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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
The Honorable R. Ferrell Cothran, Jr.

Appellate Case No. 2021-000301

Charles Waymon Murphy,.....Appellant,

v.

Lori Ann Niverson; Starr Distributing, LLC.....Defendants,

Of which Starr Distributing, LLC, is the.....Respondent,

AND

Starr Distributing, LLC.....Third-Party Plaintiff,

v.

Arthur C. Niverson.....Respondent.

RECORD ON APPEAL

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
The Honorable R. Ferrell Cothran, Jr.

Case No. 2018-CP-07-2069

RECEIVED
Mar 19 2021
SC Court of Appeals

Charles Waymon Murphy, ...Appellant,

v.

Lori Ann Niverson; Starr Distributing, LLC, ...Defendants,

Of which Starr Distributing, LLC, is the Respondent,

and

Starr Distributing, LLC, ...Third-Party Plaintiff,

v.

Arthur C. Niverson, ...Respondent.

NOTICE OF APPEAL

Appellant Charles Waymon Murphy appeals the Amended Order Granting Summary Judgment of the Honorable R. Ferrell Cothran, Jr., filed February 22, 2021. This Notice is timely filed. A copy of the Order appealed from is attached to this Notice.

Dated: March 19, 2021

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STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2018-CP-07-2069

CHARLES WAYMON MURPHY,
Plaintiff,

v.

LORI ANN NIVERSON; STARR
DISTRIBUTING, LLC,
Defendants,

STARR DISTRIBUTING, LLC,
Third-Party Plaintiff,

v.

ARTHUR C. NIVERSON,
Third-Party Defendant.

RECEIVED

Mar 19 2021

SC Court of Appeals

**AMENDED ORDER GRANTING
SUMMARY JUDGMENT**

Before this Court are motions for summary judgment filed by each Defendant Starr Distributing, LLC ("Starr Distributing") and Arthur C. Niverson. Starr Distributing seeks summary judgment on all claims alleged by Plaintiff against Starr Distributing. Arthur Niverson seeks summary judgment as to all claims based on a theory of *respondeat superior*. This Court heard arguments from the parties on January 26, 2021. For the reasons set forth below, and in the materials on file with the court, both motions are granted.

FINDINGS OF FACT

This lawsuit arises from a motor vehicle accident that took place during the early morning hours of September 30, 2017, while Plaintiff Charles Waymon Murphy and Lori Niverson were each traveling straight on Highway 17 near Hardeeville, South Carolina. Plaintiff alleges that as he was stopped for road work on Highway 17, he was struck from behind by Lori Niverson's vehicle. Plaintiff claims personal injuries and other damages as a result of this accident.

In his Complaint, Plaintiff alleges that Lori Niverson was an agent and employee of Starr Distributing (a newspaper distributing company) and that she was on a newspaper route delivering newspapers at the time of the accident. Plaintiff, therefore, claims that Starr Distributing is responsible for his injuries under a theory of *respondeat superior*.

Lori Niverson's husband, the Third-Party Defendant Arthur Niverson, was not involved in the accident and was not present at the scene of the accident. Arthur Niverson was an independent contractor of Starr Distributing, and his wife Lori Niverson was filling in for her husband on the morning of the accident. Plaintiff has not brought a cause of action against Arthur Niverson. Instead, Arthur Niverson was brought into this suit by Starr Distributing under the independent contractor agreement between Starr Distributing and Arthur Niverson.

This Court finds that the facts show that Lori Niverson was not working, but was

on her way to work, at the time of the accident. Plaintiff admits that Lori Niverson told him and his wife that she was “on her way” to work to start delivering newspapers on the morning when the accident occurred. Plaintiff further testified that Lori Niverson did not have any newspapers with her in her vehicle at the time of the accident. Similarly, deposition testimony of Arthur and Lori Niverson also demonstrates that Lori Niverson was on her way to pick up papers at the time of the accident and did not have the papers with her at the time. She and her husband often split duties, and Arthur Niverson was not working on this particular day. Some days, Lori Niverson or Arthur Niverson would stop and pick up the Savannah Morning News in Bluffton, South Carolina, before driving to the Starr Distributing Warehouse on Laurel Bay Road in Beaufort. However, on the date of this accident, there is no evidence that Lori Niverson had actually picked up the Savannah Morning News from the Bluffton Location. Starr Distributing paid a flat \$25 per week payment for Arthur Niverson picking up the Savannah Morning Paper in Bluffton and delivering them to Beaufort.

Only Arthur Niverson had an agreement with Starr Distributing to deliver newspapers. That agreement is titled “Starr Distributing Independent Contractor Distribution Agreement” and is part of the record (the “Independent Contractor Agreement”). There is no dispute that Arthur Niverson executed and entered into that agreement. The Independent Contractor Agreement specifies, among other things, that:

As an independent contractor, Contractor [Arthur Niverson] acknowledges and agrees that in performance of this Agreement, he/she alone is responsible for any property damage, bodily injury or death caused by Contractor, his/her agents and employees. . . .

As stated above, Lori Niverson was assisting her husband with deliveries. At the time of the accident, she was driving her personal vehicle, which was not owned or controlled by Starr Distributing. Only after she arrived at the work location was she considered working, and she was not paid for her commute.

STANDARD OF REVIEW

“[A] motion for summary judgment shall be granted ‘if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.’” *Media Gen. Commc’ns, Inc. v. S.C. Dep’t of Revenue*, 388 S.C. 138, 144, 694 S.E.2d 525, 527 (2010) (quoting Rule 56(c), SCRCF). “In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party.” *Quail Hill, LLC v. County of Richland*, 387 S.C. 223, 235, 692 S.E.2d 499, 505 (2010) (citation omitted). “Whether a duty exists in a negligence action is a question of law to be determined by the court.” *Nelson v. Piggly Wiggly Cent., Inc.*, 390 S.C. 382, 386, 701 S.E. 2d 776, 779 (S.C. Ct. App. 2010).

CONCLUSIONS OF LAW

A. Even under Plaintiff’s “employee” argument, Starr Distributing cannot be found liable as a matter of law for the actions of Mrs. Niverson on her way to work.

Even assuming *arguendo* that Mrs. Niverson was an employee, Starr Distributing cannot be held liable for her accident on the way to work. Under the doctrine of *respondent*

superior, “a master [is] liable to a third party for injuries caused by the tort of his servant committed within the scope of the servant's employment.” *South Carolina Ins. Co. v. James C. Greene & Co.*, 290 S.C. 171, 179, 348 S.E.2d 617, 621 (Ct. App. 1986); *see also Wade v. Berkeley Cty.*, 330 S.C. 311, 318–19, 498 S.E.2d 684, 688 (Ct. App. 1998). For a plaintiff to recover from a master/employer under the doctrine, he “must establish that the relationship existed at the time of the injuries, and also that the servant was then about his master’s business and acting within the scope of his employment.” *Armstrong v. Food Lion, Inc.*, 371 S.C. 271, 276, 639 S.E. 2d 50, 52 (2006). At the center of the *respondeat superior* theory is that the employee must be acting within the scope of her employment at the time of the tortious act. “An act is within the scope of [an employee’s] employment where reasonably necessary to accomplish the purpose of his employment and in furtherance of the [employer’s] business.” *Id.* On the other hand:

The act of a servant done to effect some independent purpose of his own and not with reference to the service in which he is employed, or while he is acting as his own master for the time being, is not within the scope of his employment so as to render the master liable therefor. Under these circumstances the servant alone is liable for the injuries inflicted. If a servant steps aside from the master's business for some purpose wholly disconnected with his employment, the relation of master and servant is temporarily suspended; this is so no matter how short the time, and the master is not liable for his acts during such time.

Id. (citing *Lane v. Modern Music, Inc.*, 244 S.C. 299, 136 S.E. 2d 713 (1964)).

Generally, where an employee is going to or coming from her place of work, she is “not engaged in performing a service growing out of and incidental to [her] employment;” therefore, no liability will lie with an employer where an employee is involved in an accident while going to or coming from work. *Wofford v. City of*

Spartanburg ex rel. S.C. Mun. Ins. Tr., 415 S.C. 152, 159, 781 S.E.2d 146, 149–50 (Ct. App. 2015) (citing *Medlin v. Upstate Plaster Serv.*, 329 S.C. 92, 95, 495 S.E.2d 447, 449 (1998)); see also *Wade v. Berkeley County*, 330 S.C. 311, 320, 498 S.E. 2d 684, 688 (Ct. App. 1998) (“the general rule is that an employee driving his own vehicle to and from work is on his own business, and not engaged in work for the master”).

South Carolina has recognized five exceptions to this rule. An employer may still be liable in those instances where (1) “the means of transportation is provided by the employer, or the time that is consumed is paid for or included in the wages”; (2) “the employee, on his way to or from his work, is still charged with some duty or task in connection with his employment”; (3) the way to work is inherently dangerous and is either the exclusive way or is constructed and maintained by the employer; (4) the injury occurred in close proximity to the workplace and there is an express or implied requirement that the employee use that approach in going to and coming from work; and (5) an employee is injured “while performing a special task, service, mission, or errand for his employer, even before or after customary working hours, or on a day on which he does not ordinarily work.” *Id.*

The first exception does not apply because there is no legitimate dispute that the vehicle operated by Lori Niverson on the date of the accident was her personal vehicle and was not owned by Starr Distributing. Nor was Lori Niverson compensated for her travel on the morning of the accident. Although Arthur Niverson received a flat \$25 per week payment for, on some mornings, picking up the Savannah Morning Paper and

delivering them in Beaufort, Lori Niverson had not picked up any papers on the day of the accident.

The second exception does not apply because Lori Niverson was not charged with some duty or task in connection with her alleged employment. Under the second exception, an employee will be considered within the scope of her employment if she is “charged with some duty or task in connection with her employment” while on the way to or coming from work. *Id.* In *Whitworth v. Window World, Inc.*, for example, an employee on his way to a window cleaning job was not performing a duty or task for work because he had no work-related duties on his way, but was instead “free to conduct personal business.” 377 S.C. 637, 641, 661 S.E. 2d 333, 336 (2008). The South Carolina Supreme Court in *Whitworth* held that the purpose of the window cleaner’s trip was a personal objective where he was traveling to the place where he would perform work. *Id.* Likewise, in *Wofford*, the Court of Appeals held that the plaintiff was not performing a duty or task for work at the time of his accident where he was “merely on his way to work to engage in his typical job responsibilities.” *Wofford*, 415 S.C. at 161, 781 S.E.2d at 151.

Like the plaintiff in *Wofford*, in the present case Lori Niverson had not yet commenced any duties or tasks associated with delivery of the papers. Rather, Mrs. Niverson was “merely on [her] way to work to engage in [her] typical job responsibilities.” 415 S.C. at 161, 781 S.E.2d at 151. Therefore, the second exception does not apply here.

The third exception does not apply because there is no evidence that the route on which Lori Niverson was traveling was inherently dangerous.

The fourth exception does not apply because there is no evidence of an express or implied requirement that Lori Niverson use a particular approach going to work.

The fifth exception does not apply because Lori Niverson was not performing a special task, mission, or errand. Under this exception, an employee is within the course and scope of her employment where she is obligated to take on tasks or perform any services requested by an employer from the time of leaving home to the end of the workday. For example, the South Carolina Supreme Court in *Bickley v. South Carolina Electric and Gas* held that an electrical lineman was performing a special task during his entire workday because he was obligated to make emergency calls and perform work outside his regular work hours. 259 S.C. 463, 471, 192 S.E. 2d 866, 870 (1972). However, where an employee is coming and going from tasks that are not unusual or special, but instead are common and customary in the course of business, those instances will not be considered within the “special task” exception. See *McDaniel v. Bus Terminal Restaurant Management Corp.*, 271 S.C. 299, 301-03, 247 S.E. 2d 321, 322-23 (1978) (S.C. Supreme Court held that cook was not within scope of employment when involved in accident while leaving regularly scheduled employee meeting because it was not unusual or “special”).

Similarly, like in *McDaniel*, Mrs. Niverson was not engaging in a “special task” at the time of the accident. The record demonstrates that Arthur Niverson (or Lori Niverson, acting on his behalf) regularly picked up the Savannah Morning Paper in

Bluffton before continuing on to Beaufort, and Arthur Niverson received a \$25.00 fee for performing such service. Thus, stopping in Bluffton to pick up the papers would not be considered a “special task” because it is a routine and regular occurrence.

Regardless of this fact, Lori Niverson had not picked up the papers on the date of her accident; rather, she was on her way to work. In South Carolina, it is clearly established that one’s commute to work does not fall within the course and scope of their employment. *Wofford*, 415 S.C. at 159; *see also Wade*, 330 S.C. at 320.

Accordingly, even if Lori Niverson were considered an employee of Starr Distributing, she was on her way to work at the time of the accident, and the exceptions to the “going and coming” rule do not not apply to Lori Niverson on the morning of the accident.

CONCLUSION

For these reasons, this Court grants summary judgment in favor of Starr Distributing and against Plaintiff on all his claims against Starr Distributing. For the same reasons, the Court grants summary judgment as to the allegations against Arthur Niverson that are based on the theory of *respondeat superior*.

So ordered this ____ day of _____, 2021.

The Honorable Judge R. Ferrell Cothran, Jr.



Beaufort Common Pleas

Case Caption: Charles Waymon Murphy VS Lori Ann Niverson , defendant, et al

Case Number: 2018CP0702069

Type: Order/Amend

So Ordered

s/ R. Ferrell Cothran, Jr., 2144

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	CIVIL ACTION NO: 2018-CP-07-
	)	
CHARLES WAYMON MURPHY,	)	SUMMONS
Plaintiff,	)	
vs.	)	
LORI ANN NIVERSON; STARR	)	
DISTRIBUTING, LLC,	)	
Defendants.	)	
	)	
	)	
	)	

TO: DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the said Complaint on the Plaintiff by and through his attorney(s), J. Ashley Twombly of TWENGE + TWOMBLY LAW FIRM, 311 Carteret Street, Beaufort, SC 29902, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint. Any answer that you serve on the parties in this action must be filed with the Clerk of Court within a reasonable period of time after service.

TWENGE + TWOMBLY LAW FIRM

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Beaufort, South Carolina
October 19, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	CIVIL ACTION NO: 2018-CP-07-
	)	
CHARLES WAYMON MURPHY,	)	
Plaintiff,	)	
vs.	)	
LORI ANN NIVERSON; STARR	)	COMPLAINT
DISTRIBUTING, LLC,	)	(Jury Trial Demanded)
Defendants.	)	

TO: DEFENDANTS ABOVE NAMED:

Charles Waymon Murphy (hereinafter "Plaintiff"), complaining of Defendants Lori Ann Niverson and Starr Distributing, LLC, would respectfully show unto this Honorable Court and allege:

PARTIES AND VENUE

1. Plaintiff is a citizen and resident of Beaufort County, State of South Carolina.
2. Upon information and belief, Defendant Lori Ann Niverson (hereinafter "Defendant Niverson") is a citizen and resident of Chatham County, State of Georgia.
3. Upon information and belief, Defendant Starr Distributing, LLC (hereinafter "Defendant Starr Distributing") is a corporation duly organized and existing pursuant to the laws of South Carolina, and has its principal place of business in Beaufort County, South Carolina.
4. The collision which forms the basis for this suit occurred in Jasper County, South Carolina.
5. The parties hereto and the subject matters herein are within the jurisdiction of this Court.

FACTUAL BACKGROUND

6. On September 30, 2017, at approximately 2:23 a.m., Plaintiff, Charles Murphy, was driving his 2001 Jeep SUV northbound in the far-right lane on Highway 17, near Hardeeville, South Carolina, and was forced to come to a stop behind a construction vehicle that was blocking the right lane.

7. Defendant Niverson was also traveling northbound in the far-right lane on Highway 17 directly behind Plaintiff.

8. When Plaintiff was coming to a stop behind the construction vehicle blocking the lane, Defendant Niverson's vehicle struck Plaintiff's vehicle from the rear with a force of impact so great that it knocked Plaintiff's glasses off of his face, shattering the frame and lenses.

9. Immediately following the accident, Plaintiff was rushed to the nearby Coastal Carolina Medical Center by his wife. Upon arriving, Plaintiff was placed on a stretcher and taken back to be evaluated by the on-call emergency physician.

10. At this time, Plaintiff immediately began to complain of left shoulder and neck pain. The on-call physician ordered X-rays of Plaintiff's left shoulder and chest as well as placed Plaintiff in a C-collar before discharging him and giving him strict instructions to follow up with his primary care physician if his neck and left shoulder pain persisted.

11. After two weeks of enduring severe pain that radiated from his neck down to his left shoulder, Plaintiff followed up with an orthopedist complaining of the pain, as well as left hand numbness.

12. Multiple MRIs were ordered on Plaintiff, which revealed a partial tear in the lateral insertion of the supraspinatus tendon, along with disc bulges and other injuries.

13. At the time of the accident, upon information and belief, Defendant Niverson was an agent and employee of Starr Distributing and was in the process of executing her morning route of delivering newspapers for Starr Distributing.

14. Defendant Niverson's actions caused a significant crash and Plaintiff's serious injuries which include, but are not limited to, internal injuries requiring an operation and injections to alleviate pain, as well as injuries to other parts of Plaintiff's body, amounting to substantial medical bills.

15. Plaintiff's injuries and damages resulting from the subject incident were directly and proximately caused by Defendants.

16. The injuries sustained by Plaintiff caused, and will in the future cause, physical pain, suffering, distress, impairment of health and bodily efficiency, medical treatment and future medical treatment, lost wages, permanent damage, and potential future lost wages.

17. Defendant Niverson was negligent, careless, reckless, grossly negligent, willful and wanton at the time and place above-mentioned.

18. Defendant Starr Distributing is responsible for the actions and omissions of Defendant Niverson under the law of respondeat superior.

19. Defendant Starr Distributing was itself negligent in the hiring or selection of Defendant Niverson, or in failing to train, supervise, monitor and discipline Defendant Niverson.

FOR A FIRST CAUSE OF ACTION

(NEGLIGENCE, GROSS NEGLIGENCE, AND NEGLIGENT HIRING/SUPERVISION)

20. Plaintiff repeats and realleges, as if set forth here verbatim, all of the allegations made above.

21. Defendants were negligent, careless, reckless, grossly negligent, willful and wanton at the time and place above-mentioned in one, some or all of the following particulars:

AS TO DEFENDANT NIVERSON

22. Plaintiff repeats and realleges, as if set forth here verbatim, all of the allegations made above.

23. Defendant Niverson owed a duty to Plaintiff to exercise reasonable care while operating her vehicle on Highway 17.

24. Defendant Niverson breached that duty owed to Plaintiff by:

- a. failing to maintain a proper lookout;
- b. failing to maintain proper control of the vehicle she was driving;
- c. traveling too fast for the conditions then and there existing;
- d. failing to take evasive action to avoid the collision;
- e. driving her vehicle in a reckless manner which was in willful and wanton disregard for the safety of Plaintiff, all in violation of the law;
- f. driving her vehicle in an erratic and dangerous manner so as to indicate a conscious disregard for the safety and lives of other motorists on the highway;
- g. failing or omitting to exercise the degree of care and caution as required by the circumstances then and there existing which a reasonably prudent person would have exercised under the same or similar circumstances;
- h. failing to take the proper precautions to insure the safety of those persons using the highway;
- i. In such other and further particulars as the evidence at trial may show.

AS TO DEFENDANT STARR DISTRIBUTING

25. Plaintiff repeats and realleges, as if set forth here verbatim, all of the allegations made above.

26. Defendant Starr Distributing owed a duty to Plaintiff to exercise reasonable care in the hiring, selection, training, supervising, and/or monitoring of its agents and employees.

27. Defendant Starr Distributing breached the duty owed to Plaintiff by:

- a. negligently hiring or selecting Defendant Niverson to execute delivery routes;
- b. negligently failing to properly train and/or supervise Defendant Niverson;
- c. failing or omitting to exercise the degree of care and caution as required by the circumstances then and there existing which a reasonably prudent person would have exercised under the same or similar circumstances;
- d. failing to take the proper precautions to insure the safety of those persons using the highway; and
- e. In such other and further particulars as the evidence at trial may show.

28. The subject incident was directly and proximately caused by Defendants' negligence.

29. Plaintiff's injuries and damages resulting from the subject incident were directly and proximately caused by Defendants' negligence.

30. Plaintiff will in the future continue to have physical injuries and will experience physical pain and suffering as a direct and proximate result of Defendants' negligence.

31. Plaintiff will continue to need medical treatment in the future as a direct and proximate result of Defendants' negligence.

32. The acts and omissions of Defendants, as described above, were done by Defendants in a willful, wanton, reckless and malicious manner evidencing the want of care which raises the presumption of conscious indifference to the consequences.

33. In light of Defendants' willful, wanton, reckless and malicious conduct, the recovery of significant punitive damages to punish said Defendants and deter them from ever engaging in such conduct again is demanded.

34. Plaintiff is entitled to an award of punitive damages, without cap, from Defendants in order to punish, penalize and deter Defendants from repeating their negligent and unlawful conduct.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff herein respectfully demands and prays for the following:

- a. that Plaintiff has a judgment against Defendants herein, in an amount as may be proven through the evidence at trial;
- b. that Plaintiff has a jury trial on all issues so triable;
- c. that Plaintiff be awarded punitive damages against Defendants in an amount to be determined by the enlightened conscience of fair and impartial jurors;
- d. for such other and further relief as this Court deems just and proper.

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October 19, 2018

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2018-CP-07-2069

CHARLES WAYMON MURPHY,

Plaintiff,

v.

LORI ANN NIVERSON; STARR
DISTRIBUTING, LLC,

Defendants.

ANSWER

(Jury Trial Requested)

Defendant Starr Distributing, LLC ("Defendant") hereby answers Plaintiff's Complaint and denies each allegation that is not specifically admitted below.

1. Admitted, upon current information and belief.
2. Admitted, upon current information and belief.
3. Admitted.
4. Admitted, upon current information and belief.
5. Admitted, for jurisdictional purposes only.

FACTS

6. Unknown at this time, and therefore denied.
7. Unknown at this time, and therefore denied.
8. Unknown at this time, and therefore denied.
9. Unknown at this time, and therefore denied.
10. Unknown at this time, and therefore denied.
11. Unknown at this time, and therefore denied.

12. Unknown at this time, and therefore denied.
13. Denied.
14. Denied.
15. Denied.
16. Denied.
17. Denied.
18. Denied.
19. Denied.

FIRST CAUSE OF ACTION
(Alleged Negligence, Gross Negligence, and Negligent Hiring/Supervision)

20. All other paragraphs are incorporated herein.
21. Denied.
22. This paragraph is directed toward another party, not against Defendant. To the extent an of these allegations are directed toward Defendant, they are denied.
23. This paragraph is directed toward another party, not against Defendant. To the extent an of these allegations are directed toward Defendant, they are denied.
24. This paragraph is directed toward another party, not against Defendant. To the extent an of these allegations are directed toward Defendant, they are denied.
25. All other paragraphs are incorporated herein.
26. Denied.
27. Denied, including all sub-paragraphs.
28. Denied.

- 29. Denied.
- 30. Denied.
- 31. Denied.
- 32. Denied.
- 33. Denied.
- 34. Denied.

Defendant further denies the paragraph beginning “Wherefore”, including all sub-paragraphs.

**AFFIRMATIVE DEFENSE
(Failure to State a Claim)**

Plaintiff’s Complaint fails to state a claim against Defendant that is proper and cognizable under applicable law.

**AFFIRMATIVE DEFENSE
(Statutes of Limitations and Repose)**

Plaintiff’s claims are barred by the applicable statute of limitations and statute of repose.

**AFFIRMATIVE DEFENSE
(Waiver and Laches)**

Plaintiff’s claims are barred or limited by the doctrine of waiver and laches.

**AFFIRMATIVE DEFENSE
(Estoppel)**

Plaintiff’s claims are barred by the doctrine of estoppel.

**AFFIRMATIVE DEFENSE
(Unclean Hands)**

Plaintiff's claims are barred by the doctrine of unclean hands.

**AFFIRMATIVE DEFENSE
(Reasonableness and Good Faith)**

Defendant acted at all times with reasonableness, in good faith, and without malice in her actions.

**AFFIRMATIVE DEFENSE
(Comparative and Contributory Negligence)**

Plaintiff's damages, if any, should be proportionately barred under the doctrine of comparative fault based on Plaintiff's own negligence and recklessness. If the claim is not barred, then any award to the Plaintiff should be reduced based on the negligence assigned to the Plaintiff.

**AFFIRMATIVE DEFENSE
(Intervening and Superseding Negligence)**

Plaintiff's alleged damages, if any, may have been due to and caused by the intervening and superseding negligence, recklessness, willfulness, and wantonness of people or entities other than Defendant.

**AFFIRMATIVE DEFENSE
(Sole Negligence of Others)**

Any alleged damages sustained by Plaintiff is due to and caused by the sole negligence of third persons or parties whom Defendant has no control, and therefore Defendant should not be held liable to Plaintiff.

**AFFIRMATIVE DEFENSE
(Failure to Mitigate)**

Plaintiff's claims and damages should be denied, barred, or reduced due to his failure to mitigate.

**AFFIRMATIVE DEFENSE
(Standard of Care)**

Plaintiff's claims are barred because Defendant complied with the applicable standard of care.

**AFFIRMATIVE DEFENSE
(Assumption of Risk)**

Plaintiff's claims are barred or limited because Plaintiff assumed the risks of his actions.

**AFFIRMATIVE DEFENSE
(No Duty)**

Defendant did not owe any purported duty to the Plaintiff so as to bar the Plaintiff from recovery against the Defendant.

**AFFIRMATIVE DEFENSE
(Lack of Proximate Cause)**

Plaintiff's damages, which are denied, were not proximately caused by any acts or omissions of the Defendant.

**AFFIRMATIVE DEFENSE
(Punitive Damages Unconstitutional)**

Plaintiff's demand for punitive damages is unconstitutional under the United States Constitution, the South Carolina Constitution and under federal law.

**AFFIRMATIVE DEFENSE
(Ongoing Investigation and Reservation of Rights)**

Defendant has not had an opportunity to conduct a sufficient investigation or to engage in adequate discovery regarding the circumstances of Plaintiff's allegations. Defendant intends to act as best Defendant can to inform itself of the pertinent facts and prevailing circumstances surrounding any purported injury or damage to Plaintiff as alleged in the Complaint and gives notice of Defendant's intent to assert any further affirmative defenses that the information gathering process may indicate is supported by fact and/or law.

