THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS

RECEIVED
JUL 12 2019
SC Court of Appeals

Letitia H. Verdin, Circuit Court Judge

Appellant Case No: 2019-000046
Case No: 2018-CP-23-03034

Elvia Stoppiello and Gilberto Garcia.....Appellants,

v.

William D. Turner and Charter Communications, LLC.....Respondents.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
Elvia Stoppiello and Gilberto Garcia,	)	
	)	DEFENDANTS' NOTICE OF MOTION AND MOTION TO DISMISS, OR, ALTERNATIVELY, FOR SUMMARY JUDGMENT
Plaintiffs,	)	
vs.	)	
	)	C.A. No.: 2018-CP-23-03034
William D. Turner and Charter Communications, LLC,	)	
Defendants.	)	

TO: BRIAN T. SMITH, ATTORNEY FOR ELVIA STOPPIELLO AND GILBERTO GARCIA, PLAINTIFFS.

PLEASE TAKE NOTICE that William D. Turner and Charter Communications, LLC (hereinafter collectively referred to as "Defendants") will move the Court, at a date and time to be set by the Court, but not sooner than ten (10) days after service hereof, for an order pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure dismissing Elvia Stoppiello and Gilberto Garcia's (hereinafter collectively referred to as "Plaintiffs") Complaint for failure to file within the applicable statute of limitations. This motion is based on the following grounds:

1. Plaintiffs' complaint alleges causes of action arising out of an automobile accident that occurred on April 21, 2015;

2. Plaintiffs' claims are governed by South Carolina Code § 15-3-530(5). Accordingly, an action for injury to the person shall be commenced within three (3) years;

3. Plaintiffs' claims are also governed by South Carolina Code § 15-3-535. As such, the three-year statute of limitations starts when the person knew or by the exercise of reasonable diligence should have known that he had a cause of action;

4. Plaintiffs' statute of limitations expired on April 21, 2018;

5. Plaintiffs filed their Summons and Complaint on May 24, 2018, more than three years after their cause of action arose;

6. As a matter of law, Plaintiffs' claims are barred by the statute of limitations and Defendants are entitled to a dismissal.

In the alternative, to the extent that matters outside the pleadings are necessary for the Court to make a decision on the motion, Defendants will move the Court for an order pursuant to Rule 56 of the South Carolina Rules of Civil Procedure granting summary judgment in their favor with regard to the causes of action set forth in Plaintiffs' Complaint inasmuch as there is no genuine issue as to any material fact and Defendants are entitled to summary judgment as a matter of law. This motion is based on the following grounds:

1. There is no genuine issue as to any material fact relating to the claims upon which Defendants seek summary judgment;

2. There is no genuine issue that the accident occurred on April 21, 2015;

3. There is no genuine issue that Plaintiffs retained counsel and, on April 23, 2015, Plaintiffs' counsel put Defendants on notice of his representation of Plaintiffs with regard to their claim for injuries arising out of the April 21, 2015 accident;

4. There is no genuine issue that Plaintiffs filed their Summons and Complaint on May 24, 2018;

5. As a matter of law, Defendants are entitled to summary judgment as to each of Plaintiffs' claims because Plaintiffs failed to file their Summons and Complaint within the applicable statute of limitations;

This motion for summary judgment is based upon the pleadings and discovery in this case, Rule 56 of the South Carolina Rules of Civil Procedure, all applicable common and statutory law, and Defendants' Memorandum in Support of Summary Judgment to be filed.

s/Michelle DeLuca Yarbrough
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ELECTRONICALLY FILED - 2018 Nov 02 10:15 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2303034

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP2303034

Elvia Stoppiello et al
PLAINTIFF(S)

William D Turner et al
DEFENDANT(S)

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

☐ **STAYED DUE TO BANKRUPTCY**

☐ **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:

Defendants Charter Communications and William Turner's Motion to Dismiss is hereby granted based upon a finding that the date of the accident is the date on which Plaintiffs knew or should have known that there was a viable cause of action. Therefore, Plaintiffs failed to file the action within the time allowed by the statute of limitations. Defendants are hereby ordered to submit a formal proposed order of dismissal reflecting this decision within 10 days of the date of this filing.

ORDER INFORMATION

This order ☑ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 11/30/2018 .

Michelle Deluca Yarbrough for William D Turner,Charter Communications LLC
Brian T. Smith for Elvia Stoppiello,Gilberto Garcia

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2018 Nov 30 11:05 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2303034

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ELECTRONICALLY FILED - 2018 Nov 30 11:05 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2303034

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Greenville Common Pleas

Case Caption: Elvia Stoppiello , plaintiff, et al vs. William D Turner , defendant, et al

Case Number: 2018CP2303034

Type: Order/Electronic Form 4

So Ordered

s/Letitia H. Verdin, SC Judge 2162

Electronically signed on 2018-11-30 10:03:26 page 3 of 3

ELECTRONICALLY FILED - 2018 Dec 06 4:22 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2303034

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
Elvia Stoppiello and Gilberto Garcia,	)	C.A. No. 2018-CP-23-03034
Plaintiffs,	)	
vs.	)	MOTION TO RECONSIDER
William D. Turner and Charter Communications, LLC.,	)	
Defendants.	)	

Pursuant to Rules 52 and 59, SCRCP, Plaintiffs Elvia and Gilberto Garcia hereby move that the Court reconsider its decision granting the Defendants' Motion to Dismiss pursuant to S.C. Code § 15-3-535. Plaintiffs request that the Court withdraw its prior Order and enter an Order Denying the Defendants' Motion. Under Rule 59, SCRCP, a party may request that a trial judge reconsider any ruling and arguments, regardless of whether the party overlooked or failed to rule upon an argument, see *Elam v. SC Department of Transportation,* 361 S.C. 9, 602 S.E. 2d 772. (2004).

The Statute of Limitations is tolled due to Elvia having a traumatic brain injury which is continuing in nature under S.C. Code § 15-3-40 and the statute runs from April 21, 2015 to April 21, 2020

Elvia's traumatic brain injury places her under the protections set forth in S.C. Code § 15-3-40 (2) as she is incapacitated thus tolling the Statute of Limitations. Plaintiffs re-focus their argument that the statute of limitations is simply tolled for evidence of "mental incompetency" under the code. *Wiggins v. Edwards*, 442 S.E. 2d 170, 314 S.C. 126, clearly states that

> The general rule as to the standard for insanity under tolling statutes is that: Insanity or mental incompetency that tolls the statute of limitations consists of a mental condition which precludes understanding the nature or effects of one's acts, an

incapacity to manage one's affairs, an inability to understand or protect one's rights, because of an over-all inability to function in society, or the mental condition is such as to require care in a hospital.

The Plaintiffs refer to Exhibit A by Dr. White showing that Elvia suffered from a traumatic brain injury that caused mental confusion. Dr. White offers his medical opinion in the last paragraph, "It is my opinion, to a reasonably degree of medical certainty [Elvia] is experiencing sequelae of traumatic brain injury, with neurologic deficits and neuropsychiatric difficulties and ongoing headaches that are causally related to the motor vehicle collision occurring in 2015." Dr. White shows that her mental state would prevent her from understanding or protecting her rights.

Elvia's evaluation from Dr. White shows that her disability is continuing in nature and the statute remains tolled for the five-year period. S.C. Code §15-3-40 (2018) S.C. Code § 15-3-40 states that "the time of the disability is not a part of the time limited for the commencement of the action, except that the period within which the action must be brought cannot be extended: (a) more than five years by any such disability; nor (b) in any case longer than one year after the disability ceases. *Id.* Here, the five-year period runs from April 21, 2015 to April 21, 2020. It is undisputed that the Plaintiffs filed the Summons and Complaint on May 25, 2018, well within the five-year period. In addition, the Plaintiffs have demonstrated that Elvia is still considered disabled. Dr. White performed his medical evaluation on November 14, 2018. In his evaluation, Dr. White describes Elvia as "extremely disorganized from a cognitive standpoint. She has limited short term and long-term memory. She has difficulty concentrating." Dr. White establishes that the disability is continuing, and that Elvia is still impaired under the statute.

Plaintiffs re-asserts their arguments that a person of common knowledge and experience would not be put on notice of an injury until after April 21, 2015.

The Defendants Motion to Dismiss under SCRCP 12(b)(6) doesn't address the theory that headaches would not put the Plaintiffs under notice of an injury. Initially following the accident,

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Elvia presented with sleep disturbances, balance difficulties, light headedness, dizziness, and headaches all of which were temporary in nature. She had no knowledge that these injuries were a result of the accident that occurred on April 21, 2015. Plaintiff did not know she had a brain injury until Dr. Smith diagnosed her with one on or about March 28, 2016. The only way for an individual to discover that they have a brain injury is by being diagnosed by a professional.

In *Grillo V. Speed Rite Products, Inc.,* 340 S.C. 508, the Court held "Institution of an action based upon these temporary symptoms would likely have been premature and possibly frivolous." In Grillo, *supra*, the Court didn't feel temporary symptoms such as headaches would put the Plaintiff under notice of an injury. *Id. at 508.* "Moreover, the focus is upon the date of the discovery of the injury, not the date of the discovery of the wrongdoer: The important date under the discovery rule is the date of the discovery of the injury," Wiggins, *supra at 170.* Just as in *Grillo,* Elvia didn't realize the headaches she was experiencing were a result of injury from the accident until diagnosis with a concussion by Dr. Smith on March 28, 2016.

Without such a medical finding in Elvia's case, a reasonable person with common knowledge and experience may have a different inference for the cause of her injuries. Elvia had headaches and felt electricity. She then, as laid out in Dr. White's evaluation (Exhibit A), suffered memory loss, memory lapses accompanied by cognitive decline, and personality changes. She and her husband began to have marital issues because they did not understand what Elvia was going through. She sought medical care that didn't help with her symptoms. She was diagnosed by Dr. Fox in the summer of 2015 with simple tension headaches. Stress causes tension headaches and marital issues cause stress. A reasonable person of common knowledge and common experience with marital issues that is having headaches could infer, as in Elvia's case, that these issues were the cause of tension headaches.

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The discovery rule is made specifically for traumatic brain injury cases. Specifically, as set forth in *Wiggins* the focus is upon the date of the discovery of the injury, not the date of the discovery of the wrongdoer. Therefore, as the South Carolina Supreme Court decided in *Wiggins* and *Grillo* that this Court should find that the discovery rule applies and dismiss Defendant's Motion on the basis that Elvia was unable to discover that her symptoms were a result of a traumatic brain injury until Dr. Smith diagnosed her in March of 2016. Thus, we ask that the Court reconsider its previous ruling and dismiss Defendant's motion.

Plaintiffs assert that Elvia, by nature of having a Traumatic brain injury, is not a reasonable person of common knowledge and experience

Defendants Motion to Dismiss under 12(b)(6) should be denied as the Complaint is not deficient on its face. The Complaint states the accident occurred on April 21, 2015 and the Plaintiff sought treatment for headaches at a later date. She was diagnosed with a concussion on March 28, 2016. The very injury itself would affect a person's cognitive reasoning so they have cognitive abilities below that of a reasonable person with common knowledge and experience. In *Snell v. Columbia Gun Exchange, Inc.*, 278 S.E. 2d 334, 276 S.C. 301 (S.C. 1981), the Court held that:

> Section 15-3-535 is of recent date and has not heretofore been construed by this Court. The exercise of reasonable diligence means simply that an injured party must act with some promptness where the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist. The statute of limitations begins to run from this point and not when advice of counsel is sought, or a full-blown theory of recovery developed.

As in *Snell, a* person with a traumatic brain injury absent medical determination of an injury would be unable on their own to have notice as laid out in *Wiggins*, *supra*. Plaintiffs feel that the Motion to Dismiss should be denied because a medical professional is needed to diagnose a person with a traumatic brain injury.

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The Complaint is not deficient on its face and the Motion to Dismiss should be denied

As a matter of law, the Plaintiffs can recover on a different theory than the one that the Plaintiffs had notice of a claim on April 21, 2015. First, The statute may be tolled due mental incapacity. The medical records, especially Dr. White's (Exhibit A), shows that her cognitive and mental defects are continuing. Second, mere symptoms are not an injury. As mentioned above, Elvia 's headaches are akin to symptoms like *Grillo*. Without a diagnosis, Plaintiff could not have been aware that she had a traumatic brain injury until March 28, 2016. Third, Elvia is not a reasonable person of common knowledge and experience. She has a traumatic brain injury and is mentally incapacitated.

Plaintiffs respectfully request that the Court allow the Plaintiffs leave to amend the lawsuit

The Plaintiffs request the Court give them leave to amend their Complaint should the Court find the Complaint defective. "When a complaint is dismissed under 12(b)(6) for failure to state a fact sufficient to constitute a cause of action, the dismissal generally is without prejudice. The Plaintiff in most cases should be given an opportunity to file and serve and serve amended complaint." *Spence v. Spence*, 368 S.C. 129, 628 S.E. 2d 869 (2006).

Conclusion

The Plaintiffs respectfully ask the Court to reconsider its ruling and hold for the Plaintiffs on the following grounds: 1) The statute of limitations is tolled due to S.C. Code 15-3-40, 2) A genuine issue of material fact exists and the Court should dismiss the Defendants' Motion to Dismiss. 3) The Complaint is not deficient on its face and the Defendants' 12 (b)(6) should be dismissed 4) Alternatively, even if the Defendants meets their burden regarding the Complaint being deficient on its face, the Court should grant plaintiff leave to amend the Complaint to more fully set forth the facts of the case.

ELECTRONICALLY FILED - 2018 Dec 06 4:22 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2303034

Respectfully Submitted,

/s/ Brian T. Smith
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Greenville, South Carolina

December 5, 2018

ELECTRONICALLY FILED - 2018 Dec 06 4:22 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2303034

ELECTRONICALLY FILED - 2018 Dec 12 8:42 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2303034

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
Elvia Stoppiello and Gilberto Garcia,	)	
	)	
Plaintiffs,	)	**ORDER GRANTING DEFENDANTS' MOTION TO DISMISS**
	)	
vs.	)	
	)	C.A. No. 2018-CP-23-03034
William D. Turner and Charter Communications, LLC,	)	
	)	
Defendants.	)	

THIS MATTER IS BEFORE the court on the motion to dismiss of Defendants, William D. Turner and Charter Communications, LLC. A hearing was held before me on November 28, 2018, at which time Plaintiffs were represented by Brian T. Smith and Defendants were represented by Michelle Deluca Yarbrough, of Gallivan, White & Boyd, P.A. The court hereby orders that Defendants' motion to dismiss be GRANTED with prejudice.

FACTUAL ALLEGATIONS

This matter arises out of an automobile accident which occurred on April 21, 2015 between Plaintiff Elvia Stoppiello (hereinafter referred to as "Plaintiff Stoppiello") and Defendant William D. Turner (hereinafter referred to as "Defendant Turner"). At the time of the automobile accident, Defendant Turner was acting within the scope of his employment with Defendant Charter Communications, LLC (hereinafter referred to as "Defendant Charter").

On May 24, 2018, Plaintiffs filed a complaint against Defendants seeking to recover for injuries Plaintiff Stoppiello sustained in the automobile accident. Plaintiffs' complaint alleges that Plaintiff Stoppiello had headaches and sought medical treatment following the automobile

accident. Accordingly, Plaintiffs knew or should have known that there was a viable cause of action against Defendants on April 21, 2015, the date of the accident.

