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AUG 19 2019

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

The Honorable Michael Nettles, Circuit Court Judge

Case No. 2017-CP-21-1375

April Jones.....Appellant

v.

Tim Ringer, Individually and as
employee/agent of WAL-MART
STORES, INC. d/b/a WAL-MART
STORE # 630; WAL-MART STORES,
INC.; and WAL-MART STORES
EAST, L.P.....Respondents

PETITION FOR REHEARING AND/OR REINSTATEMENT

Appellant hereby moves and petitions, pursuant to Rules 219, 221(a), and 260, SCAR, as well as other applicable law, for an Order granting reinstatement and/or rehearing in this case and would respectfully show that the Court may have overlooked or misapprehended certain points, as set forth below:

I. The Order is Immediately Appealable Because it Affects the Substantial Right of Choosing One's Own Counsel.

An order that affects the substantial right of a party to have an attorney of her choosing is appealable pursuant to S.C. Code Ann. § 14-3-330(2). EnerSys Delaware, 401 S.C. at 618, 738

S.E.2d at 479–80 (“In *Hagood*, we considered as an issue of first impression whether an order granting a motion to disqualify counsel in a civil trial was immediately appealable. We held that it is, finding *such an order affected the substantial right of the party to have an attorney of one's choosing and was therefore appealable* pursuant to section 14–3–330(2)”) (emphasis added).

Appellant’s attorneys were ordered to be in two places at once. Obviously, that’s not possible. Specifically, Appellant’s attorneys were ordered to appear for trial of Appellant’s case in Florence County at the same time they were ordered to appear for trial of another client’s case in Colleton County. Both cases were major actions involving serious personal injury – the Colleton County case involved degloving of an arm, and the Florence County case involved amputation of a leg. Accordingly, each client had chosen a trial team consisting of the firm’s senior-most attorneys – Eric Poulin, Roy Willey, and Lane Jefferies – and indeed those attorneys were of record in each case. *Affidavit of Jefferies*. Clearly, the entire trial team of Poulin, Willey, and Jefferies could not appear for both trials at the same time.

Appellant’s attorneys advised the Florence trial court of the conflict. *Exhibit A to Affidavit of Jefferies*. The Colleton County case was both older (2016 vs. 2017) and had higher priority on the roster (#1 vs. #4). *Affidavit of Jefferies*. Logically, the Colleton case should have gone forward, with the Florence to follow on the next term of court. This is what Appellant’s attorneys suggested. *Exhibit A to Affidavit of Jefferies*. Alternatively, the Florence case (although younger, and with a lower priority on the roster), could have gone to trial while the Colleton case waited for the next term. But what could not happen was for the trial team of Poulin, Willey, and Jefferies to try both cases simultaneously.

Unfortunately, the impossible task of trying both cases at the same time is exactly what the trial judge in this case ordered. The attorneys in the Florence case were initially advised by the Florence court that the Colleton county trial judge – despite having the older case with the higher roster priority – would eliminate the conflict by “deferring” to the Florence court. *Exhibit B to Affidavit of Jefferies*. However, that is not what a subsequent email from the Colleton court said. *Exhibit C to Affidavit of Jefferies*. Rather, the Colleton court emailed Plaintiff’s attorneys at 10:15 a.m. on May 23, 2019, as follows:

“Judge Buckner wants the Plaintiffs to designate one attorney for the trial of this matter. That attorney will be protected from other matters in other counties, the remaining attorneys are not protected from other hearings in other counties.”

Exhibit C to Affidavit of Jefferies

The result of the two judges each insisting that the case in their county go forward at the same time is that *neither* Plaintiff could have her case tried by her chosen attorneys – the trial team of Poulin, Willey, and Jefferies. It is as if each client had hired Crosby, Stills, and Nash to play her wedding, but the trial Judges decreed that the band had to split up – two would play one wedding, and the third would play the other.