WHEREFORE, having fully answered Plaintiff's Complaint and asserting the above affirmative defenses, Defendant Starr Distributing, LLC prays that the Complaint be dismissed with prejudice, that Defendant Starr Distributing, LLC be awarded the costs and reasonable fees associated with this matter, and other such relief as the Court may deem just and proper.

Respectfully submitted,

FORD WALLACE THOMSON LLC

By: s/Ian S. Ford

Ian S. Ford, Bar No. 12634

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Charleston, South Carolina 29403

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Attorneys for Defendant Starr Distributing, LLC

December 20, 2018
Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Charles Waymon Murphy,

Plaintiff,

vs.

Lori Ann Niverson; Starr Distributing, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL
CIRCUIT

CASE NO.: 2018-CP-07-02069

**DEFENDANT LORI ANN NIVERSON'S
ANSWER TO COMPLAINT
(Jury Trial Demanded)**

TO: J. ASHLEY TWOMBLEY, ATTORNEY FOR PLAINTIFF

The Defendant Lori Ann Niverson, above-named, answering the Complaint of the above-named Plaintiff, alleges and says as follows:

1. Defendant lacks sufficient information to form a belief as to the allegations and therefore denies the same.
2. Defendant admits she is a citizen and resident of Chatham County, Georgia.
3. The allegations in Paragraph 3 of plaintiff's complaint are not directed at this defendant and therefore no response is required. To the extent a response is required, defendant lacks sufficient information to form a belief as to the allegations and therefore, denies the same.
4. Defendant admits the accident that is the subject of this case occurred in Jasper County, South Carolina.
5. Defendant admits this court has personal and subject matter jurisdiction.
6. Defendant admits that on September 30, 2017 at approximately 2:23am, plaintiff was driving a Jeep northbound on Highway 17, near Hardeeville, South Carolina, and a construction vehicle was blocking the lane. Defendant lacks sufficient information to form a belief as to the remaining allegations and therefore denies the same.

7. Defendant admits that on September 30, 2017 at approximately 2:23am, she was driving northbound on Highway 17, near Hardeeville, South Carolina, and at some point behind plaintiff's vehicle.

8. Defendant admits upon seeing plaintiff's vehicle stopping, she steered her vehicle to the right to avoid hitting plaintiff, but ultimately made contact with plaintiff's vehicle. Defendant lacks sufficient information to form a belief as to the remaining allegations and therefore denies the same.

9. Defendant admits that following the accident, plaintiff's wife arrived in another vehicle, plaintiff drove that vehicle from the scene, and drove defendant to Bluffton. Defendant lacks sufficient information regarding injuries to plaintiff or medical treatment, if any, resulting from this accident, and therefore denies the same. Defendant denies the remaining allegations.

10. Defendant lacks sufficient information regarding injuries to plaintiff, if any, resulting from this accident, and therefore denies the same. Defendant denies the remaining allegations.

11. Defendant lacks sufficient information regarding injuries to plaintiff, if any, resulting from this accident, and therefore denies the same. Defendant denies the remaining allegations.

12. Defendant lacks sufficient information regarding injuries to plaintiff, if any, resulting from this accident, and therefore denies the same. Defendant denies the remaining allegations.

13. Denied.

14. Defendant admits she steered her vehicle to the right to avoid hitting plaintiff, but ultimately made contact with plaintiff's vehicle. Defendant lacks sufficient information to form a belief as to the remaining allegations and therefore denies the same.

15. Defendant lacks sufficient information regarding injuries or damages to plaintiff, if any, resulting from this accident, and therefore denies the same. Defendant denies the remaining allegations.

16. Defendant lacks sufficient information regarding injuries or damages to plaintiff, if any, resulting from this accident, and therefore denies the same. Defendant denies the remaining allegations.

17. Defendant admits upon seeing plaintiff's vehicle stopping, she steered her vehicle to the right to avoid hitting plaintiff, but ultimately her vehicle made contact with plaintiff's vehicle. Defendant denies the remaining allegations.

18. The allegations in Paragraph 18 of plaintiff's complaint are not directed at this defendant and do not require a response. To the extent a response is required, the same is denied.

19. The allegations in Paragraph 19 of plaintiff's complaint are not directed at this defendant and do not require a response. To the extent a response is required, the same is denied.

20. Defendant's responses contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

21. Defendant admits upon seeing plaintiff's vehicle stopping, she steered her vehicle to the right to avoid hitting plaintiff, but ultimately her vehicle made contact with plaintiff's vehicle. Defendant denies the remaining allegations.

22. Defendant's responses contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

23. Defendant admits drivers have a duty of care when operating motor vehicles.

24. Defendant admits upon seeing plaintiff's vehicle stopping, she steered her vehicle to the right to avoid hitting plaintiff, but ultimately her vehicle made contact with

plaintiff's vehicle. Defendant denies the remaining allegations.

25. Defendant's responses contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

26. The allegations in Paragraph 26 of plaintiff's complaint are not directed at this defendant and do not require a response. To the extent a response is required, the same is denied.

27. The allegations in Paragraph 27 of plaintiff's complaint are not directed at this defendant and do not require a response. To the extent a response is required, the same is denied.

28. Defendant admits upon seeing plaintiff's vehicle stopping, she steered her vehicle to the right to avoid hitting plaintiff, but ultimately her vehicle made contact with plaintiff's vehicle. Defendant denies the remaining allegations.

29. Defendant lacks sufficient information regarding injuries or damages to plaintiff, if any, resulting from this accident, and therefore denies the same. Defendant denies the remaining allegations.

30. Defendant lacks sufficient information regarding injuries or damages to plaintiff, if any, resulting from this accident, and therefore denies the same. Defendant denies the remaining allegations.

31. Defendant lacks sufficient information regarding injuries or damages to plaintiff, if any, resulting from this accident, and therefore denies the same. Defendant denies the remaining allegations.

32. Denied.

33. Denied.

34. Denied.

35. That the Defendant denies each and every allegation of the Complaint not

hereinabove in specifically admitted or modified.

FOR A FIRST AFFIRMATIVE DEFENSE
(Failure to State a Claim)

36. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

37. The Complaint fails to state facts sufficient to constitute a cause of action and the Complaint should be dismissed pursuant to the provisions of Rule 12(b)(6), SCRCP.

FOR A SECOND AFFIRMATIVE DEFENSE
(Failure to Mitigate Damages)

38. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

39. That the Plaintiff has failed to take prompt and reasonable action under the circumstances to avoid the occurrence of additional damages and such failure to mitigate damages constitutes a complete defense as to that portion of damages which could have been otherwise avoided by reasonable and prompt action on the part of the Plaintiff.

FOR A THIRD AFFIRMATIVE DEFENSE
(Comparative Negligence)

40. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

41. That the injuries and damages sustained by the Plaintiff, if any, were due to and caused by and were the direct and proximate result of the negligence, carelessness, recklessness, willfulness and wantonness of Plaintiff, and recovery should be barred or reduced in proportion to Plaintiff's negligence as provided by law.

42. In the event the alleged negligence of the Defendant operated as a fifty (50%) percent or greater proximate cause of the accident, which is expressly denied and admitted solely for the purpose of this defense, Defendant is entitled to a reduction

of any amount awarded to Plaintiff in an amount equal to that percentage of his negligence, recklessness and carelessness.

FOR A FORTH AFFIRMATIVE DEFENSE
(Sudden Emergency)

43. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

44. That even if the Defendant was negligent, reckless, willful and wanton, which the Defendant denies, such negligence, willfulness, wantonness and recklessness was occasioned and excused by the sudden emergency which presented itself to the Defendant and, as a result, the Defendant acted as a reasonable and prudent person would have acted under the circumstances then and there prevailing.

FOR A FIFTH AFFIRMATIVE DEFENSE
(Unavoidable Accident)

45. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

46. The subject accident was the result of an unavoidable accident and, by reason thereof, the Defendant should not be liable, and this defense is asserted as a complete and total defense to all claims.

FOR A SIXTH AFFIRMATIVE DEFENSE
(Accord and Satisfaction)

47. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

48. That plaintiff received payment in the amount of \$25,000 in exchange for a Release discharging any claims against this defendant.

FOR A SEVENTH AFFIRMATIVE DEFENSE
(Payment)

49. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

50. That plaintiff received payment in the amount of \$25,000 in exchange for a Release discharging any claims against this defendant.

FOR AN EIGHTH AFFIRMATIVE DEFENSE
(Release)

51. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

52. That plaintiff received payment in the amount of \$25,000 in exchange for a Release discharging any claims against this defendant.

FOR A NINTHAFFIRMATIVE DEFENSE
(Waiver)

53. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

54. That plaintiff received payment in the amount of \$25,000 in exchange for a Release discharging any claims against this defendant.

WHEREFORE, having fully answered the Complaint of the Plaintiff, the Defendant prays for a trial by jury and that the Plaintiff's Complaint be dismissed, together with the costs and disbursements of this action and for such other and further relief as this Court may deem just and proper.

[Signature on Follow Page]]

CLAWSON and STAUBES, LLC

s/Daniel Ranaldo
Daniel P. Ranaldo
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126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492-8144
Phone: (843) 577-2026
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Email: dranaldo@clawsonandstaubes.com
Attorney for Lori Ann Niverson

Charleston, South Carolina

January 29, 2019

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

COURT OF COMMON PLEAS
CIVIL CASE NO.: 2018-CP-07-2069

CHARLES WAYMON MURPHY,
Plaintiff,

v.

LORI ANN NIVERSON; STARR
DISTRIBUTING, LLC,
Defendants,

THIRD-PARTY COMPLAINT

STARR DISTRIBUTING, LLC,
Third-Party Plaintiff,

v.

ARTHUR C. NIVERSON,
Third-Party Defendant.

Defendant/Third-Party Plaintiff, Starr Distributing, LLC, complaining of Third-Party Defendant Arthur C. Niverson, would show this Honorable Court as follows:

JURISDICTION AND VENUE

1. Defendant/Third-Party Plaintiff, Starr Distributing, LLC is a limited liability company organized under the laws of the State of South Carolina and doing business in the County of Beaufort, South Carolina.

2. Upon information and belief, Third-Party Defendant Arthur C. Niverson ("Arthur Niverson") is a citizen and resident of Chatham County, Georgia.
3. The Complaint alleges that the collision that is the subject of the lawsuit occurred in Jasper County, South Carolina.
4. This Court has jurisdiction over the parties and subject matter described herein.

FACTUAL BACKGROUND

5. Plaintiff alleges that he sustained an injury on September 30, 2017, when his vehicle collided with a vehicle driven by Defendant Lori Ann Niverson.
6. Plaintiff has sued Defendant Starr Distributing, LLC, claiming that Defendant Lori Ann Niverson was an agent and employee of Starr Distributing, LLC and that Starr Distributing, LLC is liable under a theory of respondeat superior.
7. In fact, Starr Distributing, LLC, had no relationship whatsoever with Defendant Lori Ann Niverson.
8. On information and belief, on the day that the subject collision occurred, Defendant Lori Ann Niverson was the agent of Third-Party Defendant Arthur C. Niverson and was acting exclusively under his direction and control.
9. Third-Party Defendant Arthur C. Niverson was an independent contractor for Starr Distributing. His contract is attached hereto as Exhibit 1.
10. By the terms of his contract with Starr Distributing, Third-Party Defendant Arthur Niverson "agree[d] that in performance of this Agreement, he/she alone is responsible for any property damage, bodily injury or death caused by Contractor, his/her agents or employees." (Ex. 1, ¶11).

**FIRST CAUSE OF ACTION
(Equitable Indemnity)**

11. Starr Distributing incorporates all other paragraphs into this cause of action.
12. Starr Distributing has no fault for any alleged injuries or damages of the Plaintiff.
13. Starr Distributing had a special relationship with Third-Party Defendant Arthur Niverson, in that Arthur Niverson had an independent contractor relationship with Starr Distributing that required Arthur Niverson to be solely responsible for the acts of his agents in performing his obligations under the contract.
14. If Plaintiff's allegations as to Defendant Lori Ann Niverson's negligence are proven correct, then Third-Party Defendant Arthur Niverson is alone responsible for the Plaintiff's property damage and bodily injury.
15. Third-Party Defendant's actions have involved Starr Distributing in litigation with others and have placed it in such a relation with others as makes it necessary to incur expenses to protect its interest against the claims of the Plaintiff.
16. Starr Distributing is entitled to recover from Third-Party Defendant Arthur Niverson all necessary expenses incurred in defending itself against Plaintiff's claims, as well as any amount paid in settlement of those claims.

**SECOND CAUSE OF ACTION
(Negligence)**

17. Starr Distributing incorporates all other paragraphs into this cause of action.
18. Third-Party Defendant Arthur Niverson owed a duty to Starr Distributing to perform his duties and obligations under the contract reasonably and with due care.

19. If Plaintiff's allegations as to the acts of Defendant Lori Ann Niverson are proven correct, then Third-Party Defendant breached his duty by negligently supervising his agent, Defendant Lori Ann Niverson.

20. If Plaintiff's allegations as to the negligence of Defendant Lori Ann Niverson are proven correct, then as a direct and proximate result of such negligence, carelessness and recklessness, Starr Distributing may be damaged in the amount of any monies it is adjudged to owe Plaintiff, or which it pays Plaintiff in settlement of Plaintiff's claim, plus the cost of investigating and defending this claim.

21. Upon information and belief, Starr Distributing, LLC is entitled to judgment for actual damages against Third-Party Defendant, in the amount of any monies it is adjudged to owe Plaintiff, or which it pays Plaintiff in settlement of Plaintiff's claims, as well as fees and costs incurred in the investigation, defense, and settlement of this claim.

**THIRD CAUSE OF ACTION
(Breach of Contract)**

22. Starr Distributing, LLC incorporates all other paragraphs into this cause of action.

23. A valid and enforceable contract exists between Starr Distributing and Third-Party Defendant Arthur Niverson, the terms of which require Niverson to be solely "responsible for any property damage, bodily injury or death caused by [Arthur Niverson], his/her agents or employees." (Ex. 1, ¶11).

24. If Plaintiff's allegations are proven correct, then at the time of the alleged collision Defendant Lori Ann Niverson was an agent of Arthur Niverson, performing the obligations of Arthur Niverson under his contract with Starr Distributing.

25. Third-Party Defendant Arthur Niverson has breached his contract by failing to be responsible for the property damage and bodily injury allegedly caused by his agent Defendant Lori Ann Niverson.

26. As a direct result of Third-Party Defendant Arthur Niverson's breach, Starr Distributing has incurred damages in the amount of any money it is adjudged to owe Plaintiff, or which it pays Plaintiff in settlement of Plaintiff's claims, plus the cost of investigating and defending this claim.

**FOURTH CAUSE OF ACTION
(Contractual Indemnity)**

27. Starr Distributing, LLC incorporates all other paragraphs into this cause of action.

28. A valid and enforceable contract exists between Starr Distributing and Third-Party Defendant Arthur Niverson, the terms of which require Niverson to be solely "responsible for any property damage, bodily injury or death caused by [Arthur Niverson], his/her agents or employees." (Ex. 1, ¶11).

29. If Plaintiff's allegations are proven correct, then at the time of the alleged collision Defendant Lori Ann Niverson was an agent of Arthur Niverson, performing the obligations of Arthur Niverson under his contract with Starr Distributing.

30. Third-Party Defendant Arthur Niverson's contract with Starr Distributing entitles Starr Distributing to indemnification from Third-Party Defendant Arthur Niverson for all necessary expenses incurred in defending itself against Plaintiff's claims, as well as any amount paid in settlement of those claims.

WHEREFORE, Third-Party Plaintiff Starr Distributing, LLC requests that judgment be entered against Third-Party Defendant and that Third-Party Plaintiff be awarded the costs and reasonable attorney's fees associated with this action, and all other such relief as the Court may deem just and proper.

Respectfully submitted,

FORD WALLACE THOMSON LLC

By: s/Ainsley F. Tillman

Ian S. Ford

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Ainsley F. Tillman

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*Attorneys for Defendant/Third-Party Plaintiff
Starr Distributing, LLC*

April 19, 2019
Charleston, South Carolina

CERTIFICATE OF SERVICE

The undersigned certifies that on April 19, 2019, this document was served by electronic mail and/or first-class mail on all attorneys of record.

FORD WALLACE THOMSON LLC

s/Ainsley F. Tillman



**Starr Distributing
Independent Contractor Distribution Agreement**

1. Each carrier must be at the warehouse by 3:00am every day. If you arrive any later than 4:00 am, you will be charged \$20 per 10 minutes until you get your newspapers and are able to exit the warehouse. *Our warehouse Manager is only supposed to be there until 4am daily and 4:30am Sundays.
2. Contractor acknowledges and agrees that home delivery Subscriber complaints may cause a decrease in the number of Subscribers. Contractors agrees that the number of Subscriber complaints regarding delivery service should not exceed 1.50 per one thousand newspapers delivered daily.
3. Contractor agrees to pay to Starr Distributing \$2.00 for each missed delivery, wet paper not double bagged, each start or restart including vacation starts and restarts not started and for each stop not stopped (including vacation stops and will call stops).
4. Failure to pick up and deliver papers by Contractor will be considered abandonment and cause for immediate termination of contract. This includes all publications including the TMC products (Extras).
5. Contractor agrees to deliver any Additional products in good condition and to reasonable satisfaction of all subscribers, to all locations listed on the manifest. Contractor also agrees to deliver whatever preprinted advertising circulars, subscriber statements and or any other materials Starr Distributing may ask Contractor to deliver in connection with the Additional products.
6. Delivery area may be revised on a weekly basis as necessary to fulfill Starr Distributing's overall delivery obligations. Starr Distributing will provide Contractor with delivery manifest daily. The manifest will designate each location where deliveries are to be made and the number of products to be delivered at each location.
7. Contractor understands that this Agreement is with the Contractor and the Contractor is responsible for the delivery of all additional products.
8. Starr Distributing reserves the right to put in place any further security limitations as it deems necessary and the Contractor agrees to abide by those limitations.
9. Should Contractor fail to observe security limitations as set forth by Starr Distributing and its Agents or subverts those limitations by providing access to unauthorized individuals to the computer system or route delivery lists provided, Contractor shall be in violation of this Agreement and Contractor may be terminated for cause.
10. Information obtained from Starr Distributing or its Agent's computer system shall not be used for resale or use other than the administration and operation of the Contractor's business with Starr Distributing, its Agents and its Subscribers.
11. Vehicles/Insurance: A) Contractor alone will decide the number and type of vehicles Contractor needs to perform his/her obligations under this contract. B) Contractor agrees that the receipt, transportation, distribution and delivery by Contractor of copies of newspapers shall be made only in vehicles under his/her control or direction. C) As an independent contractor, Contractor acknowledges and agrees that in performance of this Agreement, he/she alone is responsible for any property damage, bodily injury or death caused by Contractor, his/her agents and employees. Contractor agrees, as an independent contractor, that neither Contractor nor Contractor's agents, sub-contractors or employees is eligible for worker's compensation benefits from Starr Distributing in the event Contractor and/or Contractor's agents, sub-contractors or employees is injured while performing Contractor's services pursuant to this Agreement. D) Contractor agrees to obtain from insurers of Contractor's choice which are licensed to do business in the states where Contractor shall perform this contract, and to maintain in force for the duration of this

1 | Page Contractor Initials AN Starr Distributing Initials JS

Starr Distributing Schedule of Fees and Rates

Starr Distributing agrees to pay the Contractor the following fees:

\$_____ per piece for delivery of an additional advertising product sample with the Newspaper.

\$ 7 per piece for Delivery of The Wall Street Journal to each Subscriber.

\$ 7 per piece for Delivery of USA Today to each Subscriber.

\$ 7 per piece for Delivery of SMN to each Subscriber.

\$ N/A per piece for Delivery of NYT to each Subscriber.

\$ 13 per piece for Delivery of The Beaufort Gazette on a Monday through Saturday to each Subscriber.

\$ 13 per piece for Delivery of The Beaufort Gazette on a Sunday to each Subscriber.

\$_____ per piece for Delivery of bulk, Newspaper In Education newspapers to specific drop location(s).

\$ -- per piece for Delivery of TV Books.

\$.07 per piece for Delivery of TMC Products.

\$.19 per piece for Delivery of Post & Courier.

\$.06 per piece for Delivery of The Beaufort Today.

\$_____ per hour for Warehouse Manager.

\$_____ per week for delivery of _____ Single Copy route.

\$ 25^w car allowance for Relay

AGREED:

STARR DISTRIBUTING
BY _____

CONTRACTOR

Print name Arthur C. Niversand

Signature Arthur C. Niversand

Date 11/2/16

3 | Page Contractor Initials AN Starr Distributing Initials [Signature]

contract, insurance. E) If Contractor requires the use of a Starr Distributing vehicle, there will be a charge of \$20 per day during the use of said vehicle and to replenish gasoline used during that time.

12. Contractor may be required to carry an Agilis device provided by Starr Distributing at no cost to the Contractor. This device is only used when on delivery routes and is used for tracking location.
13. Contractor must have a turn by turn for their delivery route(s) done within 1 month of the date of this contract. If this is not received within 1 month, then Starr Distributing or its Agents will charge \$100 per route to create said turn by turn(s). It is imperative that these be done in cases of emergency.
14. Contractor must provide at least a 30-day notice and be able to train their new route replacement. If a 30-day notice is not provided, then the Contractor will be charged \$50 per day until a new Contractor (Carrier) is trained properly.
15. Contractor will not hold Starr Distributing responsible for any injuries or accidents that may occur in the warehouse areas, including all areas inside and outside warehouse.
16. **Single Copy Carriers must provide returns sheet to Starr Distributing daily.** All return sheets for Sunday must be turned in by Monday at 1pm or you will not receive credit and you will be charged for your single copy newspapers per the manifests. These can be called in or text to 843-263-1524 or emailed to starrdistributing@gmail.com.
17. This is a one year contract and can be cancelled by Starr Distributing at any time for any reasonable reason noted above or otherwise.
18. You will be notified of any other addendums to this contract if such addendums are made.
19. See Schedule of Fees and Rates attached

IN WITNESS WHEREOF, Contractor and Starr Distributing, by and through its duly authorized representative, have caused this instrument to be executed at 45 Laurel Bay Rd, Unit 6, Beaufort, SC 29906 this _____ day of _____, _____ to be effective on the _____ day of _____, _____ and end exactly 1 year from this date.

STARR DISTRIBUTING

BY _____

CONTRACTOR

Print name _____

Signature 2217 Hawthorne St

Address Savannah GA 31404

Email Address _____

Phone Number _____

SSN _____

2 | Page Contractor Initials AN

Starr Distributing Initials JS

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Charles Waymon Murphy,

PLAINTIFF,

v.

Lori Ann Niverson; Starr Distributing, LLC,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2018-CP-07-02069

Answer to Third-Party Complaint

(Jury Trial Demanded)

Starr Distributing, LLC,

THIRD-PARTY PLAINTIFF,

v.

Arthur C. Niverson,

THIRD-PARTY DEFENDANT.

**TO: IAN S. FORD AND AINSLEY F. TILLMAN, ATTORNEYS FOR THE
THIRD-PARTY PLAINTIFF:**

Third-Party Defendant, Arthur C. Niverson, (hereinafter “the Defendant”),
answering the Third-Party Complaint would allege and show as follows:

1. The Defendant denies each and every allegation not specifically admitted
hereinafter and demands strict proof thereof.

FOR A FIRST DEFENSE

2. The Defendant lacks information or knowledge sufficient to form a belief as
to the truth of the matters asserted in Paragraph 1 and therefore denies same.

3. The Defendant admits the allegations in Paragraph 2.

4. Paragraphs 3 and 4 state conclusions of law and, accordingly, an answer is not required. To the extent an allegation of fact is made, the Defendant denies it.

5. Paragraphs 5 through 7 contain no allegations against the Defendant and therefore no answer is required. To the extent an allegation of fact is alleged, the Defendant denies same.

6. Paragraph 8 states a conclusion of law and, accordingly, an answer is not required. To the extent an allegation of fact is made, the Defendant denies it.

7. The Defendant admits the allegations in Paragraph 9.

8. Responding to Paragraph 10, the Defendant would allege and show that the contract speaks for itself. Further responding, the Defendant denies each and every remaining allegation of Paragraph 10.

9. Paragraph 11 contains no allegations against the Defendant and therefore no answer is required. To the extent an allegation of fact is alleged, the Defendant denies same.

10. The Defendant lacks information or knowledge sufficient to form a belief as to the truth of the matters asserted in Paragraph 12 and therefore denies same.

11. The Defendant denies the allegations in Paragraph 13. Further answering, the Defendant would allege and show that the contract speaks for itself.

12. The Defendant denies the allegations in Paragraphs 14 through 16.

13. Paragraph 17 contains no allegations against the Defendant and therefore no answer is required. To the extent an allegation of fact is alleged, the Defendant denies same.

14. Paragraph 18 states a conclusion of law and, accordingly, an answer is not required. To the extent an allegation of fact is made, the Defendant denies it.

15. The Defendant denies the allegations in Paragraph 19. Further answering, the Defendant would allege and show that at the time and place of the incident alleged in the Plaintiff's Complaint, Defendant Lori Niverson was going to work and not in the course and scope of employment with any business and not about the business of Third-Party Defendant, Niverson, nor Starr Distributing, LLC.

16. The Defendant denies the allegations in Paragraphs 20 through 21.

17. Paragraph 22 contains no allegations against the Defendant and therefore no answer is required. To the extent an allegation of fact is alleged, the Defendant denies same.

18. Responding to Paragraph 23, the Defendant would allege and show that the contract speaks for itself. Further responding, the Defendant denies each and every remaining allegation of Paragraph 23.

19. Paragraph 24 states a conclusion of law and, accordingly, an answer is not required. To the extent an allegation of fact is made, the Defendant denies it.

20. The Defendant denies the allegations in Paragraphs 25 and 26.

21. Paragraph 27 contains no allegations against the Defendant and therefore no answer is required. To the extent an allegation of fact is alleged, the Defendant denies same.

22. Responding to Paragraph 28, the Defendant would allege and show that the contract speaks for itself. Further responding, the Defendant denies each and every remaining allegation of Paragraph 28.

23. Paragraph 29 states a conclusion of law and, accordingly, an answer is not required. To the extent an allegation of fact is made, the Defendant denies it.