STANDARD OF REVIEW

Under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, a defendant may move to dismiss a complaint based upon "failure to state sufficient facts to constitute a cause of action." *Jarrell v. Petoseed Co., Inc.*, 331 S.C. 207, 500 S.E.2d 793, 794 (Ct. App. 1998); *O'Laughlin v. Windham,* 330 S.C. 379, 498 S.E.2d 689, 691 (Ct. App. 1998). A trial judge may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court. *Williams v. Condon,* 347 S.C. 227, 553 S.E.2d 496 (Ct. App. 2001). Generally, when reviewing a motion to dismiss, the trial court must base its ruling solely on the allegations contained in the complaint. See *Holy Loch Distributors, Inc. v. Hitchcock*, 332 S.C. 247, 503 S.E.2d 787, 790 (Ct. App. 1998); *Jarrell v. Petoseed Co., Inc.,* 331 S.C. 207, 500 S.E.2d 793, 794 (Ct. App. 1998); *O'Laughlin v. Windham,* 330 S.C. 379, 498 S.E.2d 689, 691 (Ct. App. 1998).

Pursuant to Rule 8(a), "[a] pleading which sets forth a cause of action . . . shall contain . . . a short and plain statement of the facts showing that the pleader is entitled to relief . . . ." See *South Carolina Nat'l Bank v. Joyner*, 289 S.C. 382, 346 S.E.2d 329 (Ct. App. 1986) ("[T]he principal purpose of pleadings is to inform the pleader's adversary of legal and factual positions which he will be required to meet on trial."). Rule 8(a), "requires a litigant to plead the ultimate facts which will be proved at trial." *Clark v. Clark,* 293 S.C. 415, 416, 361 S.E.2d 328, 328 (1987); see *Stroud v. Riddle*, 260 S.C. 99, 194 S.E.2d 235 (1973); *Watts v. Metro Sec. Agency*, 346 S.C. 235, 240, 550 S.E.2d 869, 871 (Ct. App. 2001) ("Ultimate facts fall

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somewhere between the verbosity of evidentiary facts and the sparsity of 'legal conclusions."). Conclusory allegations in a complaint are insufficient to survive a judgment on the pleadings. *Jones v. Gilstrap*, 288 S.C. 525, 528, 343 S.E.2d 646, 648 (Ct. App. 1986).

CONCLUSIONS OF LAW

An injured party must act promptly when the facts and circumstances of an injury would place a reasonable person on notice that a claim against another party might exist. *Republic Contracting Corp. v. S.C. Dep't of Highways & Pub. Transp.*, 503 S.E.2d 761, 766 (S.C. Ct. App. 1998). Pursuant to South Carolina Code Sections 15-3-530(5) and 15-3-535, Plaintiffs' claims must have commenced within three years after they knew or by exercise of reasonable diligence should have known that they had a cause of action. Plaintiffs, however, filed their action on May 24, 2018 and, therefore, failed to file their action within the time allowed by the statute of limitations. Accordingly, their claim for damages is barred by the statute of limitations under South Carolina law.

ORDER

IT IS HEREBY ORDERED that the Plaintiffs' complaint be dismissed in its entirety with prejudice.

IT IS SO ORDERED.

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Greenville Common Pleas

Case Caption: Elvia Stoppiello , plaintiff, et al vs. William D Turner , defendant, et al

Case Number: 2018CP2303034

Type: Order/Other

So Ordered

s/Letitia H. Verdin, SC Judge 2162

Electronically signed on 2018-12-11 16:23:16 page 5 of 5

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP2303034

Elvia Stoppiello et al
PLAINTIFF(S)

William D Turner et al
DEFENDANT(S)

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

☐ **STAYED DUE TO BANKRUPTCY**

☐ **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:

Plaintiff's motion to reconsider the order granting Defendant's Motion to Dismiss is hereby denied. This Court finds that the Motion to Dismiss was properly granted based on a finding that the statute of limitations for this matter had run at the time the action was brought.

ORDER INFORMATION

This order ☑ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 01/04/2019 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

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Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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ELECTRONICALLY FILED - 2019 Jan 07 9:09 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2303034

Greenville Common Pleas

Case Caption: Elvia Stoppiello , plaintiff, et al vs. William D Turner , defendant, et al

Case Number: 2018CP2303034

Type: Order/Electronic Form 4

So Ordered

s/Letitia H. Verdin, SC Judge 2162

Electronically signed on 2019-01-04 16:06:59 page 3 of 3

ELECTRONICALLY FILED - 2018 May 24 5:39 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2303034

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
Elvia Stoppiello and Gilberto Garcia,	)	
Plaintiffs,	)	C.A. No. 2018CP23_____
vs.	)	
William D. Turner and Charter Communications, LLC.,	)	COMPLAINT
Defendants.	)	(Jury Trial Demanded)

The Plaintiffs, complaining of the Defendants, allege:

PARTIES

1. That the Plaintiffs were, at all times pertinent to this action, citizens and residents of the County of Greenville, State of South Carolina.

2. That Defendant William D. Turner [*hereinafter* "Defendant Turner"], upon information and belief, was, at all times pertinent to this action, a citizen and resident of the County of Greenville, State of South Carolina.

3. That Defendant Charter Communications, LLC. [*hereinafter* "Defendant Charter"], upon information and belief, was, at all times pertinent to this action, a foreign corporation engaging in business in the County in Greenville, State of South Carolina.

4. That Plaintiff was the driver of the 2007 Ford involved in the collision giving rise to this Complaint.

5. That Defendant Turner was the driver of the 2006 Ford involved in the collision.

6. That Defendant Charter was the owner of the 2006 Ford involved in the collision.

JURISDICTION

7. Plaintiff reaffirms and reiterates all allegations above as if fully repeated and are incorporated herein verbatim.

8. That the collision that is the subject of this Complaint occurred in the County of Greenville, State of South Carolina.

9. This Court has jurisdiction over the parties and subject matter of the allegations complained of herein, and venue is proper in Greenville County.

FACTUAL ALLEGATIONS

10. Plaintiff reaffirms and reiterates all allegations above as if fully repeated and are incorporated herein verbatim.

11. At all times pertinent hereto, upon information and belief, Defendant Turner was employed by Defendant Charter and acting within the scope of his employment.

12. That on or about April 21, 2015, Plaintiff was traveling East on Airport Road in Greenville County, South Carolina.

13. That at the above time and place, Defendant Turner, in Defendant Charter's vehicle, was traveling East on Airport Road in Greenville County, South Carolina.

14. At the above time and place, Defendant Turner, traveling at high rate of speed, struck Plaintiff's vehicle.

15. That at said time and place, as a result of Defendant Turner striking the Plaintiff's motor vehicle, Plaintiff was thrown around her vehicle

16. Plaintiff had headaches and sought medical treatment.

ELECTRONICALLY FILED - 2018 May 24 5:39 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2303034

17. Months after the collision Plaintiff began experiencing headaches, flashing lights, and other symptoms. At this time. the Plaintiff sought additional medical treatment. The Plaintiff was referred to a neurologist to evaluate headaches.

18. Plaintiff began treating with a neurologist to address the persistent headaches.

19. While under neurologist care, Plaintiff was diagnosed with symptoms consistent with a traumatic brain injury as a result of a concussion caused by the collision at issue in the lawsuit.

20. Upon information and belief, the concussion that caused her symptoms consistent with traumatic brain injury was diagnosed on March 28, 2016, which was caused by the collision. Additionally, at the time of the collision, the Plaintiff had no ability to discover she had a concussion. She also did not have an ability to discover that her symptoms were consistent with traumatic brain injury. Further, Plaintiff took all necessary steps and was unable to discover the injury until March 28, 2016.

21. Upon information and belief, Defendant Turner was negligent, careless, grossly negligent, reckless, and willful and wanton in his operation of Defendant Charter's motor vehicle when he collided with the Plaintiff's vehicle, and said negligence proximately caused the injuries to the Plaintiff, in that, without limitation:

a. Defendant Turner failed to operate the motor vehicle safely;

b. Defendant Turner failed to pay attention to traffic;

c. Defendant Turner failed to keep a proper lookout;

d. Defendant Turner failed to keep Defendant Charter's motor vehicle under proper control;

e. Defendant Turner failed to properly or timely apply the brakes;

f. Defendant Turner drove the motor vehicle at a high rate of speed;

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g. Defendant Turner drove the motor vehicle carelessly and heedlessly and in willful and wanton disregard of the rights and safety of others;

h. Defendant Turner failed to take reasonable steps to avoid colliding with the Plaintiff;

i. Defendant Turner operated the motor vehicle without due care or caution and in a manner likely to endanger persons, including the Plaintiff;

j. Defendant Turner failed to pay attention to his driving while operating a motor vehicle;

k. Defendant Turner failed to use the degree of care and caution that a reasonably prudent person would have used under the same or similar conditions; and

l. In all other ways being negligent.

22. That as a proximate result of the negligent, careless, gross negligent, reckless, willful, and wanton actions of Defendant Turner, while acting as an employee within the scope of his employment with Defendant Charter, Plaintiff has suffered personal injury, anxiety, pain and suffering, the expense of medical treatment, and other losses, for which the Plaintiff is informed and believes she is entitled to judgment against the Defendants jointly and severally for a reasonable amount.

FOR A FIRST CAUSE OF ACTION AGAINST DEFENDANT TURNER
(gross negligence, negligence, carelessness, recklessness, willfulness, and wantonness)

23. Plaintiff reaffirms and reiterates all allegations above as if fully repeated and are incorporated herein verbatim.

24. Defendant Turner owed Plaintiff a duty to operate Defendant Charter's vehicle in accordance with all traffic laws and conditions then and there prevailing.

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25. Defendant Turner breached his duty to Plaintiff and was negligent, grossly negligent, wanton, willful, careless, and showed callous disregard for the rights and safety of the Plaintiff in one or more of the following particulars:

a. In failing to operate Defendant Charter's motor vehicle at an appropriate speed for the traffic conditions then prevailing;

b. In failing to maintain proper control over the motor vehicle;

c. In failing to keep a proper lookout;

d. In failing to properly or timely apply the brakes, or failing to maintain the brakes in proper condition;

e. In failing to take reasonable steps to avoid colliding with the Plaintiff's car;

f. In failing to exercise due care or caution and in a manner likely to endanger persons, including the Plaintiff;

g. In failing to operate the motor vehicle according to the traffic laws and in conformance with the traffic signals then and there prevailing;

h. In failing to use the degree of care and caution that a reasonably prudent person would have used under the same conditions; and

i. In all other ways being negligent.

26. That as a proximate result of the negligent, careless, gross negligent, reckless, willful, and wanton actions of Defendant Turner, the Plaintiff was thrown about the motor vehicle and has suffered personal injury, anxiety, pain and suffering, the expense of medical treatment, and other losses, for which the Plaintiff is informed and believes she is entitled to a judgment against Defendant Turner.

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FOR A FIRST CAUSE OF ACTION AGAINST DEFENDANT CHARTER (gross negligence, negligence, carelessness, recklessness, willfulness, and wantonness, employee/employer, master/servant, principal/agent; including any ostensible or apparent agency relationships, contractual relationships, corporate relationships, family and/or other relationships including business relationships)

27. Plaintiff reaffirms and reiterates all allegations above as if fully repeated and are incorporated herein verbatim.

28. That Defendant Charter, upon information and belief, the employer of Defendant Turner, owned, furnished, and maintained the motor vehicle in question.

29. That, at all times pertinent hereto, upon information and belief, Defendant Turner was acting within the scope and course of his employment.

30. That the negligence and recklessness of Defendant Turner is imputed to Defendant Charter, and Defendant Charter is vicariously liable for the negligent, reckless, willful, wanton, and heedless acts and omissions of Defendant Turner, as set forth above, committed in the course of and within the scope of their respective bailor/bailee, lessor/lessee, employer/employee, master/servant, and/or principal/agent relations(s), including any ostensible or apparent agency relationships, family relationships, contractual relationships, corporate relationships, and/or other relationships.

31. That the personal injuries suffered by the Plaintiff were due to, caused by, and the direct and proximate result of the negligence, carelessness, recklessness, willfulness, wantonness, and/or heedlessness of Defendant Charter, jointly and severally and/or by virtue of their respective bailor/bailee, lessor/lessee, employee/employer, master/servant, and/or principal/agent relationship(s), including any ostensible or apparent agency relationships, contractual relationships, corporate relationships, family, and/or other relationships, in one, more, or all of the following particulars, to wit:

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a. Said Defendant failed to exercise ordinary or even slight care in the maintenance and control of his vehicle;

b. Said Defendant failed to properly maintain the brakes on his vehicle;

c. Said Defendant negligently and recklessly entrusted his motor vehicle to the operation and control of an incompetent, inexperienced, and/or reckless driver, namely, Defendant Turner, whom he knew or should have known to be an incompetent, inexperienced, and/or reckless driver;

d. Said Defendant failed to properly supervise and control the use of his vehicle;

e. Said Defendant negligently and recklessly failed to properly instruct and train Defendant Turner, on proper driving techniques, as well as safety procedures, prior to allowing Defendant Turner to operate said vehicle;

f. Said Defendant negligently and recklessly failed to properly supervise Defendant Turner, an inexperienced incompetent, and/or reckless driver, while Defendant Turner operated his vehicle;

g. Said Defendant negligently and recklessly failed to exercise ordinary or even slight care in the supervision, entrustment, care, custody, and/or control of his vehicle;

h. Said Defendant failed to use the degree of care and caution that a reasonably prudent person would have used under the circumstances then and there prevailing; and

i. In all other ways being negligent.

32. That, since Defendant Turner was operating the at-fault motor vehicle in the collision in question, upon information and belief, with Defendant Charter's permission and within the course and scope of his employment with Defendant Charter, Defendant Charter should be liable through the family purpose doctrine, through an entrustment, or through the respective bailor/bailee,

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lessor/lessee, employee/employer, master/servant, and/or principal/agent relationship, including any ostensible or apparent agency relationships, contractual relationships, corporate relationships, family and/or other relationships.

33. That as a proximate result of the negligent, careless, gross negligent, reckless, willful and wanton actions of Defendant Charter, Plaintiff suffered personal injury, anxiety, pain and suffering, the expense of medical treatment, and other losses, for which the Plaintiff is informed and believes she is entitled to a judgment against the Defendants for a reasonable amount to include punitive damages.

34. That Defendant Charter provided Defendant Turner with the authority to operate his motor vehicle, and pursuant to the above-referenced stated theories of liability, is jointly and severally liable.

35. At the above time and place, upon information and belief, Defendant Charter was negligent, careless, grossly negligent, reckless, willful, wanton, and showed callous disregard for the rights and safety of the Plaintiff in granting authorization and permission to Defendant Turner to operate Defendant Charter's motor vehicle and said negligence proximately caused injuries to Plaintiff in that, without limitation:

a. Defendant Charter failed to properly train Defendant Turner in the use of Defendant Charter's motor vehicle;

b. Defendant Charter failed to properly supervise Defendant Turner's use of Defendant Charter's motor vehicle;

c. Defendant Charter failed to evaluate and observe Defendant Turner's driving abilities and skill upon hiring other than checking if he had a proper driver's license.

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36. That as a result of the negligent, careless, gross negligent, reckless, willful, and wanton actions of Defendants, Plaintiff was struck by Defendant Turner and suffered personal injury, believed to be of a permanent nature, anxiety, pain and suffering, the expense of medical treatment, the expense of future medical treatment, and lost wages, for which the Plaintiff is informed and believes she is entitled to a judgment against Defendants, jointly and severally.

37. By reason of Defendants' acts as set forth above, and the callous disregard shown for the rights and safety of the Plaintiff, the Plaintiff is entitled to an award of actual, consequential, and punitive damages in an appropriate amount and for the costs of this action.