However, unlike having the wedding band of one’s choosing, having the *attorneys* of one’s choosing is substantial right. EnerSys Delaware, Inc. v. Hopkins, 401 S.C. 615, 618, 738 S.E.2d 478, 479–80 (2013); Hagood v. Sommerville, 362 S.C. 191, 194, 607 S.E.2d at 707, 708 (2005). An order that affects the substantial right of a party to have an attorney of her choosing is appealable pursuant to S.C. Code Ann. § 14–3–330(2). EnerSys Delaware, 401 S.C. at 618, 738 S.E.2d at 479–80 (“In *Hagood*, we considered as an issue of first impression whether an order granting a motion to disqualify counsel in a civil trial was immediately appealable. We held that it is, finding *such an order affected the substantial right of the party to have an*

attorney of one's choosing and was therefore appealable pursuant to section 14-3-330(2)”)

(emphasis added). The EnerSys Delaware court went on to say:

“In concluding the right to retain counsel of one's choosing is a substantial right for the purposes of appealability, [the Hagood Court] noted:

- (1) the importance of the party's right to counsel of his choice in an adversarial system;
- (2) the importance of the attorney-client relationship, which demands a confidential, trusting relationship that often develops over time;
- (3) the unfairness in requiring a party to pay another attorney to become familiar with a case and repeat preparatory actions already completed by the preferred attorney; and
- (4) an appeal after final judgment would not adequately protect a party's interests because it would be difficult or impossible for a litigant or an appellate court to ascertain whether prejudice resulted from the lack of a preferred attorney.”

EnerSys Delaware, Inc. v. Hopkins, 401 S.C. 615, 618, 738 S.E.2d 478, 479-80 (2013).

In the same vein, the Hagood court observed that an order, affecting the

“right to be represented by an attorney of ones choosing is one of those rare orders which, in effect, could determine the action and prevent a judgment from which an appeal might be taken, or could discontinue an action due to the potential impact on both the attorney-client relationship and the overall litigation and trial of the case. Moreover, the right to be represented by ones preferred attorney is closely related to the right to a particular mode of trial, a well-established substantial right.

Deprivation of the right to one's preferred attorney would affect the attorney-client relationship, which is extremely important in our adversarial system. Furthermore, an appeal after final judgment and a new trial, if granted, would not adequately protect a party's interests because it would be difficult or impossible for the affected party or the appellate court to ascertain by any objective standard whether prejudice resulted from the disqualification.”

Hagood, 362 S.C. at 197-98, 607 S.E.2d at 710.

Moreover, regarding the closely analogous situation of an order actually disqualifying a party's preferred attorney, the Hagood court held that that not only is the order immediately


appealable, it “*must be immediately appealed* or any later objection in a subsequent appeal will be waived. Cf. Flagstar Corp., 341 S.C. at 72, 533 S.E.2d at 333 (party is required to immediately appeal if denied a mode of trial to which he is entitled as a matter of right, and failure to do so forever bars appellate review of the issue).” Hagood, 362 S.C. at 197–98, 607 S.E.2d at 710. The same applies here, because whether an attorney is actually disqualified (i.e. removed from the case) or constructively disqualified (e.g. prevented from appearing), the effect is the same – the client is deprived of her substantial right to choose her own counsel.

In light of our Supreme Court’s opinion in both EnerSys Delaware, Inc. and Hagood, not only is Appellant permitted to bring this appeal now, she is *required* to do so.

WHEREFORE, for the reasons stated above, and those set forth in the briefs and initial arguments, Appellants respectfully pray for reinstatement and/or rehearing on this matter.

August 19, 2019

s/ Lane D. Jefferies



Lane Jefferies, Esquire

Anastopoulo Law Firm, LLC

32 Ann Street

(843) 614-8888

Attorney for Appellant

Counsel of Record for Respondents:
Nashiba Boyd and Lee Ellen Bagley
3700 Forest Drive, Suite 400
Columbia, SC 29204
(803) 790-8838

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APPEAL FROM FLORENCE COUNTY
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The Honorable Michael Nettles, Circuit Court Judge

Case No. 2017-CP-21-1375

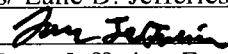
April Jones.....Appellant

v.