24. The Defendant denies the allegations in Paragraph 30. Further answering, the Defendant would allege and show that the contract speaks for itself.

FOR A SECOND DEFENSE
(Failure to State a Claim)

25. The above paragraphs are re-alleged.

26. The Third-Party Complaint fails to state facts sufficient to constitute a cause of action against Defendant and should be dismissed, pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE
(Comparative Negligence)

27. The above paragraphs are re-alleged.

28. Plaintiff, Charles Waymon Murphy (hereinafter "Plaintiff"), was negligent, grossly negligent, reckless, careless, willful and wanton in the following manner:

- a. in failing to keep proper lookout;
- b. in failing to avoid the collision;
- c. in operating the vehicle at a rate of speed which was excessive for the circumstances then prevailing;
- d. in failing to maintain proper control over the aforesaid vehicle;
- e. in failing properly to equip said vehicle with adequate and safe brakes; and, if so properly equipped, in failing properly to utilize them;
- f. in failing properly to equip said vehicle with adequate and safe steering mechanisms; and, if so properly equipped, in failing properly to utilize same;
- g. in failing properly to equip said vehicle with adequate signaling device or horn; and, if so properly equipped, in failing properly to utilize same;

- h. in failing properly to equip said vehicle with adequate and safe headlights; and, if so properly equipped, in failing properly to utilize same;
- i. in failing to take any evasive action, by any means, to keep from striking the Defendant;
- j. in failing properly to observe the road and traffic conditions;
- k. in failing to yield to vehicles with the right of way;
- l. in failing to exercise that degree of care a reasonable prudent person would have exercised under the same or similar circumstances; and
- m. such other particulars as the evidence in discovery and trial may show.

29. The Defendant is informed and believes that the acts and omissions set forth above combined with and contributed to the Plaintiff's own injuries; the Defendant is further informed and believes that the liability of the Defendant, if any, should be reduced in proportion to the Plaintiff's own negligence, and if Plaintiff's negligence exceeded that of Defendant, it be barred from any recovery.

FOR A FOURTH DEFENSE
(Sole Negligence of Another)

30. The above paragraphs are re-alleged.

31. The direct and proximate cause of the Plaintiff's injuries, if any, was due to the negligence, gross negligence, wanton and reckless conduct of some other person, or corporation and they were the sole cause of this accident and, accordingly, the Defendant is not liable for any damages or injuries sustained by the Plaintiff.

FOR A FIFTH DEFENSE
(Apportionment)

32. The above paragraphs are re-alleged.

33. The Defendant would further plead that should the jury find that this Defendant was in any way a contributing proximate cause to the accident in question, which is specifically denied, then this defendant would show that his/her liability was less than Fifty Percent (50%) of the total fault and should be liable for that percentage of the indivisible damages determined by the jury or trier of fact pursuant to S.C. Code Ann. § 15-38-15.

WHEREFORE, the Defendant, having fully answered the Third-Party Complaint, prays that this action be dismissed with costs to the Third-Party Plaintiff.

GRIFFITH, FREEMAN & LIIPFERT, LLC

By: s/ E. Mitchell Griffith
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ATTORNEYS FOR ARTHUR C. NIVERSON

July 19, 2019
 Beaufort, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2018-CP-07-2069

CHARLES WAYMON MURPHY,
Plaintiff,

v.

LORI ANN NIVERSON; STARR
DISTRIBUTING, LLC,
Defendants,

**NOTICE OF MOTION AND
MOTION FOR
SUMMARY JUDGMENT**

STARR DISTRIBUTING, LLC,
Third-Party Plaintiff,

v.

ARTHUR C. NIVERSON,
Third-Party Defendant.

TO: ASHLEY TWOMBLEY, ESQUIRE, ATTORNEY FOR PLAINTIFF

You will please take notice that the undersigned attorneys for Defendant Starr Distributing, LLC, ("Defendant" or the "Starr"), will move before the Court, ten (10) days from the date of this Motion or at a time and place to be set by the Court, for an order granting summary judgment as to all of Plaintiff's claims against Defendant Starr.

This Motion is based on the grounds that there is no genuine issue of material fact to adjudicate as to Plaintiff's causes of action against Defendant Starr, and Starr is entitled to judgment as a matter of law as to all allegations in Plaintiff's Complaint. Specifically, there is no relationship between Plaintiff and Defendant Starr, nor between Defendant

Starr and Defendant Lori Niverson, sufficient to support Plaintiff's negligence and *respondeat superior* theories of recovery from Defendant Starr.

This Motion is further supported by the pleadings in this case, as well as any additional affidavits, deposition transcripts, memoranda of law, and other materials which may be submitted to the Court prior to the hearing on this motion.

Respectfully submitted,

FORD WALLACE THOMSON LLC

s/ Ainsley F. Tillman
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Attorney for the Defendant Starr Distributing LLC

Charleston, South Carolina
December 21, 2020

CERTIFICATE OF SERVICE

The undersigned certifies that on December 21, 2020, this document was served by electronic mail on all attorneys of record.

FORD WALLACE THOMSON LLC

s/Ainsley F. Tillman

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2018-CP-07-2069

CHARLES WAYMON MURPHY,

Plaintiff,

v.

LORI ANN NIVERSON; STARR
DISTRIBUTING, LLC,

Defendants,

**NOTICE OF MOTION AND
MOTION FOR
SUMMARY JUDGMENT
AS TO CLAIMS AGAINST
THIRD-PARTY DEFENDANT
ARTHUR NIVERSON**

STARR DISTRIBUTING, LLC,

Third-Party Plaintiff,

v.

ARTHUR C. NIVERSON,

Third-Party Defendant.

TO: E. MITCHELL GRIFFITH, ESQUIRE, ATTORNEY FOR ARTHUR NIVERSON

You will please take notice that the undersigned attorneys for Defendant Starr Distributing, LLC, ("Defendant" or the "Starr"), will move before the Court, ten (10) days from the date of this Motion or at a time and place to be set by the Court, for an order granting summary judgment as to Starr's third-party claims against Third-Party Defendant Arthur Niverson ("Arthur Niverson") for contractual indemnification and breach of contract.

This Motion is based on the grounds that there is no question of material fact at issue, and Starr is entitled to judgment as a matter of law that the contract which governs

the relationship between Defendant Starr and Arthur Niverson requires Niverson to indemnify Starr.

This Motion is further supported by the pleadings in this case, as well as any additional affidavits, deposition transcripts, memoranda of law, and other materials which may be submitted to the Court prior to the hearing on this motion.

Respectfully submitted,

FORD WALLACE THOMSON LLC

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Attorney for the Third-Party Plaintiff
Starr Distributing LLC

Charleston, South Carolina
December 21, 2020

CERTIFICATE OF SERVICE

The undersigned certifies that on December 21, 2020, this document was served by electronic mail on all attorneys of record.

FORD WALLACE THOMSON LLC

s/Ainsley F. Tillman

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Charles Waymon Murphy,

PLAINTIFF,

v.

Lori Ann Niverson; Starr Distributing, LLC,

DEFENDANTS.

Starr Distributing, LLC,

THIRD-PARTY
PLAINTIFF,

v.

Arthur C. Niverson,

THIRD-PARTY
DEFENDANT.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2018-CP-07-02069

**Third-Party Defendant's Motion for
Summary Judgment**

TO: J. ASHLEY TWOMBLY, ATTORNEY FOR CHARLES WAYMON MURPHY AND PAUL TIMMERMANIAN S. FORD, HUNTER H. JAMES, AND AINSLEY F. TILLMAN, ATTORNEYS FOR STARR DISTRIBUTING, LLC.:

YOU WILL PLEASE TAKE NOTICE that, pursuant to Rule 56(b), SCRPC, Third-Party Defendant will move before the Presiding Judge for the Fourteenth Judicial Circuit, Beaufort County, at such time as the Court may designate, for an Order granting him Summary Judgment on the grounds that there is insufficient evidence to prove any cause of action against the Third-Party Defendant, and therefore judgment should be granted as a matter of law.

This motion will be further based on the case law, statutes or other evidence that may be presented at the hearing of this motion.

GRIFFITH, FREEMAN & LIIPFERT, LLC

By: s/ *E. Mitchell Griffith*

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ATTORNEYS FOR ARTHUR C. NIVERSON

December 29, 2020

Beaufort, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Charles Waymon Murphy,

PLAINTIFF,

v.

Lori Ann Niverson; Starr Distributing, LLC,

DEFENDANTS.

Starr Distributing, LLC,

THIRD-PARTY
PLAINTIFF,

v.

Arthur C. Niverson,

THIRD-PARTY
DEFENDANT.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2018-CP-07-02069

**THIRD-PARTY DEFENDANT'S
MEMORANDUM IN SUPPORT OF
HIS MOTION FOR SUMMARY
JUDGMENT**

TO: J. ASHLEY TWOMBLY, ATTORNEY FOR CHARLES WAYMON MURPHY AND IAN S. FORD, HUNTER H. JAMES, AND AINSLEY F. TILLMAN, ATTORNEYS FOR STARR DISTRIBUTING, LLC.:

NOW COMES the Third-Party Defendant, Arthur C. Niverson, ("Mr. Niverson"), in support of his Motion for Summary Judgment, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, and presents this memorandum of law.

FACTS AND PROCEDURAL BACKGROUND

This lawsuit arises from a motor vehicle accident that took place during the early morning hours of September 30, 2017 while the Plaintiff, Charles Murphy (hereinafter "Mr. Murphy"), and the Defendant, Lori Niverson (hereinafter "Ms. Niverson") were traveling

straight on Highway 17 near Hardeeville, South Carolina. (Pltf's Compl. ¶¶ 6 & 7) (Murphy Dep. 32:16-19). Mr. Murphy alleges that as he was stopped for road work on Highway 17, he was struck from behind by Ms. Niverson's vehicle. (Pltf's Compl. ¶ 8) (Murphy Dep. 33:11-16). Mr. Murphy claims personal injuries and other damages as a result of this accident. (Pltf's Compl. ¶¶ 10-12, 14-15). The Third-Party Defendant, Arthur Niverson (hereinafter "Mr. Niverson") was not involved in the accident and was not present at the scene of the accident. (Pltf's Compl.) Mr. Murphy has not brought a cause of action against Mr. Niverson. Instead, Mr. Murphy alleges that Ms. Niverson was an agent and employee of Defendant, Starr Distributing, LLC (hereinafter "Starr Distributing"), and that she was on a newspaper route delivering newspapers at the time of the accident. (Pltf's Compl. ¶ 13). Mr. Murphy, therefore, claims that Starr Distributing is responsible for his injuries under a theory of *respondeat superior*. (Pltf's Compl. ¶¶ 26 & 27).

The Third-Party Defendant, Arthur Niverson (hereinafter "Mr. Niverson"), was brought into this suit by Third-Party Complaint of Starr Distributing, LLC. Starr Distributing alleges that there was no employee-employer relationship between Starr Distributing and Ms. Niverson. (Third-Party Compl. ¶ 7). Starr Distributing alleges that Mr. Niverson was an independent contractor of Starr Distributing. (Third-Party Compl. ¶ 8).

The facts show that Ms. Niverson was not working, but was on her way to work, at the time of the accident. Mr. Murphy admits that Ms. Niverson told him and his wife that she was "on her way" to work to start delivering newspapers on the morning when the accident occurred. (Murphy Dep. 37:19 – 39:24; 66:11-13). He further testified that Ms. Niverson did not have any newspapers with her in her vehicle at the time of the accident.

(Murphy Dep. 66:2-10). Deposition testimony of Mr. and Ms. Niverson also demonstrates that Ms. Niverson was on her way to pick up papers at the time of the accident and did not have the papers with her at the time. (A. Niverson Dep. 53:7, L. Niverson Dep. 68:6-8, 77:1-10). She and her husband often split the duties of paper delivery for Starr Distributing, and Arthur Niverson was not working on this particular day. (A. Niverson Dep. 53, L. Niverson Dep. 73:19). Some days, Ms. Niverson or Mr. Niverson would stop and pick up the Savannah Morning News in Bluffton, South Carolina, before driving to the Starr Distributing Warehouse on Laurel Bay Road in Beaufort. (L. Niverson Dep. 38:10 to 39:11, and 64:1-25). Once at the distribution warehouse, her duties included folding and bagging the papers and preparing them for delivery. (L. Niverson Dep. 39:12-25). However, on the date of this accident, Ms. Niverson did not go pick up the Savannah Morning News from the Bluffton Location. (A. Niverson Dep. 53:7, L. Niverson Dep. 68:6-8, 77:1-10). Starr paid a flat \$25 per week payment for the Niversons' picking up the Savannah Morning Paper in Bluffton and delivering them to Beaufort. (L. Niverson Dep. 63:6-8).

Mr. Niverson had an agreement with Starr Distributing to deliver newspapers. (L. Niverson Dep. 72:8-14 & A. Niverson Dep. 22). Ms. Niverson was assisting her husband with deliveries. (L. Niverson Dep. 73:19 & A. Niverson Dep. 53:7). At the time of the accident, she was driving her personal vehicle, which was not owned or controlled by Starr Distributing at the time of the accident. (A. Niverson Dep 50:19, L. Niverson Dep. 75). Only after she arrived at the work location was she considered working, and she was not paid for her commute. (L. Niverson Dep. 80:12-15).

For the reasons that follow, Mr. Murphy's claims for negligence under the theory of

respondeat superior fail as a matter of law against Starr Distributing, and therefore the third-party claims against Mr. Niverson also fail.

STANDARD OF REVIEW

“[A] motion for summary judgment shall be granted ‘if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.’” *Media Gen. Commc’ns, Inc. v. S.C. Dep’t of Revenue*, 388 S.C. 138, 144, 694 S.E.2d 525, 527 (2010) (quoting Rule 56(c), SCRPC). “In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party.” *Quail Hill, LLC v. County of Richland*, 387 S.C. 223, 235, 692 S.E.2d 499, 505 (2010) (citation omitted). “Whether a duty exists in a negligence action is a question of law to be determined by the court.” *Nelson v. Piggly Wiggly Cent., Inc.*, 390 S.C. 382, 386, 701 S.E. 2d 776, 779 (S.C. Ct. App. 2010).

ARGUMENT

Under the doctrine of *respondeat superior*, “a master [is] liable to a third party for injuries caused by the tort of his servant committed within the scope of the servant's employment.” *South Carolina Ins. Co. v. James C. Greene & Co.*, 290 S.C. 171, 179, 348 S.E.2d 617, 621 (Ct. App. 1986); *see also Wade v. Berkeley Cty.*, 330 S.C. 311, 318–19, 498 S.E.2d 684, 688 (Ct. App. 1998). For a Plaintiff to recover from a master/employer under the doctrine, he “must establish that the relationship existed at the time of the injuries, and also that the servant was then about his master’s business and acting within the scope of his

employment.” *Armstrong v. Food Lion, Inc.*, 371 S.C. 271, 276, 639 S.E. 2d 50, 52 (2006). In other words, at the center of the *respondeat superior* theory is that the employee must be acting within the scope of her employment at the time of the tortious act. “An act is within the scope of [an employee’s] employment where reasonably necessary to accomplish the purpose of his employment and in furtherance of the [employer’s] business. *Id.* On the other hand:

The act of a servant done to effect some independent purpose of his own and not with reference to the service in which he is employed, or while he is acting as his own master for the time being, is not within the scope of his employment so as to render the master liable therefor. Under these circumstances the servant alone is liable for the injuries inflicted. If a servant steps aside from the master's business for some purpose wholly disconnected with his employment, the relation of master and servant is temporarily suspended; this is so no matter how short the time, and the master is not liable for his acts during such time.

Id. (citing to *Lane v. Modern Music, Inc.*, 244 S.C. 299, 136 S.E. 2d 713 (1964)).

Generally, where an employee is going to or coming from her place of work, she is “not engaged in performing a service growing out of and incidental to [her] employment;” therefore, no liability will lie with an employer where an employee is involved in an accident while going to or coming from work. *Wofford v. City of Spartanburg ex rel. S.C. Mun. Ins. Tr.*, 415 S.C. 152, 159, 781 S.E.2d 146, 149–50 (Ct. App. 2015) (citing to *Medlin v. Upstate Plaster Serv.*, 329 S.C. 92, 95, 495 S.E.2d 447, 449 (1998)). See also *Wade v. Berkeley County*, 330 S.C. 311, 320, 498 S.E. 2d 684, 688 (Ct. App. 1998) (“the general rule is that an employee driving his own vehicle to and from work is on his own business, and not engaged in work for the master”). However, South Carolina has recognized five exceptions to this rule. An employer may still be liable in those instances where (1) “the means of transportation is provided by the employer, or the time that is consumed is paid for or included in the wages;” (2) “the

employee, on his way to or from his work, is still charged with some duty or task in connection with his employment;” (3) the way to work is inherently dangerous and is either the exclusive way or is constructed and maintained by the employer; (4) the injury occurred in close proximity to the workplace and there is an express or implied requirement that the employee use that approach in going to and coming from work; and (5) an employee is injured “while performing a special task, service, mission, or errand for his employer, even before or after customary working hours, or on a day on which he does not ordinarily work.” *Id.*

As a preliminary matter, the first, third, and fourth exceptions do not apply because there is no dispute that the vehicle operated by Ms. Niverson on the date of the accident was her personal vehicle and was not owned by Starr. Further, while the Niversons received a flat \$25 per week payment for the Niversons’ picking up the Savannah Morning Paper and delivering them in Beaufort, Ms. Niverson had not picked up any papers on the day of the accident. (L. Niverson Dep. 63:6-8.). Regarding the third and fourth exceptions, there is no allegation that Ms. Niverson’s way to work is inherently dangerous or that the injury occurred in close proximity to the workplace. The second and fifth exceptions also do not apply and are discussed below.

A. Duty or Task Exception

Under the second exception, the “duty or task exception,” an employee will be considered within the scope of her employment if she is “charged with some duty or task in connection with her employment” while on the way to or coming from work. *Id.* In *Whitworth v. Window World, Inc.*, for example, an employee on his way to a window cleaning

job was not performing a duty or task for work because he had no work-related duties on his way, but was instead “free to conduct personal business.” 377 S.C. 637, 641, 661 S.E. 2d 333, 336 (2008). The Supreme Court in *Whitworth* held that the purpose of the window cleaner’s trip was a personal objective where he was traveling to the place where he would perform work. *Id.* Likewise, in *Wofford*, the Court of Appeals held that the plaintiff was not performing a duty or task for work at the time of his accident where he was “merely on his way to work to engage in his typical job responsibilities.” *Wofford*, 415 S.C. at 161, 781 S.E.2d at 151.

Like the plaintiff in *Wofford*, in the present case Lori Niverson had not yet commenced the duties or tasks associated with delivery of the papers. Rather, Ms. Niverson was “merely on [her] way to work to engage in [her] typical job responsibilities.” 415 S.C. at 161, 781 S.E.2d at 151. Accordingly, Ms. Niverson was not in the course and scope of her employment with Starr at the time of the accident, and Plaintiff’s claims for negligence under the theory of *respondeat superior* fail as a matter of law against Starr Distributing, and therefore the third-party claims against Mr. Niverson also fail.

B. Special Task or Mission

Under the “special task or mission” exception, an employee is within the course and scope of her employment where she is obligated to take on tasks or perform any services requested by an employer from the time of leaving home to the end of the work day. For example, the Supreme Court in *Bickley v. South Carolina Electric and Gas* held that an electrical lineman was performing a special task during his entire workday because he was obligated to make emergency calls and perform work outside his regular work hours. 259 S.C. 463, 471,

192 S.E. 2d 866, 870 (1972). However, where an employee is coming and going from tasks that are not unusual or special, but instead are common and customary in the course of business, these instances will not be considered within the “special task” exception. *See McDaniel v. Bus Terminal Restaurant Management Corp.*, 271 S.C. 299, 301-03, 247 S.E. 2d 321, 322-23 (1978) (Supreme Court held that cook was not within scope of employment when involved in accident while leaving regularly scheduled employee meeting because it was not unusual or “special”).

Similarly, like in *McDaniel*, Ms. Niverson was not engaging in a “special task” at the time of the accident. The record demonstrates that Ms. Niverson regularly picked up the Savannah Morning Paper in Bluffton before continuing on to Beaufort, and she received a \$25.00 fee for performing such service. Thus, stopping in Bluffton to pick up the papers would not be considered a “special task” because it is a routine and regular occurrence. Regardless of this fact, Ms. Niverson had not picked up the paper on the date of her accident, rather, she was on her way to work. In South Carolina, it is clearly established that one’s commute to work does not fall within the course and scope of their employment. *Wofford*, 415 S.C. at 159; *see also Wade*, 330 S.C. at 320.

Conclusion

For the reasons stated above, Arthur C. Niverson respectfully requests the court grant Summary Judgment in his favor as the allegations of *respondeat superior* fail as a matter of law.

GRIFFITH, FREEMAN & LIIPFERT, LLC

By: s/ *E. Mitchell Griffith*

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ATTORNEYS FOR ARTHUR C. NIVERSON

December 29, 2020
Beaufort, South Carolina

CHARLES WAYMON MURPHY vs LORI ANN NIVERSON
2018-CP-07-02069 - CHARLES MURPHY

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

CHARLES WAYMON MURPHY,

Plaintiff,

vs.

CIVIL ACTION NUMBER
2018-CP-07-02069

LORI ANN NIVERSON; STARR DISTRIBUTING, LLC,

Defendants.

-----/
STARR DISTRIBUTING, LLC,

Third-Party Plaintiff

vs.

ARTHUR C. NIVERSON,

Third-Party Defendant.

-----/

The deposition of CHARLES WAYMON MURPHY,
a witness in the above-entitled cause, taken
pursuant to Notice and agreement, before Ceil
Weser, Certified Court Reporter and Notary
Public, at The Law Offices of Twenge + Twombly,
311 Carteret Street, Beaufort, South Carolina,
on the 7th day of January, 2020, commencing at
or about the hour of 10:07 a.m.



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CHARLES WAYMON MURPHY vs LORI ANN NIVERSON
2018-CP-07-02069 - CHARLES MURPHY

33

1 A The first of the year we converted over
2 to 12-hour shifts. But back then it was 8-hour
3 shifts were your normal shifts.

4 Q So why did you have four extra hours?

5 A For overtime to help out.

6 Q What time had you gotten to work that
7 day?

8 A 2:00 o'clock.

9 Q I guess the day before?

10 A 2:00 p.m.

11 Q Tell me what you remember about the
12 accident.

13 A I was sitting still for road work and
14 got rear-ended.

15 Q Were you completely stopped?

16 A Yes.

17 Q Did you have lights on your car?

18 A Yes.

19 Q And were they on?

20 A Yes.

21 Q Were your taillights working?

22 A Yes.

23 Q Brake lights working?

24 A Yes, Ma'am.

25 Q Was there anything in front of you



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CHARLES WAYMON MURPHY vs LORI ANN NIVERSON
2018-CP-07-02069 - CHARLES MURPHY

37

1 A The rim, yes, Ma'am.

2 Q I am not a car person.

3 A Okay.

4 Q And then you have mentioned also the
5 tire was something --

6 A Knocked loose from the rim.

7 Q So where was the impact to your car
8 from this accident?

9 A The back passenger side.

10 Q Was there any damage to your car before
11 this accident?

12 A No.

13 Q Is there anything that was -- any
14 damage to the vehicle that was done in this
15 accident that is not shown in the photographs
16 that have been marked as Exhibit 1A through G?

17 A Not that I can see.

18 Q Thank you.

19 Do you know who it was in that vehicle
20 that you have mentioned that was behind you?

21 A No, Ma'am.

22 Q Did you talk to anyone in that vehicle
23 after?

24 A Yes, I talked to the lady driving the
25 vehicle.



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CHARLES WAYMON MURPHY vs LORI ANN NIVERSON
2018-CP-07-02069 - CHARLES MURPHY

38

- 1 Q So it was a lady?
- 2 A Yes.
- 3 Q Was there anyone else in the car with
- 4 her?
- 5 A No, there was not.
- 6 Q And what was that conversation with
- 7 her?
- 8 A I asked her was she okay.
- 9 Q What did she say?
- 10 A She held up her hand. Her finger was
- 11 broke.
- 12 Q Her finger was broken?
- 13 A The way it looked, yes.
- 14 Q Did you have any other conversations
- 15 with her?
- 16 A Yes. She asked could we take her to
- 17 her work, because her boss wanted her to come to
- 18 work. The State Trooper said he couldn't take
- 19 her.
- 20 Q Do you know if anyone did take her?
- 21 A My wife did.
- 22 Q Tiffany?
- 23 A Yes.
- 24 Q Do you know if your wife had any other
- 25 conversations with her during that ride?



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CHARLES WAYMON MURPHY vs LORI ANN NIVERSON
2018-CP-07-02069 - CHARLES MURPHY

39

1 A I did. I mean I was in the car with
2 her too. My wife dropped her off at her work
3 and then carried me to the hospital.

4 Q Tell me about those conversations that
5 occurred in the car?

6 A She was just talking about her boss
7 wanted her to get there to work and he was going
8 to let her use his truck.

9 Q Did she get any treatment for her
10 finger?

11 A No, she went to work. Her boss was
12 waiting on her when we drove up.

13 Q Do you know the name of her boss?

14 A No, I don't.

15 Q Do you know the name of the company she
16 was going to?

17 A No.

18 Q Where was it?

19 A It was the paper company is all I know.
20 The newspaper company.

21 Q Do you know where you dropped her off?
22 What the address was or location?

23 A No. It was -- I don't know the
24 address. No, I don't. It was in Bluffton.

25 Q Did she say anything else about her



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CHARLES WAYMON MURPHY vs LORI ANN NIVERSON
2018-CP-07-02069 - CHARLES MURPHY

66

1 A Yes.

2 Q Do you remember whether Miss Niverson
3 had newspapers with her?

4 A No, I do not.

5 Q Do you remember whether she didn't have
6 newspapers with her?

7 A She didn't have papers with her, no.

8 Q So Miss Niverson did not have
9 newspapers with her at the accident?

10 A Not that I know of.

11 Q So do you believe she was on her way to
12 work at the time?

13 A We took her to work, yes.

14 Q What kind of training do you think that
15 Starr Distributing could have done that would
16 have prevented this accident?

17 MR. TWOMBLEY: Object to the form
18 of the question.

19 THE WITNESS: Driver training.

20 BY MS. TILLMAN:

21 Q Well, if Mrs. Niverson was not employed
22 by Starr Distributing, do you think that Starr
23 Distributing is still responsible?