FOR A SECOND CAUSE OF ACTION AGAINST DEFENDANT CHARTER (NEGLIGENT HIRING, NEGLIGENT SUPERVISION AND TRAINING)

38. Plaintiff reaffirms and reiterates all allegations above as if fully repeated and are incorporated herein verbatim.

39. That Defendant Charter owned the motor vehicle driven by Defendant Turner on the date in question.

40. That Defendant Charter expressly gave Defendant Turner authorization and permission to drive Defendant Charter's motor vehicle.

41. That Defendant Charter both apparently and/or impliedly gave Defendant Turner authorization and permission to drive Defendant Charter's motor vehicle.

42. That Defendant Turner was employed by Defendant Charter and acting within the course and scope of his employment at all times pertinent to this action.

43. That, at the said time and place, upon information and belief, Defendant Turner was driving Defendant Charter's motor vehicle in furtherance of Defendant Charter's business.

44. That Defendant Charter, under the doctrine of *respondeat superior*, was the direct and

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proximate cause of the collision between Defendant Charter's motor vehicle and Plaintiff in the following ways:

a. In failing to properly train Defendant Turner in the use of Defendant Charter's motor vehicle;

b. In failing to properly supervise Defendant Turner in the use of Defendant Charter's motor vehicle;

c. In failing to properly conduct a background check on Defendant Turner;

d. In failing to properly issue employee training manuals to Defendant Turner;

e. In failing to initiate in-office training upon hiring Defendant Turner;

f. In failing to check the driving abilities and skill of Defendant Turner upon hiring other than checking for a proper driver's license.

45. That Defendant Charter should be liable to the Plaintiff for the tort of negligent entrustment.

46. That Defendant Charter caused the collision in question by negligently, carelessly, recklessly, willfully, and wantonly granting Defendant Turner authorization and permission to drive Defendant Charter's motor vehicle.

LOSS OF CONSORTIUM
AS TO PLAINTIFF GILBERTO GARCIA

47. Plaintiff Gilberto Garcia realleges by reference all the foregoing allegations as though set forth herein verbatim.

48. Due to the severe injuries, disabilities and impairment suffered by his wife, Plaintiff Gilberto Garcia has been deprived of the services of his wife including consortium for which he alleges he is entitled to actual damages against the Defendants.

49. Plaintiff's injuries occurred as a direct and proximate result of the negligent, careless and

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reckless acts of the Defendants.

WHEREFORE, the Plaintiff demands judgment against the Defendants as follows:

A. That the Plaintiff have and recover of Defendants jointly and severally a monetary sum for actual and punitive damages and personal injuries incurred or to be incurred in an amount to be determined by the jury in an amount in excess of ten thousand dollars ($10,000);

B. That the costs of this action be taxed against Defendants including a reasonable fee for the Plaintiff's attorney;

C. For interest on any compensatory judgment from date of this institution of this caption; and

D. For such other, further and different relief as the Plaintiff may be entitled in the action.

Respectfully submitted:

s/ Brian T. Smith
Brian T. Smith (S.C. Bar ID No. 070232)
714 Pettigru Street
Greenville, S.C. 29601
Dial: 864-239-2007
Fax: 864-239-2037
Attorney for the Plaintiffs

Greenville, South Carolina

This the 24th day of May 2018

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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
Elvia Stoppiello and Gilberto Garcia,	)	**DEFENDANTS CHARTER COMMUNICATIONS, LLC AND WILLIAM D. TURNER'S ANSWER TO PLAINTIFFS' COMPLAINT**
Plaintiffs,	)	
vs.	)	
William D. Turner and Charter Communications, LLC,	)	C.A. No.: 2018-CP-23-03034
	)	(Jury Trial Demanded)
Defendants.	)	

The defendants, Charter Communications, LLC, and William D. Turner, (hereinafter collectively referred to as "Defendants"), answering the complaint of the plaintiffs herein, would respectfully allege and show unto the court as follows:

FOR A FIRST DEFENSE

1. Defendants lack sufficient information in order to form a belief as to the truth of the allegations set forth in paragraph 1 of the plaintiffs' complaint and, therefore, denies them.

2. Defendants admit the allegations set forth in paragraph 2 of the plaintiffs' complaint.

3. Defendants admit the allegations set forth in paragraph 3 of the plaintiffs' complaint.

4. Defendants admit that Elvia Stoppiello was the driver of the 2007 Ford involved in the accident giving rise to this complaint; however, Defendants deny the allegations set forth in paragraph 4 of the plaintiffs' complaint as they pertain to Gilberto Garcia.

5. Defendants admit the allegations set forth in paragraph 5 of the plaintiffs' complaint.

6. Defendants admit the allegations set forth in paragraph 6 of the plaintiffs' complaint.

7. In response to paragraph 7 of the plaintiffs' complaint, Defendants reallege and incorporate by reference their responses to paragraphs 1 through 6 of the plaintiffs' complaint as if restated herein verbatim.

8. Defendants admit the allegations set forth in paragraph 8 of the plaintiffs' complaint.

9. Defendants admit the allegations set forth in paragraph 9 of the plaintiffs' complaint.

10. In response to paragraph 10 of the plaintiffs' complaint, Defendants reallege and incorporate by reference their responses to paragraphs 1 through 9 of the plaintiffs' complaint as if restated herein verbatim.

11. Defendants admit the allegations set forth in paragraph 11 of the plaintiffs' complaint.

12. Defendants admit the allegations set forth in paragraph 12 of the plaintiffs' complaint.

13. Defendants admit the allegations set forth in paragraph 13 of the plaintiffs' complaint.

14. Defendants deny the allegations set forth in paragraph 14 of the plaintiffs' complaint regarding Defendant William Turner's alleged travel at a high rate of speed. Defendants admit the remaining allegations set forth in paragraph 14 of the plaintiffs' complaint.

15. Defendants lack sufficient information to form a belief as to the truth of the allegations set forth in paragraph 15 of the plaintiffs' complaint and, therefore, deny them.

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16. Defendants lack sufficient information to form a belief as to the truth of the allegations set forth in paragraph 16 of the plaintiffs' complaint and, therefore, deny them.

17. Defendants lack sufficient information to form a belief as to the truth of the allegations set forth in paragraph 17 of the plaintiffs' complaint and, therefore, deny them.

18. Defendants lack sufficient information to form a belief as to the truth of the allegations set forth in paragraph 18 of the plaintiffs' complaint and, therefore, deny them.

19. Defendants lack sufficient information to form a belief as to the truth of the allegations set forth in paragraph 19 of the plaintiffs' complaint and, therefore, deny them.

20. Defendants lack sufficient information to form a belief as to the truth of the allegations regarding the causation of plaintiff Elvia Stoppiello's symptoms and, therefore, deny them. Defendants deny the remaining allegations set forth in paragraph 20 of the plaintiffs' complaint.

21. Defendants deny the allegations set forth in paragraph 21 of the plaintiffs' complaint, specifically including subparagraphs a. through l.

22. Defendants deny the allegations set forth in paragraph 22 of the plaintiffs' complaint.

23. In response to paragraph 23 of the plaintiffs' complaint, Defendants reallege and incorporate by reference their responses to paragraphs 1 through 22 of the plaintiffs' complaint as if restated herein verbatim.

24. Defendants admit the allegations set forth in paragraph 24 of the plaintiffs' complaint.

25. Defendants deny the allegations set forth in paragraph 25 of the plaintiffs' complaint, specifically including subparagraphs a. through i.

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26. Defendants deny the allegations set forth in paragraph 26 of the plaintiffs' complaint.

27. In response to paragraph 27 of the plaintiffs' complaint, Defendants reallege and incorporate by reference their responses to paragraphs 1 through 26 of the plaintiffs' complaint as if restated herein verbatim.

28. Defendants admit the allegations set forth in paragraph 28 of the plaintiffs' complaint as it pertains to the 2006 Ford vehicle only. Defendants deny that it owned, furnished, or maintained the 2007 Ford vehicle in question. Defendants deny the remaining allegations of the plaintiff's complaint.

29. Defendants admit the allegations set forth in paragraph 29 of the plaintiffs' complaint.

30. Defendants contend that the allegations set forth in paragraph 30 of the plaintiffs' complaint contain legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations of paragraph 30 of the plaintiffs' complaint.

31. Defendants deny the allegations set forth in paragraph 31 of the plaintiffs' complaint, specifically including subparagraphs a. through i.

32. Defendants admit that William Turner was operating the 2006 Ford vehicle with Defendant Charter's permission within the course and scope of his employment with Defendant Charter. Defendants deny the remaining allegations contained in paragraph 32 of the plaintiffs' complaint.

33. Defendants deny the allegations set forth in paragraph 33 of the plaintiffs' complaint.

34. Defendants admit that Charter provided William Turner with the authority to operate the 2006 Ford vehicle in question. Defendants contend that the remaining allegations set

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forth in paragraph 34 of the plaintiffs' complaint contain legal conclusions to which no response is required. To the extent a response is required, Defendants deny the remaining allegations of paragraph 34 of the plaintiffs' complaint.

35. Defendants deny the allegations set forth in paragraph 35 of the plaintiffs' complaint, specifically including subparagraphs a. through c.

36. Defendants deny the allegations set forth in paragraph 36 of the plaintiffs' complaint.

37. Defendants deny the allegations set forth in paragraph 37 of the plaintiffs' complaint.

38. In response to paragraph 38 of the plaintiffs' complaint, Defendants reallege and incorporate by reference their responses to paragraphs 1 through 37 of the plaintiffs' complaint as if restated herein verbatim.

39. Defendants admit the allegations set forth in paragraph 39 of the plaintiffs' complaint.

40. Defendants admit the allegations set forth in paragraph 40 of the plaintiffs' complaint.

41. Defendants admit the allegations set forth in paragraph 41 of the plaintiffs' complaint.

42. Defendants admit the allegations set forth in paragraph 42 of the plaintiffs' complaint.

43. Defendants admit the allegations set forth in paragraph 43 of the plaintiffs' complaint.

44. Defendants deny the allegations set forth in paragraph 44 of the plaintiffs' complaint, specifically including subparagraphs a. through f.

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45. Defendants deny the allegations set forth in paragraph 45 of the plaintiffs' complaint.

46. Defendants deny the allegations set forth in paragraph 46 of the plaintiffs' complaint.

47. In response to paragraph 47 of the plaintiffs' complaint, Defendants reallege and incorporate by reference their responses to paragraphs 1 through 46 of the plaintiffs' complaint as if restated herein verbatim.

48. Defendants deny the allegations set forth in paragraph 48 of the plaintiffs' complaint.

49. Defendants deny the allegations set forth in paragraph 49 of the plaintiffs' complaint.

50. Defendants deny each and every allegation set forth in the plaintiffs' complaint not specifically admitted, modified, or explained hereinabove.

FOR A SECOND DEFENSE

51. Defendants incorporate herein the allegations of their first defense, not inconsistent herewith.

52. Defendants allege that the plaintiffs claims are barred by the applicable Statute of Limitations and should be dismissed. Specifically, the plaintiffs failed to comply with the provisions of South Carolina Code §15-3-530 requiring this action to be filed within three years.

FOR A THIRD DEFENSE

53. Defendants incorporate herein the allegations of their first defense not inconsistent herewith.

54. Defendants allege that even if they were negligent, grossly negligent, reckless, and/or willful and wanton in any respect, which is expressly denied and admitted solely for the

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purpose of this defense and no others, that the plaintiffs own negligent, grossly negligent, reckless, and/or willful and wanton conduct contributed more than 50% to the cause of the accident and the plaintiffs resulting injuries and damages, if any. For that reason, Defendants are not liable to the plaintiffs in any sum whatsoever.

FOR A FOURTH DEFENSE

55. Defendants incorporate herein the allegations of their first defense not inconsistent herewith.

56. Defendants allege that even if they were negligent, grossly negligent, reckless, and/or willful and wanton in any respect, which is expressly denied and admitted solely for the purpose of this defense and no others, and even if such conduct on their part operated as a 50% or greater cause of the accident and the plaintiffs resulting damages and injuries, if any, which is also expressly denied and admitted solely for the purpose of this defense and no others, Defendants are entitled to a determination as to the percentage which the plaintiffs own negligent, grossly negligent, reckless, and/or willful and wanton conduct contributed to the accident and to a reduction of any amount awarded to the plaintiffs by an amount equal to that percentage of the plaintiffs own negligent, grossly negligent, reckless, and/or willful and wanton conduct.

FOR A FIFTH DEFENSE

57. Defendants incorporate herein the allegations of their first defense not inconsistent herewith.

58. Defendants allege that even if they were negligent, grossly negligent, reckless, and/or willful and wanton in any respect, which is expressly denied and admitted solely for the purpose of this defense and no others, they are not liable to the plaintiffs for the alleged resulting damages and injuries, if any, because of the intervening negligent, grossly negligent, reckless,

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willful and wanton, unlawful, and/or criminal actions on the part of third parties whose identity is unknown at the present time, which negligent, grossly negligent, reckless, willful and wanton, unlawful, and/or criminal actions on their part were not reasonably foreseeable and which intervened and acted as the direct and proximate cause of the damages and injuries, if any, allegedly sustained by the plaintiffs.

FOR A SIXTH DEFENSE

59. Defendants incorporate herein the allegations of their first defense not inconsistent herewith.

60. Defendants allege that insofar as the plaintiffs' complaint seeks punitive damages, such damages are violative of both the United States and South Carolina Constitutions. As such, the plaintiffs' claim for punitive damages is barred.

FOR A SEVENTH DEFENSE

61. Defendants incorporate herein the allegations of their first defense not inconsistent herewith.

62. Defendants allege that the plaintiffs' complaint fails to state facts sufficient to constitute a cause of action against it and should be dismissed pursuant to the provisions of Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR AN EIGHTH DEFENSE

63. Defendants incorporate herein the allegations of their first defense not inconsistent herewith.

64. Defendants allege that the plaintiffs' injuries and damages, if any, were the direct and proximate result of an unavoidable accident over which Defendants had no control.

65. Defendants, therefore, plead unavoidable accident as a complete defense and bar to this action.

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FOR A NINTH DEFENSE

66. Defendants incorporate herein the allegations of their first defense not inconsistent herewith.

67. Defendants allege that the plaintiffs in this case have failed to mitigate their damages. Therefore, the defendants plead failure to mitigate damages as a complete defense and bar to the plaintiffs claims.

FOR A TENTH DEFENSE

68. Defendants incorporate herein the allegations of their first defense not inconsistent herewith.

69. Defendants allege that while Defendant William Turner was operating his vehicle in a careful and prudent manner, through no fault of his own, he was placed in an unexpected emergency; that at all times and in all respects he acted in a careful and prudent manner and as any reasonable and prudent person would have acted under the circumstance then and there existing; and that, therefore, Defendants are not liable to the plaintiffs in any sum whatsoever.

FOR AN ELEVENTH DEFENSE

70. Defendants incorporate herein the allegations of their first defense not inconsistent herewith.

71. Defendants will show that all risks and dangers, if any, connected with the accident at the time and place of the plaintiffs alleged injuries and damages were open, obvious, and apparent and were known to or should have been known to the plaintiffs; that the plaintiffs were perfectly competent to judge the safety of the place where they were traveling; that the plaintiffs, therefore, by their own actions, assumed the risk of being injured in such a manner on

said occasion; and that Defendants, for these reasons, are not liable to the plaintiffs in any sum whatsoever.