Tim Ringer, Individually and as
employee/agent of WAL-MART
STORES, INC. d/b/a WAL-MART
STORE # 630; WAL-MART STORES,
INC.; and WAL-MART STORES
EAST, L.P.....Respondents

PROOF OF SERVICE

I certify that I have served the APPELLANT’S MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR REHEARING AND/OR REINSTATEMENT and PETITION FOR REHEARING AND/OR REINSTATEMENT on Respondents by depositing a copy of it in the United States Mail, postage prepaid, on August 19, 2019, addressed to Respondents’ attorneys of record, Nashiba Boyd and Lee Ellen Bagley, 3700 Forest Drive, Suite 400, Columbia, SC 29204.

s/ Lane D. Jefferies

Lane Jefferies, Esquire
Anastopoulo Law Firm, LLC
32 Ann Street
(843) 614-8888
Attorney for Appellant

August 19, 2019

AFFIDAVIT OF LANE D. JEFFERIES

Personally appeared before me who, being duly sworn states and deposes as follows:

1. My name is Lane D. Jefferies, and I am an attorney with the Anastopoulo Law Firm.
2. I am an attorney of record in both Katina Troutman v. South Carolina Department of Parks Recreation & Tourism (Case No.: 2016-CP-15-01594) and April Jones v. Tim Ringer, et al. (Case No.: 2017-CP-21-01375).
3. Eric M. Poulin and Roy T. Willey, IV are also attorneys of record, with others, in both Troutman v. South Carolina Department of Parks Recreation & Tourism (Case No.: 2016-CP-15-01594) and April Jones v. Tim Ringer, et al. (Case No.: 2017-CP-21-01375).
4. On May 22, 2019, Appellant's attorneys sent the attached email to the Florence County trial court, advising the court of a Rule 601 conflict with respect to April Jones v. Wal-Mart, et al. (Case No.: 2017-CP-21-01375). Exhibit A.
5. At the time of the May 22, 2019 email referenced above, the Colleton County case of Troutman v. South Carolina Department of Parks Recreation & Tourism (Case No.: 2016-CP-15-01593), was scheduled for trial at the same time as, and carried a higher roster priority than, the Florence county case of April Jones v. Tim Ringer, et al. (Case No.: 2017-CP-21-01375) case (#1 versus #4).
6. The Colleton County case of Troutman v. South Carolina Department of Parks Recreation & Tourism (Case No.: 2016-CP-15-01594) was filed in 2016, whereas April Jones v. Tim Ringer, et al. (Case No.: 2017-CP-21-01375) was filed in 2017.
7. Appellant's attorneys suggested that the Colleton case being older and higher on the roster go forward, with the Florence case to follow on the next term of court. Exhibit A.
8. On May 23, 2019, Appellants counsel received the attached email from the Florence county court. Exhibit B.
9. On May 23, 2019, Appellants counsel received the attached email from the Colleton county court, which states, in part, "Judge Buckner wants the Plaintiffs to designate one attorney for the trial of this matter. That attorney will be protected from other matters in other counties, the remaining attorneys are not protected from other hearings in other counties.". Exhibit C. This email made it clear to Appellant's counsel Judge Buckner did not defer to the Florence case and that the effect of Judge Nettles May 13, 2019 Order would be disqualification of at least one trial attorney from the Florence county case.

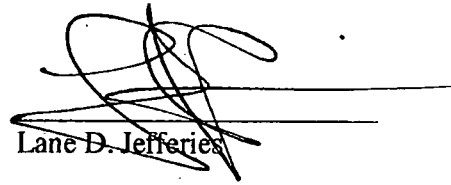
FURTHER AFFIANT SAYETH NAUGHT.

[Signature on following page]

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JUN 18 2019

SC Court of Appeals



Lane D. Jefferies

Sworn to before me this 17th day of

June, 2019

Jaquanda Vanderhorst

Notary Public for South Carolina

My Commission Expires 12/28/2028

100

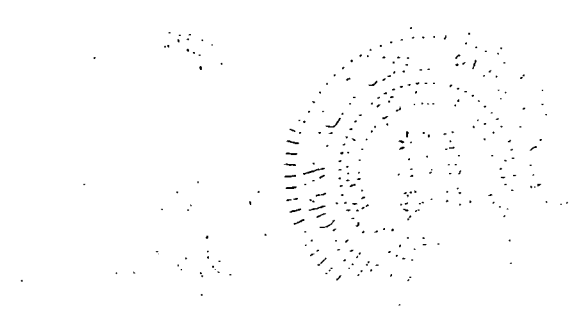


EXHIBIT A

From: Lane Jefferies lane@akimlawfirm.com
Subject: 601 Conflict - April Jones v. Wal-Mart, et al.
Date: May 22, 2019 at 2:59 PM
To: Nettles, Michael G. mnettlesj@sccourts.org, Nettles, Michael G. Law Clerk (Willie McAbee) mnettlesic@sccourts.org
Cc: Lee Ellen Bagley lebagley@gaffneylewis.com, Lee Ellen Bagley lebagley@glelawfirm.com, Matt Roy Eric teamrem@googlegroups.com, DPoulos@florenceco.org, Nashiba Boyd nboyd@gaffneylewis.com