24 MR. TWOMBLEY: Object to the form
25 of the question.



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Deposition of:
Arthur C Niverson

September 15, 2020

In the Matter of:
**Murphy, Charles Waymon Vs.
Niverson, Lori Ann**

Certified Copy

A. William Roberts, Jr & Assoc.
800-743-3376 | calendar-awr@veritext.com | www.veritext.com

1 Q. Okay. So this is I guess attached to it,
2 it's a schedule of fees and rates. Do you see that?

3 A. Yes.

4 Q. And this is your signature down here at the
5 bottom?

6 A. Correct.

7 Q. Okay. Do you see that date here of
8 November 2nd, 2016?

9 A. Yes.

10 Q. All right. I want to ask you some
11 questions about this agreement. We'll just start
12 off --

13 MR. TWOMBLEY: And I'd like to make this an
14 exhibit. I don't know how everybody on the call is
15 handling that, but these aren't Bates stamped, but I
16 don't think there's any dispute about the three-page
17 document. Does anybody have any objection to us
18 sending that to the court reporter and having her make
19 it an exhibit to the deposition?

20 MR. GRIFFITH: As I understood, you're
21 using those three pages, Ashley?

22 MR. TWOMBLEY: Right. Correct.

23 MR. GRIFFITH: Okay. Because it looks like
24 it's a pretty big file.

25 MR. TWOMBLEY: Yeah. There's 11 pages

1 A. Something is going on with my phone. Okay.

2 Yep.

3 Q. Can you see paragraph 11?

4 A. Yes.

5 Q. Okay. Can you read to me subparagraph A?

6 A. It says contractor alone -- this phone
7 stuff keeps happening. Give me one second. Stuff
8 keeps coming over my phone. There we go.

9 "Contractor alone will decide the number and type
10 of vehicles contractor needs to perform his or her
11 obligations under this contract."

12 Q. All right. And what do you understand that
13 subparagraph A to mean?

14 A. That we can use multiple vehicles if we
15 wanted to. It doesn't matter which vehicle or type
16 that we could use to perform our job.

17 Q. And did you typically use your vehicle to
18 deliver newspapers?

19 A. Yes.

20 Q. And I think Mrs. Niverson testified that
21 you have one vehicle between you and Mrs. Niverson; is
22 that correct?

23 A. Correct.

24 Q. All right. And would you read for me
25 subparagraph B, please.

1 needed insurance?

2 A. Yes.

3 Q. Bear with me for one minute.

4 Let's talk about the day of the accident that is
5 the subject of this lawsuit. Were you or your wife
6 driving the vehicle at the time of the accident?

7 A. My wife was.

8 Q. And at the time of the accident was she on
9 her way to pick up newspapers?

10 A. Yes.

11 Q. Is it your understanding that she was on
12 her way and she had not gotten yet to the facility
13 where she picked up newspapers?

14 A. Correct.

15 Q. And had you asked her to drive the route
16 for you that morning?

17 A. Yes. That day she was actually driving it.
18 I had asked her to, yes.

19 Q. All right. Thank you very much for your
20 time. I don't have any further questions for you.

21 A. Thank you.

22 MR. GRIFFITH: There being nothing from
23 Dan, I assume we're through?

24 MR. TWOMBLEY: I don't have anything else.

25 MR. RANALDO: I have no questions.



Deposition of:
Lori Ann Niverson

September 15, 2020

In the Matter of:
**Murphy, Charles Waymon Vs.
Niverson, Lori Ann**

Certified Copy

A. William Roberts, Jr & Assoc.
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1 THE WITNESS: I would get up at 1:30 a.m.
2 and drive the paper route in Beaufort.

3 BY MR. TWOMBLEY:

4 Q. Let's take it step by step. You'd get up
5 at your house in Savannah at 1:30?

6 A. Correct.

7 Q. In the morning?

8 A. Correct.

9 Q. Where would you first go?

10 A. Sometimes I would stop by the Bluffton
11 location and pick up Savannah Morning News and then go
12 straight to Beaufort.

13 (Court reporter request for clarification.)

14 THE WITNESS: Go to the Beaufort location.

15 BY MR. TWOMBLEY:

16 Q. And, so, where is the Bluffton location?

17 A. At the time, it was on Bucks Island Road.

18 Q. Is that where the Beaufort Gazette building
19 is?

20 A. No.

21 Q. Okay. Was this a separate facility where
22 you'd pick up your papers?

23 A. I would only pick up Savannah Morning News
24 on my way to the Beaufort.

25 Q. And when you say to the Beaufort location,

1 where was the Beaufort location?

2 A. Laurel Bay Road.

3 Q. And, so, what was at the Beaufort location
4 at Laurel Bay Road? Was there a warehouse there?

5 A. It's a warehouse.

6 Q. Whose warehouse was it?

7 A. Starr Distributing.

8 Q. Okay. And what would happen when you would
9 arrive at Starr Distributing?

10 A. You would get your newspaper for your
11 route.

12 Q. Okay. I mean, just kind of walk me through
13 the process. I don't know anything about what you
14 would do, but -- I mean, did you have to go in and put
15 the papers together? Did you have to fold them? Did
16 you have to put them in bags? Were there other people
17 there? I mean, walk me through what you'd do on a
18 typical morning.

19 A. You pick up your paperwork which lets you
20 know how many customers you have from Starr. You get
21 the amount of papers you need and you bag some of them
22 that don't have a paper box. As you finish your
23 papers, rolling them, you go deliver them to the
24 houses.

25 COURT REPORTER: Let me clarify one part,

1 BY MR. TWOMBLEY:

2 Q. So the \$25 a day was for the service of
3 picking up the papers from Beaufort and bringing them
4 to Beaufort? I'm sorry. Bluffton rather than
5 Beaufort.

6 A. It wasn't \$25 a day, and it was for picking
7 up the Savannah Morning Newspaper and bringing them to
8 Beaufort with me.

9 Q. All right. Yeah, I apologize. I didn't
10 mean to say per day. But I guess that would have been
11 per pay period? Right?

12 A. Per week.

13 Q. Okay. Per week. So let's talk about the
14 day of the accident for a moment. The accident
15 happened on September 20, 2017. Is that consistent
16 with your memory?

17 A. Yes.

18 Q. Okay. Presumably you woke up at your house
19 that morning to start the day?

20 A. Yes.

21 Q. And then you were -- where were you going
22 to and from?

23 A. From my home to Beaufort.

24 Q. Okay. Had you picked up the Savannah
25 Morning News at the time the accident took place?

1 A. No.

2 Q. So you were on the way to pick up the
3 Savannah Morning News when the accident occurred?

4 A. I don't remember if I was picking them up
5 that day or not.

6 Q. Okay. Well, do you remember having to go
7 back and pick them up and bring them back to Beaufort?

8 A. No. Because my car was totaled.

9 Q. Do you know if anybody else had to go back
10 and pick them up?

11 A. They might have caught it in time to put
12 the papers on the truck to transport the Beaufort
13 Gazette papers from Bluffton to Beaufort.

14 Q. Well, this accident occurred on Speedway
15 Boulevard. Are you familiar with Speedway Boulevard?

16 A. Nope.

17 Q. Do you remember where the accident took
18 place?

19 A. I've never heard it called Speedway
20 Boulevard.

21 Q. What do you call the name of that street?

22 A. Highway 17.

23 Q. And where was it on Highway 17?

24 A. Right close to --

25 Q. Go ahead. I'm sorry.

1 MR. RANALDO: Object to the form.

2 THE WITNESS: It's possible, but I can't
3 answer for sure. I'm not a doctor.

4 BY MR. TWOMBLEY:

5 Q. Did your doctor know that you were driving
6 a paper route every day that required you to be at the
7 Starr Distributing warehouse at 3 a.m. every morning?

8 MS. TILLMAN: Object to the form.

9 MR. RANALDO: Object to the form.

10 THE WITNESS: Yes.

11 BY MR. TWOMBLEY:

12 Q. Were you required to be at the warehouse
13 every day by 3 a.m.?

14 MS. TILLMAN: Object to the form.

15 MR. RANALDO: Object to the form.

16 THE WITNESS: I think at one point they
17 made an assigned time to be there by. I don't
18 remember for sure because I was always on time anyway.

19 BY MR. TWOMBLEY:

20 Q. I'm just reading from this agreement that
21 your husband signed. The first sentence says each
22 carrier must be at the warehouse by 3 a.m. every day.
23 Were all of the carriers required to be at the
24 warehouse by 3 a.m. every day?

25 MS. TILLMAN: Object to the form.

1 represent Starr Distributing, and I wanted to go back
2 a little bit and clarify about a couple of the
3 questions that Mr. Twombly asked you.

4 Mr. Twombly referred to a contract frequently in
5 his questions of you. Was that contract with Arthur
6 Niverson and Starr Distributing that Mr. Twombly was
7 referring to?

8 A. Correct.

9 Q. So it was Arthur Niverson who was an
10 independent contractor for Starr Distributing; is that
11 correct?

12 MR. TWOMBLY: Object to the form.

13 THE WITNESS: As far as I believe, that's
14 what it's called is an independent contract.

15 BY MS. TILLMAN:

16 Q. Okay. Tell me about your relationship with
17 Arthur Niverson. Is he -- is it Niverson or Niverson
18 before I pronounce it incorrectly?

19 A. Niverson.

20 Q. Niverson. Sorry about that. And tell me
21 about your relationship with Arthur Niverson. Is he
22 your husband?

23 A. He's my husband. We've been married
24 31 years.

25 Q. That's a good long time. It is. So did

1 Arthur ask you to deliver newspapers for him?

2 A. He had a regular job, and when I was going
3 to give up the paper he wanted to take it over to not
4 lose the money, so I told him I would agree to keep
5 doing it, but I didn't want it in my name because I
6 didn't want to keep doing it.

7 Q. So he asked you to do it while he was
8 working for Bimbo Bakeries; is that correct?

9 MR. TWOMBLEY: Object to the form.

10 THE WITNESS: I don't remember how it all
11 came about. That was -- I don't know how many years
12 ago.

13 BY MS. TILLMAN:

14 Q. At the time of this accident we've been
15 talking about today that is the subject of this
16 lawsuit were you delivering papers for Arthur
17 Niverson?

18 MR. TWOMBLEY: Object to the form.

19 THE WITNESS: Yes.

20 BY MS. TILLMAN:

21 Q. And were you delivering -- did he tell you
22 what route you would be delivering the papers?

23 MR. TWOMBLEY: Object to the form, leading,
24 mischaracterizes the testimony.

25 BY MS. TILLMAN:

1 they would take the papers; is that accurate?

2 MR. TWOMBLEY: Object to the form.

3 THE WITNESS: Correct. As long as you
4 delivered to every address that was on the assigned
5 route, they don't care which way you deliver it as
6 long as you deliver the whole thing to everybody.

7 BY MS. TILLMAN:

8 Q. So would the carriers come up with what
9 they felt was the best way to deliver those papers and
10 that would be their route that they would take?

11 MR. TWOMBLEY: Object to the form.

12 THE WITNESS: Correct. As long as you did
13 the assigned addresses they don't care which way you
14 drive it.

15 BY MS. TILLMAN:

16 Q. And how many cars -- in 2017 how many cars
17 did you and your husband own together? Were you a one
18 car family or a two car family?

19 A. One.

20 Q. And who owned the car, was it Arthur or
21 you? Whose name was the title in?

22 A. Both.

23 Q. How did you decide who got to use the car
24 on any particular day?

25 A. Whoever needed it at the time got it.

1 Q. I see. And you said you couldn't remember
2 if you were picking up the Savannah papers; is that
3 correct?

4 A. Correct.

5 Q. And if you didn't pick up the Savannah
6 papers then what would you do?

7 A. Just go straight to Beaufort.

8 Q. Did you have any newspapers in your car at
9 the time that the accident occurred?

10 A. No.

11 Q. I don't have any further questions. Thank
12 you for your time.

13 A. Thank you.

14 MR. TWOMBLEY: Dan. Mitch. Do you have
15 anything?

16 CROSS-EXAMINATION

17 BY MR. GRIFFITH:

18 Q. Ms. Niverson, my name is Mitch Griffith. I
19 represent your husband. I have just one or two
20 questions. I'm sorry I'm a little late. Can you hear
21 me?

22 A. Yes.

23 Q. All right. As I understand, you woke up
24 that morning and you were -- did you have your papers
25 at that time?

1 MR. RANALDO: Object to the form.

2 MS. TILLMAN: I also object to the form.

3 THE WITNESS: Until I reach a location I am
4 not considered at work.

5 BY MR. TWOMBLEY:

6 Q. Well, I think that's a legal question. I'm
7 just asking you. Part of your responsibilities was to
8 go get those papers from Bluffton and to drive them to
9 Beaufort, correct?

10 MR. RANALDO: Object to the form.

11 MS. TILLMAN: Object to the form.

12 THE WITNESS: That's correct. But I am not
13 at the job until I get to that location. I don't get
14 paid for traveling time, so that is not counted as
15 work time.

16 BY MR. TWOMBLEY:

17 Q. But that was part of your job was to get
18 those papers from Bluffton and take them to Beaufort,
19 right?

20 MR. RANALDO: Object to the form.

21 MS. TILLMAN: Object to the form.

22 THE WITNESS: That is correct.

23 BY MR. TWOMBLEY:

24 Q. Okay. And that's what you were in the
25 process of doing was going to get the papers from

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2018-CP-07-2069

CHARLES WAYMON MURPHY,

Plaintiff,

v.

LORI ANN NIVERSON; STARR
DISTRIBUTING, LLC,

Defendants,

**STARR DISTRIBUTING, LLC'S
MEMORANDUM IN SUPPORT OF
MOTION FOR
SUMMARY JUDGMENT AS TO
PLAINTIFF**

STARR DISTRIBUTING, LLC,

Third-Party Plaintiff,

v.

ARTHUR C. NIVERSON,

Third-Party Defendant.

Defendant Starr Distributing, LLC, ("Defendant" or "Starr Distributing") respectfully submits this Memorandum in support of its motion for summary judgment as to all of Plaintiff's claims, filed on December 21, 2020.

Starr Distributing is entitled to summary judgment on all of Plaintiff's claims because Starr Distributing has no legal relationship with, or responsibility to, the people involved in the car accident—Plaintiff Charles Murphy and Defendant Lori Niverson. Starr Distributing (a newspaper delivery company) was not present at the accident, and Mrs. Niverson did not work for Starr Distributing. Instead, Mrs. Niverson was filling in

for her husband, Arthur Niverson, who was an independent contractor of Starr Distributing (Mr. Niverson delivers newspapers, as an independent contractor); at the time of the accident, Mrs. Niverson was on her way to his work, on her husband's behalf. Under those undisputed facts, Starr Distributing is entitled to summary judgment as to Plaintiff's claims.

FACTS AND PROCEDURAL BACKGROUND

This lawsuit arises from a motor vehicle accident that took place during the early morning hours of September 30, 2017, while Plaintiff and Mrs. Niverson were each traveling straight on Highway 17 near Hardeeville, South Carolina. (Pltf's Compl. ¶¶ 6 & 7); (Exhibit 1: Murphy Dep. 32:16-19). Plaintiff alleges that as he was stopped for road work on Highway 17, he was struck from behind by Mrs. Niverson's vehicle. (Pltf's Compl. ¶ 8); (Ex. 1: Murphy Dep. 33:11- 16). Plaintiff claims personal injuries and other damages as a result of this accident. (Pltf's Compl. ¶¶ 10-12, 14-15).

Mrs. Niverson was not an agent or employee of Starr Distributing at the time of the accident, and she was not in the process of delivering newspapers. Mrs. Niverson's husband, the Third-Party Defendant Arthur Niverson, was not involved in the accident and was not present at the scene of the accident. (Pltf's Compl.) Plaintiff has not brought a cause of action against Mr. Niverson. Instead, Plaintiff incorrectly alleges that Mrs. Niverson was an agent and employee of Starr Distributing, and that she was on a newspaper route delivering newspapers at the time of the accident. (Pltf's Compl. ¶ 13). Plaintiff, therefore, claims that Starr Distributing is responsible for his injuries under a

theory of *respondent superior*. (Pltf's Compl. ¶¶ 26 & 27). Extensive discovery has revealed these allegations to be unsupported by the facts.

Mr. Niverson was brought into this suit by Starr Distributing. Starr Distributing has shown that there was no employee-employer relationship between Starr Distributing and Mrs. Niverson, and therefore Starr Distributing cannot be legally responsible for Mrs. Niverson's role in the accident. Instead, Mr. Niverson was an independent contractor of Starr Distributing, and his wife Mrs. Niverson was filling in for her husband.

Moreover, the facts show that Mrs. Niverson was not working, but was on her way to work, at the time of the accident. Plaintiff admits that Mrs. Niverson told him and his wife that she was "on her way" to work to start delivering newspapers on the morning when the accident occurred. (Ex 1: Murphy Dep. 37:19-39:24, 66:11-13). Plaintiff further testified that Mrs. Niverson did not have any newspapers with her in her vehicle at the time of the accident. (Ex. 1: Murphy Dep. 66:2-10). Similarly, deposition testimony of Mr. and Mrs. Niverson also demonstrates that Mrs. Niverson was *on her way* to pick up papers at the time of the accident and did not have the papers with her at the time. (Exhibit 2: A. Niverson Dep. 53:7; Exhibit 3: L. Niverson Dep. 68:6-8, 77:1-10). She and her husband often split duties, and Mr. Niverson was not working on this particular day. (Ex. 2: A. Niverson Dep. 53; Ex. 3: L. Niverson Dep. 73:19). Some days, Mrs. Niverson or Mr. Niverson would stop and pick up the Savannah Morning News in Bluffton, South Carolina, before driving to the Starr Distributing Warehouse on Laurel Bay Road in Beaufort. (Ex. 3: L. Niverson Dep. 38:10 to 39:11, and 64:1-25). However, on the date of

this accident, Mrs. Niverson did not go pick up the Savannah Morning News from the Bluffton Location. (Ex. 2: A. Niverson Dep. 53:7, Ex. 3: L. Niverson Dep. 68:6-8, 77:1-10). Starr Distributing paid a flat \$25 per week payment for Mr. Niverson picking up the Savannah Morning Paper in Bluffton and delivering them to Beaufort. (Ex. 3: L. Niverson Dep. 63:6-8.).

Only Mr. Niverson had an agreement with Starr Distributing to deliver newspapers. (Ex. 3: L. Niverson Dep. 72:8-14; Ex. 2: A. Niverson Dep. 22). That agreement – titled “**Starr Distributing Independent Contractor Distribution Agreement**” – is attached as Exhibit 4 (the “Independent Contractor Agreement”). There is no dispute that Arthur Niverson executed and entered into that agreement. The Independent Contractor Agreement specifies, among other things, that:

As an independent contractor, Contractor [Arthur Niverson] acknowledges and agrees that in performance of this Agreement, he/she alone is responsible for any property damage, bodily injury or death caused by Contractor, his/her agents and employees. . . .

Id. at p. 1, ¶ 11(C).

As stated above, Ms. Niverson was assisting her husband with deliveries. (Ex. 3: L. Niverson Dep. 73:19; Ex. 2: A. Niverson Dep. 53:7). At the time of the accident, she was driving her personal vehicle, which was not owned or controlled by Starr Distributing. (Ex. 2: A. Niverson Dep 50:19; Ex. 3: L. Niverson Dep. 75). Only after she arrived at the work location was she considered working, and she was not paid for her commute. (Ex. 3: L. Niverson Dep. 80:12-15).

For the reasons that follow, Plaintiff's claims for negligence, gross negligence, and negligent hiring/supervision fail as a matter of law against Starr Distributing.

STANDARD OF REVIEW

"[A] motion for summary judgment shall be granted 'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" *Media Gen. Commc'ns, Inc. v. S.C. Dep't of Revenue*, 388 S.C. 138, 144, 694 S.E.2d 525, 527 (2010) (quoting Rule 56(c), SCRCP). "In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party." *Quail Hill, LLC v. County of Richland*, 387 S.C. 223, 235, 692 S.E.2d 499, 505 (2010) (citation omitted). "Whether a duty exists in a negligence action is a question of law to be determined by the court." *Nelson v. Piggly Wiggly Cent., Inc.*, 390 S.C. 382, 386, 701 S.E. 2d 776, 779 (S.C. Ct. App. 2010).

ARGUMENT

Summary judgment should be granted to Starr Distributing because it had no relationship with the Defendant driver (Mrs. Niverson) sufficient to support any recovery by Plaintiff against it. Only Mrs. Niverson, who was not employed by Starr Distributing, was involved in the accident with Plaintiff. Starr Distributing had no legal relationship at all with Mrs. Niverson, and Mrs. Niverson was not in the process of delivering

newspapers at the time of the accident. Given those undisputed facts, there is no genuine issue of material fact that Starr Distributing cannot be held liable, as a matter of law, for the acts of Mrs. Niverson that morning on her way to work on behalf of her husband.

A. There is no genuine issue of material fact that Mrs. Niverson had no relationship with Starr Distributing.

“The general rule is that an employer is not vicariously liable for the negligent acts of an independent contractor.” *Rock Hill v. Globe Communications*, 611 S.E.2d 235, 363 S.C. 385 (S.C. 2005) (citing *Duane v. Presley Constr. Co., Inc.*, 270 S.C. 682, 683, 244 S.E.2d 509, 510 (1978)). In this case, Mrs. Niverson was neither an employee of nor an independent contractor with Starr Distributing. The undisputed Independent Contractor Agreement establishes that Mrs. Niverson’s husband, Arthur Niverson, was an independent contractor of Starr Distributing. That agreement specifies that Mr. Niverson “alone is responsible for any property damage, bodily injury or death caused by Contractor, his/her agents and employees. . . .” Ex. 4, p. 1, ¶ 11(C). The undisputed testimony establishes that Mrs. Niverson was filling in for her husband on the morning of the accident, and she was acting on his behalf. Mrs. Niverson (a) had no legal relationship at all with Starr Distributing, and (b) in any event, was acting through her independent contractor husband, for which Starr Distributing cannot be liable. Therefore, Starr Distributing cannot be held liable to Plaintiff for Plaintiff’s accident with Ms. Niverson.

B. Even under Plaintiff’s “employee” argument, Starr Distributing cannot be found liable as a matter of law for the actions of Mrs. Niverson on her way to work.

Plaintiff cannot point to any evidence that demonstrates that Mrs. Niverson was

an employee of Starr Distributing at the time of the accident. However, even assuming *arguendo* that Mrs. Niverson was somehow an employee, Starr Distributing cannot be held liable for her accident **on the way to work**. Under the doctrine of *respondeat superior*, “a master [is] liable to a third party for injuries caused by the tort of his servant committed within the scope of the servant's employment.” *South Carolina Ins. Co. v. James C. Greene & Co.*, 290 S.C. 171, 179, 348 S.E.2d 617, 621 (Ct. App. 1986); *see also Wade v. Berkeley Cty.*, 330 S.C. 311, 318–19, 498 S.E.2d 684, 688 (Ct. App. 1998). For a Plaintiff to recover from a master/employer under the doctrine, he “must establish that the relationship existed at the time of the injuries, and also that the servant was then about his master’s business and acting within the scope of his employment.” *Armstrong v. Food Lion, Inc.*, 371 S.C. 271, 276, 639 S.E. 2d 50, 52 (2006). In other words, at the center of the *respondeat superior* theory is that the employee must be acting within the scope of her employment at the time of the tortious act. “An act is within the scope of [an employee’s] employment where reasonably necessary to accomplish the purpose of his employment and in furtherance of the [employer’s] business.” *Id.* On the other hand:

The act of a servant done to effect some independent purpose of his own and not with reference to the service in which he is employed, or while he is acting as his own master for the time being, is not within the scope of his employment so as to render the master liable therefor. Under these circumstances the servant alone is liable for the injuries inflicted. If a servant steps aside from the master's business for some purpose wholly disconnected with his employment, the relation of master and servant is temporarily suspended; this is so no matter how short the time, and the master is not liable for his acts during such time.

Id. (citing *Lane v. Modern Music, Inc.*, 244 S.C. 299, 136 S.E. 2d 713 (1964)).

Generally, where an employee is going to or coming from her place of work, she

is “not engaged in performing a service growing out of and incidental to [her] employment;” therefore, no liability will lie with an employer where an employee is involved in an accident while going to or coming from work. *Wofford v. City of Spartanburg ex rel. S.C. Mun. Ins. Tr.*, 415 S.C. 152, 159, 781 S.E.2d 146, 149–50 (Ct. App. 2015) (citing *Medlin v. Upstate Plaster Serv.*, 329 S.C. 92, 95, 495 S.E.2d 447, 449 (1998)); see also *Wade v. Berkeley County*, 330 S.C. 311, 320, 498 S.E. 2d 684, 688 (Ct. App. 1998) (“the general rule is that an employee driving his own vehicle to and from work is on his own business, and not engaged in work for the master”).

South Carolina has recognized five exceptions to this rule. An employer may still be liable in those instances where (1) “the means of transportation is provided by the employer, or the time that is consumed is paid for or included in the wages”; (2) “the employee, on his way to or from his work, is still charged with some duty or task in connection with his employment”; (3) the way to work is inherently dangerous and is either the exclusive way or is constructed and maintained by the employer; (4) the injury occurred in close proximity to the workplace and there is an express or implied requirement that the employee use that approach in going to and coming from work; and (5) an employee is injured “while performing a special task, service, mission, or errand for his employer, even before or after customary working hours, or on a day on which he does not ordinarily work.” *Id.*

As a preliminary matter, the first, third, and fourth exceptions do not apply because there is no dispute that the vehicle operated by Mrs. Niverson on the date of the

accident was her personal vehicle and was not owned by Starr Distributing. Further, although Mr. Niverson received a flat \$25 per week payment for picking up the Savannah Morning Paper and delivering them in Beaufort, Mrs. Niverson had not picked up any papers on the day of the accident. (Ex. 3: L. Niverson Dep. 63:6-8.). Regarding the third and fourth exceptions, there is no allegation that Ms. Niverson's way to work is inherently dangerous or that the injury occurred in close proximity to the workplace. The second and fifth exceptions also do not apply and are discussed below.