FOR A TWELFTH DEFENSE

72. Defendants incorporate herein the allegations of their first defense not inconsistent herewith.

73. Defendants allege that the plaintiff's claims are barred by the doctrine of estoppel and/or laches.

WHEREFORE, having fully answered the complaint of the plaintiff herein, Defendants respectfully pray that the plaintiffs' complaint be dismissed, that Defendants be awarded the costs incurred in connection with this action, and for such other and further relief as the Court may deem just and proper.

s/Michelle DeLuca Yarbrough
Michelle DeLuca Yarbrough (S.C. Bar No. 15603)
Gallivan, White & Boyd, P.A.
Post Office Box 10589
Greenville, South Carolina 29603
(864) 271-5349

Attorney for Defendants,
Charter Communications, LLC and
William D. Turner

Greenville, South Carolina
July 6, 2018

Defendants, Charter Communications, LLC and William D. Turner, demand a trial by jury.

s/Michelle DeLuca Yarbrough
Michelle DeLuca Yarbrough (S.C. Bar No. 15603)

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ELECTRONICALLY FILED - 2018 Nov 02 10:15 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2303034

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
Elvia Stoppiello and Gilberto Garcia,	)	
	)	DEFENDANTS' NOTICE OF MOTION AND MOTION TO DISMISS, OR, ALTERNATIVELY, FOR SUMMARY JUDGMENT
Plaintiffs,	)	
vs.	)	
	)	C.A. No.: 2018-CP-23-03034
William D. Turner and Charter Communications, LLC,	)	
Defendants.	)	

TO: BRIAN T. SMITH, ATTORNEY FOR ELVIA STOPPIELLO AND GILBERTO GARCIA, PLAINTIFFS.

PLEASE TAKE NOTICE that William D. Turner and Charter Communications, LLC (hereinafter collectively referred to as "Defendants") will move the Court, at a date and time to be set by the Court, but not sooner than ten (10) days after service hereof, for an order pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure dismissing Elvia Stoppiello and Gilberto Garcia's (hereinafter collectively referred to as "Plaintiffs") Complaint for failure to file within the applicable statute of limitations. This motion is based on the following grounds:

1. Plaintiffs' complaint alleges causes of action arising out of an automobile accident that occurred on April 21, 2015;

2. Plaintiffs' claims are governed by South Carolina Code § 15-3-530(5). Accordingly, an action for injury to the person shall be commenced within three (3) years;

3. Plaintiffs' claims are also governed by South Carolina Code § 15-3-535. As such, the three-year statute of limitations starts when the person knew or by the exercise of reasonable diligence should have known that he had a cause of action;

4. Plaintiffs' statute of limitations expired on April 21, 2018;

5. Plaintiffs filed their Summons and Complaint on May 24, 2018, more than three years after their cause of action arose;

6. As a matter of law, Plaintiffs' claims are barred by the statute of limitations and Defendants are entitled to a dismissal.

In the alternative, to the extent that matters outside the pleadings are necessary for the Court to make a decision on the motion, Defendants will move the Court for an order pursuant to Rule 56 of the South Carolina Rules of Civil Procedure granting summary judgment in their favor with regard to the causes of action set forth in Plaintiffs' Complaint inasmuch as there is no genuine issue as to any material fact and Defendants are entitled to summary judgment as a matter of law. This motion is based on the following grounds:

1. There is no genuine issue as to any material fact relating to the claims upon which Defendants seek summary judgment;

2. There is no genuine issue that the accident occurred on April 21, 2015;

3. There is no genuine issue that Plaintiffs retained counsel and, on April 23, 2015, Plaintiffs' counsel put Defendants on notice of his representation of Plaintiffs with regard to their claim for injuries arising out of the April 21, 2015 accident;

4. There is no genuine issue that Plaintiffs filed their Summons and Complaint on May 24, 2018;

5. As a matter of law, Defendants are entitled to summary judgment as to each of Plaintiffs' claims because Plaintiffs failed to file their Summons and Complaint within the applicable statute of limitations;

This motion for summary judgment is based upon the pleadings and discovery in this case, Rule 56 of the South Carolina Rules of Civil Procedure, all applicable common and statutory law, and Defendants' Memorandum in Support of Summary Judgment to be filed.

s/Michelle DeLuca Yarbrough
Michelle DeLuca Yarbrough (S.C. Bar No. 15603)
Gallivan, White & Boyd, P.A.
Post Office Box 10589
Greenville, South Carolina 29603
(864) 271-5349

Attorney for Defendant,
Charter Communications, LLC

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ELECTRONICALLY FILED - 2018 Nov 21 10:34 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2303034

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
Elvia Stoppiello and Gilberto Garcia,	)	
	)	DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION TO DISMISS, OR, ALTERNATIVELY, FOR SUMMARY JUDGMENT
Plaintiffs,	)	
vs.	)	
	)	C.A. No.: 2018-CP-23-03034
William D. Turner and Charter Communications, LLC,	)	
Defendants.	)	

Pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, William D. Turner and Charter Communications, LLC (hereinafter collectively referred to as "Defendants") file this memorandum of law in support of their motion to dismiss in the above-referenced matter. In the alternative, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, Defendants file this memorandum of law in support of their motion for summary judgment in the above-referenced matter. For the reasons set forth below, Defendants move and respectfully request that this Court grant their motion to dismiss or, in the alternative, grant summary judgment in their favor with regard to all of the claims asserted by the plaintiffs.

FACTUAL BACKGROUND

On April 21, 2015, Plaintiff Elvia Stoppiello (hereinafter referred to as "Plaintiff Stoppiello") and Defendant William D. Turner (hereinafter referred to as "Defendant Turner") were in an automobile accident on Airport Road in Greenville County, South Carolina. *Complaint*, ¶¶ 12-14. At the time of the automobile accident, Defendant Turner was acting within the scope of his employment with Defendant Charter Communications, LLC (hereinafter referred to as "Defendant Charter"). *Id.* at ¶ 22.

As a result of the automobile accident, Plaintiff Stoppiello had headaches and sought medical treatment. *Id.* at ¶ 16. Months later, Plaintiff Stoppiello sought additional medical treatment for headaches, flashing lights, and other symptoms. *Id.* at ¶ 17. On March 28, 2016, Plaintiff Stoppiello was diagnosed with a traumatic brain injury that allegedly resulted from a concussion caused by the automobile accident. *Id.* at ¶¶ 19-20.

On or before April 23, 2015, Plaintiff Stoppiello retained Brian T. Smith (hereinafter referred to as "Mr. Smith") as counsel for claims arising out of the automobile accident.[1] On May 24, 2018, Mr. Smith filed a complaint on behalf of Plaintiffs in the Greenville County Court of Common Pleas asserting negligence and loss of consortium against Defendants and, negligent hiring, supervision, and training against Defendant Charter.

MOTION TO DISMISS

I. Motion to Dismiss Standard

Pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, a motion to dismiss may be granted for failure to state facts sufficient to constitute a cause of action. Rule 12(b)(6), SCRCP. In considering such a motion, the trial court must base its ruling solely on allegations set forth in the complaint. *Spence v. Spence*, 628 S.E.2d 869, 874 (S.C. 2006). If the facts and inferences drawn from the facts alleged in the complaint, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper. *Id.*

II. Arguments in Favor of Granting Defendants' Motion to Dismiss

Plaintiffs' complaint alleges claims for personal injury arising out of an automobile accident, which are governed by South Carolina Code Sections 15-3-530(5) and 15-3-535. Accordingly,

[1] Mr. Smith's notice of representation, including an affidavit notarized on April 22, 2015, is attached hereto as Exhibit A.

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Plaintiffs' claims must have commenced within three (3) years after they knew or by the exercise of reasonable diligence should have known that they had a cause of action. *See* S.C. Code Ann. §§ 15-3-530(5), 15-3-535.

An injured party must act promptly when the facts and circumstances of an injury would place a reasonable person on notice that a claim against another party might exist. *Republic Contracting Corp. v. S.C. Dep't of Highways & Pub. Transp.*, 503 S.E.2d 761, 766 (S.C. Ct. App. 1998). It is immaterial that an injured party does not comprehend the extent of their injuries. *Id.* (emphasis added). Therefore, the statute of limitations begins to run when a plaintiff knows or should know of a potential claim against another party, not when the plaintiff develops a full-blown theory of recovery. *Id.* at 767.

The automobile accident occurred on April 21, 2015. *Complaint*, ¶ 14. As a result of the automobile accident, Plaintiff Stoppiello had headaches and sought medical treatment. *Complaint*, ¶ 16. Thus, Plaintiffs' claim was discoverable on April 21, 2015 because a person exercising reasonable diligence would know they have a cause of action immediately following an automobile accident that resulted in personal injury. *See Wiggins v. Edwards*, 442 S.E.2d 169, 170 (S.C. 1994) (holding that the statute of limitations began to run on the date of accident and not at the time plaintiff was actually able to investigate her case); *see also Moates v. Bobb*, 470 S.E.2d 402, 403 (S.C. Ct. App. 1996) (finding that the statute of limitations began to run on the date of the automobile accident and that the defendant was not estopped from asserting statute of limitations as a defense because plaintiff never gave the defendant any indication that the claim would be settled without litigation); *see also Bayle v. S.C. DOT*, 542 S.E.2d 736, 742 (S.C. Ct. App. 2001) (finding that the statute of limitations began to run on the date of the loss, not when the plaintiff develops absolute certainty that a cause of action exists or discovers the cause of the loss).

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Plaintiffs, however, contend that Plaintiff Stoppiello had no ability to discover that she had a concussion or that her symptoms were consistent with a traumatic brain injury until March 28, 2016. *Complaint*, ¶ 20. Despite this contention, the fact that Plaintiff Stoppiello discovered the extent of her injuries on March 28, 2016 is immaterial because Plaintiffs had notice of claims against Defendants on April 21, 2015. *See Knox v. Greenville Hosp. Sys.*, 608 S.E.2d 459, 462 (S.C. Ct. App. 2005) (holding that the statute of limitations began to run when the incident occurred and not when the plaintiff discovered the extent of his injury) (emphasis added); *see also Young v. South Carolina Dep't of Corrections*, 511 S.E.2d 413, 416 (S.C. Ct. App. 1999) (finding that the statute of limitations began to run when the plaintiff suffered injury and was not tolled during the period of time in which he was unaware of the extent of his actionable injury) (emphasis added).

Accordingly, the statute of limitations began to run on April 21, 2015. Thus, Plaintiffs' claims must have commenced by April 21, 2018. *See* S.C. Code Ann. §§ 15-3-530(5), 15-3-535. Plaintiffs, however, filed their complaint on May 24, 2018. Plaintiffs' complaint was filed outside the applicable statute of limitations and, therefore, should be dismissed.

MOTION FOR SUMMARY JUDGMENT

I. Motion for Summary Judgment Standard

Summary judgment should be granted as to all or any part of a plaintiff's claim when no genuine dispute of material fact exists and the moving party is entitled to judgment as a matter of law. Rule 56, SCRCP. Thus, the moving party must demonstrate that there is no genuine dispute of material fact. *Miller v. Blumenthal Mills, Inc.*, 616 S.E.2d 722, 732 (S.C. Ct. App. 2005) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)). Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. *See Regions Bank v. Schumacher*, 582 S.E.2d 432

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(S.C. Ct. App. 2003). Rather, to defeat the motion, the party opposing summary judgment must present evidence of specific facts from which the finder of fact could *reasonably* find for him, thereby showing that there is a genuine issue for trial. *See Miller*, 616 S.E.2d at 732.

In considering a motion for summary judgment, the court must view the facts in the light most favorable to the non-moving party. While a plaintiff need only submit a "scintilla of evidence" to avoid summary judgment, *see Hancock v. Mid-South Management Co., Inc.*, 673 S.E.2d 801, 803 (S.C. 2009), the evidence must be material evidence that, if true, would tend to establish the issue in the mind of a reasonable juror. *See Taylor v. Atlantic Coast Line R. Co.*, 59 S.E. 641 (S.C. 1907) (defining "scintilla of evidence" as any material evidence that, if true, would tend to establish the issue in the mind of a reasonable juror) (emphasis added). When only one reasonable inference can be deduced from the evidence, it becomes a question of law for the court, and not a question of fact for a jury. *See National Bank of Honea Path v. Thomas J. Barrett, Jr., & Co.*, 174 S.E. 581 (S.C. 1934). Moreover, "a court 'cannot ignore facts unfavorable to the [non-moving] party and [the court] must determine whether a verdict for the party opposing the motion would be reasonably possible under the facts.'" *Bloom v. Ravoira*, 529 S.E.2d 710, 713 (S.C. 2000) (citing *Hopson v. Clary*, 468 S.E.2d 305, 307 (S.C. Ct. App. 1996)) (emphasis added).

II. Arguments in Favor of Granting Defendants' Motion for Summary Judgment

As discussed above, the applicable statute of limitations is three (3) years. S.C. Code Ann. § 15-3-530(5). Pursuant to Section 15-3-535 of the South Carolina Code, the plaintiff's claims must be commenced within three years after the plaintiff knew or by the exercise of reasonable diligence should have known that he had a cause of action. In other words, an injured party must act promptly when the facts and circumstances of an injury would place a reasonable person on notice that a claim against another party might exist. *Republic Contracting Corp.*, 503 S.E.2d at 766. It is immaterial that an injured party does not comprehend the extent of their injuries. *Id.* (emphasis added).

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Accordingly, the statute of limitations begins to run when a plaintiff knows or should know of a potential claim against another party, not when the plaintiff develops a full-blown theory of recovery. *Id.* at 767.

Plaintiffs' injury was discoverable on April 21, 2015, the date of the automobile accident, because an automobile accident would put a reasonable person on notice of a potential claim. *See Wiggins*, 442 S.E.2d at 170; *see also Moates*, 470 S.E.2d at 403; *see also Bayle*, 542 S.E.2d at 742. The complaint also alleges that Plaintiff Stoppiello experienced headaches and sought medical treatment after the accident. *Complaint*, ¶ 16. A reasonable person would know they have a cause of action immediately following an automobile accident that resulted in personal injury. *See Wiggins*, 442 S.E.2d at 170; *see also Moates*, 470 S.E.2d at 403; *see also Bayle*, 542 S.E.2d at 742.

Moreover, on or before April 23, 2015, Plaintiffs retained Mr. Smith as counsel for claims arising out of the automobile accident. *See* Exhibit A. On April 23, 2015, just two (2) days after the automobile accident, Mr. Smith sent a letter notifying Defendants' insurer that his office had accepted representation of Plaintiff Stoppiello with regard to her claim for injuries she sustained in an automobile accident on April 21, 2015. *Id.* Further, Mr. Smith attached an affidavit, notarized on April 22, 2015 (just one (1) day after the automobile accident), stating that he was retained by Plaintiff Stoppiello to represent her for any and all claims arising out of the automobile accident specifically, but not limited to, personal injuries suffered as a result of the accident. *Id.* Generally, the discovery rule says that the statute of limitations begins to run prior to the date when the advice of counsel is sought. *See Wiggins*, 442 S.E.2d at 170 (citing *Snell v. Columbia Gun Exchange, Inc.*, 278 S.E.2d 333, 334 (S.C. 1981)). As such, at the latest, a reasonable person would have knowledge and be on notice of claims against the Defendants on April 23, 2015. *See id.*

Plaintiffs, however, contend that Plaintiff Stoppiello had no ability to discover that she had a concussion or that her symptoms were consistent with a traumatic brain injury until March 28, 2016.

