would call that the face of a box, and then
25 you have the back of the box, the part that you

1 can't see.

2 If the back of the box is locked, and
3 only the front side or the driver's side of the
4 truck is unlocked, the box is going to bend towards
5 the top lifter, meaning that the machine is
6 actually pulling instead of lifting. And you would
7 place the box back down on the ground.

8 Q. But if there is a problem with the pin
9 known to the driver, how would that be communicated
10 to you?

11 A. He would -- he'd yell out the window,
12 or as they're driving by they'll give the signal,
13 twist lock problem or front pin problem,
14 (indicating) and we would look for it. If it's the
15 rear twist lock, you generally inch it out really
16 slowly hoping that it would pop loose, but that
17 doesn't always happen. And we let the driver work
18 on it and -- we don't work on it.

19 Q. And again, I think this point has been
20 made, but when a driver presents a box to you to be
21 taken off, what does that tell you?

22 A. I'm sorry?

23 Q. When a driver drives under your --
24 under your machine to have his box removed and
25 there's been no communication from the driver, what

1 does that tell you?

2 A. He's ready to be lifted and I can have
3 the box. We're going to take possession of it.

4 Q. And whose responsibility is it to make
5 certain that the pins are actually removed and the
6 box is safe to lift?

7 A. That is strictly on the driver.

8 MR. STONEY: Thank you. Please answer
9 any questions Mr. Howell may have.

10 MR. HOWELL: I just have one.

11 CROSS-EXAMINATION

12 BY MR. HOWELL:

13 Q. You didn't see this accident happened,
14 did you, Mr. Washington?

15 A. I did not.

16 MR. HOWELL: That's all the question I
17 have. Thank you.

18 THE COURT: Redirect?

19 MR. STONEY: No redirect, Your Honor.

20 THE COURT: You may step down. Thank
21 you. And I think you're free to go this time.

22 THE WITNESS: Thank you, Your Honor.

23 THE COURT: And feel free to stay with
24 us if you like.

25 MR. STONEY: Your Honor, that's the

1 causation and damages. I think we have a prima
2 facia case, and I don't think the port is entitled
3 to a directed verdict.

4 THE COURT: Anything further,
5 Mr. Stoney?

6 MR. STONEY: Yes, Your Honor. I would
7 -- I would move to strike any attempt by the
8 Plaintiffs to show any lost wages. He's
9 testified --

10 THE COURT: Hold on. We're still on
11 directed verdict. So are you making a motion as to
12 directed verdict -- a directed verdict as to lost
13 wages?

14 MR. STONEY: Yes, ma'am.

15 THE COURT: Specifically?

16 MR. STONEY: Yes, ma'am. So that would
17 be a different -- the second motion, yes, Your
18 Honor, I apologize.

19 THE COURT: All right. Just as,
20 generally, I'm denying your motion for directed
21 verdict. Let's go down now, what testimony was
22 there as to lost wages?

23 MR. HOWELL: Dr. Poletti testified in
24 his deposition that he -- that he -- that the
25 person who took him out of work for medical

1 reasons, and Plaintiff testified from the stand
2 that he was out of work, approximately, nine weeks
3 and lost, approximately, \$12,000. And I think it's
4 good enough for a jury to consider.

5 MR. STONEY: Your Honor, I would take
6 exception with that. I believe that the record
7 reflects that he had paid no taxes. So there's no
8 documentation of any lost wages, which I think he's
9 obligated to do.

10 In addition to that, his
11 testimony is somewhat speculative that he lost
12 about. It needs to be -- not to a mathematical
13 certainty, but it's got to have some form to it.
14 And the information that was received from his
15 records at that time showed, for instance, that his
16 -- his actual pay on a weekly basis would be
17 somewhere in the \$500 range, give or take, once --
18 you know, once his other expenses were deducted.

19 He was in the process of
20 purchasing a truck, I think, and that was all
21 through his employer. So, I believe, the Plaintiff
22 is obligated to show that much more -- much more
23 specifically than just as a speculative, well, I
24 was out of work 12 weeks and I lost X number of
25 dollars. I think he's obligated to --

1 THE COURT: I agree. I'm striking lost
2 wages from this -- from their request.

3 MR. STONEY: Thank you, Your Honor.

4 THE COURT: I note your exception to my
5 ruling. Anything else?

6 MR. HOWELL: No, Your Honor.

7 THE COURT: All right. Are we ready to
8 argue and charge?

9 MR. HOWELL: Yes, Your Honor.

10 THE COURT: Would you like to look at
11 the proposed verdict form?

12 (PLF. EXH. 7, Copy of affidavit of
13 nonservice, was marked for identification.)

14 (PLF. EXH. 8, Printout, was marked for
15 identification.)

16 (Off-the-record conference.)

17 THE COURT: Mr. Howell, comparative has
18 been pled. What says you?

19 MR. HOWELL: Your Honor, there is not a
20 scintilla of evidence as to any negligence on the
21 part of my client. The testimony is uncontroverted
22 in every instance that he removed all the pins at
23 the gate. That's all a driver is required to do.

24 The testimony has also been
25 uncontroverted that these pins jostle back into

1 place. The testimony is also uncontroverted as to
2 what happens when the pins are engaged and the
3 truck begins to fill up with the boxes. The only
4 negligence that could be -- it doesn't exist. It's
5 total speculation that he didn't disengage the
6 pins.

7 There's simply no evidence in this case
8 whatsoever that he did anything other than
9 disengage the pins.

10 THE COURT: Well, I don't know if
11 that's the testimony because the pins were engaged
12 somehow, correct?

13 MR. HOWELL: Yes, Your Honor. And it's
14 uncontroverted testimony that it's not uncommon for
15 them to jostle back in. They don't have any
16 witness or any testimony --

17 THE COURT: The only one thing that's
18 uncontroverted is the pins were in when the truck
19 was lifted -- when the box was lifted. That's the
20 only thing that -- correct?

21 MR. HOWELL: I don't agree with that,
22 but I understand -- I hear you, Your Honor. I
23 think it's uncontroverted that he -- no one has
24 testified that he did anything. It was just pure
25 speculation that he did anything negligent.

1 THE COURT: Mr. Stoney is arguing that
2 he did something so that means it is converted.
3 The only thing I know for sure is that those pins
4 were engaged when the box was lifted.

5 MR. HOWELL: Your Honor --

6 THE COURT: Correct?

7 MR. HOWELL: No, Your Honor.

8 THE COURT: Okay.

9 MR. HOWELL: But Mr. Stoney's argument
10 doesn't have any basis in the evidence, but if
11 you're going to rule the other way, I know when to
12 sit down.

13 MR. STONEY: I may be able to clarify,
14 Your Honor, just in response to Mr. Howell.

15 THE COURT: All right.

16 MR. STONEY: First of all, the evidence
17 is otherwise and it's before the jury that the
18 responsibility of the driver is to make sure that
19 the pins are disengaged and the load is ready for
20 removal.

21 THE COURT: Correct.

22 MR. STONEY: Not when he gets through
23 the gate. It's at the site where he's going to be
24 removed. That's where the operative removal needs
25 to be. So that's one thing.

1 And then there's been testimony --

2 THE COURT: Tell me, Mr. Stoney, what
3 the Plaintiff did that gets you to comparative.

4 MR. STONEY: Well, one, he either
5 didn't pull the pins --

6 THE COURT: Okay.

7 MR. STONEY: -- or, as Mr. Solomon
8 testified and they've all testified, it is the
9 driver's responsibility to make certain that the
10 pins are pulled.

11 THE COURT: Which is to my point. All
12 we do know for sure -- we don't know if he did or
13 didn't, right?

14 MR. STONEY: Right.

15 THE COURT: The way the testimony is.
16 All right. But we don't have a video so all we can
17 do is circumstantially, or based upon the testimony
18 which is converted -- the only thing that has been
19 for sure testified to is the pins were in when the
20 box was lifted, correct?

21 MR. STONEY: That is correct. So --

22 THE COURT: Okay. So, then assuming
23 that that is the one thing that we know to be true;
24 otherwise, the truck would not have lifted with the
25 box, correct? There's no other way the box would

1 have lifted but for the pins being in, correct?

2 MR. STONEY: Correct.

3 THE COURT: Okay. At that point, what
4 did the Plaintiff do that makes him negligent?

5 MR. STONEY: He failed to make certain
6 that the pins were disengaged.

7 THE COURT: And how would he have done
8 that once the crane is at the top of the box?

9 MR. STONEY: He would have done that
10 before the crane --

11 THE COURT: No. No. No. Once the
12 crane is on the box, what does he -- what did he do
13 that was negligent?

14 MR. STONEY: What his negligence --
15 where his negligence was, Your Honor, was before
16 the crane landed on the box. And if I may complete
17 my -- try and get my theory or my point out --

18 THE COURT: But the testimony from
19 Washington today was that when the rear lifts up,
20 that's the first signal, the crane should have put
21 it back down. Yes?

22 MR. STONEY: No. No, ma'am. No, Your
23 Honor. What the -- the way this works is as
24 follows -- and the testimony has been consistent
25 that the driver's obligation is to pull the pins.

1 THE COURT: Correct.

2 MR. STONEY: The crane operator has no
3 obligation to check up on that.

4 THE COURT: Correct.

5 MR. STONEY: When the box is presented,
6 it's represented that the box is ready for a safe
7 lift.

8 THE COURT: Correct.

9 MR. STONEY: So if the pins -- if the
10 jury accepts the pins -- the testimony that the
11 pins may jostle back into place over the course of
12 the transit, getting to the area where it's going
13 to be removed, it's still the driver's
14 responsibility to make certain that those pins are,
15 in fact, disengaged.

16 Now, Mr. Solomon testified -- because I
17 asked him specifically: Isn't it the driver's
18 obligation to make sure that they're disengaged?
19 Yes, they are. Is there anything preventing the
20 driver when he gets -- right before the bar is
21 lowered and the load moved, is there anything
22 preventing the driver from doing his due diligence
23 to get out and make certain that all of those pins
24 are disengaged, knowing that they may get jostled
25 back in place over the course of transit? And he

1 said, no, there's nothing preventing that.

2 And then, I asked him specifically:
3 Wouldn't that be the safer method? Wouldn't that
4 be the safer process?

5 THE COURT: But that's not the standard
6 here. That's not the standard here.

7 MR. STONEY: Well --

8 THE COURT: So from the time the crane
9 touches the box, he can't get out of the truck.
10 But your crane could have dropped it down. Once
11 the crane touches the box, he can't do anything.
12 He would have endangered everybody getting out of
13 the truck.