A. Duty or Task Exception

Under the second exception, the "duty or task exception," an employee will be considered within the scope of her employment if she is "charged with some duty or task in connection with her employment" while on the way to or coming from work. *Id.* In *Whitworth v. Window World, Inc.*, for example, an employee on his way to a window cleaning job was not performing a duty or task for work because he had no work-related duties on his way, but was instead "free to conduct personal business." 377 S.C. 637, 641, 661 S.E. 2d 333, 336 (2008). The Supreme Court in *Whitworth* held that the purpose of the window cleaner's trip was a personal objective where he was traveling to the place where he would perform work. *Id.* Likewise, in *Wofford*, the Court of Appeals held that the plaintiff was not performing a duty or task for work at the time of his accident where he was "merely on his way to work to engage in his typical job responsibilities." *Wofford*, 415 S.C. at 161, 781 S.E.2d at 151.

Like the plaintiff in *Wofford*, in the present case Lori Niverson had not yet

commenced the duties or tasks associated with delivery of the papers. Rather, Mrs. Niverson was “merely on [her] way to work to engage in [her] typical job responsibilities.” 415 S.C. at 161, 781 S.E.2d at 151. Accordingly, Mrs. Niverson was not in the course and scope of any work with Starr Distributing at the time of the accident, and Plaintiff’s claims for negligence under the theory of *respondeat superior* fail as a matter of law against Starr Distributing.

B. Special Task or Mission

Under the “special task or mission” exception, an employee is within the course and scope of her employment where she is obligated to take on tasks or perform any services requested by an employer from the time of leaving home to the end of the work day. For example, the South Carolina Supreme Court in *Bickley v. South Carolina Electric and Gas* held that an electrical lineman was performing a special task during his entire workday because he was obligated to make emergency calls and perform work outside his regular work hours. 259 S.C. 463, 471, 192 S.E. 2d 866, 870 (1972). However, where an employee is coming and going from tasks that are not unusual or special, but instead are common and customary in the course of business, those instances will not be considered within the “special task” exception. See *McDaniel v. Bus Terminal Restaurant Management Corp.*, 271 S.C. 299, 301-03, 247 S.E. 2d 321, 322-23 (1978) (S.C. Supreme Court held that cook was not within scope of employment when involved in accident while leaving regularly scheduled employee meeting because it was not unusual or “special”).

Similarly, like in *McDaniel*, Mrs. Niverson was not engaging in a “special task” at

the time of the accident. The record demonstrates that Mr. Niverson (or Mrs. Niverson, acting on his behalf) regularly picked up the Savannah Morning Paper in Bluffton before continuing on to Beaufort, and her husband, Mr. Niverson, received a \$25.00 fee for performing such service. Thus, stopping in Bluffton to pick up the papers would not be considered a “special task” because it is a routine and regular occurrence.

Regardless of this fact, Mrs. Niverson had not picked up the paper on the date of her accident, rather, she was on her way to work. In South Carolina, it is clearly established that one’s commute to work does not fall within the course and scope of their employment. *Wofford*, 415 S.C. at 159; *see also Wade*, 330 S.C. at 320.

CONCLUSION

For these reasons, this Court should grant Starr Distributing’s motion for summary judgment as to Plaintiff’s claims against it.

Respectfully submitted,

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Charleston, South Carolina
January 22, 2020

Exhibit 1: Plaintiff transcript

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I N D E X



Page 6

Page 7

1 A Probably 2005.
 2 **Q And what was it in regards to?**
 3 A Somebody getting hurt at work.
 4 **Q Was it you?**
 5 A No.
 6 **Q Were you in charge of that person?**
 7 A No.
 8 **Q Or their boss?**
 9 A No.
 10 **Q So tell me a little bit more about**
 11 **that.**
 12 **Why did you have to give a deposition?**
 13 A I was working with him.
 14 **Q You saw the incident occur?**
 15 A I didn't really see it. I was working
 16 with him, so I didn't really have much to add to
 17 it.
 18 **Q And what company was that?**
 19 A International Paper Company.
 20 **Q Do you still work there now?**
 21 A Yes.
 22 **Q How long have you worked at**
 23 **International Paper Company?**
 24 A 30 years.
 25 **Q Other than giving that deposition in**

1 2005, have you given any other depositions
 2 before?
 3 A No.
 4 **Q Since that was a little while ago I**
 5 **will go over the ground rules with you. You are**
 6 **doing great so far.**
 7 **And I understand you have a cold today?**
 8 A Yes.
 9 **Q If you need to take a break or need**
 10 **tissues, that is the first thing I will tell**
 11 **you, take the break. It is your deposition.**
 12 A Okay.
 13 **Q It is not a race, so let us know if you**
 14 **need one?**
 15 A Okay.
 16 **Q This is my opportunity and everybody**
 17 **else's opportunity today to find out what your**
 18 **take is on this accident and what your testimony**
 19 **will be if we were to go to trial on the case.**
 20 A (Nods).
 21 **Q Along those lines the main reason we**
 22 **are here today is to get a deposition transcript**
 23 **and that is why the court reporter is sitting**
 24 **with us. And as you may remember from your**
 25 **first deposition that is why we have some rules**

Page 8

Page 9

1 here. The main rule is we can't give nonverbal
 2 cues, like uh-huh or uh-uh or pointing to a body
 3 part. She can't got that down for the record
 4 and so when we will look at the transcript later
 5 and that won't make any sense to us. So if I
 6 have to remind you to give a verbal response
 7 like a yes or a no, I am not trying to be rude,
 8 I am making sure I get my record, okay?
 9 A Okay.
 10 **Q The other thing to keep in mind is if**
 11 **we start to talk over each other, she will**
 12 **probably interrupt us and tell us to stop. That**
 13 **is very hard for her to get everything down. So**
 14 **I will let you finish what you are saying and**
 15 **then before I ask my next question, then if you**
 16 **will do the same for me, I think we will good to**
 17 **go, okay?**
 18 A Okay.
 19 **Q If you do answer the question as it is**
 20 **posed to you, I am going to assume that you**
 21 **understood it and you are answering truthfully**
 22 **and accurately, is that fair?**
 23 A Okay.
 24 **Q If there is something that I say that**
 25 **doesn't make sense to you or you need me to**

1 rephrase, let me know. I don't want you to
 2 answer anything that you don't understand, okay?
 3 A Okay.
 4 **Q Can you state your full name?**
 5 A Charles Waymon Murphy.
 6 **Q How do you spell your middle name?**
 7 A W-a-y-m-o-n.
 8 **Q Have you ever gone by any other names?**
 9 A No.
 10 **Q What is your date of birth?**
 11 A [REDACTED].
 12 **Q And so how old are you?**
 13 A 56.
 14 **Q And what is your current address?**
 15 A [REDACTED], Bluffton, South
 16 Carolina 299 -- I don't know that. I don't
 17 remember the zip code.
 18 **Q But it is the Bluffton zip code?**
 19 A Yes.
 20 **Q 29910?**
 21 A No, 209. It is really Okatie.
 22 **Q Okay, Okatie.**
 23 **How long have you lived at that**
 24 **address?**
 25 A Seven years.



Page 10

1 **Q** Were you living there at the time of
2 this accident?
3 A Yes, Ma'am.
4 **Q** And who was living there with you at
5 the time of this accident?
6 A My wife and son and daughter.
7 **Q** And what is your wife's name?
8 A Tiffany.
9 **Q** Does she go by your last name Murphy?
10 A Yes, Ma'am.
11 **Q** Are your son and daughter over the age
12 of 18?
13 A My son is.
14 **Q** What is his name?
15 A Chance.
16 **Q** Murphy?
17 A Yes.
18 **Q** What is your daughter's name?
19 A Victoria. She goes by Tory.
20 **Q** Anyone else other than the one's you
21 have already mentioned living with you at the
22 time of the accident?
23 A No.
24 **Q** You said you have been in that home for
25 seven years?

Page 12

1 **Q** Have any of them ever lived in Beaufort
2 County?
3 A One.
4 **Q** And what was their name or is their
5 name?
6 A Alex.
7 **Q** Last name?
8 A Murphy. Alexandra Murphy.
9 **Q** But the other two children have never
10 lived in Beaufort?
11 A Never.
12 **Q** And have you been married before
13 Tiffany?
14 A Yes.
15 **Q** How many times?
16 A Once.
17 **Q** When were you married?
18 A 1983.
19 **Q** And did you get divorced?
20 A Yes.
21 **Q** What year did you get divorced?
22 A 1986. A very brief marriage.
23 **Q** What was her name?
24 A Angela.
25 **Q** Last name?

Page 11

1 A Yes, Ma'am.
2 **Q** Where did you live before that?
3 A In Savannah.
4 **Q** What about before that?
5 A Monroe, Louisiana.
6 **Q** Louisiana?
7 A Monroe, Louisiana.
8 **Q** Where are from originally?
9 A Monroe.
10 **Q** And then from there you moved to
11 Savannah?
12 A Yes.
13 **Q** Have you ever lived in any other states
14 other than Louisiana, Georgia and South
15 Carolina?
16 A Arkansas when I was born.
17 **Q** Any other states?
18 A No.
19 **Q** Any other children other than Chance
20 and Victoria?
21 A Yes.
22 **Q** Where are they?
23 A Louisiana, Georgia, Tennessee.
24 **Q** How many are there?
25 A Three.

Page 13

1 A Anderson.
2 **Q** Other than Angela and Tiffany any other
3 marriages?
4 A No.
5 **Q** And your other three children, are they
6 Tiffany's children?
7 A One is Tiffany's.
8 **Q** Which one?
9 A Alex.
10 **Q** What about the other two?
11 A One is Angela's and the one in
12 Tennessee is Tammy's.
13 **Q** Who is Tammy?
14 A Ex-girlfriend.
15 **Q** You all were never married?
16 A Never married.
17 **Q** Has she ever lived in Beaufort County?
18 A Never.
19 **Q** Any other children we have not
20 discussed?
21 A No.
22 **Q** Do you belong to any civic or social
23 organizations in Beaufort County?
24 A No.
25 **Q** Do you belong to a church in Beaufort

Page 14

1 **County?**
2 A No.
3 **Q Do you have any other family that we**
4 **haven't yet discussed living in Beaufort County?**
5 A No.
6 **Q What about your wife does she have**
7 **other family in Beaufort?**
8 A No.
9 **Q Where is Tiffany from originally?**
10 A Monroe.
11 **Q What brought you to the Bluffton/Okatie**
12 **area?**
13 A I was transferred to Savannah.
14 **Q And what originally brought you to**
15 **Savannah?**
16 A I was transferred.
17 **Q With a company?**
18 A Yes.
19 **Q Which one?**
20 A International Paper Company.
21 **Q So you were working for International**
22 **Paper Company when you were in Louisiana?**
23 A Yes.
24 **Q Have you ever been arrested or do you**
25 **have a criminal background in this state or any**

Page 16

1 **certifications since that time?**
2 A No.
3 **Q Did you go to high school in Louisiana?**
4 A Yes.
5 **Q And we have already discussed you**
6 **currently work at International Paper Company?**
7 A Correct.
8 **Q Any other jobs currently?**
9 A No.
10 **Q And what is it that you do at**
11 **International Paper Company?**
12 A I am a Boiler Operator.
13 **Q Say that again.**
14 A A Boiler Operator.
15 **Q And what does that entail? What do you**
16 **do with that job?**
17 A I operate a Chemical Recovery Boiler.
18 **Q B-o i L?**
19 A Boiler, B-o-i-l-er.
20 MR. TWOMBLEY: Boiler.
21 THE WITNESS: I am sorry, I am
22 from Louisiana.
23 BY MS. MEYER:
24 **Q Everybody has their accents, we have**
25 **them here.**

Page 15

1 **other state?**
2 A Yes.
3 **Q Other states?**
4 A Other states.
5 **Q How many times?**
6 A Once.
7 **Q Where was that?**
8 A Bastrop, Louisiana.
9 **Q What happened there?**
10 A Attempted possession of marijuana.
11 **Q Did you spend any time in jail for that**
12 **charge?**
13 A No.
14 **Q How old were you or what year did that**
15 **happen?**
16 A I can't remember. I would just -- I
17 would say the late eighties.
18 **Q What is your educational background?**
19 A Associates in Applied Science.
20 **Q Where did you get that degree?**
21 A University of Arkansas, Monticello.
22 **Q Do you know when you received the**
23 **degree?**
24 A 2002.
25 **Q Any other educational training,**

Page 17

1 **What does a Boiler Operator do?**
2 A We burn the chemicals recovered from
3 the pulping process to make steam to turn a
4 generator to make electricity for the mill.
5 **Q So the steam you create from burning**
6 **actually generates the paper mill?**
7 A Yes.
8 **Q And International Paper Company has I**
9 **am assuming multiple facilities?**
10 A Yes.
11 **Q Which facility is it that you work in**
12 **now?**
13 A At Savannah.
14 **Q Did your facility change when you moved**
15 **from Savannah to Okatie? I mean did you have to**
16 **change anything you were doing with your job?**
17 A No.
18 **Q Or did you just decide to move to**
19 **Okatie?**
20 A No, I didn't have to change anything.
21 **Q How long have you been working as a**
22 **Boiler Operator?**
23 A Probably 25 years.
24 **Q What did you do there before that?**
25 A I worked with maintenance in the power

Page 18

1 division.
 2 **Q In the what?**
 3 A In the power division, utilities
 4 division.
 5 **Q Power?**
 6 A Yes.
 7 **Q Are you claiming that you lost any**
 8 **wages as a result of the accident that we are**
 9 **talking about today?**
 10 A Yes.
 11 **Q Did you miss time from work after the**
 12 **accident?**
 13 A Yes.
 14 **Q How much time?**
 15 A From January to the middle of April of
 16 2018.
 17 **Q And I understand that you had a surgery**
 18 **after this accident?**
 19 A Yes, Ma'am.
 20 **Q When was the surgery?**
 21 A I think the third week of January.
 22 **Q Okay. Which doctor performed the**
 23 **surgery?**
 24 A Dr. Lawhorne.
 25 **Q Did he have a recommendation for**

Page 20

1 A 25 to \$26 an hour.
 2 **Q You said 25 to 26. Is it somewhere in**
 3 **between there?**
 4 A We get paid shift differential.
 5 **Q Can you explain that a little bit more.**
 6 A We at the time we were on rotating
 7 eight-hour shifts. So if you worked days you
 8 were paid the 25 base rate. If you worked
 9 evenings you were given 50 or 75 more cents an
 10 hour, and then when you are night shift rolled
 11 around you were given a dollar or a dollar and a
 12 half. I don't know the exact rates, but you
 13 were given a shift differential for the shift
 14 you were having to work that week, and we rotate
 15 shifts.
 16 **Q If I wanted to speak to someone at that**
 17 **facility who was in charge of keeping track of**
 18 **your hours in 2017 and 2018, who would that be?**
 19 A I do not know I mean. I don't know.
 20 **Q Is there like a Human Resource**
 21 **department?**
 22 A There is an Industrial Relations is
 23 what they call it.
 24 **Q Do you know anyone in particular within**
 25 **that department?**

Page 19

1 **recovery after that surgery?**
 2 A No -- I don't understand.
 3 **Q Did Dr. Lawhorne tell you to stay out**
 4 **of work for a certain length of time?**
 5 A Yes.
 6 **Q What was his recommendation?**
 7 A I don't exactly -- I don't know what
 8 his recommendation was. He is the one who
 9 returned me to work finally.
 10 **Q So you were just relying on his timing**
 11 **to go back?**
 12 A Yes.
 13 **Q Did he sign something letting you go**
 14 **back in April?**
 15 A Yes.
 16 **Q What about -- so this accident was the**
 17 **end of September of 2017.**
 18 **Did you miss any time from work from**
 19 **September through January?**
 20 A I don't think. I can't recall.
 21 **Q And at the paper mill are you salary or**
 22 **hourly?**
 23 A Hourly.
 24 **Q What was your hourly wage during the**
 25 **January to April 2018 time frame?**

Page 21

1 A I know -- we have had a high turnover
 2 lately. A Miss Little I think is her last name.
 3 **Q Do you know her first name?**
 4 A No, I do not.
 5 **Q And did you have a direct supervisor in**
 6 **that 2017, 2018 time frame who you would report**
 7 **to?**
 8 A Yes.
 9 **Q Who was that?**
 10 A Richard Lynch.
 11 **Q Okay. Did you discuss this accident**
 12 **with anyone at your job?**
 13 A No. Other than -- no. For my -- the
 14 Industrial Relations I had to fill out
 15 paperwork. I got the doctor to fill out
 16 paperwork and send in.
 17 **Q Before your surgery?**
 18 A Yes.
 19 **Q Other than that, anyone else?**
 20 A No.
 21 **Q How many hours were you working in a**
 22 **week before the accident?**
 23 A Anywhere from 40 to 60.
 24 **Q Did you have set days that you were**
 25 **scheduled to work every week?**

Page 22

1 A What do you mean by set days?

2 **Q Was there a schedule that changed from**

3 **week to week?**

4 A Yes.

5 **Q Or was it the same?**

6 A Yes, it changed from week to week.

7 **Q How did you know your schedule for the**

8 **coming weeks?**

9 A On Friday's they put it out.

10 **Q For the following week?**

11 A Yes.

12 **Q And that would be completely different**

13 **depending on the week?**

14 A We might change shifts, yes, it

15 changed.

16 **Q After your surgery when you returned to**

17 **work in April were you able to perform your task**

18 **as a Boiler Operator?**

19 A Basically. I don't do any of the heavy

20 lifting anymore.

21 **Q What kind of heavy lifting were you**

22 **doing prior to the accident?**

23 A Turning valves mainly. I make the

24 younger guys do it.

25 **Q Does the fact that you can't do that**

Page 24

1 A I can't take the work level any more.

2 **Q Can you tell me a little more about**

3 **that?**

4 A My neck and shoulders get too sore for

5 me to stay out there like I used to.

6 **Q Before this accident in September of**

7 **2017 had you had any work-related injuries or**

8 **incidents?**

9 A Work related?

10 **Q Yes.**

11 A How far back are we talking about?

12 **Q Any that you have had in your lifetime?**

13 A I broke my hand.

14 **Q Where was that?**

15 A At International Paper in Bastrop,

16 Louisiana.

17 **Q Did you file a Workers' Compensation**

18 **claim after that?**

19 A Workers' Comp paid for the surgery I

20 guess, I mean, or the doctor's visits and all.

21 **Q Which hand was that?**

22 A My right.

23 **Q And about what time frame was that?**

24 A It would have had to have been in the

25 middle nineties. I am just guessing, somewhere

Page 23

1 **heavy lifting any more affect your pay at all?**

2 A No.

3 **Q And when you returned to work in April**

4 **were you back working full time?**

5 A Yes.

6 **Q And was your hourly wage changed at**

7 **all?**

8 A We get a raise every year so --

9 **Q At the end of the year?**

10 A No, I think it is in June, June 1st.

11 **Q So you would have been back before June**

12 **of 2018?**

13 A Yes.

14 **Q Did you get a raise that year?**

15 A Yes.

16 **Q Are you on any -- were you on any**

17 **restrictions when you went back?**

18 A No.

19 **Q And you are still a Boiler Operator**

20 **today?**

21 A Yes.

22 **Q You still work the same amount of time?**

23 A No, I have had to cut back.

24 I work 40 hours a week.

25 **Q Why have you cut back?**

Page 25

1 in the middle nineties.

2 **Q Before you were transferred to**

3 **Savannah?**

4 A Yes.

5 **Q Do you know what year you were**

6 **transferred to Savannah?**

7 A 2009.

8 **Q Any other injuries at work?**

9 A No.

10 **Q Before this accident in September of**

11 **2017 had you had any pain while working to your**

12 **neck area?**

13 A No.

14 **Q Had you ever been in any other motor**

15 **vehicle accidents before the accident we are**

16 **talking about today?**

17 A No.

18 **Q And when I say motor vehicle accidents**

19 **I will clarify that, it could be you running in**

20 **into a mail box or just hitting a parked car or**

21 **a deer?**

22 A When I was teenager a person ran in

23 front of my car, a pedestrian did and got hit.

24 **Q Any other incidents?**

25 A No.



Page 26

1 **Q Were you injured when you hit the other**
2 **walker?**
3 A No.
4 **Q What about other incidents not related**
5 **to a vehicle? Slip and falls, falling off a**
6 **ladder, tripping on something? Any incidents**
7 **like that where you were injured?**
8 A I was injured when I ran into a fence.
9 **Q When was that?**
10 A Probably 2001, 2002.
11 It was 2002.
12 **Q And what happened?**
13 A I had to have neck surgery.
14 **Q What do you mean by ran into a fence?**
15 A I was going after a softball.
16 **Q Okay.**
17 **Were you playing softball?**
18 A Yes.
19 **Q Was it somewhere around here?**
20 A No.
21 **Q Where was it?**
22 A Monroe, Louisiana.
23 **Q And you were trying to catch the ball?**
24 A Yes.
25 **Q What happened to your body then? Tell**

Page 28

1 A No.
2 **Q Were you continuing to experience pain**
3 **in your neck after that surgery from 2002?**
4 A No.
5 **Q Had you seen any chiropractors before**
6 **the accident we are discussing today for general**
7 **maintenance on it?**
8 A On my neck?
9 **Q Yes.**
10 A No.
11 **Q Had you seen any chiropractors for any**
12 **other reason?**
13 A I have seen them for my back.
14 **Q Were you seeing one in -- that is in**
15 **Beaufort?**
16 A No, I haven't seen one in Beaufort.
17 **Q When is the last time you saw a**
18 **chiropractor for back pain?**
19 A Probably in 2003, 2004. I don't know
20 the specifics.
21 **Q And where was that?**
22 A Monroe, Louisiana.
23 **Q Have you ever seen a chiropractor in**
24 **Savannah or South Carolina?**
25 A No.

Page 27

1 **me a little bit more about what happened when**
2 **you ran into a fence?**
3 A I hit the fence and flipped over it.
4 **Q And what surgery did you have to have?**
5 A I had to have disk surgery on my neck.
6 **Q Do you know what disk they performed**
7 **surgery on?**
8 A I don't know which.
9 **Q Who performed that surgery?**
10 A Myron Bailey.
11 **Q He is in Louisiana?**
12 A Yes, Monroe, Louisiana.
13 **Q What practice is he with?**
14 A I don't know. But he has his own. I
15 don't --
16 **Q Did you have a physical therapy regimen**
17 **and some other things he wanted you to do after**
18 **that surgery?**
19 A Physical therapy, no. I wore a neck
20 brace.
21 No physical therapy, no.
22 **Q After that surgery around the 2001,**
23 **2002 time frame, did you have any other**
24 **surgeries until the incident we are talking**
25 **about here?**

Page 29

1 **Q What about a physical therapist?**
2 A No.
3 **Q And who was your primary care doctor at**
4 **the time of this accident?**
5 A In which accident?
6 **Q The one we are talking about today, the**
7 **September --**
8 A Lawrence Zottoli is my primary care.
9 **Q You said his first name?**
10 A Lawrence Zottoli.
11 **Q Where is he?**
12 A He is with St. Joseph/Candler.
13 **Q Do you go to the Savannah campus to see**
14 **him?**
15 A Yes.
16 **Q Any other doctors that you see for**
17 **regular checkups other than him?**
18 A I have had colonoscopies.
19 **Q Is that a different doctor?**
20 A Yes.
21 **Q Who do you go to for that?**
22 A I went to two different one's.
23 Dr. Dorvilus is the last one I have had.
24 And I don't know the other guy's name
25 that I have had.

Page 30

1 **Q Where is Dr. Dorvilus?**
2 A He is in Statesboro or that is where he
3 did it at anyway.
4 **Q Any other doctors that you see**
5 **regularly?**
6 A No.
7 **Q Have you ever been involved in any**
8 **other lawsuits where you have sued anyone or**
9 **been sued?**
10 A Are you talking about divorce or --
11 **Q No, other than the divorce we already**
12 **talked about?**
13 A No, I have had to have my hand, I guess
14 IP to get him to pay for Workman's Comp.
15 **Q And that was the same incident at**
16 **International Paper that we already talked**
17 **about?**
18 A Yes.
19 **Q Any other lawsuits or Workers'**
20 **Compensation claims you have been involved in?**
21 A No.
22 **Q Have you ever filed for disability?**
23 A No.
24 **Q Have you ever filed for bankruptcy?**
25 A Yes.

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1 **Q Were you going to work at that time?**
2 A I was coming from work.
3 **Q What time did the accident happen?**
4 A It had to be a little bit after
5 2:00 a.m. because that is the time I got off.
6 **Q You got off that day at 2:00 a.m.?**
7 A Yes, Ma'am.
8 **Q And how long had you been in the road**
9 **before the accident occurred?**
10 A Probably 15 minutes.
11 **Q So you were coming from the plant in**
12 **Savannah?**
13 A Yes, Ma'am.
14 **Q And headed where?**
15 A To my house.
16 **Q Where did the accident happen?**
17 A On Highway 17 before you turn to go
18 to -- I guess that is 331 or something. I don't
19 know the name -- to go back to Bluffton.
20 **Q How many hours had you worked that day**
21 **before getting off at 2:00 a.m.?**
22 A 12.
23 **Q Is that one shift?**
24 A Now, it is yes.
25 **Q What do you mean now?**

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1 **Q When have you filed for bankruptcy?**
2 A I don't remember.
3 **Q Was it you individually or you and a**
4 **spouse?**
5 A Me individually.
6 **Q Where were you living at the time?**
7 A Monroe, Louisiana.
8 **Q So we can assume it was during your**
9 **time living --**
10 A Yeah.
11 **Q It has been a while?**
12 A Yes, it has been a while.
13 **Q Let us talk about the accident from**
14 **September 30th of 2017.**
15 **Were you driving that day?**
16 A Yes.
17 **Q Was anyone else in the car with you?**
18 A No.
19 **Q What kind of car were you driving?**
20 A A Jeep Cherokee.
21 **Q Who owned that car?**
22 A It was in my wife's name.
23 **Q Did you have another vehicle or was**
24 **that your primary car?**
25 A That was the one I drove to work.