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Complaint, ¶ 20. Despite this contention, the fact that Plaintiff Stoppiello discovered the extent of her injuries on March 28, 2016 is immaterial because Plaintiffs had notice of claims against Defendants on April 21, 2015 or, at the latest, April 23, 2015. *See Knox*, 608 S.E.2d at 462; *see also Young*, 511 S.E.2d at 416.

Accordingly, the statute of limitations began to run on April 21, 2015 or, at the latest, April 23, 2015. Thus, Plaintiffs must have filed their complaint by April 23, 2018. *See* S.C. Code Ann. §§ 15-3-530(5), 15-3-535. Plaintiffs, however, filed their complaint on May 24, 2018, which is outside the applicable statute of limitations regardless of whether it began to run on April 21, 2015 or April 23, 2015. As such, Plaintiffs' claims are barred by the applicable statute of limitations and, therefore, Defendants are entitled to summary judgment as a matter of law.

CONCLUSION

For the foregoing reasons, Defendants respectfully request that Plaintiffs' complaint against them be dismissed. In the alternative, if the Court must consider materials outside the pleadings to make a decision on the motion, Defendants respectfully request summary judgment in their favor with regard to all of the claims asserted by Plaintiffs.

s/Michelle DeLuca Yarbrough
Michelle DeLuca Yarbrough (S.C. Bar No. 15603)
Gallivan, White & Boyd, P.A.
Post Office Box 10589
Greenville, South Carolina 29603
(864) 271-5349

Attorney for Defendant,
Charter Communications, LLC

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STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

AFFIDAVIT OF
BRIAN T. SMITH

PERSONALLY APPEARED BEFORE ME, Brian T. Smith, who being duly sworn, says:

1. I am an attorney licensed to practice law in the State of South Carolina who has been retained by Elvia Stoppiello to represent her for any and all claims arising out of an automobile accident which occurred on or about April 21, 2015 specifically but not limited to personal injuries suffered as a result of this motor vehicle accident.
2. As standard practice when executing the representation agreement, Elvia Stoppiello also appointed me Power of Attorney to make legal requests on her behalf.
3. I have attached to this affidavit a copy of the accident report in this matter providing the particulars of the accident.
4. This affidavit is being submitted in compliance with *SC Code Ann. § 38-77-250*, as a request for the release of insurance coverage information.

FURTHER AFFIANT SAITH NOT.

Brian T. Smith

SWORN to before me this 22
day of April 2015.

Notary Public for South Carolina
My Commission Expires: 3.29.16

186997198

THE LAW OFFICE OF BRIAN T. SMITH
714 PETTIGRU ST.
GREENVILLE, S.C. 29601
BSMITH@BTSMITHLAW.COM

April 23, 2015
Attn: Debbie Sorocko
Dial: 314-543-2357
Fax: 314-965-9745

Re:	Our Client:	Elvia Stoppiello
	Claim Reference #:	7464047
	Date of Loss:	4/21/15

Dear Ms. Sorocko:

This letter is to inform you that our office has accepted representation of Elvia Stoppiello with regard to her claim for injuries she sustained in a collision on or about April 21, 2015. The liable party in the collision, William Turner, has insurance coverage through your company. All further communications regarding this matter should be directed to my attention at the above address and phone number.

Initially, in accordance with S.C. Code 38-77-250 (A) we request that you provide the following information in regard to each policy of insurance available to your insured:

1) Name, address, and telephone number of each insurer;
2) Name of each insured; and,
3) Limits of coverage, including any excess or umbrella coverage.

You may provide a copy of the declaration page of each such policy in lieu of providing such information.

We appreciate your attention to this matter and look forward to working with you to resolve this claim. Thank you for your assistance.

Sincerely,

The Law Office of Brian T. Smith, LLC

Brian T. Smith

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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
Elvia Stoppiello and Gilberto Garcia,	)	
	)	DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION TO RECONSIDER THE ORDER GRANTING DEFENDANTS' MOTION TO DISMISS
Plaintiffs,	)	
vs.	)	
	)	
William D. Turner and Charter Communications, LLC,	)	C.A. No.: 2018-CP-23-03034
Defendants.	)	

William D. Turner and Charter Communications, LLC (hereinafter collectively referred to as "Defendants") file this memorandum in opposition to Plaintiffs' Motion to Amend their complaint and Motion to Reconsider the Court's Order granting the Defendants' Motion to Dismiss pursuant to S.C. Code § 15-3-535.

MOTION FOR LEAVE TO AMEND

I. Plaintiffs' Motion to Amend is futile.

As the Court reasoned in granting the Defendants' Motion to Dismiss, Elvia Stoppiello and Gilberto Garcia (collectively referred to as "Plaintiffs") had notice of their claims against Defendants prior to May 24, 2015 and, therefore, Plaintiffs' claims were commenced outside the applicable statute of limitations. *See* S.C. Code Ann. §§ 15-3-530(5), 15-3-535. Accordingly, Plaintiffs' Motion to Amend is futile.

Plaintiffs' complaint alleges claims for personal injury arising out of an automobile accident, which are governed by South Carolina Code sections 15-3-530(5) and 15-3-535. Accordingly, Plaintiffs' claims must have commenced within three (3) years after they knew or by the exercise of

reasonable diligence should have known that they had a cause of action. *See* S.C. Code Ann. §§ 15-3-530(5), 15-3-535.

An injured party must act promptly when the facts and circumstances of an injury would place a reasonable person on notice that a claim against another party might exist. *Republic Contracting Corp. v. S.C. Dep't of Highways & Pub. Transp.*, 503 S.E.2d 761, 766 (S.C. Ct. App. 1998). It is immaterial that an injured party does not comprehend the extent of their injuries. *Id.* (emphasis added). Therefore, the statute of limitations begins to run when a plaintiff knows or should know of a potential claim against another party, not when the plaintiff develops a full-blown theory of recovery. *Id.* at 767.

The automobile accident occurred on April 21, 2015. *Complaint*, ¶ 14. As a result of the automobile accident, Plaintiff Stoppiello had headaches and sought medical treatment. *Complaint*, ¶ 16. Thus, Plaintiffs' claim was discoverable on April 21, 2015 because a person exercising reasonable diligence would know they have a cause of action immediately following an automobile accident that resulted in personal injury. *See Wiggins v. Edwards*, 442 S.E.2d 169, 170 (S.C. 1994) (holding that the statute of limitations began to run on the date of accident and not at the time plaintiff was actually able to investigate her case); *see also Moates v. Bobb*, 470 S.E.2d 402, 403 (S.C. Ct. App. 1996) (finding that the statute of limitations began to run on the date of the automobile accident and that the defendant was not estopped from asserting statute of limitations as a defense because plaintiff never gave the defendant any indication that the claim would be settled without litigation); *see also Bayle v. S.C. DOT*, 542 S.E.2d 736, 742 (S.C. Ct. App. 2001) (finding that the statute of limitations began to run on the date of the loss, not when the plaintiff develops absolute certainty that a cause of action exists or discovers the cause of the loss).

Plaintiffs' Motion to Amend proposes the addition of factual allegations relating to Plaintiff Stoppiello's brain injury. Again, for the purpose of this motion only, Defendants do not dispute the

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allegations that Plaintiff Stoppiello was diagnosed with a traumatic brain injury on March 28, 2016. However, the severity and accompanying symptoms of Plaintiff Stoppiello's brain injury, diagnosed almost an entire year after the accident and contained in Dr. White's medical opinion, are immaterial because Plaintiffs had notice of claims against Defendants on April 21, 2015. *See Knox v. Greenville Hosp. Sys.*, 608 S.E.2d 459, 462 (S.C. Ct. App. 2005) (holding that the statute of limitations began to run when the incident occurred and not when the plaintiff discovered the extent of his injury) (emphasis added); *see also Young v. South Carolina Dep't of Corrections*, 511 S.E.2d 413, 416 (S.C. Ct. App. 1999) (finding that the statute of limitations began to run when the plaintiff suffered injury and was not tolled during the period of time in which he was unaware of the extent of his actionable injury) (emphasis added).

Regardless of Plaintiffs' Motion to Amend, the statute of limitations began to run on the date of the accident, April 21, 2015. From that date, Plaintiffs had three (3) years to file their complaint. *See* S.C. Code Ann. §§ 15-3-530(5), 15-3-535. Plaintiffs, however, failed to file their complaint before the statute of limitations had run and, therefore, Defendants' Motion to Dismiss was properly granted. Accordingly, granting Plaintiffs' Motion to Amend would be futile because the statute of limitations has run. *See Couram v. Davis*, No. 2015-UP-065, 2015 S.C. App. Unpub. LEXIS 67, at *2 (S.C. Ct. App. 2015) (relying on *Health Promotion Specialists, L.L.C. v. S.C. Bd. of Dentistry*, 403 S.C. 623, 632, 743 S.E.2d 808, 812-13 (S.C. 2013) and affirming the circuit court's decision to deny the plaintiff's motion to amend her complaint on the grounds that any amendment would be futile because the statute of limitations had run).

MOTION TO RECONSIDER

This Court properly granted the Defendants' Motion to Dismiss pursuant to S.C. Code § 15-3-535 because Plaintiffs knew or by exercise of reasonable diligence should have known that they had a cause of action prior to May 24, 2015. *See* S.C. Code Ann. §§ 15-3-530(5), 15-3-535.

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In considering a motion to dismiss, the trial court must base its ruling solely on allegations set forth in the complaint. *Spence v. Spence*, 628 S.E.2d 869, 874 (S.C. 2006). As discussed above, the Court should deny Plaintiffs' Motion to Amend. However, even if the Court grants the Plaintiffs' Motion to Amend, the Plaintiffs' Motion to Reconsider should be denied.

I. Plaintiffs are not entitled to toll the statute of limitations pursuant to S.C. Code § 15-3-40(2).

Plaintiffs request to amend their complaint to add allegations that Plaintiff Stoppiello's "mental state would prevent her from understanding or protecting her rights." Accordingly, Plaintiffs contend that Plaintiff Stoppiello is entitled to the protections set forth in S.C. Code § 15-3-40(2) because she is "incapacitated." Even considering Plaintiffs' additional facts or proposed amendments, Defendants' are entitled to a dismissal of Plaintiffs' complaint.

Under S.C. Code § 15-3-40, a person is entitled to toll the statute of limitations if, at the time the cause of action is accrued, they are insane. The standard for "insanity" under S.C. Code § 15-3-40(2) is as follows:

> Insanity or mental incompetency that tolls the statute of limitations consists of a mental condition which precludes understanding the nature or effects of one's acts, an incapacity to manage one's affairs, an inability to understand or protect one's rights, because of an over-all inability to function in society, or the mental condition is such as to require care in a [] hospital.

Wiggins v. Edwards, 314 S.C. 126, 129, 442 S.E.2d 169, 170, (S.C. 1994) (finding that the claimant was not entitled to toll the statute of limitations because confusion or disorientation, as well as failing to lose consciousness, does not constitute "insanity"). Accordingly, Plaintiff Stoppiello is entitled to toll the statute of limitations only if she was unable to understand the nature or effects of her acts, manage her own affairs, or understand or protect her rights at the time the cause of action was accrued. *See* S.C. Code § 15-3-40(2) (emphasis added).

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In *Wiggins*, the South Carolina Supreme Court found that the claimant was not entitled to toll the statute of limitations because "confusion" and "disorientation" do not constitute "insanity." 314 S.C. at 129, 442 S.E.2d at 170. Additionally, in *Grant-Davis v. S.C. Office of Governor*, the United States District Court for the District of South Carolina, Charleston Division, found that the plaintiff was not entitled to toll the statute of limitations because he failed to provide any evidence that his PTSD, depression, and antisocial symptoms resulted in "an over-all inability to function in society." No. 2:15-cv-02521-PMD-MGB, 2018 U.S. Dist. LEXIS 46494 (D.S.C. Jan. 26, 2018). Moreover, in *Grant-Davis*, the court found that the plaintiff was reasonably and cogently pursuing his remedies at the time his right to action accrued because he wrote and responded to letters regarding his claim. *Id.* at *10.

On the other hand, in *Timpson v. Haley*, the United States District Court for the District of South Carolina, Greenville Division, found that the claimant was entitled to toll the statute of limitations. No. 6:16-1174-MGL, 2017 U.S. Dist. LEXIS 135939 (D.S.C. Aug. 24, 2017). Specifically, the court found that the claimant suffered from mental disabilities that require constant care and, accordingly, rose to the level of "insanity" required under S.C. Code § 15-3-40(2). *Id.* at *8. Additionally, in *Estate of Mims v. S.C. Dep't of Disabilities & Special Needs*, the South Carolina Court of Appeals found that uncontroverted evidence existed that the claimant was mentally incompetent because he required consistent one-to-one care to accomplish daily tasks of living as a result of being born with severe mental disabilities. 422 S.C. 388, 397, 811 S.E.2d 807, 812 (S.C. Ct. App. 2017).

Here, Plaintiffs proffer Dr. White's medical opinion as evidence that Plaintiff Stoppiello's "mental state would prevent her from understanding or protecting her rights." More specifically, Plaintiffs allege that Plaintiff Stoppiello is "extremely disorganized" and has limited memory and "difficulty concentrating." Plaintiffs do not allege that Plaintiff Stoppiello requires constant care or

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that she lacks an overall ability to function in society. *See Timpson*, 2017 U.S. Dist. LEXIS 135939 at *8; *see also Estate of Mims*, 422 S.C. at 397, 811 S.E.2d at 812; *see also Grant-Davis*, 2018 U.S. Dist. LEXIS 46494, at *10. Accordingly, Plaintiff Stoppiello was not mentally incompetent or "insane" at the time the cause of action accrued. Thus, Plaintiffs are not entitled to toll the statute of limitations. *See* S.C. Code § 15-3-40.

Moreover, Plaintiff Stoppiello retained Brian T. Smith (hereinafter referred to as "Mr. Smith") as counsel on or before April 23, 2015.[1] Such an act clearly demonstrates Plaintiff Stoppiello's ability to understand and protect her rights. As such, Plaintiff Stoppiello was not mentally incompetent or "insane" at the time the cause of action accrued. *See Grant-Davis*, 2017 U.S. Dist. LEXIS 135939 at *8. Thus, Plaintiffs are not entitled to toll the statute of limitations. *See* S.C. Code § 15-3-40.

As additional support, upon retaining Mr. Smith as counsel on or before April 23, 2015, Plaintiff Stoppiello signed a power of attorney.[2] Accordingly, Mr. Smith became Plaintiff Stoppiello's agent on or before April 23, 2015. As a result, Plaintiff Stoppiello's mental competency became irrelevant on April 23, 2015 as to the tolling of the statute of limitations.

II. <u>This Court properly granted Defendants' Motion to Dismiss pursuant to S.C. Code § 15-5-535.</u>

In response to Plaintiffs reasserting their arguments in opposition to Defendants' Motion to Dismiss, Defendants submit the same arguments found in Defendants' Reply to Plaintiffs' Memorandum in Opposition to Defendants' Motion to Dismiss. Specifically, Plaintiffs contend that Defendants failed to address their theory that headaches would not put Plaintiff Stoppiello under notice of an injury and, in response, Defendants reassert that Plaintiffs' reliance on the South Carolina Court of Appeals' opinion in *Grillo v. Speed Rite Products, Inc.*, 532 S.E.2d 1 (S.C. Ct.

[1] Mr. Smith's notice of representation is attached hereto as Exhibit A.
[2] The Affidavit of Mr. Smith is attached hereto as Exhibit B.