14 MR. STONEY: Yes, if he --

15 THE COURT: Yes. And so that's --
16 right there, that's where the comparative
17 negligence is. So, they may find that he's -- that
18 you're not negligent, but the injury was caused by
19 the falling. Not by the lifting, but by the
20 falling.

21 MR. STONEY: Well, Your Honor, I would
22 respectfully disagree, because when that -- when
23 that lift begins, there are ways that that operator
24 can let the crane operator -- the truck driver, he
25 can honk the horn. There are all kind of signals

1 out there on the port where they communicate:

2 So it's -- it is -- it is -- it could
3 be a balance of comparative negligence. It could
4 be that. As to whether or not --

5 THE COURT: You want it to -- I just
6 don't know at the point what he could have done to
7 change it. The testimony has been that this
8 happens all the time. Pins go in when they
9 shouldn't be, but that they lift the back axle, and
10 at that point that's when they know they need to
11 put it back down.

12 MR. STONEY: It's not the back axle.

13 THE COURT: Well, the back whatever,
14 Mr. Stoney. The back.

15 MR. STONEY: The box is on a cant, and
16 that's where they first -- where they first notice
17 it, but, you know, comparative negligence -- the
18 negligence on behalf of Mr. Mills is not having --
19 his not confirming or not making certain that his
20 pins were disengaged. That's the negligence.
21 That's the comparative negligence.

22 The comparative negligence is not
23 necessarily after the process starts.

24 THE COURT: But has there been
25 testimony -- I don't know that there's been

1 testimony that they weren't engaged, that they
2 possibly perhaps were. Right? That he didn't do
3 his job.

4 MR. STONEY: Well, the inference is --
5 if the inference -- if the testimony has been that
6 the pins were engaged --

7 THE COURT: Let's hear from Mr. Howell.

8 MR. STONEY: Certainly.

9 MR. HOWELL: Your Honor, the port's own
10 documentation entered into evidence today, itself,
11 says that the pins were disengaged at the gate.
12 And any argument of negligence on the part of
13 Mr. Mills is pure speculation. And you said it the
14 last time I was standing on this issue about five
15 minutes ago.

16 But Mr. Stone is arguing that there is.
17 Well, sure, he is, but not based on any evidence.

18 MR. STONEY: Your Honor, the only thing
19 I would say in response to that is that if Mr.
20 Howell is referring to the police report, the
21 evidence is uncontroverted and clear, that what's
22 contained in that report is Mr. Mills's recitation
23 to the officers of what happened. That's not to be
24 -- not to be accepted as gospel that he pulled the
25 pins.

1 You know, the point was made that the
2 comparative negligence from the ports' perspective
3 -- and I'll just go ahead make the record, and we
4 can go on. But the comparative negligence from the
5 ports' perspective is Mr. Mills did not -- he was
6 negligent in not confirming that his pins were
7 pulled and that his load was safe to lift; and,
8 therefore, his negligence by failing to do that was
9 the proximate cause of the lift. Therefore, that
10 was the proximate cause of any injuries he claims
11 related.

12 That's the comparative negligence, in
13 his failing to do what he is obligated to do. And
14 that's the -- that's the basis for our pleading of
15 comparative negligence, that he failed to pull the
16 pins, which he was obligated to do, and that the
17 failure to have the pins pulled and confirm that
18 was the proximate cause of any injuries that he may
19 convince this jury are related to the accident.

20 THE COURT: And I understand your
21 argument, Mr. Stoney, but is it not the ports'
22 responsibility once they attach to the box for the
23 last -- for lack of -- last clear chance to prevent
24 this accident?

25 MR. STONEY: To some -- it's a dual

1 responsibility, Your Honor. I mean, the
2 operator -- the crane operator has got the -- is
3 going to be vigilant, but the truck driver is
4 primarily responsible for pulling the pins. So the
5 -- you know.

6 And the question then becomes from the
7 sequential standpoint what happened? And that's a
8 factual issue for the jury.

9 THE COURT: Correct.

10 MR. STONEY: But -- and I don't believe
11 Mr. Howell has pled last clear chance, and I --

12 THE COURT: I just used it. I don't
13 know that it even applies in this instance because
14 I don't know --

15 MR. STONEY: And I would ask the Court
16 to instruct him not to suggest last clear chance in
17 his opening argument because it was not properly
18 pled.

19 THE COURT: It was an incorrect
20 statement. Just merely a hypothetical, Mr. Stoney,
21 that the Court was using. And so it's not a proper
22 legal doctrine in this case, but a similar
23 situation, so Mr. Howell should not use it.

24 MR. HOWELL: Your Honor, I won't use
25 that phrase. There just isn't any evidence of

1 negligence. And if it's Randall's argument, as I
2 understand it, he should check it at the gate and
3 then check it again, that's not the standard. The
4 standard is, you have to disengage them.

5 Everybody knows that sometimes they
6 jostle back into place, which is why the port has
7 the policy to lower it back down if you notice that
8 the chassis is coming up with it. There's just no
9 evidence of negligence.

10 And one other point Mr. Stoney said,
11 just because Curtis says he disengaged it multiple
12 times, including at the scene, doesn't mean it's
13 the gospel. Well, what it is, it's evidence, and
14 that's what they don't have to the contrary.

15 MR. STONEY: Just briefly in response.
16 We do have evidence, Your Honor, because the pins
17 were engaged when the lift occurred --

18 THE COURT: Correct.

19 MR. STONEY: -- which means one of two
20 things; either he didn't disengage them at the gate
21 or they jostled back into place. And with the pins
22 fully engaged, the probability is he didn't pull
23 them. And it's interesting that in his statement
24 and his testimony it's constant, he's always, I
25 pulled the pins, I pulled the pins.

1 Me think she doth protest too much.

2 It's Shakespeare.

3 THE COURT: I know it's Shakespeare; I
4 was an English juror.

5 All right. I note your exception. I
6 am not charging comparative.

7 And you've viewed the verdict form?

8 MR. HOWELL: Yes, Your Honor.

9 THE COURT: So the charge -- the
10 charges are very simple, very standard. Direct and
11 circumstantial, definition of preponderance of the
12 evidence, credibility, expert witnesses,
13 depositions used in testimony, the definition of
14 negligence, actual damages, pain and suffering,
15 mental suffering, loss of enjoyment of life,
16 personal injuries must be proven reasonable and
17 necessary, pain and suffering past and future,
18 mental anguish, impairment of health,
19 disfigurement, loss wages -- not lost wages, excuse
20 me, reduced earning capacity, prospective damages,
21 future damages, the life expectancy table -- he's
22 45; is that correct?

23 THE PLAINTIFF: 46, Your Honor.

24 THE COURT: Did you have a birthday?

25 THE PLAINTIFF: Yes, ma'am.

1 his closing argument, and Mr. Howell has an
2 opportunity for rebuttal argument.

3 After that, I will instruct you on the
4 law applicable to this case. Please remember, the
5 law as given by the Court is the only law that you
6 may follow. Please listen carefully.

7 MR. HOWELL: Your Honor, may it please
8 the Court.

9 THE COURT: Yes, sir.

10 MR. HOWELL: Ladies and gentlemen of
11 the jury. Thank you again for your service. Today
12 is Curtis Mills's only shot at justice, and it's in
13 your lap, in your very capable hands; and we're
14 grateful for it.

15 There was no opportunity for justice or
16 compensation before today. There will be none
17 after today. Today is Curtis's day for justice.

18 It's been an honor representing him to
19 this point. The port, as you all know simply
20 because we live here, is a giant, a giant powerful
21 enemy to have; David and Goliath. And they have
22 thrown every single possible argument against
23 awarding Curtis justice.

24 Just to name a few. Well, at first it
25 didn't happen; then you're a big faker; then it's

1 not related to this accident. You heard from two
2 eyewitnessss to this accident.

3 There was a third eyewitness that
4 wasn't here today. And you heard various excuses,
5 oh, he's retired. I submit to you, ladies and
6 gentlemen of the jury, retired people can testify.
7 If the port wanted Greg Spanbauer here today, he
8 would have been here with the ports' resources.

9 MR. STONEY: Your Honor --

10 MR. HOWELL: The reason --

11 THE COURT: Mr. Howell, you-all need to
12 approach.

13 (Bench conference)

14 MR. HOWELL: You'll have in your
15 deliberation room Greg Spanbauer's deposition
16 transcript. That's the one that I took in
17 discovery.

18 THE COURT: Mr. Howell, that does not
19 go back.

20 MR. HOWELL: Okay. I thought we marked
21 it as a Court's Exhibit. Thank you, Your Honor.

22 You'll remember his testimony. What
23 didn't come across was his combativeness, but what
24 did come across was his contradiction of himself
25 over and over and over again. I get in arguments,

1 you know, maybe once a week, maybe once a month,
2 maybe every six months, maybe once a year.

3 In the accident report, which you will
4 have in the deliberation room, you'll see that he
5 said that the box moved six feet. He also
6 testified in his deposition that in his 15 years
7 being a crane operator, he's never lifted a box
8 that's still attached more than a half of an inch.
9 A half of an inch.

10 He also testified that truck drivers
11 can feel that. Maybe if you're on a bicycle. He's
12 in a truck. It's just not credible, ladies and
13 gentlemen.

14 One of the biggest arguments that they
15 make is based on when the container was stacked,
16 trying to argue that Damion Solomon wasn't there
17 and couldn't have seen it. First of all, you're
18 the judges of the facts, and it's your job to
19 decide whether or not you think he's telling the
20 truth, whether he was believable; but, also, with
21 the defendant's own records, and you'll have those
22 in your jury deliberation room as well, you'll see
23 in these two left-hand columns that Damion Solomon
24 arrived at the port at 15:06, military time for
25 3:06 in the afternoon.

1 You'll have in the deliberation room
2 the accident report. You'll see that the officer
3 arrived at 1530, got the call at 15:28. You will
4 remember that Mr. Solomon testified that he left
5 while the officer was still talking to the parties,
6 Mr. Spanbauer and Curtis.

7 You'll see also on that same sheet of
8 paper, this one, (indicating) that he left at 15:39
9 or 3:39. So Damion -- based upon evidence
10 submitted by the port, these two documents, Damion
11 arrived at 3:06. The accident happened around --
12 well, the officer arrived at the scene so the
13 accident had already happened.

14 The officer arrives at the scene at
15 3:30, which is 24 minutes later. And Damion left
16 at 3:39, nine minutes after the officer got on the
17 scene. Based on the defendant's own documents,
18 Damion was there.