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1 A The first of the year we converted over
2 to 12-hour shifts. But back then it was 8-hour
3 shifts were your normal shifts.
4 **Q So why did you have four extra hours?**
5 A For overtime to help out.
6 **Q What time had you gotten to work that**
7 **day?**
8 A 2:00 o'clock.
9 **Q I guess the day before?**
10 A 2:00 p.m.
11 **Q Tell me what you remember about the**
12 **accident.**
13 A I was sitting still for road work and
14 got rear-ended.
15 **Q Were you completely stopped?**
16 A Yes.
17 **Q Did you have lights on your car?**
18 A Yes.
19 **Q And were they on?**
20 A Yes.
21 **Q Were your taillights working?**
22 A Yes.
23 **Q Brake lights working?**
24 A Yes, Ma'am.
25 **Q Was there anything in front of you**

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1 other than the road work going on?
 2 A No, just the road work.
 3 Q Can you describe the impact for me.
 4 A What do you mean describe the impact?
 5 Q What do you remember about when the
 6 vehicles came in contact with one another?
 7 A The seatbelt yanking my shoulder and my
 8 neck and my glasses being broke.
 9 Q Do you wear glasses when driving?
 10 A Yes, I do.
 11 Q And you are wearing them today?
 12 A Yes, Ma'am.
 13 Q What is the prescription on those?
 14 A I do not know.
 15 Q Do you go to an eye doctor?
 16 A Yes, Ma'am.
 17 Q Where do you go?
 18 A Pearl Vision Center I think.
 19 Q Is that in Bluffton?
 20 A Yes, Ma'am.
 21 Q Has your prescription changed since the
 22 time of the accident?
 23 A Yes, it has.
 24 Q So you said your glasses were broken?
 25 A Yes, Ma'am.

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1 Q And this was the vehicle involved in
 2 the accident?
 3 A Yes, Ma'am.
 4 Q And if you could describe to me the
 5 damage that occurred to your car?
 6 A The rear tail lights knocked out. The
 7 axle is knocked loose and the tire is knocked
 8 loose.
 9 Q Is there a picture in there that best
 10 describes the damage that you are referring to
 11 to the taillight?
 12 A C.
 13 Q 1C?
 14 A And 1B.
 15 Q You said there was something to do with
 16 an axle?
 17 A Yes.
 18 Q Is there a picture of that?
 19 A 1B.
 20 Q And show me where because I am no good
 21 with cars?
 22 A Right there. That is the tire. I mean
 23 you can see it.
 24 Q This shows the tire and the metal piece
 25 within it?

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1 Q Did any part of your body hit anything
 2 in the vehicle on impact?
 3 A My chest hit the steering wheel.
 4 Q Did your air bags deploy?
 5 A No, Ma'am.
 6 Q Did you lose consciousness at any
 7 point?
 8 A No, Ma'am.
 9 Q Did your head hit anything on impact?
 10 A No.
 11 MS. MEYER: Ashley, I have some
 12 photographs I probably should have
 13 shown you before.
 14 (Whereupon, Defendant's Exhibit
 15 Numbers 1A through 1G were marked
 16 for identification.)
 17 BY MS. MEYER:
 18 Q I have marked these as Exhibit 1A
 19 through G just to make it easy to reference
 20 here.
 21 If you could, Mr. Murphy, take a look
 22 through those photographs. In general what are
 23 those photographs of? What are we looking at in
 24 those pictures?
 25 A My vehicle.

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1 A The rim, yes, Ma'am.
 2 Q I am not a car person.
 3 A Okay.
 4 Q And then you have mentioned also the
 5 tire was something --
 6 A Knocked loose from the rim.
 7 Q So where was the impact to your car
 8 from this accident?
 9 A The back passenger side.
 10 Q Was there any damage to your car before
 11 this accident?
 12 A No.
 13 Q Is there anything that was -- any
 14 damage to the vehicle that was done in this
 15 accident that is not shown in the photographs
 16 that have been marked as Exhibit 1A through G?
 17 A Not that I can see.
 18 Q Thank you.
 19 Do you know who it was in that vehicle
 20 that you have mentioned that was behind you?
 21 A No, Ma'am.
 22 Q Did you talk to anyone in that vehicle
 23 after?
 24 A Yes, I talked to the lady driving the
 25 vehicle.



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1 **Q So it was a lady?**
2 A Yes.
3 **Q Was there anyone else in the car with**
4 **her?**
5 A No, there was not.
6 **Q And what was that conversation with**
7 **her?**
8 A I asked her was she okay.
9 **Q What did she say?**
10 A She held up her hand. Her finger was
11 broke.
12 **Q Her finger was broken?**
13 A The way it looked, yes.
14 **Q Did you have any other conversations**
15 **with her?**
16 A Yes. She asked could we take her to
17 her work, because her boss wanted her to come to
18 work. The State Trooper said he couldn't take
19 her.
20 **Q Do you know if anyone did take her?**
21 A My wife did.
22 **Q Tiffany?**
23 A Yes.
24 **Q Do you know if your wife had any other**
25 **conversations with her during that ride?**

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1 **boss?**
2 A She was just talking about that he had
3 gotten upset at her the night her mother died,
4 because she was wanting to -- he wanted her to
5 be at work that night.
6 I was asking her why she wasn't going
7 to the hospital I mean.
8 **Q Okay. Did she discuss anything else**
9 **with you about her job? How long she had been**
10 **there?**
11 A No.
12 **Q Anything like that?**
13 A No.
14 **Q Any other conversations you had?**
15 A No. I did ask her why her eyes were so
16 red. She said she had gotten shots for being a
17 diabetic in her eyes.
18 **Q Okay. When did you first notice her**
19 **eyes were red?**
20 A When we first -- she first got in the
21 car.
22 **Q And she said she had shots for**
23 **diabetes?**
24 A Yes.
25 **Q Did she say when she had those?**

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1 A I did. I mean I was in the car with
2 her too. My wife dropped her off at her work
3 and then carried me to the hospital.
4 **Q Tell me about those conversations that**
5 **occurred in the car?**
6 A She was just talking about her boss
7 wanted her to get there to work and he was going
8 to let her use his truck.
9 **Q Did she get any treatment for her**
10 **finger?**
11 A No, she went to work. Her boss was
12 waiting on her when we drove up.
13 **Q Do you know the name of her boss?**
14 A No, I don't.
15 **Q Do you know the name of the company she**
16 **was going to?**
17 A No.
18 **Q Where was it?**
19 A It was the paper company is all I know.
20 The newspaper company.
21 **Q Do you know where you dropped her off?**
22 **What the address was or location?**
23 A No. It was -- I don't know the
24 address. No, I don't. It was in Bluffton.
25 **Q Did she say anything else about her**

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1 A No, she didn't.
2 **Q Did she make any other comments or did**
3 **you make any other comments about her eyes?**
4 A No.
5 **Q Any other conversations with her?**
6 A No.
7 **Q Were you able to get out of your**
8 **vehicle after the accident?**
9 A Yes. With some help, yeah.
10 **Q And were you feeling pain at that time?**
11 A Yes.
12 **Q Where were you feeling pain?**
13 A My neck and left shoulder.
14 **Q In the months prior to this or just**
15 **before this accident had you had any left**
16 **shoulder pain?**
17 A No.
18 **Q Had you had any neck pain?**
19 A No.
20 **Q Did you see the lady -- did you see the**
21 **lady's vehicle before the impact occurred?**
22 A No, I did not.
23 **Q Where were you looking just before the**
24 **impact?**
25 A At the guy that had me stopped.



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1 **Q There was a road worker ahead of you?**
2 A Yes.
3 **Q Did your vehicle hit him?**
4 A No.
5 **Q Or hit any of the construction site?**
6 A No.
7 **Q And you mentioned that your wife picked**
8 **you up?**
9 A Yes.
10 **Q So she came to the scene?**
11 A Yes, Ma'am.
12 **Q How long was it until she arrived on**
13 **the scene?**
14 A Probably within 20 to 30 minutes.
15 **Q And what were you during that time?**
16 A Sitting in the car.
17 **Q Were you having any discussions with**
18 **anyone?**
19 A The ambulance driver was asking me was
20 I okay and told me not to move.
21 **Q Who called the police?**
22 A I think the construction worker did. I
23 think.
24 **Q Do you know the names of any of the**
25 **construction workers that were there?**

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1 A I don't know what you mean by clear me.
2 **Q I am sorry?**
3 A What do you mean by clear me?
4 **Q Did you need an ambulance at that**
5 **point?**
6 A I needed to go to the hospital, yes.
7 **Q Did you tell him you needed his**
8 **assistance?**
9 A I told him I could get my wife because
10 he had some other people they just got the call
11 about. He told me he had that call for seven
12 more individuals in a car wreck. I told him I
13 could just get my wife to carry me to the
14 hospital.
15 **Q Okay. And I ask this question of**
16 **everyone, so don't take offense. Were you under**
17 **the influence of any alcohol or recreational**
18 **drugs at the time of the accident?**
19 A No.
20 **Q Had you taken any prescription**
21 **medications that day?**
22 A Probably -- yes. Earlier in the day,
23 yes.
24 **Q What kinds of prescriptions were you**
25 **taking?**

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1 A No, I don't.
2 **Q Were there any other witnesses to the**
3 **incident?**
4 A Other than the construction workers, no
5 others.
6 **Q And did you have a conversation with**
7 **any Officers on the scene?**
8 A I can't remember. I mean the State
9 Trooper showed up there, but he didn't ask me
10 anything I don't think.
11 **Q Did you have conversations with the**
12 **paramedics about your pain at that time?**
13 A Yes, I did.
14 **Q And what was your conversation with**
15 **them?**
16 A I told him my neck was hurting bad.
17 **Q What did they do for you?**
18 A He told me to stay sitting there, but
19 he got a call for seven more individuals in a
20 wreck. So about that time my wife came and I
21 told him I would get her to take me to the
22 hospital.
23 **Q Okay. So did he leave the scene?**
24 A Yes, he left the scene.
25 **Q Did he clear you first?**

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1 A I take an Adderall every day.
2 **Q Other than that anything else?**
3 A No.
4 **Q Any other conversations with anyone**
5 **else at the scene of the accident we have not**
6 **discussed?**
7 A No.
8 **Q I have that you go to Coastal Carolina**
9 **Medical Center on the date of the accident?**
10 A Yes, Ma'am.
11 **Q And your wife took you there?**
12 A Yes.
13 **Q And that would have been after you**
14 **dropped off the lady in the accident?**
15 A Yes.
16 **Q So how long was it from the time of the**
17 **accident until you got to the hospital?**
18 A Probably within an hour.
19 **Q And what did they do for you at Coastal**
20 **Carolina that day?**
21 A They took a couple of X-rays and gave
22 me some pain medicine.
23 **Q Did you fill the pain medication?**
24 A No, they just gave me a couple of like
25 Tylenol 3 to take there and told me to go see an



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1 orthopedic doctor.
 2 **Q Do you have a pharmacy that you use if**
 3 **you need prescriptions?**
 4 A Walgreen's and Kroger.
 5 **Q And where are those located?**
 6 A One is at Okatie Center and the new
 7 Kroger is at Discovery Drive I think.
 8 **Q Both in Okatie?**
 9 A I don't know what you would call the
 10 new Kroger in Bluffton. It is right there where
 11 the bowling alley is at.
 12 **Q Kind of like where the New River side**
 13 **area is?**
 14 A Yes, Riverside is right up the road,
 15 the school is yes. The Publix and bowling alley
 16 and all is right there in the same Care Corp.
 17 You have probably dealt with them.
 18 **Q Were you discharged from the hospital**
 19 **the same day?**
 20 A Yes.
 21 **Q Where did you go after that?**
 22 A I went home.
 23 **Q How did you get home?**
 24 A My wife.
 25 **Q Did you do anything else that day?**

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1 A I saw -- I don't know if he is a doctor
 2 or a physician's assistant. They took X-rays
 3 and I saw Dr. Lawhorne after that.
 4 **Q And what about your first appointment**
 5 **with Dr. Lawhorne, what did he do for you?**
 6 A I can't recall. I don't remember.
 7 **Q At some point I see you had an MRI?**
 8 A Yes.
 9 **Q After your first visit with Dr.**
 10 **Lawhorne?**
 11 A Yes.
 12 **Q Was that referred by a particular**
 13 **doctor?**
 14 A By Dr. Lawhorne.
 15 **Q And did he discuss that MRI with you?**
 16 A Yes, that is when he told me I was
 17 going to have surgery.
 18 **Q What was the discussion he had with you**
 19 **about that MRI and about the surgery?**
 20 A He said I had the disk that was causing
 21 all the pain down my shoulder and my neck.
 22 **Q And do you know what disks those were?**
 23 A No, I don't.
 24 **Q Do you know what surgery was**
 25 **recommended?**

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1 A No. We went into -- I don't know what
 2 day it was, as soon as we could get an
 3 appointment at Optim in Savannah.
 4 **Q Had you been to Optim before?**
 5 A No, I have never been to Optim.
 6 **Q And that was Optim Orthopedics?**
 7 A Yes.
 8 **Q How did you find out about Optim?**
 9 A I think we just looked it up.
 10 **Q No one referred it to you?**
 11 A No.
 12 **Q And why was it that you felt you needed**
 13 **to go to Optim?**
 14 A I mean they were orthopedics, that is
 15 what they do I mean.
 16 **Q Well, what was going on with your --**
 17 A My neck and shoulder was killing me.
 18 **Q Left shoulder?**
 19 A Yes.
 20 **Q And did you make an appointment?**
 21 A I don't know if we made an appointment
 22 or we just showed up. I think we may have made
 23 an appointment. I am not sure at all.
 24 **Q What did they do for you when you**
 25 **arrived the first time at Optim Orthopedics?**

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1 A I don't know what he would call it I
 2 mean.
 3 **Q And so sitting here today do you know**
 4 **what surgery it was, the name of the surgery you**
 5 **had?**
 6 A No, no.
 7 **Q Did you see anyone else for that**
 8 **shoulder and neck pain before the surgery with**
 9 **Dr. Lawhorne?**
 10 A No.
 11 **Q Did he refer you to what I would call**
 12 **more conservative care? Physical therapy or**
 13 **anything like that?**
 14 A Yes, he did, but I couldn't afford
 15 physical therapy. They wanted a \$150 every time
 16 I went. I couldn't afford it. I didn't have
 17 the money to pay it.
 18 **Q He did refer you for that?**
 19 A Sometime after I first saw him.
 20 **Q Before the surgery?**
 21 A Yes.
 22 **Q Did you have health insurance?**
 23 A Yes, I do, but I mean with the health
 24 insurance they wanted \$150 every time I showed
 25 up; and I couldn't pay that.



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1 **Q Did you talk to Dr. Lawhorne about the**
2 **fact that you weren't going to physical therapy?**
3 A Yes, he knew.
4 **Q And what was his recommendation at that**
5 **time?**
6 A He told me I was going to have to do
7 the surgery anyway. The insurance was the one
8 that was trying to recommend the physical
9 therapy anyway. He said they were -- he told me
10 I was going to have surgery all along in the
11 beginning after he saw the MRI.
12 **Q Okay. And you had the surgery in**
13 **January?**
14 A Yes.
15 **Q I have that first visit with Dr.**
16 **Lawhorne as sometime in October of 2017, does**
17 **that sound right?**
18 A Yes.
19 **Q What were you doing from the time in**
20 **October when you first saw Dr. Lawhorne and the**
21 **date of the surgery to treat the pain?**
22 A What do you mean what was I doing?
23 **Q Were you seeing any other doctors or**
24 **any other treatment?**
25 A No, I was seeing Dr. Lawhorne all the

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1 A No.
2 **Q Any other doctors or treatment**
3 **providers that you saw as a result of this**
4 **accident that we have not yet discussed?**
5 A I can't -- I went to a pain management
6 guy here a couple of months ago trying to -- to
7 see if he could do anything about the pain. I
8 can't think of his name. I don't know his name
9 right now.
10 **Q Where is he located?**
11 A In Beaufort.
12 **Q And are you currently seeing him?**
13 A No -- well, I don't know what is going
14 on. He wanted an MRI and the insurances refused
15 the MRI; so I don't know where I stand with him.
16 **Q When did you go to him?**
17 A It has been like two months ago I
18 think.
19 **Q How many times did you go to see him?**
20 A One time.
21 **Q After the surgery how was your neck and**
22 **left shoulder?**
23 A Stiff. It hurts.
24 **Q Did it help the pain at all?**
25 A Yes, it helped it a lot. I mean when I

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1 time.
2 **Q Just seeing Dr. Lawhorne?**
3 A Yes. I mean I went before the surgery
4 they sent me to like an ear, nose and throat.
5 They wanted to make sure my vocal cords were all
6 right before they operated.
7 **Q And I see that is Coastal Ear Nose and**
8 **Throat?**
9 A Yes.
10 **Q And that was something that Dr.**
11 **Lawhorne said you had to do?**
12 A Yes.
13 **Q And then after the surgery in January**
14 **did you see any other doctors for treatment?**
15 **Any physical therapists or chiropractors?**
16 A No. I see Dr. Zottoli every six months
17 for a physical. Other than that ...
18 **Q Did Dr. Lawhorne recommend any other**
19 **treatment after the surgery to help?**
20 A No, he did not.
21 **Q Have you seen Dr. Lawhorne since the**
22 **surgery?**
23 A Yes, several times. I mean I am
24 talking about until he released me to work.
25 **Q What about after he released you?**

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1 have to work long hours or I am on my feet a
2 lot, I get to the point where I just can't go
3 anymore.
4 **Q And you haven't gone back to Dr.**
5 **Lawhorne to discuss this?**
6 A No, I haven't.
7 **Q Just the pain management doctor?**
8 A Yes.
9 **Q Was the pain management recommended by**
10 **someone?**
11 A No, I went on my own.
12 **Q How did you find it?**
13 A My wife actually found it, so I don't
14 know how she found it.
15 **Q I may have some other questions, but I**
16 **probably have asked a lot so far. So I am going**
17 **to turn you over to one of these other**
18 **attorneys.**
19 A Okay.
20 **Q And I may have some later. Thank you.**
21 A All right.
22 CROSS-EXAMINATION
23 BY MS. TILLMAN:
24 **Q Mr. Murphy, my name is Ainsley Tillman**
25 **and I represent Starr Distributing, which is a**

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1 Defendant in this case.
 2 A Okay.
 3 Q I want to go back to the accident with
 4 you and the night of the accident.
 5 Can you describe for me the impact?
 6 Can you describe how hard the car hit you?
 7 A It hit me pretty hard. I mean she
 8 ended up spinning around to the side AND kind of
 9 to the front of me on the passenger side.
 10 Q And tell me about your glasses in
 11 particular, that was one detail I noticed that
 12 your glasses shattered.
 13 How did that happen?
 14 A The glasses didn't shatter. The side
 15 broke off that goes to my ear. I guess it broke
 16 from the impact when it pulled it. It broke it
 17 off from the glass part.
 18 Q Did they fall off?
 19 A They got slung off, yeah.
 20 Q Was your car towed from the scene of
 21 the accident?
 22 A I assume. I didn't see it, Ma'am. I
 23 can't -- it had to have been.
 24 Q Were you wearing a seatbelt?
 25 A Yes, I was.

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1 previous neck surgery, did you have any
 2 limitations at work?
 3 A No.
 4 Q Tell me what medical expense you have
 5 incurred as a result of your injury.
 6 MR. TWOMBLEY: Object to the form.
 7 You can still answer.
 8 THE WITNESS: What do you mean
 9 what medical expenses?
 10 BY MS. TILLMAN:
 11 Q How much did all the medical care that
 12 you received cost?
 13 A I don't know.
 14 MR. TWOMBLEY: The same objection.
 15 BY MS. TILLMAN:
 16 Q Do you have, particularly with Dr.
 17 Lawhorne, do you have any idea how much you
 18 paid?
 19 A No, I do not know. I don't. I don't
 20 know all I paid.
 21 Q Do you have any kind of bills or other
 22 documentation?
 23 A The lawyers have that I mean. I don't
 24 have that. You will have to ask the lawyers
 25 about that.

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1 Q Did you call your wife to the scene of
 2 the accident?
 3 A Yes, I did.
 4 Q And how long did it take for her to get
 5 there?
 6 A Like I said, within 20 to 30 minutes
 7 she was there.
 8 Q And you said you had a previous neck
 9 surgery.
 10 Do you know whether -- do you know
 11 which disk that surgery was on?
 12 A No, I do not.
 13 Q What kind of surgery did you have for
 14 your neck?
 15 A A plate and a bone graft. I don't know
 16 what you would call that.
 17 Q A bone graft?
 18 A Yes.
 19 Q And were you out of work for any amount
 20 of time after that previous neck surgery?
 21 A Yes, I was.
 22 Q And for how long?
 23 A I don't know. It was in 2002. I can't
 24 remember.
 25 Q When you returned to work after that

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1 Q So to your knowledge you have given all
 2 of your bills and other medical cost records to
 3 your lawyers?
 4 A Yes, I have.
 5 Q What damages are you claiming with
 6 relation to this lawsuit?
 7 MR. TWOMBLEY: Object to the form
 8 of the question.
 9 THE WITNESS: I don't understand.
 10 What are you talking about what
 11 damages?
 12 BY MS. TILLMAN:
 13 Q What sort of compensation are you
 14 seeking?
 15 MR. TWOMBLEY: The same objection.
 16 THE WITNESS: My long term health
 17 is going to be -- I don't know how long
 18 I will be able to hold up at work with
 19 the way my neck is now.
 20 BY MS. TILLMAN:
 21 Q So you said that you previously worked
 22 between 40 and 60 hours a week, is that correct?
 23 A Correct.
 24 Q Before the accident?
 25 A Correct.



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1 **Q And now you are working 40 hours a**
2 **week?**
3 A Yes, correct.
4 **Q But you nonetheless are able to work**
5 **40 hours a week, is that correct?**
6 A Right now I am, yes.
7 **Q After your surgery with Dr. Lawhorne**
8 **what did you -- how did you tell him that you**
9 **were feeling?**
10 A Well, I told him I am feeling good. I
11 mean I felt better than before the surgery.
12 **Q You felt better than before the**
13 **surgery?**
14 A Yes.
15 **Q And then you went back to work?**
16 A In April, yes.
17 **Q Was there any point when you started to**
18 **feel badly again?**
19 A I mean as far as badly, I don't know
20 what you mean by that. What do you mean? I
21 have never got to the point of feeling the way I
22 was before the surgery, no.
23 **Q Did you work from after the accident**
24 **through January when you had the surgery?**
25 A Yes.

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1 **Q Regardless of insurance or finances**
2 **would you go back to a doctor?**
3 A I just went to a pain management
4 doctor, yes.
5 **Q But you don't remember that pain**
6 **management doctor's name?**
7 A No, I don't. I gave it to you all in
8 the questionnaire you all had me fill out. I
9 filled out all the doctors' names for you.
10 **Q Do you remember what recommendations**
11 **that doctor gave you?**
12 A He wanted me to get an MRI and they
13 were going to give me a shot in my neck or
14 whatever. He said he needed a newer MRI than
15 the one I had.
16 **Q How about medications, are you taking**
17 **any medications for your pain?**
18 A Yes, he gave me muscle relaxers and a
19 Hydrocodone with aspirin.
20 **Q And do you have those prescriptions**
21 **filled regularly?**
22 A No, he just gave me one prescription.
23 **Q How about Dr. Lawhorne, did he give you**
24 **any medications for the pain?**
25 A At the time they were giving me shots.

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1 **Q What kind of hours did you work during**
2 **that time?**
3 A As least as I could, 40 hours a week.
4 **Q And then you took a few months off from**
5 **January to March at that point in 2018?**
6 A Yes.
7 **Q And then you went back to work?**
8 A Yes.
9 **Q Did you go back to work working 40 to**
10 **60 hours a week?**
11 A No, I did not.
12 **Q You went back working 40 hours?**
13 A Yes.
14 **Q And you say you were still experiencing**
15 **pain, but it was less than you had experienced**
16 **before?**
17 A Yes.
18 **Q Did you go back to Dr. Lawhorne at any**
19 **point and ask for more care?**
20 A No, I haven't.
21 **Q Have you thought of doing that?**
22 A It is a matter of finances, no. I mean
23 the way the insurance is now, you got to pay
24 everything up front until you meet your \$6,000
25 deductible; so no.

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1 But no, not afterwards, no. He gave me a --
2 they are giving me a mild muscle relaxer. But I
3 mean no, I don't -- Dr. Zottoli is the one who
4 gave me the -- I started going to and I got him
5 to give me a -- I filled it out. I can't think
6 of the name of it, but it is a real mild
7 skeletal muscle relaxer.
8 **Q And Dr. Zottoli is your primary care**
9 **physician?**
10 A Yes, my primary care doctor.
11 **Q Dr. Zottoli is the one has prescribed**
12 **the medication for you?**
13 A He is the one prescribing me the mild
14 muscle relaxer prescription.
15 **Q How much per month do you pay for those**
16 **prescriptions?**
17 MR. TWOMBLEY: Object to the form.
18 THE WITNESS: I don't know. I
19 have a medical savings account that
20 they just automatically -- so I never
21 ask.
22 BY MS. TILLMAN:
23 **Q Are you doing anything on your own to**
24 **try and feel better?**
25 A What do you mean by that? I don't

Page 62

1 understand what you are saying.
2 **Q Do you do any stretches? Do you sleep**
3 **differently?**
4 A The only way I sleep is on my left
5 side.
6 No -- I get in the hot tub a lot.
7 **Q Does that help?**
8 A Yes, I do.
9 **Q Have you had to modify your house in**
10 **any way?**
11 A No.
12 **Q Going back to April of 2018, at that**
13 **time did you believe that your condition had**
14 **improved?**
15 A It has from the time of surgery, yes.
16 **Q Do you believe that it is still**
17 **improving?**
18 A No, not really. I think I have hit
19 this flat line and that is where I am at.
20 **Q All right.**
21 **Other than working reduced or lesser**
22 **hours than you had before, what else are you**
23 **unable to do now that you could do before you**
24 **had your injury?**
25 A I have to watch myself out on the water

Page 64

1 MR. TWOMBLEY: Object to the form
2 of the question.
3 THE WITNESS: That was her
4 employer.
5 BY MS. TILLMAN:
6 **Q How is her employer responsible for**
7 **your injuries?**
8 A The employer is responsible for
9 anybody.
10 MR. TWOMBLEY: Object to the form
11 of the question.
12 BY MS. TILLMAN:
13 **Q Do you think your employer is**
14 **responsible for the accident?**
15 A I think my employer is -- I don't think
16 I am responsible in any way for the accident.
17 **Q What could Starr Distributing have done**
18 **differently that would have prevented the**
19 **accident?**
20 MR. TWOMBLEY: Object to the form
21 of the question.
22 THE WITNESS: Train their
23 employees better.
24 BY MS. TILLMAN:
25 **Q Train them to do what?**

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1 now.
2 And as far as practicing with my
3 daughter softball and all, I can't get my hand
4 above my shoulders and stuff to throw back to
5 her or anything.
6 **Q Anything else? Any other ways your**
7 **life has changed since this injury?**
8 A No, other than less sleep. I have
9 trouble sleeping I mean.
10 **Q Let us talk about the driver of the car**
11 **behind you, Mrs. Lori Niverson.**
12 **What do you think she could have done**
13 **differently to prevent this accident?**
14 MR. TWOMBLEY: Object to the form
15 of the question.
16 THE WITNESS: You would be asking
17 me to -- I don't know what she could
18 do. I mean I wasn't in the car with
19 her.
20 BY MS. TILLMAN:
21 **Q How do you think that she has caused**
22 **your injuries?**
23 A She hit me.
24 **Q And what in particular did Starr**
25 **Distributing do that caused your injuries?**

Page 65

1 A To drive.
2 **Q If Lori Niverson was not working at the**
3 **time of the accident, then would her employer be**
4 **responsible for the accident?**
5 MR. TWOMBLEY: Object to the form
6 of the question.
7 THE WITNESS: She wouldn't have
8 been there if she wasn't working.
9 BY MS. TILLMAN:
10 **Q How do you figure that?**
11 A She was going to deliver papers for her
12 employer.
13 **Q So she was on her way to work?**
14 A She was working.
15 **Q Did she have newspapers in the car?**
16 A I don't remember. You are asking
17 questions you will have to ask her. You are
18 asking me questions that you should be asking
19 her.
20 **Q I surely will ask her, but one question**
21 **I have is just your memory of the night, I am**
22 **trying to get what information you have about**
23 **the night.**
24 **And you say that your wife Tiffany gave**
25 **Lori Niverson a ride to work, is that correct?**



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1 A Yes.