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App. 2000) is misplaced. In *Grillo*, the plaintiff developed headaches over a period of a year due to repeat and continuous exposure to poisonous ink in his workplace. *Id.* Based on the facts, the court found that there was a distinction between temporary symptoms and the point at which the plaintiff could attribute his symptoms to the poisonous ink. *Id.* The court based its finding on workplace exposure cases such as asbestos, and determined that a reasonable person might have a different opinion as to the cause of the plaintiff's headaches. *Id.* As such, only the specific diagnosis that the plaintiff's symptoms resulted from the ink exposure put the plaintiff on notice of a legally compensable injury. *Id.*

Here, however, Plaintiff Stoppiello was not repeatedly exposed to anything, nor was the cause of her injury unidentifiable without a diagnosis. Rather, Plaintiff Stoppiello was in a single automobile accident, after which she began experiencing headaches. Plaintiffs' contention that headaches alone do not put someone on notice of an injury is not applicable in automobile personal injury cases where such symptoms are attributable to a single identifiable cause (i.e. the automobile accident), after which any reasonable person would be on notice of a claim. Accordingly, this Court properly held that Plaintiffs had notice of a claim against Defendants following the automobile accident on April 21, 2015.

III. Plaintiff Stoppiello is a reasonable person of common knowledge and experience.

Plaintiffs contend that Plaintiff Stoppiello did not have any notice of her claim against Defendants until March 28, 2016 when Dr. White diagnosed her with a concussion "because a person of reasonable diligence would only know they had a traumatic brain injury when they were diagnosed with it." As previously discussed in Defendants' Reply to Plaintiffs' Memorandum in Opposition to Defendants' Motion to Dismiss, however, Plaintiffs confuse the relevant analysis for the discovery rule. There is no requirement that Plaintiffs have a diagnosis attributing the injury to the accident in order to have notice that a claim exists. *See Snell v. Columbia Gun Exchange, Inc.*,

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278 S.E.2d 333, 334 (S.C. 1981) (the relevant inquiry is when a person exercising reasonable diligence would have notice that some right of his has been invaded or that some claim against another party might exist, not when Plaintiffs determined their full-blown theory of recovery). Rather, the proper inquiry is when a person of reasonable diligence would have notice of a claim against Defendants. *See id* (emphasis added).

Plaintiffs fail to acknowledge that they had notice, prior to May 24, 2015, of a claim for personal injury against Defendants even if their notice was not specifically of Plaintiff Stoppiello's claim for an alleged traumatic brain injury. Plaintiffs contend that a reasonable person would not have notice of a traumatic brain injury until they are diagnosed by a doctor. Defendants do not dispute that Plaintiff Stoppiello was not aware that she had a traumatic brain injury stemming from the automobile accident until March 28, 2016. *Complaint*, ¶ 20. However, Defendants proffer that Plaintiffs' complaint still alleges that Plaintiff Stoppiello had notice of an injury prior to May 24, 2015, the earliest day on which the statute of limitations began to run in order for Plaintiffs' complaint to be timely. The automobile accident occurred on April 21, 2015 and Plaintiffs allege that Plaintiff Stoppiello had headaches and sought medical treatment as a result of the automobile accident, prior to experiencing flashing lights and other symptoms that led her to seek additional medical treatment months later. *Id.* at ¶¶ 16, 17. Specifically, Plaintiffs allege that as a result of the automobile accident, Plaintiff Stoppiello had headaches and sought medical treatment. *Id.* at ¶ 16. Plaintiffs then allege that months later Plaintiff Stoppiello experienced headaches, flashing lights, and other symptoms, and sought medical treatment. *Id.* at ¶ 17. Thus, Plaintiffs allege that Plaintiff Stoppiello experienced injury as a result of the automobile accident, and prior to her brain injury diagnosis on March 28, 2016.

Based on the foregoing analysis, this Court properly concluded that the statute of limitations began to run prior to May 24, 2015. As such, Plaintiffs' claims were commenced outside the

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applicable statute of limitations and, therefore, were properly dismissed. *See* S.C. Code Ann. §§ 15-3-530(5), 15-3-535.

s/Michelle DeLuca Yarbrough
Michelle DeLuca Yarbrough (S.C. Bar No. 15603)
Gallivan, White & Boyd, P.A.
Post Office Box 10589
Greenville, South Carolina 29603
(864) 271-5349

Attorney for Defendants,
Charter Communications, LLC
and William D. Turner

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1 **P R O C E E D I N G S**
2 (Proceedings begin on the 28th day of
3 November 2018, at approximately 2:24 p.m.)
4 **THE COURT:** All right. So this is
5 defendant's motion to dismiss, or in the
6 alternative, for summary judgment.
7 **MS. YARBROUGH:** Your Honor, may it please
8 the Court. My name is Michelle Yarbrough. I'm
9 an attorney at Gallivan, White & Boyd, and I
10 represent the defendants, Charter
11 Communications and William Turner.
12 **THE COURT:** Okay.
13 **MS. YARBOROUGH:** We request that the
14 plaintiff's case be dismissed under
15 Rule 12(b)(6) of the South Carolina Rules of
16 Civil Procedure, on the grounds that their
17 complaint fails to state facts sufficient to
18 constitute a cause of action against the
19 defendants, specifically as it relates to the
20 statute of limitations. Alternatively, if this
21 Court believes that the documents produced as
22 exhibits are helpful in making a decision on
23 this case, then we would ask that this Court
24 grant our motion for summary judgment under
25 Rule 56.

1 We believe that this is a very
2 straightforward issue. It's a question of law
3 regarding whether or not the complaint was
4 filed timely within the statute of limitations.
5 There was a car accident on April 21, 2015,
6 involving a vehicle driven by Mr. Turner, which
7 rear-ended a vehicle driven by the plaintiff,
8 Elvia Stoppiello, which is the wife of Gilberto
9 Garcia, also the plaintiff.
10 Taking allegations in the complaint as true
11 for the purpose of this motion, we learned that
12 the plaintiff was thrown around in the vehicle
13 as a result of the accident, which is in
14 paragraph 15. She had headaches and sought
15 medical treatment, which was in paragraph 16 of
16 the complaint. And then, months later, she
17 sought additional medical treatment for
18 headaches, flashing lights, and other symptoms,
19 which is paragraph 17.
20 Now, going beyond the allegations of the
21 complaint and looking at the actual exhibits
22 filed, we learned that plaintiff retained
23 Attorney Brian Smith on April 22, 2015, which
24 was the day after the accident, to, quote,
25 represent her for any and all claims arising

1 out of an automobile accident, which occurred
2 on April 21, 2015, specifically, but not
3 limited to, personal injuries suffered as a
4 result of the motor vehicle accident. And
5 that's Defendant's Exhibit A. So by the day
6 after the accident, she knows she has a claim
7 and she's hiring Attorney Smith to represent
8 her for her claim.
9 **THE COURT:** Okay.
10 **MS. YARBROUGH:** On April 23, which is two
11 days after the accident, Attorney Smith
12 notified the defendants of his representation
13 of Plaintiff Stoppiello, with regard to her
14 claim for injuries that she sustained in a
15 collision on or about April 21, 2015. And this
16 is just a direct quote from his letter to the
17 defendants, and that's Defendant's Exhibit A,
18 as well.
19 The records placed into -- into evidence as
20 attached as exhibits confirm that Plaintiff
21 began to experience lower and mid back pain,
22 approximately two hours after the accident, and
23 began seeing Dr. Brandy at a chiropractic
24 facility, who provided adjustments to her neck
25 and spine, as well as massages, to help relieve

1 her pain from headaches, that started
2 post-accident. And that's Plaintiff's Exhibit
3 D.
4 And then Plaintiff sought medical treatment
5 on April 22, 2015, which is the day after the
6 accident, and also on May 6, 2015, for low back
7 and bilateral leg problems, due to her motor
8 vehicle accident, and that's Plaintiff's
9 Exhibit A-1.
10 Plaintiff's headaches also began within two
11 weeks of a car accident, which she described
12 caused her to sustain a whiplash-type injury,
13 and that's Plaintiff's Exhibits C and D. And
14 then Plaintiff sought medical treatment for
15 severe headaches on May 20th, 2015, which was
16 more than three years before Plaintiff's
17 complaint was filed. That's Plaintiff's Exhibit
18 A-1.
19 The plaintiff's complaint was filed on
20 May 24th, 2018, which was three years, one
21 month and three days after the accident. So
22 it's the defendant's contention that the
23 plaintiff's complaint was not timely filed
24 within the three-year statute of limitations.
25 **THE COURT:** Okay.

1 **MS. YARBROUGH:** The plaintiff alleges that
2 she did not discover, nor did she have the
3 ability to discover that her symptoms from the
4 car accident were consistent with a traumatic
5 brain injury that was diagnosed on March 28,
6 2016, which was 11 months after the accident.
7 That was paragraph 20 of her complaint. She,
8 then, suggests that the statute of limitations,
9 therefore, would not start to run until 11
10 months after the accident; and therefore, when
11 he filed the complaint, the statute of
12 limitations would not have run yet.
13 The case law and the statutory law,
14 unfortunately, does not support the plaintiff's
15 arguments. The Code 15-3-530, subsection 5 and
16 South Carolina Code Section 15-3-535 reveal
17 that a claim must be initiated within three
18 years of the date for which plaintiff knew or
19 should have known that she had a cause of
20 action for a personal injury. So in other
21 words, she needed to know that she had a claim
22 against the defendants, or a reasonable person
23 would have known that she would have a claim
24 against the defendants.
25 So the accident occurred on April 21st,

1 with a known claim on that date requiring the
2 complaint to be filed by April 21, 2018, which
3 was in that three-year period. The plaintiff
4 confirms in her complaint that she was thrown
5 around in the vehicle at the time of the
6 accident. She confirms in her complaint that
7 she had headaches and sought medical treatment.
8 She confirms in her complaint that she had
9 personal injuries and pain for which she was
10 seeking compensation.
11 Outside of the complaint, she confirms that
12 she had known injuries on the date of the
13 accident consisting of lower and mid back pain.
14 She confirms, in medical records, that she had
15 headaches within two weeks of the date of the
16 accident. She confirms that she received
17 medical treatment for back and bilateral leg
18 pain due to her accident in early April --
19 excuse me, in April and early May of 2015, more
20 than three years after -- more than three years
21 before the complaint was filed.
22 The case of *Republic Contracting*, which was
23 cited in Defendant's memo, says that it doesn't
24 matter if the plaintiff does not comprehend the
25 extent of her injuries, such as, she didn't

1 know whether she had a headache or a brain
2 injury or a concussion. You don't have to have
3 a full-blown theory of recovery developed
4 before the statute of limitations begins to
5 run.
6 The plaintiff argues that the discovery
7 rule applies here; that she had three years to
8 file the complaint from the date that she knew
9 that she had the injury, which in her case, she
10 says was a concussion or traumatic brain in
11 jury. They say that because Stoppiello wasn't
12 diagnosed with a traumatic brain injury until
13 March 2016 that she didn't know that she was
14 actually injured until March 2016.
15 But these are the problems with her claims:
16 The argument's not actually consistent with the
17 law because the law only requires that the
18 action be commenced within three years after
19 the person knew or by the exercise of
20 reasonable diligence, should have known that a
21 cause of action exists. They need to know that
22 a claim exists. They don't have to have a
23 specific diagnosis. They don't have to have a
24 full-blown theory of recovery, and that's the
25 *Snell versus Columbia Gun Exchange* case.

1 **THE COURT:** Right.
2 **MS. YARBROUGH:** So on the date of the
3 accident or within one day of the accident, she
4 knew she was thrown about the car. She had low
5 or mid back pain. Within that one day, she was
6 seeking counsel for assistance and she signed
7 the document saying that she wanted her
8 attorney to represent her for her claims for
9 personal injuries.
10 So when defendants have sufficient
11 evidentiary support that the claimant -- or the
12 plaintiff filed their complaint over three
13 years after they knew or should have known that
14 the plaintiffs had a cause of action stemming
15 from the motor vehicle accident, under South
16 Carolina law, the plaintiff cannot just give
17 allegations that she didn't know that she was
18 injured until 11 months later. And that's the
19 *Miller versus Blumenthal* case. You just can't
20 make mere allegations to get past a motion for
21 summary judgment.
22 There is a specific case on point, which is
23 cited in my briefs, it's called *Wiggins versus*
24 *Edwards*, which is 442 S.E.2d 169. It was a 1994
25 South Carolina Supreme Court case. It's very --

1 it's specifically on point in this matter. This
2 was a three-car accident. The person filed a
3 complaint three years and four days after the
4 accident. The Court held that she should have
5 been aware of a potential claim on the date of
6 the accident and that she needed to act with
7 promptness when the facts and circumstances of
8 the injury would have put her or a person of
9 common knowledge and experience on notice that
10 some right of hers had been invaded or that a
11 claim against another party might exist.
12 The Supreme Court said that this is an
13 objective determination and that it's not a
14 subjective test. The discovery of the injury is
15 not a subjective test and it does not create a
16 jury question. The Court said that there's no
17 question that the plaintiff should have known
18 that the cause of action accrued on the date of
19 the car accident and that summary judgment was
20 proper because there was no genuine issue of
21 material fact.
22 **THE COURT:** All right.
23 **MS. YARBROUGH:** The Court -- the plaintiff
24 uses -- cites the case of *Grillo versus Speed*
25 *Rite Products* as his support for getting past

1 the motion. And the defendants contend that
2 that case can be easily distinguished. The
3 plaintiff in that case developed headaches over
4 a period of a year, due to repeated and
5 continuous exposure to poisonous ink in his
6 workplace. That was an occupational exposure
7 case, just like asbestos, where a reasonable
8 person may have a different opinion as to what
9 caused the -- what caused his headaches.
10 **THE COURT:** All right.
11 **MS. YARBROUGH:** Our case is not an exposure
12 case over a period of time. Our case is a
13 specific injury that occurred on a specific
14 date; a discrete, identifiable event; a single,
15 identifiable cause, which was the car accident.
16 So even if this Court decides that the
17 plaintiffs didn't know or a reasonable person
18 could not know that she had the claim for
19 headaches until 11 months after that accident,
20 and that it was caused by the car accident,
21 there's no doubt, though, that she did have a
22 claim for back pain that she experienced two
23 hours after the accident, and which she got
24 medical treatment for.
25 There's no denying that she had a claim

1 when she sought out an attorney the day after
2 the accident. There can be no denying that she
3 knew she had a claim when she signed an
4 affidavit giving her attorney the right to
5 represent her for injuries that she suffered as
6 a result of the accident. There could be no
7 denying that she knew she had a claim when her
8 attorney notified the defendants of her claim
9 for injuries sustained two days later and there
10 can be no denying that she knew she had a claim
11 when she went to the doctor on multiple
12 occasions, the first, the day after the
13 accident, for back pain and headaches.
14 This is not as subjective a determination
15 of when she knew; this is an objective
16 determination. According to South Carolina case
17 law, the rule requires the filing within three
18 years of the notice of the cause of action. The
19 plaintiffs did not file it within three years,
20 so they are barred, period, end of story.
21 It's a straightforward motion. Considering
22 the facts and inferences drawn from the facts
23 alleged in the complaint, even viewed in the
24 light most favorable to the plaintiff, they
25 would not be entitled to relief because their

1 claims are barred by the statute of
2 limitations. We would respectfully request that
3 this Court grant the motion to dismiss or,
4 alternatively, a motion for summary judgment.
5 **THE COURT:** All right. Thank you so much.
6 I appreciate it.
7 Yes, sir.
8 **MR. SMITH:** Yes, ma'am, Your Honor. If I
9 could just go over my exhibits real quick ---
10 **THE COURT:** Sure.
11 **MR. SMITH:** --- before I start. We have
12 Dr. White's, who is a board-certified
13 neurologist and testifying expert, IME. And we
14 feel like that would show, you know, Elvia
15 Stoppiella, when her husband was provided
16 notice of her injury on March 28, 2016. It also
17 discusses that Dr. Robert Moss performed a
18 neuropsych evaluation and went and diagnosed
19 her with a pain disorder that was psychosematic
20 or psychological in nature. Then we also have
21 the records from Palmetto Proactive.
22 Let's just start -- we feel like the --
23 obviously, *Wiggins v. Edwards* is the focus
24 here. And in *Wiggins*, they say the focus -- you
25 know, it's the discovery rule which holds. The

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NEURO-DIAGNOSTIC SCREENING

RE: Elvia Stoppiello
DOB: 09.30.1973
DOI: 4.21.2015
DOE: 9.11.2015

Mrs. Stoppiello was referred to NRS to assess her neurocognitive status and the need for neuro-medical care as a result of her 4.21.2015 motor vehicle collision.