Dear Judge Nettles:

A Rule 601 conflict has arisen which prevents this trial going forward next week. To avoid any additional delay beyond that, we intend to proceed with depositions tomorrow and Friday as currently planned.

Specifically, the conflict is this: We were advised yesterday that we are number one for trial in Colleton County in Katina Troutman v. South Carolina Dept. of Parks, Recreation, and Tourism. We immediately set a pre-trial conference call today as we were hoping that matter would resolve. Unfortunately, attempts to settle the Troutman matter today were unsuccessful, and the parties are so far apart that there is no reasonable hope for settlement before trial given the pre-trial conference that occurred today.

Both Troutman and Jones are major cases, and both involve the same Anastopoulo attorneys of record and trial team. The cases differ in that Troutman is a year older (2016 vs. 2017) and Troutman is ahead on the trial roster (#1 vs. #4). Therefore, we will need to be in Colleton County next week to try the Troutman matter.

As mentioned, we intend to proceed with depositions in this case (Jones) as planned tomorrow and Friday, and we are ready to try the case on the very next available roster. I am copying opposing counsel as well as the clerk of court so that everyone is informed, and so that the clerk may update the roster.

Best regards,
Lane Jefferies

--
Lane D. Jefferies
Trial Lawyer
Anastopoulo Law Firm, LLC
32 Ann Street | Charleston, SC 29403
Tel: 843-614-8888 | Fax: 843-494-5536

www.akimlawfirm.com | TeamJefferies@GoogleGroups.com

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EXHIBIT B

From: Nettles, Michael G. Law Clerk (Willie McAbee) MNettlesLC@sccourts.org
Subject: Re: 601 Conflict - April Jones v. Wal-Mart, et al.
Date: May 23, 2019 at 9:21 AM
To: Lee Ellen Bagley lebagley@gaffneylewis.com
Cc: TeamJefferies teamjefferies@googlegroups.com, Nettles, Michael G. mnettlesj@sccourts.org, Matt Roy Eric teamrem@googlegroups.com, O'Hara, Doris dpoulos@florencoco.org, Nashba Boyd nboyd@gaffneylewis.com

Mr. Jeffries:

Judge Nettles has spoken to Judge Buckner and Judge Buckner has agreed to defer to the Florence case in this matter. Judge Buckner asks that Plaintiff's counsel contact him ASAP in regards to this matter. However, the April Jones v Wal-Mart will be subject to be calling to trial next week.

Sent from my iPhone

On May 22, 2019, at 7:35 PM, Lee Ellen Bagley <lebagley@gaffneylewis.com> wrote:

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Thank you. We can be available tomorrow afternoon at the judge's convenience.

On May 22, 2019, at 6:50 PM, Nettles, Michael G. Law Clerk (Willie McAbee) <MNettlesLC@sccourts.org> wrote:

Judge Nettles is also available tomorrow, more likely around noon and the afternoon.

Sent from my iPhone

On May 22, 2019, at 5:29 PM, Lee Ellen Bagley <lebagley@gaffneylewis.com<mailto:lebagley@gaffneylewis.com>> wrote:

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Dear Judge Nettles,

Defendants respectfully request an in-person, in-camera audience with the court on this matter, tomorrow or Friday if at all possible. I understand from the conference call on Sunday that you may be in Greenville. We are glad to be available at the court's convenience.

Thank you,

Lee Ellen Bagley

On May 22, 2019, at 2:59 PM, Lane Jefferies <lane@akimlawfirm.com<mailto:lane@akimlawfirm.com>> wrote:

P

Dear Judge Nettles:

A Rule 601 conflict has arisen which prevents this trial going forward next week. To avoid any additional delay beyond that, we intend to proceed with depositions tomorrow and Friday as currently planned.