2 **Q Do you remember whether Miss Niverson**

3 **had newspapers with her?**

4 A No, I do not.

5 **Q Do you remember whether she didn't have**

6 **newspapers with her?**

7 A She didn't have papers with her, no.

8 **Q So Miss Niverson did not have**

9 **newspapers with her at the accident?**

10 A Not that I know of.

11 **Q So do you believe she was on her way to**

12 **work at the time?**

13 A We took her to work, yes.

14 **Q What kind of training do you think that**

15 **Starr Distributing could have done that would**

16 **have prevented this accident?**

17 MR. TWOMBLEY: Object to the form

18 of the question.

19 THE WITNESS: Driver training.

20 BY MS. TILLMAN:

21 **Q Well, if Mrs. Niverson was not employed**

22 **by Starr Distributing, do you think that Starr**

23 **Distributing is still responsible?**

24 MR. TWOMBLEY: Object to the form

25 of the question.

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1 don't know what to say. I don't understand what

2 you are trying to say.

3 **Q What do you think the connection is**

4 **between Starr Distributing and your damages in**

5 **this case?**

6 MR. TWOMBLEY: The same, object to

7 the form.

8 THE WITNESS: That was their

9 worker that hurt me.

10 BY MS. TILLMAN:

11 **Q So your belief is that because their**

12 **worker hurt you, Starr Distributing is**

13 **responsible for your injury, is that correct?**

14 A Correct.

15 **Q How about your ongoing damages?**

16 A Yes.

17 THE WITNESS: Can we take a break?

18 MR. TWOMBLEY: Sure.

19 (Whereupon, a short break was

20 taken.)

21 BY MS. TILLMAN:

22 **Q Mr. Murphy, have you hired any kind of**

23 **expert witness in this matter?**

24 A I haven't.

25 **Q Do you know whether your lawyer has?**

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1 THE WITNESS: I don't understand

2 that question.

3 BY MS. TILLMAN:

4 **Q If she doesn't work for Starr**

5 **Distributing, is Starr Distributing still**

6 **responsible do you believe?**

7 MR. TWOMBLEY: The same objection.

8 THE WITNESS: I still don't

9 understand what you are trying to say.

10 Do you mean if she doesn't work? If

11 somebody else was working doing the job

12 that night?

13 BY MS. TILLMAN:

14 **Q Just if she isn't an employee for Starr**

15 **Distributing?**

16 A If she is employed?

17 **Q If she is not employed? If she does**

18 **not work?**

19 A And she hits me, is that what you are

20 saying?

21 **Q I suppose I am saying is if she is not**

22 **an employee of Starr Distributing, is Starr**

23 **Distributing in your mind still responsible?**

24 A I don't understand that question. I

25 really don't, so I am not going to answer. I

Page 69

1 A No, I don't.

2 **Q Have you met with or talked with any**

3 **kind of expert?**

4 A No, I haven't.

5 **Q Has your relationship with your wife**

6 **changed at all since this injury?**

7 A No, no.

8 **Q Mr. Murphy, did you receive a prior**

9 **settlement in this lawsuit --**

10 A Yes.

11 **Q Related to this accident, rather.**

12 **How much was that settlement for?**

13 A I don't know all together. No, I

14 don't.

15 **Q How much could you estimate it was for?**

16 A I don't know. I really don't. You

17 would have to ask the lawyer.

18 **Q Would it sounds right that it was**

19 **\$25,000?**

20 A I don't know I told you. I have

21 already answered three times. I don't know.

22 **Q What was your understanding that that**

23 **settlement compensated you for?**

24 A It was supposed to be for some of the

25 medical bills and for lost work.

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1 **Q And when you say some of the medical**
2 **bills, again do you know how much your medical**
3 **expenses were?**
4 A No, I don't, not all together.
5 **Q Do you believe they were more than**
6 **\$25,000?**
7 A Yes, I do.
8 **Q How about, how much do you estimate**
9 **that you have lost in wages due to this injury?**
10 A Probably close to 20,000. I mean that
11 would be a guess.
12 **Q I am sorry, could you say that again?**
13 A I would say close to 20,000. That
14 would be a guess.
15 **Q And how do you figure that?**
16 A Just 80,000 or 85,000 a year divided by
17 12 -- I mean I don't know. I am just guessing
18 is what I am saying.
19 **Q So 85,000 is about what you make a**
20 **year, is that correct?**
21 A Correct.
22 **Q Or is that what you made prior to the**
23 **accident or what you are making now?**
24 A That is what I make now.
25 **Q And how much did you make prior to the**

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1 A To me it didn't, no.
2 **Q Did the insurance company say that it**
3 **did?**
4 A They did, yes.
5 **Q Are there any sorts of damages that you**
6 **don't think I have covered that you think you**
7 **are entitled to?**
8 A I don't know. No, I mean.
9 **Q So we have talked about your decrease**
10 **in your earning per year and your car and your**
11 **medical bills and pain that you are**
12 **experiencing.**
13 **Does that cover the damages that you**
14 **are seeking?**
15 MR. TWOMBLEY: Object to the form
16 of the question.
17 THE WITNESS: I don't know what my
18 future medical will be on this either I
19 mean, you know.
20 BY MS. TILLMAN:
21 **Q What kind of future medical treatment**
22 **do you anticipate needing?**
23 A I don't know now. I mean my neck
24 already starting -- it is not going to last, no.
25 **Q Do you think you might need another**

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1 **accident?**
2 A Between 80 to 100,000 each year.
3 **Q So how much less do you think you make**
4 **a year because of this injury?**
5 A I will have to go back and look at my
6 taxes; but I mean I have turned them into you
7 all so I mean.
8 **Q Based on your previous answer is it**
9 **about -- do you believe it is about 15 to**
10 **\$20,000?**
11 A 10 to 15 maybe, yeah.
12 **Q How much do you think you should be**
13 **compensated for your pain?**
14 A I have no idea.
15 MR. TWOMBLEY: Object to the form
16 of the question.
17 BY MS. TILLMAN:
18 **Q What was your car value or your wife's**
19 **car?**
20 A I don't know. I think we got a check
21 for \$3700 from my insurance company for it.
22 **Q And so was your car totaled?**
23 A Yes, it was.
24 **Q So did the \$3700 reimburse you for your**
25 **car?**

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1 **surgery?**
2 A I don't know right now.
3 **Q Has Dr. Zottoli suggested that you**
4 **might need a new surgery?**
5 A Not yet.
6 **Q Has Dr. Zottoli recommended that you go**
7 **back to a surgeon or other doctor?**
8 A No, he hasn't. No, he hasn't.
9 **Q Have you talked about the pain that you**
10 **are experiencing with Dr. Zottoli?**
11 A No.
12 MS. HEATON: I don't have any
13 questions.
14 REDIRECT EXAMINATION
15 BY MS. MEYER:
16 **Q I have one more. Mr. Murphy, when you**
17 **were with Lori Niverson at the scene or when you**
18 **were with her in the vehicle taking her to work,**
19 **did she mention anything about what she had been**
20 **doing prior to the accident?**
21 A No, she didn't. Not that I recall.
22 **Q Did she mention that she had been**
23 **working prior to the accident?**
24 A I don't know. Honestly like I said I
25 don't know.

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1 **Q That is all I have.**
 2 CROSS-EXAMINATION
 3 BY MR. TWOMBLEY:
 4 **Q I just have a couple of questions.**
 5 **You were asked about your relationship**
 6 **with your wife?**
 7 A Yes.
 8 **Q After the accident and when you had the**
 9 **surgery and until you were released back to go**
 10 **to work, were you able to have intimate**
 11 **relationships with your wife in the same manner**
 12 **that you --**
 13 A No, no.
 14 **Q Were you able to help her around the**
 15 **house?**
 16 A No, no. No.
 17 **Q So to the extent that constitutes a**
 18 **change in relationship, do you think you did**
 19 **have a change in the relationship with your**
 20 **wife?**
 21 A I mean yeah.
 22 I don't sleep near like -- I get up in
 23 the middle of the night and all that and hurting
 24 and stuff. I can't sleep the same. I don't
 25 know if that affects her -- if that affects her

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1 or not.
 2 **Q That is all I got.**
 3 THE COURT REPORTER: Ms. Meyer
 4 will take the original and an
 5 electronic copy of the deposition.
 6 Mr. Twombley will take an
 7 electronic copy.
 8 Ms. Tillman will take an
 9 electronic copy.
 10 Ms. Heaton will take an electronic
 11 copy.
 12 (WAIVED SIGNATURE.)
 13 (Whereupon, the deposition of
 14 Charles Waymon Murphy was concluded
 15 at 11:30 a.m.)
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

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1 C E R T I F I C A T E
 2
 3 STATE OF SOUTH CAROLINA:
 4 BEAUFORT COUNTY:
 5
 6 I, Ceil Weser, CSR and Notary
 7 Public in and for the above county and state, do
 8 hereby certify that the foregoing testimony was
 9 taken before me at the time and place
 10 herein before set forth; that the witness was by
 11 me first duly sworn to testify to the truth, the
 12 whole truth, and nothing but the truth, that
 13 thereupon the foregoing testimony was later
 14 reduced by computer transcription; and I certify
 15 that this is a true and correct transcript of my
 16 stenographic notes so taken.
 17 I further certify that I am not of
 18 counsel to either party, nor interested in the
 19 event of this cause.
 20
 21 *Ceil Weser*
 22
 23 Ceil Weser, CCR
 24 Notary Public
 25 Beaufort, South Carolina



Exhibit 2: Arthur Niverson transcript



Deposition of:
Arthur C Niverson

September 15, 2020

In the Matter of:
**Murphy, Charles Waymon Vs.
Niverson, Lori Ann**

A. William Roberts, Jr & Assoc.
800-743-3376 | calendar-awr@veritext.com | www.veritext.com

Page 1

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF BEAUFORT

3 CHARLES WAYMON MURPHY,

4 Plaintiff,

5 vs. CIVIL ACTION NO. 2018-CP-07-02069

6 LORI ANN NIVERSON; STARR DISTRIBUTING, LLC,

7 Defendants.

8 STARR DISTRIBUTING, LLC,

9 Third-Party Plaintiff,

10 vs.

11 ARTHUR C. NIVERSON,

12 Third-Party Defendant.

13 DEPOSITION OF: ARTHUR C. NIVERSON

14 DATE: September 15, 2020

15 TIME: 1:48 p.m.

16 LOCATION: 2217 Hawthorne Street

Savannah, Georgia

17 TAKEN BY: Counsel for the Plaintiff

18 REPORTED BY: MINDY VISLAY (attending by VTC)

Page 2 1 APPEARANCES OF COUNSEL: 2 ATTORNEYS FOR PLAINTIFF CHARLES WAYMON MURPHY (attending by VTC): 3 4 TWENG & TWOMBLEY LAW FIRM BY: J. ASHLEY TWOMBLEY 311 Carteret Street 5 Beaufort, South Carolina 29902 843-982-0100 6 twombley@twlawfirm.com 7 8 ATTORNEYS FOR DEFENDANT LORI ANN NIVERSON (attending by VTC): 9 CLAWSON AND STAUBES, LLC BY: DANIEL P. RANALDO 10 126 Seven Farms Drive Suite 200 11 Charleston, South Carolina 29492 843-577-2026 12 dranaldo@clawsonandstaubes.com 13 14 ATTORNEYS FOR THE DEFENDANT STARR DISTRIBUTING, LLC (attending by VTC): 15 FORD WALLACE THOMSON, LLC BY: AINSLEY F. TILLMAN 16 715 King Street Charleston, South Carolina 29403 17 843-277-2011 ainsley.tillman@fordwallace.com 18 19 ATTORNEYS FOR THE DEFENDANT STARR DISTRIBUTING, LLC (attending by VTC): 20 21 BRAITHWAITE TIMMERMAN, LLC BY: TERENCE PAUL TIMMERMAN 759 Richland Avenue West 22 Aiken, South Carolina 29801 803-649-4144 23 paul@bcarolinalaw.com 24 25	Page 3 1 ATTORNEYS FOR THE DEFENDANT ARTHUR C. NIVERSON (attending by VTC): 2 3 GRIFFITH, FREEMAN & LIIPFERT, LLC BY: E. MITCHELL GRIFFITH 600 Monson Street 4 Beaufort, South Carolina 29902 843-521-4242 mgriffith@griffithfreeman.com 5 6 7 8 (INDEX AT REAR OF TRANSCRIPT) 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25
Page 4 1 PROCEEDINGS 2 COURT REPORTER: Due to the need for this 3 deposition to take place remotely, the parties will 4 stipulate that the court reporter may swear in the 5 witness over the Veritext virtual videoconference and 6 that the witness has verified that he is in fact 7 Arthur C. Niverson. 8 MR. TWOMBLEY: Yes, I agree. 9 MR. RANALDO: Dan Ranaldo. I agree. 10 MR. GRIFFITH: Mitchell Griffith. I agree. 11 MS. TILLMAN: Ainsley Tillman. I agree. 12 MR. TIMMERMAN: Paul Timmerman. I agree. 13 ARTHUR C. NIVERSON, 14 Being first duly sworn, testified as follows: 15 DIRECT EXAMINATION 16 BY MR. TWOMBLEY: 17 Q. Mr. Niverson, my name is Ashley Twombley. 18 I'm a lawyer here at Beaufort, and we're here to take 19 your deposition today about a traffic accident that 20 occurred on September 30, 2017, involving your wife, 21 and we're going to be asking you some questions today. 22 Have you ever had your deposition taken before? 23 A. No. 24 Q. Okay. Well, I'm going to ask you some 25 questions. You've been placed under oath and swore to	Page 5 1 give truthful responses to my questions. Do you 2 understand that? 3 A. Yes. 4 Q. We're not in a courtroom with a judge, but 5 the oath that you took today is the same oath you 6 would take if you were in a courtroom in front of the 7 judge, and it carries the same penalties of perjury 8 that would apply if we were in a courtroom in front of 9 a judge. Do you understand that? 10 A. Yes. 11 Q. Okay. You're doing a great job. Please 12 try to let me finish my question and then give a 13 verbal response. That way the court reporter can 14 accurately take down what my question was and what 15 your response is. Okay? 16 A. Okay. 17 Q. Based on the nature of this case, I 18 anticipate that some of the other attorneys may object 19 to some of the questions that I answer [sic], and you 20 may hear one or all of them say I object or I object 21 to the form, or they may make some other type of 22 objection, but unless someone tells you not to answer 23 the question, then you are obligated to go ahead and 24 answer. So try not to let the objections throw off 25 your response to the question, because you're still

Page 6

1 going to need to give a response even though there are
2 objections. Okay?
3 A. Okay.
4 Q. All right. If you have any questions about
5 my questions, you let me know. Otherwise, we will
6 presume that you understood the question and have
7 given a truthful answer. Fair enough?
8 A. Okay.
9 Q. And once we start the deposition you're not
10 allowed to talk to anybody on a break about your
11 testimony. So if we take a break remember not to do
12 that. Okay?
13 And it looks like your video may have froze,
14 Mr. Niverson. Can you still hear us?
15 It looks like you're back now. Are you able to
16 hear us, Mr. Niverson? Mr. Niverson, are you able to
17 hear us?
18 MR. TWOMBLEY: Mitch, can you hear me?
19 MR. GRIFFITH: I can hear you, Ashley. It
20 appears to be frozen to me.
21 THE WITNESS: Hello? I can't hear
22 anything. Sorry. Are you there?
23 MR. GRIFFITH: We are.
24 MR. TWOMBLEY: All right. Are you there,
25 Mr. Niverson? Can you hear us again?

Page 7

1 THE WITNESS: I can't hear anything -- here
2 we go. I've got it. Are you there?
3 MR. TWOMBLEY: Yeah. We can hear you now,
4 but we can't see you.
5 (A short recess was then taken.)
6 BY MR. TWOMBLEY:
7 Q. I'm not sure where I left off, but I think
8 the last thing I was asking you or telling you is that
9 if you don't understand my questions you let me know
10 and I'll rephrase them, otherwise we will presume that
11 you understood the question and are giving a truthful
12 response. Okay?
13 A. Okay.
14 Q. All right. Are you on an iPhone or an iPad
15 or a computer?
16 A. No. It's on a phone. It's an LG. It's an
17 Android phone.
18 Q. Okay. All right. Do you have any of the
19 documents in this case with you?
20 A. No, I don't.
21 Q. Well, at one point I'm going to want to
22 show you this Starr Distributing distribution
23 agreement, and I'll pull it up on the screen so you
24 can look at it.
25 A. Okay.

Page 8

1 Q. We'll just move on until we get to that
2 point. If you could start by just telling us your
3 full name and what your current address is.
4 A. My name is Arthur Clark Niverson, and my
5 address is [REDACTED], Savannah, Georgia
6 31404.
7 Q. And how old are you, Mr. Niverson? What's
8 your date of birth?
9 A. Fifty-two.
10 Q. And what's your date of birth?
11 A. [REDACTED].
12 Q. And how long have you been married?
13 A. Since '88. So that is -- that's 32 years.
14 Yeah.
15 Q. Is that your first marriage or --
16 A. Yes. First marriage.
17 Q. And what is your cellphone number?
18 A. It's area code 912- [REDACTED].
19 Q. The cellphone you have today, is that
20 the -- how long have you had it?
21 A. The cellphone I have right now?
22 Q. Yes.
23 A. Over a year.
24 Q. Mr. Niverson, tell me a little bit about
25 your educational background. Did you graduate from

Page 9

1 high school?
2 A. Yes, I did.
3 Q. Okay. Where was that?
4 A. It was Redondo Beach, California.
5 Q. Where in Redondo Beach?
6 A. It's just south of L.A.
7 Q. Okay. How did you make it over here to the
8 south?
9 A. I was in the Marine Corps.
10 Q. When did you join the Marine Corps?
11 A. Right after high school in '86.
12 Q. And how long were you in?
13 A. I got out in '89.
14 Q. Were you honorably discharged?
15 A. General.
16 Q. I'm sorry?
17 A. It was general under honorable, yeah.
18 Q. Okay. Did you say general honorable?
19 A. Under honorable, yeah. That's what they
20 told me, but --
21 Q. Well, so, were you honorably discharged or
22 were you --
23 A. Yes.
24 Q. Okay. All right. I mean, did you fill out
25 your time that you had agreed to commit?

Page 10 1 A. I got out a little bit early because of 2 some health issues and stuff. 3 Q. What were the health issues? 4 A. Actually, I gained a whole bunch of weight. 5 Q. Okay. 6 A. And -- oh, wow, I'm not even sure actually 7 what my weight was at the time when I got out, but it 8 was excessive. It was some excessive weight that I 9 had gained. 10 Q. Okay. What did you do after the Marine 11 Corps? 12 A. At first I moved back to California, and I 13 was working as an automotive -- what is it? Pretty 14 much like a delivery person of automotive parts. I 15 delivered parts to different like garages and gas 16 stations in California. I did that for about -- what 17 was it? -- around four years and ended up moving back 18 to South Carolina and then did some -- I worked at 19 like Walmart for a while, I worked for Pepsi, and in 20 about 2000 I started working for the company I'm at 21 right now. It was Best Foods Baking, and now it's 22 called Bimbo Bakeries. I've been there for 20 years. 23 Q. What do you do for Bimbo Bakeries? 24 A. Right now I'm the sales center lead. 25 Q. What does that --	Page 12 1 MS. TILLMAN: Object to the form. 2 BY MR. TWOMBLEY: 3 Q. Was what I just said a correct summary of 4 your testimony, Mr. Niverson? 5 A. That I remember, yes. 6 Q. What type of back surgery did your wife 7 have? 8 A. She ended up getting some rods and screws 9 in her back. Lower back. 10 Q. Why did she need those? 11 A. Her -- what was it? Her spinal cord was 12 being compressed. 13 Q. Was she in an accident or did she sustain 14 some injury or -- 15 A. No. It was like degenerative. 16 Q. Did she ever take pain medication for the 17 pain associated with that? 18 A. Maybe for a short while back then. 19 Q. Okay. Back in 2012? 20 A. Yes. 21 Q. Okay. But your testimony is she was not 22 receiving any prescriptions for pain medication in 23 2017 when this accident took place? 24 A. No. 25 Q. Okay. Was anyone else, either you or
Page 11 1 A. It's pretty much the manager over the 2 warehouse. I'm in charge of the employees there. I 3 keep track of the accountability of the product that 4 comes in and out of the sales center. 5 Q. All right. But you don't do any delivering 6 for them, right? 7 A. No, I do not. 8 Q. Okay. You just manage the warehouse at a 9 location somewhere in Savannah? 10 A. Correct. 11 Q. Okay. When did you start delivering 12 newspapers? 13 A. I really don't remember. 14 Q. All right. Were you working for the 15 Beaufort Gazette before you started working for Starr 16 Distributing? 17 A. Yes. At the time it was actually under 18 Lori's time then before then. I know we switched it 19 from her name to my name when she had back surgery 20 back in 2012, so I know it was before that. 21 Q. So prior to 2012 it was your memory it was 22 in Lori's name, and then when she had back surgery in 23 2012 is when you switched it to your name? 24 A. Yes. 25 MR. RANALDO: Object to the form.	Page 13 1 anyone else in your house taking any prescription pain 2 medication in 2017? 3 A. No. 4 Q. Would you use -- if you had had a 5 prescription for anything, would you have used the 6 same pharmacies that your wife used? 7 A. No. 8 Q. Okay. What pharmacies would you have used? 9 A. You said pharmacy? 10 Q. Yes. 11 A. Oh, no. I use the same pharmacy. Yes. 12 Q. Okay. What -- 13 A. I thought you said prescription. 14 Q. Oh. Okay. All right. Do you have a 15 doctor? 16 A. Yes, I do. 17 Q. Who is your doctor? 18 A. His name is Thomas Hogan. 19 Q. How long has he been your doctor? 20 A. For probably -- probably about two years. 21 Q. Who was your doctor before that? 22 A. I actually wasn't going to a doctor for a 23 long time before that. 24 Q. Okay. So you did not have a doctor in 2017 25 at the time of this accident?