19 But even if Damion wasn't there, and he
20 was as the documents proved, is Curtis believable?
21 He is one of the first people in his family to
22 achieve a trucking license, a CDL, and he's proud
23 of that. He supports his family and children with
24 that. He wants to work. He went back to work as
25 soon as he can. He's working now with pain. He's

1 an independent truck driver with no official
2 employer.

3 No one would undergo a diskogram, no
4 one. No one would risk paralysis and certain pain
5 in the procedure, if you weren't truly hurt. You
6 can't -- the films can't lie. You can't fake a
7 film. It showed the bulges, it showed the annular
8 tear. Surgery might help, but he might -- it's
9 also a very risky surgery, and there's a 50/50
10 chance that he may be paralyzed in that surgery so
11 he chose to just to live with it.

12 And it's uncontroverted that his
13 injuries are permanent. We seek nothing less than
14 an affirmation of truth. Curtis on that day
15 underwent a life-changing injury. He's going to
16 have to live with it for the rest of his life.

17 The judge will charge you on the law,
18 and part of -- one of the charges is going to talk
19 about his life expectancy. I believe it's 34 years
20 more on this earth living. And we wish that this
21 legal system could provide physical relief for him,
22 but it can't. The only option he has is monetary
23 damages.

24 He has over \$47,000 in medical bills,
25 and he's got to live with this for the rest of his

1 life. It's uncontroverted, all of these medical
2 bills and treatment were medically necessary and
3 reasonable.

4 When you're deliberating after the
5 lawyers are done talking, and you're thinking about
6 the witness's testimony, think about the
7 believability of it; think about whether Curtis
8 ever deviated from his version of what happened.
9 His recollection of it never has changed.

10 On the accident report, that you'll
11 have back there, you'll see that on that day he
12 said the crane picked me up high enough that it
13 also picked up the cab, the truck went with -- the
14 box went with the chassis which went with the
15 truck, and it was all lifted up.

16 He also said, and it's in the
17 defendant's evidence as well, that he pulled the
18 pins. And think back on the utter, utter, and at
19 times unbelievable, inconsistencies that you heard
20 in Greg Spanbauer's testimony and whether or not
21 you thought that was believable.

22 Though you couldn't hear the tone of
23 his voice or the volume of it because it's a cold
24 transcript, he's not a nice person.

25 Ladies and gentlemen, on behalf of

1 Curtis, thank you again for being here. Please, as
2 I know you will, do your best without regard to the
3 economic size of the parties, so to speak, and
4 bring back truth.

5 In this courtroom it doesn't matter if
6 it's Boeing versus a homeless man. This is our
7 fair playing field. This is why America is so
8 great. This is where we're equal.

9 Thank you again and I look forward to
10 hearing the truth.

11 THE COURT: Mr. Stoney?

12 MR. STONEY: Thank you, Your Honor.
13 May it please the Court.

14 Madam Foreperson, ladies and gentlemen,
15 I want to echo what Mr. Howell said and thank you
16 for your service. I think it was Winston Churchill
17 who said that jury service is the greatest service
18 that any citizen can perform for their country,
19 outside of serving in the service, Army or the Navy
20 during war.

21 First of all, I want to remind you that
22 Her Honor will charge you that you-all are the
23 judges of the facts, and if anything I say during
24 the course of my summation -- this is advocacy. So
25 you go with what you remember being the facts of

1 and see as evidence, then by all means you go with
2 your recollection.

3 This is my last opportunity to talk
4 with you, and I thank you very much on behalf of
5 not only the State Ports Authority, but Mr. Mills
6 and our system in general. Thank you.

7 THE COURT: Mr. Howell?

8 MR. HOWELL: Very brief, Your Honor.

9 First, I submit that Damion Solomon is
10 believable and the reason he's believable is
11 because he's telling the truth. The argument that
12 he was not there and may be mistaken about his
13 recollection -- I know you all recall the details
14 of how the accident happened, chatting with Curtis
15 at the scales, seeing the confrontation between
16 Spanbauer and Curtis. That's not some mistake.
17 Like, I forgot where I put my keys? No, he was
18 there.

19 And the ports' argument that he wasn't
20 is based on what kind of a container got stacked.
21 My argument which is based on their own records is,
22 what time did the people come and leave. Damion
23 came about 3:06. The officer came at about 3:30.
24 Damion Left about 3:39, right smack dab in the
25 middle. So to use where a container was stacked --

1 use where the people were.

2 As I mentioned, today, this is Curtis's
3 only day. I thank you for paying attention and
4 doing your best. I know that you will. As Randall
5 said, if I've done something to offend any of you,
6 please don't take it out on Curtis.

7 Thank you for your time and I look
8 forward to the justice.

9 THE COURT: Thank you.

10 All right. Ladies and gentlemen, I am
11 now going to instruct you on the law applicable to
12 this case. I typically do not send a copy of the
13 charge on the law back to you, so please pay close
14 attention.

15 I remind you that during the trial you
16 and I have certain duties to perform. As the trial
17 judge, it is my responsibility to preside over the
18 trial of this case, and I have the duty to rule on
19 the admissibility of the evidence that was offered
20 during the trial.

21 You are to consider only the competent
22 evidence before you. You are to consider only the
23 testimony that has been presented from the witness
24 stand, the exhibits that have been made part of the
25 record in this case, and any stipulations of

1 counsel.

2 I have the additional duty to charge
3 you the law applicable to this case. As the
4 presiding judge, I am the sole judge of the law in
5 this case. It is your duty as jurors to accept the
6 law as I state it to you now.

7 If you already have any idea as to what
8 the law is or what the law ought to be, and it does
9 not agree with what I'm about to tell you, you must
10 abandon your own idea because you were sworn to
11 accept the law and apply the law exactly as I state
12 it to you.

13 In every case tried in this court
14 before a jury, the jury becomes the sole and
15 exclusive judges of the facts. A trial judge may
16 never make any comment to the jury regarding a fact
17 in this case.

18 You are not to infer from what I have
19 said during the progress of this trial, or in
20 ruling upon the admissibility of any evidence or
21 otherwise, or anything that I say now that I have
22 any opinion about the facts in this case. The law
23 does not allow me to have an opinion about the
24 facts in this case. This is a matter solely for
25 you to determine.

1 It is your duty to determine the
2 effect, value, and weight of the evidence presented
3 during the trial. The burden of proof in this case
4 is by preponderance of the evidence. A
5 preponderance of the evidence simply means the
6 greater weight of the evidence. It is evidence
7 which, as a whole, shows that the facts sought to
8 be proved is more likely true than not true.

9 This can be illustrated by imagining a
10 set of scales. When the case begins, the scales
11 are even. After all of the evidence has been
12 presented, if the scales remain even or if they tip
13 even slightly in favor of the defendant, the
14 plaintiff has failed to meet the burden of proof
15 and would not be entitled to recover in this case.

16 If, on the other hand, the scales tip
17 even slightly in favor of the plaintiff, the
18 plaintiff will have met the burden of proof and you
19 should return a verdict for the plaintiff.

20 The preponderance of the evidence is
21 not determined by the number of witnesses. It must
22 be determined by the greater weight of all of the
23 evidence.

24 There are two types of evidence
25 generally presented throughout a trial, direct

1 evidence and circumstantial evidence. Direct
2 evidence is the testimony of a person who claims to
3 have actual knowledge of a fact such as an
4 eyewitness. It is evidence which immediately
5 establishes the main fact to be proved.

6 Circumstantial evidence is proof of a
7 chain of facts and circumstances indicating the
8 existence of a fact. It is evidence which
9 immediately establishes collateral facts from which
10 the main fact may be inferred.

11 Circumstantial evidence is based on
12 inference and not on personal knowledge. It is
13 proof that does not actually establish the fact in
14 question, but it asserts or describes something
15 else from which you might reasonably infer the
16 truth of that fact, or at least reasonably infer an
17 increase in the probability that that fact is true.

18 For circumstantial evidence to be
19 sufficient to warrant the finding of a fact, the
20 circumstances must lead to that fact with
21 reasonable certainty in light of ordinary
22 experience and common sense. The existence of a
23 fact cannot be based on speculation or surmise.

24 The law makes absolutely no distinction
25 between the weight or value to be given either

1 direct or circumstantial evidence, nor is a greater
2 degree of certainty required of circumstantial
3 evidence than that of direct evidence.

4 Necessarily you must determine the
5 credibility of the witnesses who have testified in
6 this case. Credibility simply means believability.

7 It becomes your duty as jurors to
8 analyze and to evaluate the evidence and determine
9 which evidence convinces you. In determining the
10 believability of witnesses who have testified in
11 this case, you may believe one witness over several
12 witnesses or several witnesses over one witness.

13 You may believe a part of the testimony
14 of a witness and reject the remaining part of the
15 testimony of that same witness. You may believe
16 the testimony of a witness in its entirety or
17 reject the testimony of a witness in its entirety.

18 You may consider whether any witness
19 has exhibited to you any interest, bias, prejudice,
20 or other motive in this case, and you may also
21 consider the appearance and the manner of the
22 witness while that witness was testifying.

23 The rules of evidence ordinarily do not
24 permit witnesses to testify to opinions or to
25 conclusions. An exception in our law exists for

1 witnesses we call expert witnesses. A witness who
2 by education and experience has become expert in
3 some art, science, or profession may give an
4 opinion as to the subject the witness claims to be
5 an expert in and may also give reasons for that
6 opinion.

7 You should consider any expert opinion
8 given in this case, and like any other evidence
9 give it the weight that you think it deserves. If
10 you decide an expert witness's opinion is not based
11 on sufficient education and experience, or if you
12 decide that the reasons given in support of the
13 opinion are not sound, or that the opinion is
14 outweighed by other evidence, you may disregard the
15 opinion entirely.

16 An expert witness's testimony is to be
17 given no greater weight simply because that witness
18 is an expert, and you do not have to accept the
19 expert's opinion even though it was not
20 contradicted.

21 Testimony was presented to you by a
22 deposition. As I indicated, a deposition is a
23 document or report containing sworn testimony given
24 by a witness outside of court in the presence of
25 lawyers for each party who may ask questions of

1 that witness.

2 Deposition testimony is entitled to the
3 same consideration and is to be judged as to
4 credibility and weighed by you in the same way as
5 if the witness were present and gave testimony to
6 you from the witness stand. It is up to you to
7 determine the effect, value, and weight given in
8 the deposition.