Mrs. Elvia Stoppiello is a 42-year-old Hispanic female from Mexico, who moved to the United States in 2000, and was involved in a motor vehicle collision on April 21, 2015. Ms. Stoppiello reported being the restrained driver of a Ford Expedition involved in a collision. She stated she was making a left turn at a traffic light when she was slowed because of vehicle in front of her. She reported she looked in her rearview mirror and saw a truck coming at a high rate of speed behind her and the truck rear-ended her. She stated she braced against the steering wheel with both hands and put all her pressure on the brake with her right foot. She indicated the airbag did not deploy during the collision. She denied loss of consciousness and the impact created a whiplash motion of her body. Mrs. Stoppiello reported her two daughters, 11 and 3 years of age, were in the vehicle at the time of the collision. She reported getting out of car and shaking so severely she got back into her car. She stated she waited on the police to arrive and provide her a copy of the incident report. She reported EMS responded to the scene but she did not go to the hospital because she did not have pain at the time they were present. Mrs. Stoppiello reported she began to experience pain in her lower and mid back approximately two hours after the collision. She indicated she began seeing Dr. Brandy at Meine Chiropractic who provided adjustment to her neck and spine, and massage to help relieve pain from headaches that started post-collision. She explained the chiropractor informed her she could not help her with her injuries any further. Mrs. Stoppiello reported she was subsequently referred to Pain Management Associates who told her she was taking "too much Advil" and drinking too many "cocktails," and prescribed her clonazepam.

Mrs. Stoppiello denied any significant medical issues pre-collision. She denied a history of seizures, hypothyroidism, surgeries or a medically prescribed diet. She reported continued pain in her neck, lower back and hips. She indicated when laying on a pillow she has pain on both sides of her head, coming from the superior occipital area, blurry eyesight, seeing flashes of light, and experiencing dizziness. She reported light sensitivity and blurriness during her headaches. Mrs. Stoppiello denied nausea, noise sensitivity or sensitivity to odors. She denied triggers to her headaches except lying down. She reported the chiropractor took x-rays of her lower back and hips and informed her tissues were inflamed in those areas. She reported she gains some relief from her headaches by taking two tablets of Ibuprofen 500 mg each. She reported going to her room and lying on her side or sitting up provides relief. She stated her headaches last 20-30 minutes without medicine. She denied use of a cold compress or use of the TENS unit providing relief. She stated the time of day does not impact the onset of her headaches.

Mrs. Stoppiello denied problems with swallowing, ataxia, or apraxia. She indicated remaining able to perform daily activities such as cooking, cleaning, grocery shopping, and driving. She reported being independent in all activities of daily living. Mrs. Stoppiello denied changes in her sense of smell, touch, taste, or temperature modulation. She stated she does not wear corrective vision devices even though after watching a thirty minute show the images viewed get blurry.

Mrs. Stoppiello denied pre-morbid conditions resulting in balance or sleep issues, but following the collision she noted an increase in sleep disturbance and a decrease in her ability to balance. She reported experiencing stumbling due to imbalance, lightheadedness and dizziness. She denied problems with stairs or running into doorways as she walked through them. Mrs. Stoppiello indicated she experienced a decrease in sleep from eight hours a night to three to four hours, difficulty falling asleep, and difficulties staying asleep. Mrs. Stoppiello denied nightmares, restless sleep, or snoring.

Mrs. Stoppiello reported "mixing up" her words and experiencing "tip of her tongue" syndrome. She reported difficulty with communicating her thoughts. She denied and did not exhibit dysphasia, dysarthria, or aphasia.

Mrs. Stoppiello reported mild memory problems post collision such as misplacing items, absentmindedness, and feeling more forgetful. She reported using compensatory mechanisms such as calendars, schedules, and her cellular phone, etc. to help manage appointments and scheduled commitments. She responded appropriately to a question about responding to an emergency in the home, Short, recent, and long-term memory was grossly intact.

Mrs. Stoppiello reported changes in attention and concentration post collision. She reported blurry vision, not being able to multi-task, being easily sidetracked and walking into a room and forgetting what she was doing. She reported having difficulties watching a thirty minute television program and staying focused throughout the program.

Ms. Stoppiello denied a pre-morbid history of mental health or substance abuse disorders. She reported experiencing symptoms of anxiety, while driving post collision, when other cars appeared too close to her. She denied easily losing her temper or losing her "ability to have fun." She reported liking to dance with her children in her home. She denied becoming easily frustrated, easily angered, and impatient. She reported becoming more irritable when she is in pain.

Mrs. Stoppiello reported she has been married twice. She stated her first marriage lasted six years and the couple divorced due to her husband's infidelity. She stated her second marriage has lasted sixteen years and the couple have four children, ages 20, 12, 5, and 3.

Mrs. Stoppiello holds a Bachelor's Degree in Graphic Design reportedly obtained in 2001. She currently is a stay at home mother and her husband is an electrician.

Mrs. Stoppiello was oriented to person, place, time, and circumstance during the screening. She was appropriately groomed and her mood was noted to be euthymic with congruent affect. She denied suicidal / homicidal ideation, intent, or plan.

Mrs. Stoppiello denied any pending or current legal charges or the use of alcohol or tobacco products.

RECOMMENDATIONS

To further determine the extent of Mrs. Stoppiello's injuries, deficits, and prognoses as they relate to the April 2014 collision, she will require assessment and rehabilitation interventions by several neuro-medical and rehabilitation specialists.

1. Mrs. Stoppiello should be referred to a Neurologist. On initial consultation, these initial treatment interventions should be considered:
    a. CT scan without contrast of the head
    b. MRI of the head if any findings on the CT scan
    c. CT scan without contrast of the neck and spine
    d. Referral to vestibular therapy to assess and treat her imbalance.
    e. Referral to physical therapy to assess and treat her ambulation skills, and need for assistive devices.
    f. Referral to rehabilitation psychologist trained specifically in neurocognitive disorders such as TBI to address cognitive remediation and anxiety symptoms.
    g. Referral to a neuropsychologist for assessment of her cognitive strengths and weaknesses and to assist in treatment planning.

2. Mrs. Stoppiello should be referred to a neuro-psychiatrist for medication evaluation and management of her depression, sleep disturbance, headaches, and pre-morbid bipolar disorder. On initial consultation, the following medication issues should be reviewed:

    a. Review and / or modify current TBI related headache medications.
    b. Consider introduction of a psycho-stimulant to address Mrs. Stoppiello's inattention.
    c. Consider SSRI or Mood Stabilizer for her depression / anxiety symptoms

****This Neuro-Diagnostic Screening has been conducted on the basis of the representation of Mrs. Stoppiello with the assumption the representations she made are true and correct.****

Thank you for the opportunity to work with Mrs. Stoppiello and please do not hesitate to contact my office with questions.

Respectfully,

T—, Psy. D

Tobi Gilbert, Psy.D., CAP
Clinical Neuropsychologist

Palmetto Proactive Healthcare
1120 N. Pleasanburg Dr, Suite 301, Greenville, SC 29607-1258
Office: 864-252-4808: Fax: 864-342-6962

Office Visit Note

ElationHealth

Patient Name: Elvia Stoppiello

D.O.B.: 09/30/1973; 41 yrs. 7 mo at the time of visit
Seen by Jerome Aya-ay, MD

Date of Encounter: 05/20/2015

Exam Reason (CC): Follow-Up - 2 wek F/u

Problem:

This is a 41 year old female that presents for follow up.

Complains of severe headaches and seeing little lights after chiropractor sessions. Denies dizziness, or feeling nauseous. Pt states to only be taking Tylenol for the pain, but states she thinks she is taking too much especially after therapy sessions.

Vitals:

BP: 114/66 HR: 70 Ht: 65 in. Wt: 186 lbs. [-5 from 191 lbs on 05/06/2015] BMI: 30.95 [-0.83 from 31.78 on 05/06/2015]

PE:

GENERAL: NAD, Pleasant

RESP: Clear to auscultation.

CVS: RRR w/o murmurs.

MSS: No C/C/E. Taut and TTP of superior trapezius musculature. TTP lumbar paraspinals (right > left). Negative SLR. DTRs intact.

Assessment:

Backache Unspecified
Spasm Of Muscle

Plan:

Advised refrain from chiropractic therapy.
Follow up in 2 weeks.

Electronically signed by Jerome Aya-ay, MD on 05/20/2015 3:32 pm in ElationHealth

500 Poinsett Highway
Greenville, SC 29609
Phone: 864 232 2292
Fax: 864 232 2215

Patient: Stoppiello-Mayorga, Elvia Maria DOB: 9/30/1973
Ins Co Pol # Insured
Date 06/01/2015
Provider Brandy Chapman

Subjective:

Elvia sought treatment today, complaining of constant aching and burning discomfort in the back of the neck. She rated the intensity of discomfort, using a VAS, as a level 4 on a scale of 1 to 10 with 10 being the most severe. The discomfort was reported to increase with applied pressure. The discomfort was reported to decrease with medication.

Objective:

Daily Objective Findings:

- *Spinal Restriction(s)/Subluxation(s):* C1, C2, C5, C6, T4, T5, T8 and T9
- *Extraspinal Restrictions/Subluxations:* N/A (no other subluxations were noted).
- *Pain/Tenderness:* upper to mid cervical, mid to lower cervical, cervico-thoracic and upper thoracic
- *Postural Analysis:* short right leg (pelvic deficiency).
- *Muscle Spasm(s):* mild to moderate muscle spasms in the following areas; suboccipital and cervical paraspinal muscles.
- *ROM Concern(s):* cervical extension, cervical left lateral flexion, cervical right lateral flexion, cervical right rotation and lumbar extension was recorded as mildly reduced with pain noted.

Re-examination was performed 06/01/2015:

Musculoskeletal - Range of Motion - Cervical - *Active*

-Flexion:	60/60 degrees without pain, stiffness or radiation
-Extension:	55/55 degrees with stiffness and moderate pain
-Left Lat. Flexion:	40/40 degrees with stiffness and moderate pain
-Right Lat. Flexion:	40/40 degrees with stiffness and moderate pain
-Left Rotation:	80/80 degrees without pain, stiffness or radiation
-Right Rotation:	80/80 degrees with stiffness and mild pain

Musculoskeletal - Range of Motion - Thoraco-Lumbar - *Active*

-Flexion:	90/90 degrees without pain, stiffness or radiation
-Extension:	30/30 degrees mild pain
-Left Lat. Flexion:	35/35 degrees without pain, stiffness or radiation
-Right Lat. Flexion:	35/35 degrees without pain, stiffness or radiation
-Left Rotation:	30/30 degrees without pain, stiffness or radiation
-Right Rotation:	30/30 degrees without pain, stiffness or radiation

Ortho-Valsalva *Test* performed. Patient indicated no pain.
Ortho-*Maximum Foramina Compression* performed bilaterally. Patient indicated pain that was on the left without radiation.
Ortho-*Jackson's Compression* performed bilaterally. Patient indicated segmental level pain that was on the left without radiation.
Ortho-*Shoulder Depression* performed bilaterally. Patient indicated pain that was on the left non-radiating local pain.
Ortho-*Distraction Test* performed, patient indicated relief of segmental level pain
Ortho-*Soto Hall Test* performed. Patient indicated no pain.

Ortho-*Straight Leg Raiser Test* performed. Patient indicated no pain bilaterally.

500 Poinsett Highway
Greenville, SC 29609
Phone: 864 232 2292
Fax: 864 232 2215

Patient: Stoppiello-Mayorga, Elvia Maria **DOB:** 9/30/1973
Ins Co **Pol #** **Insured**
Date 06/01/2015
Provider Brandy Chapman

*** continued from previous page ***

Ortho-*Nachlas' Test* performed. Patient indicated no pain bilaterally.
Ortho-Yeoman's test performed bilaterally. Patient indicated increased pain in the S.I. joint on the right.
Ortho-*Kemp's Test* performed. Patient indicated no pain bilaterally.
Ortho-Valsalva *Test* performed. Patient indicated no pain.
Ortho-Lewin-*Gaenslen's Test* performed. Patient indicated no pain bilaterally.

Neuro-*Mental Status*: evaluations performed and the patient was observed to be alert and oriented X 3 (person place time) and cooperative .
Neuro-*Sensory-Pain*: evaluations performed bilaterally. Dermatomal normal findings at all upper & lower spinal segments .
Neuro-*Gross Touch/Vibration*: evaluations performed and indicated gross touch and vibration sensations were within normal limits at all upper & lower spinal segments .
Neuro-*Light Touch:* evaluations performed and indicated light touch sensations were decreased at left C3 and left C4.
Neuro-*Deep Tendon Reflexes* (normal 2+):
- *Biceps* Left 2+, Right 2+,
- *Triceps* Left 2+, Right 2+,
- *Brachioradialis* Left 2+, Right 2+,
- *Patellar* Left 2+, Right 2+,
- *Achilles* Left 2+, Right 2+,

Neuro-*Upper extremity resistive isometric motor testing* (normal 5/5):
- Shoulder Elevation: Left: 5 / 5 Right: 5 / 5.
- Deltoid: Left: 5 / 5 Right: 5 / 5
- Biceps: Left: 5 /5 Right: 5 /5
- Triceps: Left: 5 / 5 Right: 5 / 5
- Wrist Flexors: Left: 5 / 5 Right: 5 / 5
- Wrist Extensors: Left: 5 / 5 Right: 5 / 5
- Finger Extensors: Left: 5 / 5 Right: 5 / 5
- Finger Flexors: Left: 5 / 5 Right: 5 / 5
- Finger Abductors: Left: 5 / 5 Right: 5 / 5
- Palmar Interossei: Left: 5 / 5 Right: 5 / 5

Neuro-*Lower extremity resistive isometric motor testing* (normal 5/5):
- Iliopsoas: Left: 5 / 5 Right: 5 / 5
- Quadriceps: Left: 5 / 5 Right: 5 / 5
- Anterior Tibialis: Left: 5 / 5 Right: 5 / 5
- Hallucis Longus: Left: 5 / 5 Right: 5 / 5
- Ext Digitorum Longus & Brevis: Left: 5 / 5 Right: 5 / 5
- Gluteus Medius: Left: 5 / 5 Right: 5 / 5

Neuro-*Cranial Nerves:* I to XII were examined revealing normal function to the following: I through XII.