Specifically, the conflict is this: We were advised yesterday that we are number one for trial in Colleton County in Katina Troutman v. South Carolina Dept. of Parks, Recreation, and Tourism. We immediately set a pre-trial conference call today as we were hoping that matter would resolve. Unfortunately, attempts to settle the Troutman matter today were unsuccessful, and the parties are so far apart that there is no reasonable hope for settlement before trial given the pre-trial conference that occurred today.

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As mentioned, we intend to proceed with depositions in this case (Jones) as planned tomorrow and Friday, and we are ready to try the case on the very next available roster. I am copying opposing counsel as well as the clerk of court so that everyone is informed, and so that the clerk may update the roster.

Best regards,
Lane Jefferies

--
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Trial Lawyer
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327 Ann Street | Charleston, SC 29403
Tel: 843-614-8888 | Fax: 843-494-5536

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By Appointment Only: Wilmington, NC

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You received this message because you are subscribed to the Google Groups "TeamJefferies" group.  
To unsubscribe from this group and stop receiving emails from it, send an email to [teamjefferies+unsubscribe@googlegroups.com](mailto:teamjefferies+unsubscribe@googlegroups.com).  
To post to this group, send email to [teamjefferies@googlegroups.com](mailto:teamjefferies@googlegroups.com).  
To view this discussion on the web visit <https://groups.google.com/d/msgid/teamjefferies/7A57FD06-3C03-49FA-9AC1-5F38E4FA3D0F%40scccourts.org>.  
For more options, visit <https://groups.google.com/d/optout>.

# EXHIBIT C

From: **Buckner, Perry M. Law Clerk (David A. Nasrollahi)** PBucknerLC@sccourts.org  
Subject: RE: Katina Troutman VS South Carolina Department Of Parks Recreation & Tourism 2016CP1501594  
Date: May 23, 2019 at 10:15 AM  
To: Andrea Aikman aaikman@barnwell-whaley.com, Randell Stoney rstoney@barnwell-whaley.com, Eric Poulin eric@akimlawfirm.com  
Cc: kenneth@akimlawfirm.com, teamjefferies@googlegroups.com, cjuhas@wernlawyers.com, Lindsey Perkins lperkins@barnwell-whaley.com, Nettles, Mylinda mnettles@hamptoncountysc.org

Good Morning,

Judge Buckner wants the Plaintiffs to designate one attorney for the trial of this matter. That attorney will be protected from other matters in other counties, the remaining attorneys are not protected from other hearings in other counties. I have cc'd Judge Nettle's law clerk so that everyone is on the same page. Please do not hesitate to contact me if there are any questions, concerns, or comments.

Please let me know who is designated as the Plaintiff's attorney for the trial of this case.

Thank you for your time,

David A. Nasrollahi

---

**From:** Buckner, Perry M. Law Clerk (David A. Nasrollahi)  
**Sent:** Tuesday, May 21, 2019 4:31 PM  
**To:** 'Andrea Aikman' <aaikman@barnwell-whaley.com>; Randell Stoney <rstoney@barnwell-whaley.com>; Eric Poulin <eric@akimlawfirm.com>  
**Cc:** kenneth@akimlawfirm.com; teamjefferies@googlegroups.com; cjuhas@wernlawyers.com; Lindsey Perkins <lperkins@barnwell-whaley.com>  
**Subject:** RE: Katina Troutman VS South Carolina Department Of Parks Recreation & Tourism 2016CP1501594

Hello,

The pre-trial packet should consist of:

- A) List of witnesses (including hometown and occupation);
- B) Any pretrial motions;
- C) Any proposed Jury Voir Dire;
- D) Estimation as to the length of this matter.

All correspondence to the Court should be cc'd with opposing counsel. Please review opposing counsel's pre-trial packets and let me know if you object or consent to each document.