9 The plaintiff claims that the defendant
10 was negligent and should compensate the plaintiff
11 for the injuries the plaintiff suffered as a result
12 of the defendant's negligence. In order to prove
13 that the defendant was negligent, the plaintiff
14 must prove by a preponderance, or greater weight of
15 the evidence the following things:

16 First, the plaintiff must prove by a
17 preponderance, or greater weight of the evidence
18 that the defendant owed the plaintiff a duty of
19 care. The first of these is whether -- the first
20 question that you must decide is whether the
21 plaintiff has proven by a preponderance, or greater
22 weight of the evidence that the defendant breached
23 the duty of care by a negligent act or omission.

24 Negligence means that a person has done
25 something that a reasonable person would not have

1 done, or has failed to do something that a
2 reasonable person would have done in the same
3 situation.

4 The plaintiff must also prove by a
5 preponderance, or greater weight of the evidence
6 that he suffered damages as a result of the
7 defendant's breach of duty.

8 Finally, the plaintiff must prove by
9 the preponderance, or greater weight, of the
10 evidence that the damages were proximately caused
11 by the defendant's breach of duty.

12 Proximate cause is something that
13 produces a natural chain of events which, in the
14 end, brings about the injury. It is the direct
15 cause of the injury.

16 To prove that the defendant's
17 negligence proximately caused the plaintiff's
18 injury, the plaintiff must first prove causation
19 and fact. This is proven by a showing that the
20 injury would not have occurred but for the
21 defendant's negligence.

22 The plaintiff must also prove legal
23 cause. Legal cause is proven by showing that the
24 injury was foreseeable. This means that the injury
25 occurred as a natural and probable consequence of

1 the defendant's negligence.

2 The plaintiff must prove that some
3 injury from the defendant's negligence was
4 foreseeable, but does not have to prove that the
5 particular injury that occurred was foreseeable;
6 however, the defendant cannot be responsible for
7 things which could not be expected to happen.

8 Proximate cause does not mean the only
9 cause. The defendant's act can be a proximate
10 cause of the plaintiff's injury if it was at least
11 one of the direct concurring causes of the injury.

12 If you decide that the plaintiff is
13 entitled to a verdict, your next step would be to
14 decide how much money the defendant should be
15 required to pay.

16 Actual damages are to compensate the
17 plaintiff for the plaintiff's injury or loss and to
18 put the plaintiff, as near as possible, in the same
19 position that the plaintiff was in before the
20 incident occurred; in other words, actual damages
21 would be the actual loss of expenses which the
22 plaintiff has suffered because of the defendant's
23 negligence.

24 Pain and suffering compensates the
25 plaintiff for the physical discomfort and emotional

1 response to the sensation of pain caused by the
2 injury itself. There is no definite standard by
3 which to compensate the plaintiff for pain and
4 suffering.

5 You have the authority to determine the
6 amount, if any, to be allowed for pain and
7 suffering using calm and reasonable judgment to
8 ensure that the damages are just and reasonable in
9 light of the testimony and the evidence presented
10 in this case.

11 Mental suffering, apprehension, shock,
12 fright, emotional upset, humiliation and anxiety,
13 either present or expected in the future, can be
14 properly considered as elements of damages. The
15 amount of damages for mental suffering cannot be
16 exactly measured.

17 Loss of enjoyment of life compensates
18 the plaintiff for limitations on the plaintiff's
19 ability to participate in, and derive pleasure
20 from, the normal activities of daily life.

21 The plaintiff must prove that the
22 expenses caused by the injury were necessary and
23 reasonable.

24 Actual damages for a plaintiff who has
25 been physically injured include pain and suffering,

1 past and future, as well as mental anguish,
2 impairment of health and physical condition, or
3 disfigurement. The plaintiff may also claim
4 reduced earning ability for the future.

5 In determining the amount of
6 compensation for personal injuries, it is proper to
7 consider past and present aspects of the injury.
8 This would include physical and mental pain and
9 suffering, expenses incurred for necessary medical
10 treatment, loss of time and income which resulted
11 from the impairment of the ability to work and earn
12 a livelihood, the loss of enjoyment of life
13 suffered as a result of the injury, and any other
14 losses which are reflected by the character of the
15 injury.

16 The injured party may also recover for
17 those future damages that are reasonably sure to
18 result from the injury. The principle underlying
19 compensation for future damages is that only one
20 action can be brought and, therefore, only one
21 recovery had.

22 It is proper to include in the
23 estimate of future damages compensation for loss of
24 the capacity for work or attention to the
25 plaintiff's ordinary business, future medical

1 expenses, and pain and suffering which will, with
2 reasonable certainty, result.

3 A plaintiff is never entitled to
4 recover speculative damages, but if you find that
5 the plaintiff is entitled to a verdict for actual
6 damages, your verdict should include an amount to
7 cover any past, present, and future damages which
8 were proximately caused by the defendant. Any
9 future damages must be reasonably certain to occur
10 in the future as a result of the defendant's acts.

11 Actual damages need not be proven to a
12 mathematical certainty or based on evidence of the
13 precise amount of damages the plaintiff has
14 suffered.

15 Instead, the evidence must allow you to
16 determine what amount of damages is fair, just, and
17 reasonable. Any future damages must be reasonably
18 calculated to have resulted from the alleged injury
19 or damage sustained in this case.

20 Future damages must be reduced to their
21 present cash value. If you find that the plaintiff
22 was permanently injured as a result of the
23 defendant's actions, you must decide how, if at
24 all, the injury will affect the rest of the
25 plaintiff's life.

1 A person's life expectancy is
2 determined by a life expectancy table as part of
3 the laws of this state. This life expectancy table
4 is only an estimate of the probable -- of the
5 probable average remaining length of the life of
6 all persons in our state -- everybody good?

7 It's only an estimate of the probable
8 average remaining length of the life of all persons
9 in our state of a given age. The plaintiff --

10 At least one of you -- and I really
11 have poor eyesight. At least one of you, I think,
12 is a closed-eye listener. I'm almost done. I just
13 need everybody to wide eye for me. Thank you.

14 And every so often look at your
15 neighbor and make sure they are still wide eyed.
16 Thank you. I know this is long and boring, unlike
17 what you probably see on Law and Order.

18 The plaintiff is a 46-year-old male
19 with a life expectancy, according to the life
20 expectancy table, of 32.78 years. This fact is to
21 be considered by you, along with any other facts
22 and circumstances in evidence based on the
23 plaintiff's life expectancy including occupation,
24 habits, and health at the time of injury in
25 deciding the amount of damages to be awarded to the

1 plaintiff.

2 When the plaintiff is injured or
3 damaged by the wrongful act of another person, it
4 is the duty of the plaintiff to reasonably try to
5 avoid and lessen the damages. Those damages, which
6 may be avoided by the use of reasonable efforts,
7 care, and prudence by the plaintiff, cannot be the
8 proximate result of the defendant's wrongful act;
9 therefore, the plaintiff cannot recover for any
10 damages which reasonably might have been avoided.

11 The evidence required by the plaintiff
12 must be determined by the rules of common sense and
13 fair dealing of what a person of ordinary reason
14 and prudence would do under the same circumstance.

15 The plaintiff is not required to use
16 unreasonable efforts or great expense to avoid or
17 lessen the damages. The defendant has the burden
18 of proving a failure to less damages on the part of
19 the plaintiff by the preponderance, or greater
20 weight, of the evidence.

21 The defendant claims that the plaintiff
22 had a pre-existing injury or condition prior to the
23 date that the plaintiff claims that the defendant
24 injured him.

25 If you find that the plaintiff received

1 an injury as a result of the negligence of the
2 defendant and is entitled to recover for that
3 injury, the fact that the plaintiff had a
4 pre-existing injury or condition would not prevent
5 the plaintiff from recovering.

6 The defendant is responsible for all
7 ill effects which, considering the plaintiff's
8 condition of health when the plaintiff was injured,
9 naturally and necessarily follow the injury.

10 The defendant takes the plaintiff as
11 the plaintiff is found, whether the plaintiff is in
12 perfect health, poor health, or somewhere in
13 between. A defendant's liability is in no way
14 lessened or affected because of the fact that the
15 injury would not have resulted or would not have
16 been as serious or severe had the plaintiff been in
17 good health, or that the injuries were aggravated
18 and rendered more difficult to cure by reason of
19 the fact that the plaintiff was not in good health.

20 In other words, if the presence of a
21 pre-existing condition aggravates or prolongs the
22 injury and increases the damages, the plaintiff
23 should be compensated for the increased or added
24 damages.

25 A person with a pre-existing injury or

1 condition is not, however, entitled to any
2 compensation for the pre-existing injury or
3 condition. In addition, if the problems are the
4 result of the natural progression of the worsening
5 of a pre-existing injury or condition, then the
6 plaintiff would not be entitled to be compensated
7 for those problems.

8 In reaching your verdict, you should
9 not consider whether any party in this case was or
10 was not covered by insurance. As you know, some
11 plaintiffs are covered, some are not, and some have
12 various forms of partial coverage. The same is
13 true for defendants. The law does not allow the
14 parties to present any evidence about insurance or
15 lack of insurance or amount of insurance, and there
16 is no way that you can accurately determine whether
17 any party in this case has coverage, or if they
18 have it, how much insurance they have.

19 More importantly, insurance, or lack of
20 insurance, has no bearing on whether a defendant
21 was or was not negligent, or on how much damage, if
22 any, the plaintiff has suffered.

23 Ladies and gentlemen, I'm now going to
24 go over the verdict form with you.

25 Madame Foreperson, it's your

1 responsibility to complete this verdict form.

2 Ladies and gentlemen, there is
3 absolutely no significance in the way that I place
4 things on the paper. It is simply I have to put
5 something first.

6 State of South Carolina, County of
7 Charleston, Curtis Mills, Plaintiff v. South
8 Carolina State Ports Authority, Defendant; Case No.
9 2016-CP-10-5892, in the Court of Common Pleas,
10 Ninth Judicial Circuit.

11 Your first question, Question No. 1:
12 Was the Defendant negligent?

13 If you answer yes, you will check the
14 yes; or if you answer no, you will check the no.
15 If you answer yes, you would go to question two.
16 If you answer no, you would stop your
17 deliberations.

18 Question No. 2: Was the defendant's
19 negligence a proximate cause of the plaintiff's
20 injury? If you answer yes, go to question three.
21 If you answer no, you would stop your
22 deliberations.

23 Question No. 3: Please state the
24 amount of damages, if any, sustained by the
25 plaintiff. There is a line, if you get to question

1 three, where you would write in the actual dollar
2 amount of the plaintiff's actual damages.

3 Madame Foreperson, once you have
4 reached a unanimous decision, meaning all 12 of you
5 can agree, sign the verdict form and date it.