Musculoskeletal
- *Gait and Station:* normal gait and normal balance

Musculoskeletal
- *Inspection/Percussion +/or Palpation:* left side of neck, posterior cervical (neck), right side of neck, left trapezius, upper thoracic and right posterior trapezius
- *Postural Analysis:* short right leg (pelvic deficiency).
- *Spinal Stability/Restriction(s)/Subluxation(s):* C1, C2, C5, C6, T5 and T6
- *Extraspinal restrictions/subluxations:* N/A (no other subluxations were noted).
- *Muscle Strength and Tone:* moderate to severe muscle spasms in the following areas; left trapezius, left

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Patient: Stoppiello-Mayorga, Elvia Maria DOB: 9/30/1973
Ins Co Pol # Insured
Date 06/01/2015
Provider Brandy Chapman

*** continued from previous page ***

side of neck, right side of neck and right posterior trapezius.

Assessment:

Daily Assessment: plateaued as indicated in today's subjective.
- *Current Status:* Approaching maximum medical improvement because she is reporting less discomfort and is showing improved function but continues to report intermittent headaches daily and discomfort in the cervical region.

ASSESSMENT:

Elvia feels the complaint has improved her ability to lifting, sitting and standing and has changed about 90% since the onset of this complaint/condition. In consideration of the findings from today's re-evaluation of Elvia's complaints, the outcome score and my examination findings for this condition, continued treatment is unnecessary and the new treatment plan will be discontinued and sent to referral. Patient is dismissed to treatment at Palmetto Medical for remaining symptoms.

Elvia is of good health and has made good progress and recovery with some residuals. She continues to have no complicating factors and nothing noted as contraindications to chiropractic care, it is reasonable to believe that her recovery may take about the same length of time as an average patient with an uncomplicated case.

DIAGNOSIS:

Upon consideration of the information available the diagnosis has changed to: (723.2) Cervicocranial Syndrome, (723.1) Cervicalgia (No Disk)

Plan:

Today's Treatment:

Primary Treatment: Diversified- Chiropractic Manipulative Therapy (CMT) to the C2, C5, T5, T6 and T10 level(s) and following extraspinal region(s) (if any): N/A (no other subluxations were noted).

- **Supportive Therapy** to optimize treatment effectiveness for complaint # 1:. **Intersegmental Mechanical Traction** applied to mid to lower cervical and cervico-thoracic for 15 minutes.

Therapeutic Exercises were performed for 15 minutes for cervical AROM with 30% resistance and bridging.

The patient was counseled regarding the following: Instructions for home management and self care to support in-office supervised care and instructions for self-directed stretching. Today's services were in accordance with the existing treatment orders and working diagnosis and are in compliance with the medical necessity of the present condition. The

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patient responded well to treatment noting improvement following the recommended treatment. The patient tolerated our treatment provided well and did not report any adverse effects from care performed today.
- *Next Visit:* referred to different practitioner for remaining complaints associated with cervicocranial syndrome.

Diagnosis 723.2: Cervicocranial Syndrome
723.1: Cervicalgia (No Disk)

Provider Signature X Brandy Chapman
06/09/2015 02:05 PM

CAROLINA NEUROLOGY ASSOCIATES

Thomas J. Fox, Jr., MD
American Board of Psychiatry and Neurology
Added Qualifications in Clinical Neurophysiology
American Board of Electrodiagnostic Medicine
American Board of Internal Medicine
126 Milestone Way
Greenville, SC 29615

Phone: 864-288-9936 *Fax: 864-288-9937*

Patient: Elvia Stoppiello
Date of Birth: 09/30/1973
MRN: 271010
Date: June 26, 2015

CLINICAL PROBLEM: Headache.

The patient is a 41-year-old Hispanic female with no significant past history of episodic headache disorder. She was involved in a motor vehicle accident with a flexion-extension injury to the cervical spine. She was initially without headache until approximately two weeks after the injury when she began having occipitocervical headache that would spread forward. At peak intensity headaches would occasionally be associated with some sensitivity to light and noise but never nausea or vomiting. On a couple of occasions she had what she describes as "flashes of light" but no clear persistent abnormalities in the visual field. Occasionally at peak intensity she would have trouble finding words but never had persistent issues of that sort, and there is no history of sudden visual loss, diplopia, paralopsia, altered facial sensation, or problems chewing, swallowing, or speaking. Gait, balance, coordination, and bowel and bladder function are stable. She underwent a series of chiropractic manipulations, which according to her history today actually caused her headaches to worsen slightly. She has no family history of migraine. There is no history of childhood or adult motion sickness or keen sense of smell. She does experience cold sensitive headache. Unfortunately since the onset of her headaches she has continued using short-acting analgesics that include combination acetaminophen, aspirin, and caffeine, as well as ibuprofen, several tablets per dose and up to three times per day. She frequently mixes compounds. She has not had a day when she did not take these medications since her symptoms started. These compounds provide partial relief only to have the pain build again after the medication wears off.

EXAM: The patient is alert, pleasant, cooperative, and in no distress. The visual fields are full to confrontation. Fundoscopic exam shows well-defined disc margins and normal-appearing vessels. The ocular motility shows normal saccades, smooth pursuit, and no nystagmus. Facial sensation and strength are intact. Hearing is intact. The lower cranial nerves are normal. Motor Exam: There is no drift of the upper extremities. The patient has normal strength proximally and distally in the upper and lower limbs. The sensory exam is normal to the primary and cortical modalities. The cerebellar test shows no dysmetria. The reflexes are symmetric. Plantar response is flexor.

Continued...

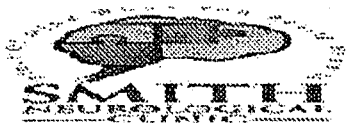
IMPRESSION: Cervical sprain-type injury with persistent headache with intermittent vascular component.

PLAN: The patient really does not give a history strongly suggestive of migraine, although there are some migrainous features associated with the attacks when they reach maximum severity. At present she needs to taper and discontinue short-acting analgesics as much as possible, limiting herself to three doses per week rather than three doses per day. We will start magnesium supplements and a cervical exercise program. Her examination was quite normal, and I do not think imaging is necessary at this juncture. She will have a return visit here in one month.

Thomas J. Fox, Jr, MD

TJF:ATS14
Voice File 0629.001; 14:30

Cc Dr Bridges
(877) 365-2994



Stoppiello, Elvia
42 Y old Female, DOB: 09/30/1973
Account Number: 35702
, SC

Appointment Facility: Upstate Neurology Pa

03/28/2016 **Progress Notes: Arthur L Smith, MD**

Current Medications
Taking
- Tylenol , Notes pm
- Ibuprofen , Notes pm

Past Medical History
No Medical History.

Surgical History
Denies Past Surgical History

Family History
Non-Contributory

Social History
Tobacco Use:
Tobacco Use/Smoking
Are you a *nonsmoker*
Additional Findings: Tobacco Non-User *Current non-smoker*

Allergies
N.K.D.A.

Hospitalization/Major Diagnostic Procedure
Denies Past Hospitalization

Review of Systems
General/Constitutional:
Patient denies contraindicated medications. Denies Change in appetite. Denies Chills. Denies Fatigue. Denies Fever. Admits Headache. Admits Lightheadedness. Denies Sleep disturbance. Denies Weight gain. Denies Weight loss.

Reason for Appointment
1. NP Consult

History of Present Illness
Constitutional:
This is a 42 year-old female new patient who presents with a chief complaint of headaches after being involved in an MVA in 04/15. The patient's vehicle was struck from behind by another driver. She sustained injuries to her head, neck, and back. She is uncertain as to whether she lost consciousness during the MVA. The patient was treated by a chiropractor her spinal pain, and denies that there are any radiating symptoms to her extremities. No Brain imaging studies have been done. Additionally, she reports having difficulty with her speech and concentration, visual changes, and dizziness.

Vital Signs
HR 70 /min, BP 118/86 mm Hg, Ht 64 in, Wt 180 lbs, BMI 30.89 Index, RR 18 /min, Ht-cm 162.56 cm, Wt-kg 81.65 kg.

Examination
General Examination:
GENERAL APPEARANCE: in no acute distress, well developed, well nourished.
HEAD: normocephalic, atraumatic.
EYES: pupils equal, round, reactive to light and accommodation.
EARS: normal.
ORAL CAVITY: mucosa moist.
THROAT: clear.
NECK/THYROID: neck supple, full range of motion, no cervical lymphadenopathy.
SKIN: no suspicious lesions, warm and dry.
HEART: no murmurs, regular rate and rhythm, S1, S2 normal.
LUNGS: clear to auscultation bilaterally.
ABDOMEN: normal, bowel sounds present, soft, nontender, nondistended.
EXTREMITIES: no clubbing, cyanosis, or edema.
Neurological:
CORTICAL FUNCTIONS: normal.
CRANIAL NERVES: no afferent pupil defect, No ptosis or nystagmus, Pinprick, light touch intact in all three divisons, I - Not Tested., II - Pupils 4mms reacting briskly to 2 mms, III , IV, VI - EOM were full with normal pursuit and saccade, V - Motor V intact, VII - No asymmetry or weakness, VIII - Actuity intact to finger rub bilaterally, IX , X- Palate rose in midile., XI - Sternocleidomastoid, trapezius strength intact., XII - Tongue protruded midline w/o atrophy or fasciculations.
MOTOR STRENGTH: no cogwheeling, no drift bulk is normal. normal.
SENSORY: decreased temperature LUE. decreased vibration LLE.

Assessments
1. Concussion without loss of consciousness, initial encounter - S06.0X0A (Primary)
2. Other encephalopathy - G93.49
3. Headache - R51
4. Migraine with aura, intractable, without status migrainosus - G43.119
5. Vertigo of central origin, bilateral - H81.43
6. Benign paroxysmal vertigo, bilateral - H81.13
7. Cervicalgia - M54.2
8. Other dorsalgia - M54.89

Treatment
1. Concussion without loss of consciousness, initial encounter
Start Fioricet Capsule, 50-300-40 MG, 1 capsule as needed, Orally, two times daily, 30 days, 60, Refills 2
Start Cyclobenzaprine HCl Tablet, 10 MG, 1 tablet, Orally, two times daily, 30 days, 60, Refills 2
Notes: Discontinue Tylenol.
Heating pad bid/pm.
Avoid sudden movements.
Physical therapy for neck and back pain.

Procedures
Head CT w/o contrast.
EEG.
VNG.

Follow Up
1 Week

Electronically signed by Arthur Smith , MD on 03/29/2016 at 10:14 AM EDT
Sign off status: Pending

Upstate Neurology Pa
103 CLAIR DR
PIEDMONT, SC 29673-6401
Tel: 864-295-0051
Fax: 864-295-0058

Patient: Stoppiello, Evia DOB: 09/30/1973 Progress Note: Arthur L Smith, MD 03/28/2016

Note generated by eClinicalWorks EMR/PM Software (www.eClinicalWorks.com)

Date: November 14th, 2018
Patient Name: Stoppiello Mayorga, Elvia aka Elvia Stoppiello

INDEPENDENT MEDICAL EVALUATION

Date of Accident: On or about 04/21/2015.

Mrs. Stoppiello is a 45-year-old female patient who was in a motor vehicle collision on or about 04/21/2015. She was rear-ended by a service truck. It is reported that she was the restrained driver of a Ford Expedition when the collision occurred. There was no certain loss of consciousness. She was reported to be shaken as a result of the collision. EMS was called to the scene, but she did not go to the hospital at that time. She later sought the attention of a chiropractor, who began to treat her for complaints of pain. These modalities included conservative chiropractic care treatments with adjustments, and she was taking over-the-counter anti-inflammatories. Through this period, she was also seen by a pain management physician, who prescribed her clonazepam and a muscle relaxant. She was also reporting headache on both sides of her head. The pain emanated from the occipital area and was associated with blurred vision, flashes of light and dizziness. She was sensitive to light. She experienced no nausea or vomiting or other migrainous symptoms.

Following the collision, it is reported that she had sleep disturbance, balance difficulties, lightheadedness and dizziness. There were reports of her running into doorways walking through the house. It was also reported that she continued most of her activities of daily living in spite of the fact that she was experiencing these symptoms. She was having difficulty with her speech, mixing up her words and having word-finding difficulties. Mild memory difficulties were noted following the collision, including misplacing items, absentmindedness and feeling more forgetful. She was also having difficulty with attention and concentration following the collision, not being able to multitask, becoming easily sidetracked and having difficulty focusing, even during a brief television program. There was no prior history of neuropsychiatric disorders, dementia, alcohol or substance abuse. It is furthermore reported, and confirmed through her husband, that she was having difficulty with mood disturbance, becoming easily frustrated, angry episodes and anhedonia.

She was referred in the early fall of 2015 for evaluation through the neurodiagnostic screening clinic of Neuro Rehab Services. There, it was recognized that she was having significant difficulties consistent with post-concussion syndrome; however, it was not until she saw a neurologist in the spring of 2016 that she was diagnosed as having a concussion. Mrs. Stoppiello reports that she did not go to the appointments in 2015 with her husband, and that he was unaware that she had a concussion, or that her changes in personality were related to head injury. He was clearly unsure of why she was experiencing these personality changes and would become irritated with her because of her changes. He was principally aware of her headaches, as the only issues related to the motor vehicle collision of 04/21/2015.

Dr. Smith's notes from 2016 confirm the presence of concussion without loss of consciousness, headaches and cervicalgia related to the collision, along with post-concussive-type headaches. There was also vertigo reported of a central etiology, none of which predated her collision. Prior to the collision she was healthy, she had no chronic medical problems that she is aware of, and

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did not take chronic medications. Imaging from 2016 failed to show evidence of chronic traumatic injury. Ms. Stoppiello has no history of alcohol, tobacco or illicit drug use.

I had an opportunity to specifically speak with Mr. Stoppiello during the course of this evaluation, and he confirms that he was aware of her personality changes, but did not know why she was having these problems. He stated that she stopped cooking meals and was experiencing an apathy that, to him, was poorly explained and created disharmony as a result within the marriage. Mrs. Stoppiello reports that she is having great difficulty remembering. She was an extremely poor historian, unable to provide much history at all. The history obtained largely comes from her husband and the medical records.

Today, I find Ms. Stoppiello to be alert and oriented. She is extremely disorganized from a cognitive standpoint. She has limited short- and long-term memory. She has difficulty concentrating. She appears dysthymic. She has an atraumatic, normocephalic head. Cranial nerves are intact. No lateralizing sensory or motor abnormalities are present. Her gait is normal. DTRs are symmetric. No appendicular or axial cerebellar abnormalities are seen. Neuropsychiatric testing, performed by Dr. Robert Moss, shows the patient to have mild neurocognitive disorder, secondary to traumatic brain injury, and pain disorder due to psychological factors and simple phobia/anxiety specifically related to the motor vehicle collision.

It is my opinion, to a reasonable degree of medical certainty, that Ms. Stoppiello is experiencing sequelae of traumatic brain injury, with neurocognitive deficits and neuropsychiatric difficulties and ongoing headaches that are causally related to the motor vehicle collision occurring in 2015. She and her husband are extremely unsophisticated in terms of understanding and accessing the medical system. They are not receiving adequate care at this time, and their understanding of treatment options and medical matters are extremely limited. It would be important for her to have someone who can provide a level of understanding to them regarding the medical system and to serve as a liaison between health-care providers and the family. Someone who speaks Spanish would be ideal to assist in this matter. There appear to be significant language barriers with respect to medical communication and their understanding of these concepts. Additional treatment needs to be provided in the form of headache management, management of insomnia and treating her underlying mood disturbance and anxiety disorder related to the collision. I would be happy to consider addressing these matters by treating Ms. Stoppiello if this is deemed to be desirable.

This concludes my independent medical evaluation for Elvia Stoppiello.

Sincerely,

Marshall A. White, MD
Board Certified Neurologist

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Certificate of Counsel

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

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Greenville, South Carolina
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