I hope this answers your question,

David A. Nasrollahi

---

**From:** Andrea Aikman [<mailto:aaikman@barnwell-whaley.com>]  
**Sent:** Tuesday, May 21, 2019 4:27 PM  
**To:** Randell Stoney <rstoney@barnwell-whaley.com>; Buckner, Perry M. Law Clerk (David A. Nasrollahi) <PBucknerLC@sccourts.org>; Eric Poulin <eric@akimlawfirm.com>

(David A. Nasrollahi) <PBucknerLC@sccourts.org>, Eric Poulin <eric@akimlawfirm.com>  
**Cc:** kenneth@akimlawfirm.com; teamjefferies@googlegroups.com;  
cjuhas@wernlawyers.com; Lindsey Perkins <lperkins@barnwell-whaley.com>  
**Subject:** RE: Katina Troutman VS South Carolina Department Of Parks Recreation &  
Tourism 2016CP1501594

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Mr. Nasrollahi,

Could you clarify what is to be included in the pre-trial packets to be exchanged between Plaintiff and Defendant? Thank you.

**ANDREA AIKMAN, PARALEGAL  
BARNWELL WHALEY PATTERSON & HELMS, LLC**



**From:** Randell Stoney <rstoney@barnwell-whaley.com>  
**Sent:** Tuesday, May 21, 2019 3:09 PM  
**To:** Buckner, Perry M. Law Clerk (David A. Nasrollahi) <PBucknerLC@sccourts.org>; Eric Poulin <eric@akimlawfirm.com>  
**Cc:** kenneth@akimlawfirm.com; teamjefferies@googlegroups.com;  
cjuhas@wernlawyers.com; Lindsey Perkins <lperkins@barnwell-whaley.com>; Andrea Aikman <aaikman@barnwell-whaley.com>  
**Subject:** RE: Katina Troutman VS South Carolina Department Of Parks Recreation & Tourism 2016CP1501594

thank you...rcs

**From:** Buckner, Perry M. Law Clerk (David A. Nasrollahi) <PBucknerLC@sccourts.org>  
**Sent:** Tuesday, May 21, 2019 1:36 PM  
**To:** Eric Poulin <eric@akimlawfirm.com>  
**Cc:** kenneth@akimlawfirm.com; teamjefferies@googlegroups.com;  
cjuhas@wernlawyers.com; Randell Stoney <rstoney@barnwell-whaley.com>  
**Subject:** RE: Katina Troutman VS South Carolina Department Of Parks Recreation & Tourism 2016CP1501594

Good Morning,

This matter is set as number one on the roster. Please send me the following by 5:00 p.m. Thursday, May 21, 2019.

- A) List of witnesses (including hometown and occupation);

- B) Any pretrial motions;
- C) Any proposed Jury Vior Dire;
- D) Estimation as to the length of this matter.

Additionally, please review opposing counsel's pre-trial packets and let me know if you object or consent.

Thank you all in advance for your help,

David A. Nasrollahi

**From:** Eric Poulin [mailto:eric@akimlawfirm.com]  
**Sent:** Tuesday, May 21, 2019 9:33 AM  
**To:** Buckner, Perry M. Law Clerk (David A. Nasrollahi) <PBucknerLC@sccourts.org>  
**Cc:** kenneth@akimlawfirm.com; teamjefferies@googlegroups.com; cjuhas@wernlawyers.com; rstoney@barnwell-whaley.com  
**Subject:** Re: Katina Troutman VS South Carolina Department Of Parks Recreation & Tourism 2016CP1501594

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David,

Sorry for the delayed response. I believe this case is ready to go. However, we have another case on the 5/28 roster in Florence that Judge Nettles is pushing us hard to try. Given the substantial damages in both cases, I am hoping not to have to split up our trial team and resources to try both at the same time. That would be easy if either was a simple MVA case, but neither is. In any event, this case is older than the Florence case so if Judge Buckner needs it to go, we will make it happen.

Thanks.

On Mon, May 20, 2019 at 8:27 AM Buckner, Perry M. Law Clerk (David A. Nasrollahi) <PBucknerLC@sccourts.org> wrote:

Good Morning,

This matter is set for trial during the week of May 28, 2019 in Colleton County. Please let me know the status of this case at your earliest convenience.

Thank you,

David A. Nasrollahi  
Law Clerk to Judge P. M. Buckner  
Post Office Drawer 470  
101 Hampton Street

Walterboro, S.C. 29488

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Eric M. Poulin, Esq.
Director of Litigation

Anastopoulos Law Firm LLC

32 Ann Street | Charleston, SC 29403

Tel: 843-614-8888 | Fax: 843-494-5536

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