6 Ladies and gentlemen, this is the last
7 time I am going to say this to you. Do not begin
8 your deliberations; do not discuss this case
9 amongst yourselves. We are gathering the verdict
10 form and the evidence and bringing that back to
11 you.

12 At that time, the bailiff will indicate
13 to you that you may begin your deliberations.
14 Please rise for the jury.

15 (Jury out, 3:37 p.m.)

16 THE COURT: Please be seated. Any
17 objection to the charges as read? Mr. Howell?

18 MR. HOWELL: None other than what was
19 noted earlier.

20 THE COURT: Thank you.

21 MR. STONEY: None, Your Honor.

22 THE COURT: All right. Thank you.

23 MR. STONEY: The only thing I would put
24 on the record, I would renew my objection to not
25 including the comparative charge.

1 THE COURT: Thank you.

2 MR. HOWELL: Your Honor, I am on the
3 record with respect to the lost wages?

4 THE COURT: Yes. Twice.

5 MR. HOWELL: Sorry.

6 THE COURT: Now, three times.

7 (Evidence went back and jury
8 deliberating 3:41 p.m.)

9 (COURT'S EXH. 8, Jury note, was marked
10 for identification.)

11 (Testimony of Mr. Curtis Mills was
12 played in the jury room.)

13 THE COURT: Thank you. Please be
14 seated. Where is Mr. Howell?

15 (Off-the-record conference.)

16 THE COURT: I need everybody to leave
17 the courtroom because Mr. Howell is not here and I
18 need to dismiss the jury. Don't come in even if
19 Mr. Howell shows up out there.

20 Everybody out of the courtroom. Just
21 leave your things on the table.

22 (All counsel and parties left the
23 courtroom.)

24 THE COURT: Okay.

25 (Jury in, 4:34 p.m.)

1 THE BAILIFF: All the jurors are here.

2 THE COURT: Ladies and gentlemen, we've
3 reached the time where we need to stop today. So
4 please remember all of my admonitions. Do not
5 discuss this case with anyone and, even more
6 important, don't you in your mind start deciding
7 any issues.

8 Just go home, remember all of my
9 admonitions and -- because you cannot come up with
10 a verdict until all 12 of you can do that. All
11 right. So let everything go out of your mind until
12 all of you are back in the morning.

13 Ladies and gentlemen, what we'll do --
14 can everybody be here at 9:00 a.m. in the morning,
15 with traffic? I would say 8:30, but it's really
16 difficult for the court staff to get here. So
17 9:00 a.m. is really the most -- the most convenient
18 early time. Does that work for everybody? I just
19 need a commitment.

20 THE JURY FOREPERSON: That's good.

21 THE COURT: So if you would be back at
22 9:00 a.m., and what they will do is just bring you
23 back to your room at 9:00 a.m. Once all 12 of you
24 are back, they'll bring you back the evidence and
25 the verdict form and then tell you you can begin

1 your deliberations.

2 So if 11 of you are back there, do not
3 start discussing. Understand, Madam Foreperson?
4 Until 12 of you are there.

5 Ladies and gentlemen, I cannot stress
6 to you enough, if you do not show up in the
7 morning, this case will result in a mistrial, and
8 all of the hard work that you-all have done so far.
9 So I need you-all to understand. Do I have
10 everybody's guarantee you will be here in the
11 morning? Otherwise, I'm going to have to lock you
12 in.

13 THE JURY FOREPERSON: We'll be here.

14 (Jury out, 4:30 p.m.)

15 THE COURT: Counsel, just for the
16 record, we had indicated that I would stop at 4:30.
17 I miscalculated and made the decision to submit it
18 to the full 12. I think that was the most proper
19 thing to do. We've ended at 4:30. I admonished
20 them to quit their deliberations.

21 They'll be back at 9:00 a.m. in the
22 morning. 9:00 a.m. in the morning. We've taken
23 the exhibits and the verdict form back into -- the
24 Court Reporter will hold on to all of that for
25 tomorrow.

1 So if you'll be back at 9:00 morning,
2 they're going to begin their deliberations. I'm
3 not even going to bring them back in. They'll go
4 straight to their room and be given the verdict
5 form and the evidence.

6 But, again, if I need -- if they have a
7 question, I need you-all here. So please report at
8 9:00 a.m., and we'll just -- the courtroom will be
9 open, but I probably won't come out until there's a
10 question.

11 MR. STONEY: Thank you.

12 THE COURT: Anything?

13 MR. HOWELL: No, Your Honor.

14 THE COURT: All right. Thank you.

15 (These proceedings were recessed at
16 4:49 p.m., to be continued 6/1/18 at 9:00 a.m.)

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1 (The following proceedings were had
2 June 1, 2018, 10:55 a.m., Charleston County Common
3 Pleas, Curtis Mills V South Carolina State Ports
4 Authority.)

5 THE COURT: All right. We have a
6 verdict. Anything before we bring in the jury?

7 MR. HOWELL: Nothing from the
8 plaintiff.

9 MR. STONEY: I don't know whether this
10 is the appropriate time, but I would renew my
11 position about requesting the charge on comparative
12 negligence, and if -- I can either put it on the
13 record or wait until after the verdict is in.

14 THE COURT: I don't think you need to
15 do it, nothing has changed. There hasn't been
16 anything procedurally that you need to renew the
17 motion, so I don't know that it's necessary.

18 But I will allow you to do it after the
19 verdict.

20 MR. STONEY: Thank you.

21 (Jury in, 10:47 a.m.)

22 THE BAILIFF: All jurors are present,
23 Your Honor.

24 THE COURT: Thank you. Please be
25 seated.

1 Madame Foreperson, if you will hand the
2 verdict form to the bailiff.

3 THE COURT: Ladies and gentlemen, did
4 you follow all of my instructions, other than
5 continuing your deliberations this morning? If you
6 complied with my instructions, please raise your
7 right hand.

8 THE JURY: (Raised hands.)

9 THE COURT: Thank you. The record
10 reflects that all jurors have complied with the
11 Court's instructions.

12 Mr. Uricchio, please read the verdict.

13 THE CLERK: State of South Carolina,
14 County of Charleston, Curtis Mills, Plaintiff v.
15 The South Carolina Ports Authority, Defendant; Case
16 No. 2016-CP-10-5892, in the Court of Common Pleas,
17 Ninth Judicial Circuit.

18 As to Question No. 1: Was the
19 defendant negligent? Yes.

20 Question No. 2: Was the defendant's
21 negligence a proximate cause of plaintiff's
22 injuries? Yes.

23 Question No. 3: Please state the
24 amount of damages, if any, sustained by the
25 plaintiff. \$616,710.07 actual damages.

1 Signed by the Foreperson, dated June 1,
2 2018.

3 Is this is your verdict, please raise
4 your right hand.

5 THE JURY: (Raised hands.)

6 THE CLERK: Your Honor, the verdict
7 stands.

8 THE COURT: Thank you.

9 Anything further requested of the jury
10 by the plaintiff?

11 MR. HOWELL: No, Your Honor.

12 THE COURT: By the defendant?

13 MR. STONEY: Nothing, Your Honor.

14 THE COURT: All right. Thank you.

15 Ladies and gentlemen, this completes
16 your service to this case and also completes your
17 service for the week. Please go back to the jury
18 room and I will be there in just a moment to thank
19 you for your service to Charleston County.

20 Please rise for the jury.

21 (Jury out, 10:59 a.m.)

22 THE COURT: Please be seated.

23 Anything from the plaintiff?

24 MR. HOWELL: No, but I didn't get the
25 number.

1 THE CLERK: \$616,710.07.

2 MR. HOWELL: Thank you. Nothing
3 further from the plaintiff.

4 THE COURT: Mr. Stoney.

5 MR. STONEY: Your Honor, I would
6 request ten days to make post-trial motions.

7 THE COURT: Mr. Stoney, as I've
8 discussed previously, I don't have ten days, and I
9 typically require you to make post-trial motions
10 immediately upon receipt of the verdict.

11 What I will do is, we will -- I will
12 ~~hear your post-trial motions at 11:00 next Friday,~~
13 which is the 8th. I will require you to articulate
14 in a brief with sufficient specificity any case law
15 to be received by noon on the 5th, which is
16 Tuesday.

17 You may e-mail me that. I will be in
18 Berkeley County that day, but I will be back in
19 Charleston Wednesday, Thursday, and Friday.

20 Any questions about that, Mr. Howell?

21 MR. HOWELL: No, Your Honor.

22 THE COURT: Mr. Stoney?

23 MR. STONEY: None, Your Honor.

24 THE COURT: Thank you very much.

25 MR. HOWELL: Thank you.

1 (These proceedings were concluded at
2 11:01 a.m.)
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1 CERTIFICATE OF REPORTER

2

3 I, Carol Denise Lauder, Registered
4 Professional Reporter and Notary Public for the
5 State of South Carolina at Large, do hereby certify
6 that the foregoing transcript is a true, accurate,
7 and complete record.

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

11 Witness my hand, I have hereunto affixed my
12 official seal this 5th day of August, 2018 at
13 Charleston, Charleston County, South Carolina.

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Carol Denise Lauder
Registered Professional
Reporter, CP
My Commission expires
February 27, 2028

STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	DOCKET NO. 2016-CP-10-5892
	)	
	)	
CURTIS MILLS	)	
	)	
Plaintiff	)	
	)	
vs.	)	
	)	
SOUTH CAROLINA STATE PORTS	)	
AUTHORITY	)	
	)	
Defendant	)	
	)	
	)	
	)	
	)	TRANSCRIPT OF RECORD

June 8, 2018
Charleston, South Carolina

B E F O R E:

THE HONORABLE KRISTI LEA HARRINGTON, JUDGE

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

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Attorney for the Plaintiff

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Circuit Court Reporter

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PROCEEDINGS

THE COURT: Mr. Howell, Mr. Stoney good to see you again.

MR. STONEY: Good to see you, Your Honor.

THE COURT: Mr. Mills, good to see you. Yes, sir?

MR. HOWELL: Your Honor, did the court receive plaintiff's post-trial brief yesterday?

THE COURT: Of course, I did.

MR. HOWELL: Okay. So you don't need another copy?

THE COURT: I do not. All right Mr. Stoney, I'm happy to hear from you.

MR. STONEY: Thank you, Your Honor. Your Honor, one housekeeping matter on my post-trial we have the wrong number. That's the pre 40-J number so this is 2016-CP-10-5892.

Your Honor, if it please the court first of all I thank you for the court's courtesy in giving us this opportunity and also giving us the additional time to get our brief with you and hear our arguments. The facts of the case in the trial, Your Honor, I believe are well familiar to the court.

The first premise of our request for a new trial involves the failure of the court to charge comparative negligence. Your Honor, as we pointed out in the brief it's our opinion that this is a classic case of

1 comparative negligence. And here are the points. First
2 of all the evidence was clear from both the plaintiff and
3 the defense witnesses that when a truck driver presents a
4 load for removal, that is the container be removed from a
5 chassis, the obligation is with the truck driver to make
6 sure that all four pins are disengaged.

7 The evidence is uncontroverted to that effect. And
8 there is certainly no evidence to contest the fact that
9 Mr. Mills's truck was lifted in some capacity. Also Mr.
10 Spannbauer [phonetic] through deposition testimony
11 testified that when Mr. Mills pulled away that he saw the
12 two front pins still missing and still engaged in the
13 closed position. And there is no evidence to controvert
14 that.

15 So we know that the rig was lifted, uncontroverted.
16 We know it's uncontroverted that the pins were in the
17 engaged position as they pulled away. It's
18 uncontroverted that the truck driver's obligation is to
19 make certain when he presents for removal that the pins
20 are all disengaged.

21 So the fact that a truck driver may enter the Port
22 as Mr. Mills testified and disengage the pins at the
23 point of entry does not confirm that they are in fact
24 disengaged when he gets to the point of removal, which is
25 really the important operative point. That's when they

1 need to be double checked. And Mr. Solomon testified
2 that not only did he recognize that that was the truck
3 driver's responsibility but it was also an option that he
4 could and a more safer option to double check and confirm
5 that they were disengaged.

6 THE COURT: And while it may have been a more safer
7 option and perhaps a better practice that was not what
8 was done at the Port, correct?

9 MR. STONEY: That is correct. There was no
10 testimony and I believe Mr. Mills testified that he did
11 not get out and double check. So here is the point of
12 comparative, Your Honor. Let's take all of those
13 factors. Then we've got a crane operator. So if he is
14 negligent whose negligence is more the cause? Is it the
15 operators for not doing what he is charged with the
16 responsibility of doing?

17 And he has acknowledged is his duty. Or is it the
18 operator that during the course of the lift somehow he
19 missed the fact that that container was coming up with
20 the chassis and may have had an opportunity at that point
21 to stop the movement and lower it back down.

22 So you've got two individuals both involved in the
23 same enterprise, both of whom had responsibility, both of
24 whom arguably could have been negligent in the duty that
25 they had. So that's a classic case of comparative

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1 negligence, Your Honor. And when the court, and this was
2 not brought up in closing arguments because Your Honor
3 advised us that you were not going to charge that. So I
4 felt it would have been dangerous for me to suggest that
5 point to the jury because they were not going to hear it
6 from Your Honor when you gave them the law.

7 So it felt that this really is a solid ground for us
8 to have a mistrial. Your Honor, these cases, these
9 lifting cases at the Port and Mr. Howell is familiar with
10 them because he and I have had several of them together
11 it is a joint responsibility. And it's important that
12 that joint responsibility be recognized.

13 And a comparative negligence in this case is
14 absolutely proper. It was pled in the Answer. It was
15 brought out through the testimony of the witnesses. And
16 with all due respect Your Honor it's the defense position
17 that we were entitled to that as a charge to the jury and
18 could have made that suggestion or argument to them in
19 our summation. So that's the first point, Your Honor.

20 THE COURT: Okay. Mr. Howell, do you believe that
21 comparative because I asked you and you indicated that
22 you did not want comparative.

23 MR. HOWELL: That's correct, Your Honor. If you
24 want to go issue by issue?

25 THE COURT: Yes.

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1 MR. HOWELL: Okay, great. Your Honor, with regard
2 to uncontroverted testimony it is uncontroverted that Mr.
3 Mills on the date of the accident and his testimony at
4 deposition and throughout all time since this accident
5 happened that he removed his pins when he got to the
6 gate. The Port police officer put that in his report.

7 It's also uncontroverted from all witnesses from
8 both sides that once a chassis starts to come up with a
9 box that it is the duty of the crane operator to slowly
10 lower that box back down to give the driver of the truck
11 an opportunity to remove the pins. It is also
12 uncontroverted testimony that it is well-known throughout
13 the Port that pins can giggle back into place between the
14 gate and the crane. And that is why the Port has a
15 policy of gently lowering it back down.

16 Finally, there is no testimony offered by any
17 witness for any side that a truck driver has a duty to
18 check twice. There was some testimony and Mr. Stoney is
19 correct that he got somebody to admit that it might be
20 safer to do that. But it also might be unsafe to get out
21 of a truck when there is a crane coming down on the box.
22 So with regard to comparative negligence there is no
23 standard of care established by the defense requiring
24 twice checking the pins; once at the gate and again at
25 the crane. And if you can't establish a standard of care

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1 and you can't show any evidence because it doesn't exist
2 that he ever neglected his duty then there can be no
3 showing of negligence on the part of Curtis Mills and
4 there was not. And the court we respectfully submit was
5 correct in its ruling to decline to charge comparative
6 negligence in this case.

7 THE COURT: All right. Based upon my review and my
8 initial -- that I initially did not submit comparative
9 your denial -- I'm denying your motion for a mistrial as
10 to the court's failure to instruct the jury regarding
11 comparative negligence. I'll note your exception to that
12 post-trial ruling. So your next point would be?

13 MR. STONEY: Thank you, Your Honor. If I may just
14 briefly in rebuttal to one point that Mr. Howell made?

15 THE COURT: That's fine Mr. Stoney. I think that
16 we have talked about all this but I want your record to
17 be abundantly clear because I am aware that depending
18 upon how the rest of the post-trial motions are made that
19 you are making a record for appeal.

20 MR. STONEY: Thank you, Your Honor.

21 MR. HOWELL: Plaintiff will concede that the court
22 has preserved this issue properly.

23 THE COURT: We're here so let's just go ahead and
24 let Mr. Stoney place it on the record.

25 MR. STONEY: Thank you, Your Honor. I would just

1 point out that Mr. Howell suggested that the driver has
2 no obligation to check his pins twice. I would not take
3 issue with that but I would say that the obligation to
4 check the pins to make certain that they are disengaged
5 is not at the gate; it's when he presents the load for
6 removal. And that is the operative time when the pins
7 need to be absolutely removed.

8 THE COURT: Just again to reiterate there was no
9 evidence presented during trial to warrant the charge of
10 comparative negligence. The testimony indicated the duty
11 to ensure the safe lift was upon the crane operator and
12 there was no testimony to indicate the duty was on the
13 truck driver to exit the truck and ensure the pins were
14 disengaged immediately prior to the lift.

15 While testimony was presented that this may be a
16 safer method or preferred method there was no testimony
17 to indicate it was the duty of the truck driver at the
18 time of the incident. I'll note your exception to my
19 ruling. All right, Mr. Stoney?

20 MR. STONEY: Thank you, Your Honor. Your Honor,
21 the next ground is for judgment NOV new trial or new
22 trial nisi remittitur. And as pointed out and as
23 addressed in the brief the verdict simply was not
24 supported by the evidence. The plaintiff provided no
25 evidence of any lost wages. He provided no evidence of

1 any diminished earning capacity. The testimony regarding
2 his wages he testified that he had not paid any taxes,
3 which is typically a fairly good bellwether of what an
4 individual's income is. He hadn't paid taxes in five
5 years. And we had really no documentation whatsoever
6 during the course of the trial and in discovery
7 beforehand that established a figure of what Mr. Mills
8 was making at the time. The only information we had was
9 his testimony which was fairly vague as to what his
10 income was. The ---

11 THE COURT: --- we also had you introduced into
12 evidence a paystub didn't you?

13 MR. STONEY: I did not. I questioned Mr. Mills
14 about it. He did not -- it was not introduced into
15 evidence because he ---

16 THE COURT: --- I thought it was your exhibit 3.

17 MR. HOWELL: Your Honor, you're both right. Mr.
18 Damian Solomon's paystub was entered into evidence.

19 THE COURT: I'm sorry. Okay, I had just written ---

20 MR. HOWELL: --- who also has the same exact
21 occupation as Mr. Mills.

22 THE COURT: I apologize. I had written on my
23 exhibit sheet this paystub and when I was reviewing for
24 today I just assumed that was the paystub. So my
25 apologies.

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1 MR. STONEY: Thank you, Your Honor.

2 THE COURT: Thank you. And it's nice for
3 everybody to be right. Thank you, Mr. Howell.

4 MR. STONEY: So in any event Your Honor there was
5 absolutely no evidence entered by the plaintiff to
6 substantiate his lost wage claim. As I said it was
7 extremely amorphous with regards to not only what it was
8 but also the duration.

9 The only date given was that he was cleared to
10 return to work, which was Doctor Zgleszewski's testimony
11 that he could return to work I believe in February of
12 2014. And Your Honor I think that was even noted on the
13 document that was made court's exhibit 9. The projected
14 future loss -- not only were there any actual loss ---

15 THE COURT: --- I don't know that I placed court's
16 exhibit number 9 -- so how that transpired was we read
17 the verdict and I went back to customarily release the
18 jury. The bailiff approached me and said that the jury
19 indicated they wanted me to have that to be a part of the
20 record. I did not ask them to do that. That is not my
21 policy to do that.

22 And the bailiff specifically -- I felt that the
23 court had an obligation to mark that as a court's exhibit
24 and I had an in chambers conference with Mr. Stoney and
25 Mr. Howell to go over what I had determined it appeared

1 that that was some, used as some calculation for them to
2 reach their verdict. I'm sorry for the interruption.

3 MR. STONEY: No problem. Thank you, Your Honor.
4 In any event there was no documentation. There was no
5 documentation of any future lost wages or that he has had
6 -- to what extent he has been working or not working
7 since this accident in October of 2012 which is coming up
8 on six years ago. So Your Honor it felt that these
9 figures were clearly speculative and capricious to some
10 extent.

11 The documents that -- the documentation the
12 plaintiff did tender were medical bills in the amount of
13 50,157 dollars and seven cents. And then his somewhat
14 vague reference to a lost income which and this was not
15 part of the court's exhibit -- excuse me, this was not
16 made an exhibit because Mr. Mills didn't recognize it.
17 But the evidence would have shown that there were some
18 deductions because he was buying a truck.

19 So we never did really get a true net out figure as
20 to what his out of pocket loss was. And I believe that
21 is the plaintiff's obligation to show that, Your Honor.
22 He's got to prove these not to a mathematical certainty
23 but certainly he's got to give some foundation for what
24 these claims are. So based on that certainly we feel
25 that we are entitled to a new trial, a trial

1 notwithstanding the verdict and in the alternative
2 certainly some sort of remittitur to bring whatever award
3 the court believes to be equitable in line with what the
4 plaintiff met as their burden of proof showing ---

5 THE COURT: --- what is that number Mr. Stoney?

6 MR. STONEY: Your Honor, I was going to leave that
7 up to your sense of equity. I did not suggest a number,
8 Your Honor. I would suggest certainly that he is
9 entitled to; this jury has found he is entitled to his
10 medical bills. And he is entitled to some compensation
11 for whatever he can show from the period of this accident
12 until February when he was released to go back to work;
13 cleared to go back to work.

14 I do not believe he is entitled to 398,000 dollars
15 which is a projected future lost wage that has absolutely
16 no foundation and he tendered no information about his
17 inability to work. There was no disability information
18 given other than some very vague testimony. And there
19 was no testimony that he was unable to work and that he
20 was not working.

21 THE COURT: But you did not object when I charged
22 future earnings, future earning potential or loss of
23 future earning potential or future damage, correct?

24 MR. STONEY: Your Honor, that I don't remember. I
25 mean I didn't -- I don't remember objecting to any of

1 your charges other than the ---

2 THE COURT: --- the comparative.

3 MR. STONEY: The comparative. But as I say I
4 believe that a jury -- you instructed the jury though
5 that they had to find based on the evidence presented.
6 And there was simply no evidence presented to support
7 these figures. And for that reason, Your Honor we feel
8 like we're entitled to a trial NOV or at least a
9 remittitur.

10 His testimony I think was that he was making
11 somewhere around 2,000 dollars per week at some point in
12 his career. But again that was a gross figure and not a
13 net figure. I just -- we found nothing and obviously we
14 don't have the benefit of the trial transcript at this
15 point. But according to my recollection there was just
16 absolutely no evidence to support the jury's finding for
17 those figures as outlined and likewise outlined in our
18 brief.

19 THE COURT: Mr. Howell?

20 MR. HOWELL: May it please the court?

21 THE COURT: Yes.

22 MR. HOWELL: I'd like to address the court if I may
23 with a two-fold argument. The first portion of my
24 argument Your Honor has already enunciated. Whether
25 intentional or not because the trial record will reflect

1 that the court at the trial had declined to charge lost
2 wages in this case. But contained in your charges are
3 clearly charges for both past lost wages and at least two
4 for future lost wages.

5 The testimony at trial supports that; the medical
6 testimony that his injury is permanent, that he would be
7 a surgical candidate but for a 50 percent chance he would
8 lose the ability to walk and be in a wheelchair. He had
9 50,000 dollars in medical bills just since the accident
10 and that he is going to be living with this for the next
11 I think 34 years; might be 32. The jury could
12 extrapolate that quite easily.

13 But to sum up and you have the brief and I don't
14 need to read from it but it's clear that both past and
15 future medical -- excuse me, lost wages were charged to
16 the jury. And although we don't have the entire trial
17 transcript I will represent to the court on the record
18 there was no objection from the court other than to the
19 lack of comparative negligence charge.

20 So therefore, Your Honor any argument for new trial
21 nisi or remittitur or JNOV is based virtually entirely on
22 this wage issue and it just simply not preserved. The
23 time to challenge that was when you came back in this
24 courtroom and before the jury started its deliberations
25 for an objection. And if you had chosen to you could

1 bring the jury back and tell them that they are not to
2 consider lost wages. But that's not what happened. The
3 record is clear. There is testimony about lost wages.
4 There is testimony about permanency. There is a jury
5 charge that they have the right to consider past and
6 future wages and therefore they did and that's the law of
7 the case at this point, Your Honor. It's simply not
8 preserved. Now that's the first aspect.

9 The second aspect of this my argument is why are we
10 talking about lost wages anyway? And the reason we're
11 talking about lost wages primarily is because that one
12 piece of paper that this court has made an exhibit of
13 that has numbers written down. The court's understanding
14 of what those numbers mean and how they were arrived at,
15 if that's a grammatically correct sentence, is based on a
16 conversation the court had with one of the 12 jurors.

17 All 12 jurors were given pads of paper. And this
18 was a good jury and an attentive jury with the exception
19 of perhaps one or two that seemed a little bored. But
20 almost all these jurors and I would estimate 80 percent
21 of these jurors took notes the entire trial. We don't
22 have those notes, Your Honor. We have one piece of paper
23 from one pad from one juror and the understanding of what
24 those numbers mean were conveyed to the court outside the
25 presence of the lawyers, outside the presence ---

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1 THE COURT: --- the notes were given to me.

2 MR. HOWELL: I understand.

3 THE COURT: So there was no discussion. I just --
4 there was no discussion regarding what those numbers
5 mean.

6 MR. HOWELL: Oh, I apologize Your Honor. I thought
7 in chambers we were talking about how the paycheck was
8 extrapolated over ---

9 THE COURT: --- it was discussions amongst the
10 three of us. There was no -- that document was handed to
11 me and out of an abundance of caution I marked it as a
12 record. I did not take that and have them explain;
13 that's not my province.

14 MR. HOWELL: I know, Your Honor. I know that.

15 THE COURT: So I want that to be very clear. There
16 was no discussion with any juror in any way concerning
17 what was on that paper or what those numbers mean.

18 MR. HOWELL: I'm sorry. I thought the juror had
19 spoken to you in some way when the paper was handed to
20 you.

21 THE COURT: The bailiff, I believe Mr. Williams
22 handed me the paper.

23 MR. HOWELL: Okay. So you don't even know which
24 juror it was?

25 THE COURT: It was the foreperson because the

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1 bailiff indicated the foreperson gave it to him and
2 wanted me to have it.

3 MR. HOWELL: Okay, okay.

4 THE COURT: But your point is well taken. We do
5 not know. There were a bunch of numbers that we are
6 assuming mean certain things; each of you assume. And
7 there is no way for anyone in this courtroom with
8 absolute certainty understand what those numbers mean and
9 where those numbers came from and how those numbers were
10 utilized. Nor do I think that that is what the law
11 requires for me to do this analysis under a JNOV request
12 for a new trial or a nisi remittitur.

13 MR. HOWELL: Your Honor, just to wrap up the second
14 part of my argument. And I agree Your Honor the 12
15 citizens that sit in that box they are the finders of the
16 facts and you are the judge of the law. And to try to
17 step into the province, sacred province of the finders of
18 fact and second guess their reasoning would be improper
19 the plaintiff respectfully submits.

20 THE COURT: Anything else, Mr. Howell?

21 MR. HOWELL: Not on -- well, Your Honor if the
22 court is inclined to consider the reasoning behind the
23 jurors scratches of numbers on a piece of paper the
24 plaintiff would reserve the right to file a request,
25 whether or not it would be granted or denied, to take

1 testimony from that juror or other jurors if that's where
2 we're going to go. That's it.

3 THE COURT: Mr. Stoney, any response?

4 MR. STONEY: None, Your Honor. I believe we've
5 outlined everything with regards to the plaintiff's
6 burden of evidence.

7 THE COURT: All right. A trial court may grant a
8 new trial absolute on the ground that the verdict is
9 excessive or inadequate. The jury's determination of
10 damages is entitled to substantial deference. When
11 considering a motion for a new trial based upon the
12 inadequacy or in this case the defendant's position of
13 the excessiveness of the verdict the court must
14 distinguish between awards that are verily unduly liberal
15 or conservative or the ones that are actuated by passion,
16 caprice or prejudice.

17 I must grant a new trial absolute if the amount is
18 grossly excessive so as to shock the conscience of the
19 court and clearly indicated that the figure reached was
20 the result of any passion, prejudice, partiality,
21 corruption or some other improper motive. The numbers
22 and the additions and the ultimate jury award we can sit
23 here all day long and make some determination and
24 speculate as to how they reached and what those numbers
25 meant and where the information came from. The law does

1 not require absolute certainty if the data upon which the
2 verdict is to be determined but requires reasonable
3 certainty that damages are not based upon speculation and
4 conjecture. Based upon the testimony that was presented
5 I find that -- I deny your motion for a new trial, a JNOV
6 or reducing the verdict as a new trial nisi remittitur.

7 Neither party objected to the charges that were read
8 in the charge conference nor was an objection made
9 following the charge. And as Mr. Howell obtained the
10 copy I believe of the transcript and indicated the court
11 charged the jury on the issue of future lost wages as
12 actual damages for plaintiff who has been physically
13 injured include pain and suffering past and future as
14 well as mental anguish, impairment of health and physical
15 condition or disfigurement.

16 The plaintiff may also claim reduced earning ability
17 for the future. The injured party may also recover for
18 those future damages that are reasonably sure to result
19 from the injury. The principal underlying compensation
20 for future damages is that only one action may be brought
21 and therefore only one recovery had. It is proper to
22 include in the estimate of future damages compensation
23 for loss of the capacity to work or attention to the
24 plaintiff's ordinary business, future medical expenses
25 and pain and suffering which will with reasonable

1 certainly result. There was an abundance of testimony
2 from both the doctors that the plaintiff was going to be
3 in a lifetime of pain potentially facing surgeries.
4 Based upon the testimony taken as a whole I deny your
5 request for a new trial. The verdict based upon the
6 testimony presented does not shock the conscious of the
7 court. Your next is a JNOV or a new trial under the 13th
8 juror, is that correct?

9 MR. STONEY: That's correct, Your Honor.

10 THE COURT: All right.

11 MR. STONEY: I would go ahead and just state on the
12 record that under the 13th juror doctrine as outlined in
13 our brief we would request a new trial. I would imagine
14 the court has essentially responded to this by your
15 response and position on the preceding point made by
16 defense.

17 THE COURT: Mr. Howell, do you have anything to add
18 as to this?

19 MR. HOWELL: Your Honor, I think Randell has
20 already been through the 13th juror doctrine. The
21 doctrine is pretty much the same as it was for the JNOV.
22 My argument is the same against the 13th juror doctrine
23 as it was against the JNOV. I'm happy to expound upon
24 that if the court feels ---

25 THE COURT: --- I just want the record to be

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1 abundantly clear that I addressed every ---

2 MR. HOWELL: --- yes, Your Honor ---

3 THE COURT: --- post-trial motion that was raised
4 and give you the opportunity to respond.

5 MR. HOWELL: Plaintiff adopts as his response to
6 the 13th juror doctrine argument the same response that
7 we articulated against the JNOV argument.

8 THE COURT: Mr. Stoney?

9 MR. STONEY: Your Honor, and I would offer that
10 same proposition. We would simply not reiterate but
11 adopt the same position that I stated in the preceding
12 point.

13 THE COURT: All right. Traditionally in South
14 Carolina Circuit Court judges have the authority to grant
15 a new trial and allow the judge to act as the 13th juror
16 upon the judge finding that justice has not prevailed. I
17 may grant a new trial if the verdict is inconsistent or
18 reflects the jury's confusion.

19 Again, based upon the jury's verdict there was
20 testimony in which they could have found for the
21 plaintiff in that amount. I deny your motion for the
22 court to act as the 13th juror. And that brings us I
23 believe to the final reduction under the Torts Claims
24 Act, is that correct?

25 MR. STONEY: That's correct, Your Honor. And I

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1 believe plaintiff has included that same recognition in
2 his response brief.

3 THE COURT: Mr. Howell?

4 MR. HOWELL: Your Honor, plaintiff concedes that
5 the South Carolina Tort Claims Act applies to this case
6 and that it would be proper for this court to reduce the
7 verdict to a 300,000 dollar cap tort claims against
8 governmental entities.

9 THE COURT: So I will reduce the verdict to reflect
10 the cap set forth in the South Carolina Tort Claims Act
11 under 15-78-120(a). And I will complete a Form 4
12 indicating denial of all the defendant's post-trial
13 motions, reduction of the verdict to comport with the
14 Tort Claims Act. Anything else required, Mr. Stoney?

15 MR. STONEY: Nothing from the defense, Your Honor.

16 THE COURT: Mr. Howell?

17 MR. HOWELL: Just to clarify the record all the
18 defendants motions are granted -- excuse me, are denied.
19 We concede to the last one.

20 THE COURT: Thank you. With that is there
21 anything further? I'll complete that Form 4 today so
22 I'll go ahead and complete the Form 4 today. Mr. Stoney,
23 anything further?

24 MR. STONEY: Nothing further on behalf of the
25 defense, Your Honor.

Curtis Mills v S.C. State Ports Authority
Post-trial Motions
June 8, 2018

1 THE COURT: Mr. Howell?

2 MR. HOWELL: No, Your Honor. This is the same
3 court reporter as the trial, correct?

4 THE COURT: Not correct.

5 MR. HOWELL: That's what I thought. So when a
6 transcript is ordered we need to request it for both.
7 May I get a card if she has it? That probably didn't
8 need to be on the record.

9 THE COURT: That did not need to be on the record.

10 MR. HOWELL: I'm sorry.

11 THE COURT: I don't know if I had the opportunity
12 to say last week was a long week and y'all both tried an
13 excellent trial and zealously advocated on behalf of your
14 clients. So it was a pleasure trying that case last week
15 and thank you for your professionalism and your courtesy
16 to the court both Mr. Stoney and Mr. Howell. And good
17 luck to you, Mr. Mills. Thank you.

18 MR. STONEY: Thank you very much, Your Honor.

19 *****END OF TRANSCRIPT OF RECORD*****
20
21
22
23
24
25

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete Transcript of
Record of the proceedings had and evidence introduced in
the trial of the captioned case, relative to appeal, in
the Court of Common Pleas for Charleston County, South
Carolina on the 8th day of June, 2018.

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

June 12, 2018

Joyce C. Rueger, CVR-M
Court Reporter

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)

IN THE COURT OF COMMON PLEAS

CASE NO.: 2016-CP-10-5892

CURTIS MILLS,)
)
Plaintiff,)
)

vs.)
)

THE SOUTH CAROLINA STATE)
PORTS AUTHORITY,)
)

Defendant,)
)

DECLARATION OF CUSTODIAN OF RECORDS

I, the undersigned, being of full age, declare as follows:

1. I am the Custodian of Records of the business named below and am authorized to declare the attached records on its behalf. The attached records are true and accurate copies.
2. The attached records are prepared, compiled, or otherwise made and thereafter kept by the personnel of the business named below as part of its regular course of business and its regular practices.
3. The attached records were prepared or compiled at or near the time of observation of the acts, events or conditions recorded, or from information supplied by a person with actual knowledge of the acts, events or conditions recorded.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 5th, 2018

BRETT LUNDY
Print Name

Roadrunner Intermodal
Business Name

[Signature]
Signature

Post Office Box 1032 Mt Pleasant, SC 29465
Business Address



Andrea Allman, Paralegal
Aallman@barnwell-whaley.com

October 22, 2015

Via Certified Mail

2207.133
Road Runner Intermodal
Attn: Personnel
Post Office Box 1032
Mt: Pleasant, SC 29465

Re: Curtis Mills v South Carolina State Ports Authority
Case No.: 2014-CP-10-2908

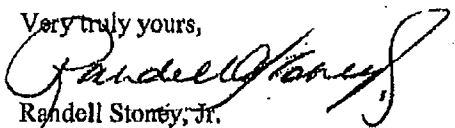
Dear Custodian of Records:

Enclosed please find a subpoena requesting that you produce to us a complete copy of your employment records pertaining to Damion Solomon. The subpoena outlines the specific documents needed by **November 4, 2015 at 9:00 a.m.** Please notify us if the cost exceeds \$150.00 prior to preparing these documents.

In addition, by copy of this letter to all counsel and non-parties, I am advising them of our subpoena for these records. Should they require a copy of the records, I ask that they contact me, to make arrangements to have copies made at their expense or to make arrangements to inspect the copies at our office at a mutually convenient time.

If you have any questions or comments, please do not hesitate to contact me.

Very truly yours,


Randell Stoner, Jr.

RCSjr/aa
Encs (as stated)
Cc: Ladson Howell, Jr., Esq.

{00369815.DOC}

M. Dawes Cooke, Jr.
B.C. Killough*
Randell C. Stoner, Jr.
Phillip S. Ferderigos
K. Michael Barfield

William C. Helms, III*

* Registered patent attorney
* Retired

Ernest B. Lipscomb, III*
J. Gail Rahn
Todd M. Mushoff
John A. Jones
Lucinda D. Gardner
John W. Fletcher

Allisa D. Fleming
Barbara J. Wagner, Ph.D.
Jeremy E. Bowers
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288 Meeting Street, Suite 200, Charleston, SC 29401
Mail: P.O. Drawer H, Charleston, SC 29402 P 843.577.7700 F 843.577.7708
www.barnwell-whaley.com

ROADRUNNER - SOLOMON FILE 1

*Let,
Pull all files
for Damion
Solomon*

Owner Operator Settlement History Report for City

From Pay Period Ending: 1/1/12

To Pay Period Ending: 12/30/12

Name: SOLOMON, DAMION K.

Vendor ID: 14874

Address: 1608 LANGSTON DRIVE
JOHNS ISLAND, SC 29455

21	1270204	SUDU7844297	EARC21	9/28/2012	COLUMBIA	1.00	250.0000	\$250.00
21	1270204	SUDU7844297	FSCC21	9/28/2012	FSC	234.00	0.3500	\$81.90
Earnings Subtotal								\$2,589.45

Deductions

Code	Date	Description	Amount
CADV21	9/24/2012	665109241221 FUEL	-\$891.40
CADF21	9/24/2012	665109241221 FEE	-\$5.00
CADV21	9/26/2012	665109261221 FUEL	-\$470.04
CADF21	9/26/2012	665109261221 FEE	-\$5.00
COIN21	9/27/2012	CONTRACTOR INSURANCE	-\$128.75
ESCM21	9/27/2012	ESCROW-ENGINE MAINTENANCE	-\$100.00
OOLC21	9/27/2012	LEASE PURCHASE ADMIN FEE	-\$5.00
OCAC21	9/27/2012	OCC ACC INSURANCE	-\$39.00
LSPM21	9/27/2012	MSI LEASE PURCHASE	-\$173.52
TAGC21	9/27/2012	LICENSE/TAGS	-\$31.00
ESCB21	9/27/2012	ESCROW - BREAKDOWN	-\$50.00
HVUC21	9/27/2012	HEAVY VEH USE TAX	-\$12.00
BOBC21	9/27/2012	BOBTAIL INSURANCE	-\$9.46
ESCR21	9/27/2012	ESCROW - BASIC	-\$25.00
ESCD21	9/27/2012	ESCROW-DOWN PAYMENT	-\$25.00
PHDC21	9/27/2012	PHYSICAL DAMAGE INS	-\$22.73

Deductions Subtotal -\$1,992.90

Truck CS8701 Subtotal \$596.55

Settlement Total 596.55

Pay Period End Date: 10/7/12

Truck Number: CS8701

Earnings

Trml	Control #	Unit #	Code	Date	Description	Pay/Miles	Rate	Amount
21	1270723	CAIU8218686	EARC21	10/1/2012	NEWBERRY	154.00	1.8500	\$284.90
21	1270723	CAIU8218686	FSCC21	10/1/2012	FSC	308.00	0.3500	\$107.80
21	1267394	MOFU6834382	EARC21	10/2/2012	NEWBERRY	154.00	1.8500	\$284.90
21	1267394	MOFU6834382	FSCC21	10/2/2012	FSC	308.00	0.3500	\$107.80
21	1269583	MOFU6834382	EARC21	10/3/2012	CHARLOTTE	205.00	1.8500	\$379.25
21	1269583	MOFU6834382	FSCC21	10/3/2012	FSC	410.00	0.3500	\$143.50
21	1271499	GATU8586601	EARC21	10/4/2012	CHARLOTTE	205.00	1.8500	\$379.25
21	1271499	GATU8586601	FSCC21	10/4/2012	FSC	410.00	0.3500	\$143.50
21	1273556	UMXU887498	EARC21	10/5/2012	SUMTER	1.00	300.0000	\$300.00
Earnings Subtotal								\$2,130.90

6-1-2018

~~Comp~~ - 351
Survivor

50,157.07 Bills

9 week 12,000.00

Comp.

62,157.07

80,888.00

14 months (cleared)

\$ 143,045.07

398,665.00

lost of wages

541,710.07

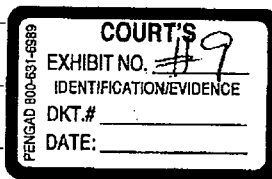
Type Salary	Inefficiency	Years Retired	February
\$69,333	x 2590	x 23	= 398,665

12 x 9 weeks x 52 weeks = 69,333

9 week 12k - Oct - Dec - 2012 out of work

Out 14 months - 80,888 Jan 2013 - Feb 2014
cleared to work

lost wages till Ret. 398,665



Cont.

541,710.07

75,000.00

616,710.07

total Actual
damages