Page 14	Page 16
1 A. No. 2 Q. Okay. Where does Dr. Hogan work? 3 A. It's Memorial University on Waters, I 4 believe. 5 Q. And what's the last four digits of your 6 Social Security number? 7 A. [REDACTED]. 8 Q. Let me try to share this -- well, let me 9 ask you this: Let's go back to prior to the time to 10 2012. You were delivering the newspapers at that 11 time, correct? 12 A. Before 2012? No. She was. 13 Q. Okay. Yeah. I apologize. She was. And 14 then do you know whether or not she had any type of a 15 agreement with her employer -- 16 MS. TILLMAN: Object to the form. 17 BY MR. TWOMBLEY: 18 Q. -- prior to 2012? 19 A. No, I don't. 20 Q. Okay. You said that in 2012 you 21 switched -- I think you said you switched it to your 22 name. What do you mean you switched it to your name? 23 A. Well, they do contracts every year to every 24 other year whenever Starr Distributing took over, and 25 at the time, you know, she -- I ended up losing -- I	1 Q. Do you remember when they took over? 2 A. No, I don't. 3 Q. Okay. But your memory is, though, that 4 even prior to Starr Distributing there was some type 5 of written agreement between either you and the 6 Beaufort Gazette or your wife and the Beaufort 7 Gazette? 8 A. I do not remember saying that. I don't 9 remember if there was or not. 10 Q. Well, I apologize if I misspoke. I thought 11 you said that even prior to the agreement that I have 12 that there were -- they made you sign an agreement 13 every year? 14 A. It was when Starr Distributing, when they 15 took over -- 16 Q. Okay. 17 A. -- they were doing it. It wasn't -- before 18 that I don't remember how they were -- if they were 19 doing that or not. I don't remember. 20 Q. Okay. All right. Do you have any estimate 21 as to when Starr Distributing may have taken over? 22 A. Best of my knowledge, no. 23 Q. All right. The agreement that I have a 24 copy of between you and Starr Distributing is 25 signed -- or is dated. There's a date on one page of
Page 15	Page 17
1 got let go for about a year with the company I'm with 2 now, and with her having the back problems it was 3 easier for me to do the paper route, and it gave me 4 something to do, too, so I took it -- pretty much took 5 it over instead of her doing it because that way she 6 can, you know, rest and heal up a lot better and 7 stuff, so -- 8 (Court reporter request for clarification.) 9 THE WITNESS: I lost my job for -- pretty 10 much they laid me off for a year, but they hired me 11 back. 12 BY MR. TWOMBLEY: 13 Q. Do you know what year that was you were 14 laid off? 15 A. It was in 2012. I believe it was March of 16 2012. And I came back in July or June of 2013. 17 Q. When you say you came back, you mean you 18 recommenced your employment with Bimbo Bakeries? 19 A. Correct. 20 Q. Okay. So what happened to the paper route 21 in June of 2013 when you went back to Bimbo Bakeries? 22 A. Lori started driving it again. 23 Q. At that point in time in 2013 had Starr 24 Distributing taken over? 25 A. I do not remember.	1 November 2nd, 2016, which would have been 2 approximately one year prior to the time of this 3 accident that we're here about today which occurred in 4 September of 2017. Does that refresh your memory at 5 all? 6 A. I do remember that, but I still don't 7 remember exactly when they started, that they took 8 over for the Gazette. I don't remember. 9 Q. Okay. Did you ever drive this paper route 10 for Starr Distributing? 11 A. Yes. 12 MS. TILLMAN: Object to the form. 13 BY MR. TWOMBLEY: 14 Q. Okay. And do you know what time period you 15 drove the route for Starr? 16 MS. TILLMAN: Object to the form. 17 THE WITNESS: Yes. 18 BY MR. TWOMBLEY: 19 Q. When was that? 20 A. I was usually there about three, four 21 o'clock in the morning. 22 Q. Okay. Well, I'm first just kind of looking 23 for the general period that you would have drove the 24 route as far as 2016/2017. 25 A. Usually, to do the route, I usually started

Page 18 1 around three, four, and I finished up around 2 seven o'clock -- 3 Q. Okay. 4 A. -- in the morning. 5 Q. I'm looking for not the time you would 6 start each day but just the time period which you were 7 personally driving this route rather than your wife 8 driving the route. 9 A. Oh. Okay. It pretty much -- there would 10 be certain days where I'd drive it and certain days 11 where she'd drive it, and there were days we'd ride 12 together. And, I mean, like on Sundays we'd both ride 13 and do the paper route. Tuesdays and Saturdays I 14 would do the route by myself, and if I had, you know, 15 certain days off, an extra day off, I'd ride it with 16 her and stuff. So it would just depend on the week 17 and how would it go, but at least two times a week I'd 18 ride it with her, and then sometimes I'd do it by 19 myself, too. 20 Q. Okay. Is it fair to presume that at least, 21 though, by June of 2013 when you got rehired back at 22 Bimbo that you would not have been driving the route, 23 that it would have been your wife that would have been 24 driving? 25 A. She would drive part of it, but I did drive	Page 19 1 a couple of -- at least two days a week. 2 Q. Okay. So you would have been driving the 3 route even though you would have been still employed 4 at Bimbo? 5 A. Correct. Because on my days off I would 6 actually drive the route. 7 Q. Okay. All right. And was that continuing 8 even through 2017 at the time this accident occurred? 9 A. Yes. 10 Q. Okay. So even in 2017 there were days that 11 you would do it and there were days that your wife 12 would do it? 13 A. Correct. 14 Q. And that would just depend on whatever your 15 work schedule was and whatever she was up for? 16 A. Correct. 17 Q. Okay. I know you said you didn't remember 18 when Starr took over, but whenever Starr did take 19 over, did Starr, to the best of your knowledge, did 20 they do any type of background check on you or did 21 they give you any type of test or did they otherwise, 22 you know, perform any type of an evaluation, to the 23 best of your knowledge, as to whether or not, you 24 know, you could -- you would be a good person for this 25 job?	Page 20 1 MS. TILLMAN: Object to the form. 2 THE WITNESS: No. 3 BY MR. TWOMBLEY: 4 Q. Okay. Even though the paperwork is with 5 you, your wife did this from time to time, or your 6 wife did it as well, and I think she had also 7 testified that sometimes neither one of you could do 8 it. You'd have to get somebody else to fill in. Is 9 that correct? 10 A. Correct. 11 Q. Okay. Did Starr Distributing ever give you 12 any type of guidelines or any type of criteria 13 regarding who you could have fill in and who you could 14 not have fill in? 15 A. No. 16 Q. Okay. So, I mean, as far as you knew, you 17 could pick anybody out there that could fill in as 18 long as you thought they'd do a good job that was fine 19 with Starr? 20 MS. TILLMAN: Object to the form. 21 THE WITNESS: Correct. 22 BY MR. TWOMBLEY: 23 Q. But they never had to be a certain age or 24 never had to have any certain type of experience or 25 anything along those lines, it was just that there was	Page 21 1 a person available to do it you could send them over 2 to do it? 3 A. They'd have to have a vehicle, but -- 4 Q. Okay. 5 A. They'd have to be able to drive. 6 Q. Other than having a vehicle and being able 7 to drive, were there any other criteria or guidelines 8 that were given to you by Starr as to who could do it 9 and who could not? 10 MS. TILLMAN: Object to the form. 11 THE WITNESS: No. 12 BY MR. TWOMBLEY: 13 Q. Okay. Did -- okay. Let me see if I can 14 show you -- you tell me if you can see it. You should 15 be able to see a document in front of you called Starr 16 Distributing. Do you see that? 17 A. No, I don't. 18 Q. All right. How about now? 19 A. Now I do. 20 Q. And I'm just going to scroll through this. 21 This is a document that's been produced to me. See 22 down below it's not signed, but it appears it's got 23 your initial right here at the bottom. Do you see 24 that? 25 A. Yes.
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1 Q. Okay. So this is I guess attached to it, 2 it's a schedule of fees and rates. Do you see that? 3 A. Yes. 4 Q. And this is your signature down here at the 5 bottom? 6 A. Correct. 7 Q. Okay. Do you see that date here of 8 November 2nd, 2016? 9 A. Yes. 10 Q. All right. I want to ask you some 11 questions about this agreement. We'll just start 12 off -- 13 MR. TWOMBLEY: And I'd like to make this an 14 exhibit. I don't know how everybody on the call is 15 handling that, but these aren't Bates stamped, but I 16 don't think there's any dispute about the three-page 17 document. Does anybody have any objection to us 18 sending that to the court reporter and having her make 19 it an exhibit to the deposition? 20 MR. GRIFFITH: As I understood, you're 21 using those three pages, Ashley? 22 MR. TWOMBLEY: Right. Correct. 23 MR. GRIFFITH: Okay. Because it looks like 24 it's a pretty big file. 25 MR. TWOMBLEY: Yeah. There's 11 pages	1 A. Correct. 2 Q. And is that when everybody had to be there 3 every day? 4 MS. TILLMAN: Object to the form. 5 THE WITNESS: Yes. 6 BY MR. TWOMBLEY: 7 Q. And it says here that complaints may cause 8 a decrease in subscribers. I guess that would be 9 folks you're delivering the paper to might complain 10 about where their paper was delivered or how it was 11 delivered? 12 A. Correct. Or if they didn't get it. 13 Q. Okay. And who would they complain to? 14 A. If I remember right, it was to the Beaufort 15 Gazette, and they would contact Tony Starr with Starr 16 Distributing. 17 Q. All right. It says in No. 3 that I guess 18 the contractor agrees to pay Starr \$2 for every missed 19 delivery, wet paper not double bagged -- I guess you 20 were responsible for double bagging the papers so they 21 didn't get wet if it was raining? 22 A. Correct. 23 Q. And who would provide the papers to you in 24 the bags? 25 A. The bags you'd actually have to buy from
Page 23	Page 25
1 total. I'm going to ask him about those, too, but for 2 right now I just want to stick to the agreement and 3 make sure everyone is okay with that. 4 MR. GRIFFITH: I'm fine with the agreement. 5 MR. TWOMBLEY: Ainsley? Everybody? 6 MS. TILLMAN: That's fine with me. 7 MR. RANALDO: No objection. 8 MR. TIMMERMAN: No objection. 9 (PLF. EXHIBIT 1, Starr Distributing 10 Independent Contractor Distribution Agreement, Starr 11 Distributing Schedule of Fees and Rates, and Invoices 12 1196, 1762 and 1790, were marked for identification.) 13 BY MR. TWOMBLEY: 14 Q. All right. Let's start with No. 1 here -- 15 well, let me just tell you in general that this would 16 appear to be an agreement that outlines, you know, 17 both what your responsibilities are related to Starr 18 Distributing with respect to the delivery of the 19 newspapers. 20 A. Okay. 21 Q. Is that accurate? 22 A. Yeah. 23 Q. Okay. I guess in No. 1 it sets forth what 24 time you have to be there, right, about 3 a.m. every 25 day?	1 them. I do believe it's further down in the contract, 2 but you buy the bags from Starr Distributing. 3 Q. Okay. When you say you had to buy them 4 from them, I mean, Starr Distributing would physically 5 provide you with the bags, right? They would give 6 them to you each day? 7 A. Well, they give them to us, yes, but we 8 actually paid for those bags. 9 Q. Okay. When you say you paid for them, they 10 would just take that out of your pay, right? 11 A. Correct. 12 Q. Okay. So you never really had to take any 13 money out of your pocket and give it to them. They 14 would just deduct it out of what they paid you every 15 two weeks? 16 A. Correct. 17 Q. Okay. It says here in No. 4 the failure to 18 pick up delivery papers can result in immediate 19 termination of the contract. And let me just -- is 20 that right that you could be immediately terminated 21 for that? 22 A. Yes. According to that, yeah, it says 23 that's what they do. 24 Q. Okay. And I'm going to just jump ahead to 25 paragraph 18 -- I'm sorry -- 17. It says this is a

Page 26 1 one year contract and can be canceled by Starr at any 2 time for any reasonable reason noted above or 3 otherwise. Do you see that? 4 A. Yes. 5 Q. And did you understand that Starr could 6 terminate the contract for any reasonable reason or 7 otherwise? 8 A. Yes. 9 Q. I mean, they could fire you if they wanted 10 to, right? 11 A. Correct. 12 MS. TILLMAN: Object to the form. 13 BY MR. TWOMBLEY: 14 Q. Let's talk about No. 5 for a minute. It 15 says that -- I guess they're calling the list of where 16 you would deliver the paper each day a manifest in No. 17 5. Is that what you referred to it as? 18 A. What was the question again? 19 Q. Well, it appears that each day you were 20 provided a document called a manifest which would set 21 forth who was supposed to get a paper, or I guess the 22 list of who was supposed to get papers; is that right? 23 A. Actually, we actually had the same 24 customers every day. Every once in a while they'd 25 have like extra papers that we'd have to -- that we	Page 28 1 A. Yes. 2 Q. At the top of the second page it talks 3 about if a contractor requires the use of a Starr 4 Distributing vehicle. Was it an option, to use a 5 Starr Distributing vehicle? 6 A. Yes, there was. 7 Q. Okay. Did you use their vehicles from time 8 to time? 9 A. There was a couple times, yes. 10 Q. Okay. I mean, other than your car, I mean, 11 what else would you take on this job other than 12 your -- you know, yourself obviously? I mean, you 13 would drive your own car. Would you take anything 14 else with you in order to perform this job? 15 MS. TILLMAN: Object to the form. 16 THE WITNESS: Pretty much -- I mean, we had 17 like boxes that we'd keep papers in -- the papers in 18 and stuff, and we'd like roll them and put them into a 19 box, that way they wouldn't be all over the front 20 seat, and we'd have a box in the front seat that we'd 21 keep it in. 22 BY MR. TWOMBLEY: 23 Q. Yeah, I think your wife said that was a 24 cardboard box? 25 A. Yeah. It's like a plastic box.
Page 27 1 could deliver to additional customers in our area, and 2 I guess that's what that meant, but they didn't give 3 us a list. They gave us a list of like if we got like 4 new customers or customers that were stopping and 5 stuff like that. 6 Q. I gotcha. But the original list that you 7 got when you started the route, that would come from 8 Starr, right? 9 A. Yes. It would come from Starr. 10 Q. And then each day, whether or not people 11 needed to be added to the list or taken off the list, 12 that would come in the manifest each day, right? 13 A. Yes. 14 Q. Okay. And you were obligated to deliver to 15 everyone on the original list or changes to the 16 original list that came in the manifest? 17 MS. TILLMAN: Object to the form. 18 THE WITNESS: Correct. 19 BY MR. TWOMBLEY: 20 Q. Number 6 says the delivery area may be 21 revised on a weekly basis as necessary to fulfill 22 Starr Distributing's overall delivery obligations. 23 Was it your understanding that Starr Distributing 24 had the right to revise the delivery area on a weekly 25 basis?	Page 29 1 Q. So, other than that, is there anything else 2 that you'd been told you would take with you or any 3 equipment you would take with you to do the job? 4 MS. TILLMAN: Object to the form. 5 THE WITNESS: All you needed to have is the 6 bags just in case it rained or there was people that 7 had sprinklers and stuff. That was it. 8 BY MR. TWOMBLEY: 9 Q. Okay. Well, you needed the list from -- 10 you know, either the original list or the daily 11 changes to the manifest. That would be in the car, 12 right? 13 A. Yes. 14 Q. And -- 15 A. As long as there were no changes on it. 16 Q. Right. But if there were changes, that 17 would come from Starr, right? 18 A. Correct. 19 Q. And you needed the papers. That came from 20 Starr, right? 21 A. Correct. 22 Q. And the bags. Those were physically 23 provided to you by Starr, right? 24 A. We'd buy boxes of them at one time, and 25 then we'd keep those boxes with us, so it would last

Page 30 1 us like a month or more depending on how many -- 2 Q. Okay. But they were physically provided to 3 you by Starr Distributing, correct? 4 A. Correct. 5 Q. All right. And then your wife mentioned 6 that there was some carts that you would use to 7 transport these papers from the warehouse to the 8 vehicle; is that right? 9 A. Correct. 10 Q. And those were provided to you by Starr? 11 A. Correct. 12 Q. All right. Okay. How often did you get 13 paid and how did you get paid? 14 A. That was direct deposited, and I believe it 15 was every week. 16 Q. Okay. I want to ask you about some 17 additional documents that were provided to me, and 18 just for identification purposes this is an invoice 19 1196 dated January 13, 2017, and it's three pages, and 20 then there's another invoice dated September 22, 2017, 21 invoice No. 1762, and it is three pages as well, and 22 this last one, I don't think I'm going to ask you 23 about that. 24 MR. TWOMBLEY: But does anybody have any 25 objection to me using these the two invoices, invoice	Page 31 1 1196, which is three pages, and invoice 1762, which is 2 three pages? 3 MS. TILLMAN: No objection. 4 MR. TWOMBLEY: Anything from you, Mitch, or 5 Dan? 6 MR. RANALDO: No objection. 7 MR. TWOMBLEY: Okay. 8 MR. GRIFFITH: This is from Starr, too, 9 Mr. Niverson, correct? 10 MR. TWOMBLEY: That's what it says. 11 MR. GRIFFITH: Well, if he can identify it, 12 then I don't really have a problem with it. 13 MR. TWOMBLEY: Well, I want to make them 14 exhibits to the deposition, and I'll ask him if he can 15 identify them. Do you have any objection to me making 16 them an exhibit? 17 MR. GRIFFITH: No. I don't mind if you 18 mark it for identification, and if he can identify 19 them that's fine. 20 MR. TWOMBLEY: Okay. 21 BY MR. TWOMBLEY: 22 Q. Mr. Niverson, Mr. Griffith kind of 23 anticipated what my question was. Let's just start 24 with this first one, invoice 1196. What is this 25 document?	Page 32 1 A. This looks like how they would pay us. 2 Q. Okay. Let me just show you what I see on 3 it and kind of orient you a little bit. I mean, it's 4 from Starr Distributing LLC, and it's invoice 1196, 5 and then it's got a date on it January the 13th, 2017, 6 and it says bill to Arthur Niverson, but it's also got 7 a 918 14th Street. 8 A. Yep. That's where I lived before -- '17? 9 That's way back, because that's my old address before 10 I moved to this one back in 2016. 11 Q. Okay. All right. Anyway, it says customer 12 ID. It's got you there. And there's some other 13 information. I mean, is this -- this is not an 14 invoice that you created and sent to Starr 15 Distributing, is it? 16 A. No. 17 Q. Okay. This would have been something 18 generated by Starr Distributing? 19 A. Correct. Yes. 20 Q. Okay. All right. And I guess if we look 21 through here this would appear to be I guess what 22 you're getting paid for the time period in question? 23 A. Correct. 24 Q. All right. So if we go -- if we go through 25 here through page 1 and page 2, and then we get to the	Page 33 1 third page, I guess the total here is \$893.26. Do you 2 see that? 3 A. Yes. 4 Q. So would that have been the amount you 5 would have been paid for the time period I guess 6 December 26, 2016, through January 8, 2017? 7 A. I believe so. That's what it looks like it 8 says. Customer ID 12/26 to 1/8/17. 9 Q. And is that about the amount -- I think 10 your wife testified y'all get paid every two weeks. 11 Do you remember getting paid every week? 12 A. I can't remember if it was every week or 13 every two weeks. I don't remember. 14 Q. All right. 15 A. I thought it was every week, but -- 16 Q. All right. I mean, did you ever -- well, 17 let me just ask you. I mean, now that you've seen 18 this document and seen, you know, what it says on 19 here, I guess there's one for Barrons on here. BG I 20 presume is the Beaufort Gazette. WSJ, Wall Street 21 Journal. This would appear to be a list of all the 22 things you were delivering and what you were going to 23 be compensated for? 24 A. Correct. 25 Q. So is this a record of how much you get
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Page 34 1 paid each pay period? 2 MS. TILLMAN: Object to the form. 3 THE WITNESS: It would be what they used to 4 show what we would get paid, yes. 5 BY MR. TWOMBLEY: 6 Q. Okay. All right. I mean, I'm not married 7 to that terminology if you want to call it something 8 different. This looks kind of like a pay stub. 9 A. Correct. 10 Q. Okay. All right. Now, down here, I guess 11 I'm on the third page of this first invoice 1196, it 12 says car allowance \$25. Do you see that? 13 A. Yes, I do. 14 Q. And if we go back up to the distribution 15 agreement, on the second page it has a \$25 car 16 allowance. I think that says relay. Is that what it 17 says? 18 A. Yes. 19 Q. And it's my understanding from when Starr 20 took over that an additional responsibility under this 21 agreement was for certain papers to be picked up in 22 Bluffton and then transported to Beaufort? 23 A. Correct. 24 Q. And that \$25 was the payment for that 25 particular service?	Page 35 1 A. Correct. 2 Q. All right. Okay. And, again, on the third 3 page of invoice 1196 we see that there's the \$25 for 4 the car allowance which is really for the relay, 5 right? 6 A. Correct. 7 Q. And then there's one complaint, 1811 8 Lenora. That would have been a complaint made by the 9 customer back to Beaufort Gazette? 10 A. Correct. 11 Q. And then Beaufort Gazette would have 12 reported the complaint to Starr Distributing, right? 13 A. Correct. Yep. 14 Q. And then Starr Distributing would have then 15 reported it to you in this -- in this pay stub? 16 MS. TILLMAN: Object to the form. 17 BY MR. TWOMBLEY: 18 Q. Right? 19 A. Yeah. This would be the -- this is where 20 they take it from our pay. 21 Q. Okay. 22 A. That's not how they reported it, but that's 23 another -- that would be on a daily sheet. This was 24 only like every couple weeks. This shows where they 25 actually take it from our pay.	Page 36 1 Q. Okay. When would you get the daily sheets? 2 A. We'd get the daily sheet every morning when 3 we show up and get our papers. 4 Q. Would that be part of the manifest? 5 A. Yeah. That would be, like, the manifest, 6 yes. 7 Q. So the manifest would not only include 8 additions or subtractions from the original list that 9 Starr had created for you, it would also include 10 complaints from the day before that Starr had 11 received? 12 A. Correct. 13 Q. Okay. Under this agreement it said that 14 Starr had the right to use a tracking device. 15 "Contractor may be required to carry an Agilis device 16 provided by Starr Distributing." Do you see that? 17 A. I see it. Yes. 18 Q. "This device is only used when on delivery 19 routes and is used for tracking location." Did you 20 ever have one of those in one of your vehicles? 21 A. Nope. 22 Q. Did you ever hear of anybody else having 23 one in their vehicle? 24 A. No. 25 Q. I need to mute you for one second. Okay?	Page 37 1 I apologize. 2 (A short recess was taken.) 3 BY MR. TWOMBLEY: 4 Q. So you never had one of these devices in 5 your vehicle, but did you understand that Starr had 6 the right to put one in your vehicle if they wanted 7 to -- 8 A. Yes. 9 Q. -- and to track your movement while you 10 were delivering papers? 11 A. Yes. 12 Q. Okay. 13 MR. TWOMBLEY: Mitch, I think you're off 14 mute. 15 MR. GRIFFITH: Sorry about that. That was 16 somebody else drinking not me. 17 MR. TWOMBLEY: Gotcha. 18 BY MR. TWOMBLEY: 19 Q. Mr. Niverson, did you consider the route, 20 you know, the list of addresses where you were to 21 deliver papers, along with, you know, the daily 22 manifest of changes, did you consider those your daily 23 instructions from Starr Distributing as to what you 24 were supposed to do for the day? 25 MS. TILLMAN: Object to the form.
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1 THE WITNESS: You can look at it that way. 2 I was just looking at it that it was the customers I 3 had to deliver to. 4 BY MR. TWOMBLEY: 5 Q. But, I mean, you wouldn't know who to 6 deliver to and what changes need to be made daily 7 unless you looked at their instructions, right? 8 A. Yeah. 9 Q. Okay. Isn't it true that you had a set 10 time period in which you had to follow those 11 instructions, be it between 3 a.m. and 6 a.m. each 12 morning? 13 MS. TILLMAN: Object to the form. 14 THE WITNESS: Correct. 15 BY MR. TWOMBLEY: 16 Q. Part of the work, that is picking up the 17 papers and bagging them and using the carts to bring 18 them out to your car, that had to take place on Starr 19 Distributing's -- at their warehouse, correct? 20 MS. TILLMAN: Object to the form. 21 THE WITNESS: Not the bagging didn't have 22 to, no. 23 BY MR. TWOMBLEY: 24 Q. Okay. But the rest of it had to, right? 25 A. Yes.	1 that after y'all got into that accident you terminated 2 the relationship with Starr Distributing; is that 3 right? 4 A. Yes. 5 Q. And do you remember when that accident was? 6 A. Oh, man. I'm getting confused. 7 Q. Well, let me just ask you this: Did you 8 believe that you had the right to, you know, tell 9 Starr that you were no longer going to -- you were no 10 longer going to work for them? 11 MS. TILLMAN: Object to the form. 12 THE WITNESS: Yes. 13 BY MR. TWOMBLEY: 14 Q. And, in fact, that's exactly what you did, 15 right? 16 A. Correct. 17 Q. Has your wife ever been in any other 18 traffic accidents other than this one? 19 A. Besides this one or -- can you repeat that 20 for me again? 21 Q. Yeah. That was a bad question. Other than 22 the September 30, 2017, accident involving my client, 23 do you know if your wife's been in any other motor 24 vehicle accidents? 25 A. No. Not that she was driving. No.
Page 39	Page 41
1 Q. And did you bag in your car at the 2 warehouse like your wife did? 3 A. Yes. 4 Q. Okay. Did you have to make any investment 5 before you took on this contract other than -- well, 6 let me just ask you. Did you have to buy anything or 7 invest any money before you were able to do this job 8 for Starr Distributing? 9 MS. TILLMAN: Object to the form. 10 THE WITNESS: No. 11 BY MR. TWOMBLEY: 12 Q. Did you perform the services of delivering 13 papers for anyone else other than Starr Distributing 14 during the time you were -- during the time the 15 agreement with Starr Distributing was in place? 16 MS. TILLMAN: Object to the form. 17 THE WITNESS: No. 18 BY MR. TWOMBLEY: 19 Q. It's my understanding that following this 20 accident that happened with my client in September of 21 2017 that you were involved in another traffic 22 accident when your wife was a passenger. Do you 23 remember that? 24 A. Yes. 25 Q. Okay. And I believe your wife testified	1 Q. Your wife mentioned that she's got some 2 health problems that she had back at least in 2017, 3 and I want to just go through each one of them, and 4 you can tell me generally what you know about them. 5 We talked about her back issues, and you said she had 6 rods and screws in her back in 2012, right? 7 A. Correct. 8 Q. Then she said she had diabetes and high 9 blood pressure. Were you aware of that? 10 A. Yes. 11 Q. She had that for a long time? 12 A. Yes. 13 Q. And high cholesterol? 14 A. Yes. 15 Q. She smokes about a pack of cigarettes a day 16 since she was a child or a kid I think she said? 17 A. Correct. 18 Q. And she also suffers from sleep apnea, or 19 suffered from sleep apnea? 20 A. Yeah. She did. 21 Q. Okay. And she had I think a CPAP machine 22 for that? 23 A. Yeah. It was actually a BiPAP. 24 Q. What's a BiPAP? 25 A. A BiPAP is different. Instead of the

Page 42 1 forced air when you exhale it like slows down so you 2 can exhale and stuff instead of a constant stream of 3 air. So it goes on when you're breathing at night. 4 When you exhale it slows down the amount of air going 5 in so you can exhale. 6 Q. What is sleep apnea? How do you describe 7 that? 8 MR. RANALDO: Objection. 9 THE WITNESS: It gets to the point where 10 your airway gets blocked and you stop breathing while 11 you're sleeping. It can be -- oh, God. How would you 12 say it? Your airway gets blocked off and on because 13 of the way your throat is -- 14 (Court reporter request for clarification.) 15 THE WITNESS: They way your tongue in your 16 throat is, it's so soft -- it's hard to explain. I'm 17 sorry. 18 BY MR. TWOMBLEY: 19 Q. Is one of the side effects of that that you 20 don't sleep well at night? 21 A. Yes, you can. Definitely. You can have 22 some -- 23 Q. Is that something that your wife was 24 experiencing back in 2017? 25 A. I actually don't remember. I know she	Page 44 1 looked to the side. 2 A. All right. 3 Q. You were telling us what your wife told you 4 about how the accident occurred. 5 A. Yep. She had told me that she had dozed 6 off and that she had woke up right before hitting your 7 client and she tried swerving to miss him. 8 Q. Okay. All right. And did you understand 9 that to mean that she fell asleep while she was 10 driving? 11 A. Yeah. That's what I meant by dozed off. 12 Q. And she was behind the wheel of the car at 13 the time, right? 14 A. Correct. 15 Q. So that would mean she fell asleep at the 16 wheel, correct? 17 MR. RANALDO: Object to the form. 18 THE WITNESS: Correct. 19 BY MR. TWOMBLEY: 20 Q. I understand that your wife now takes 21 medication to make her more alert. Are you aware of 22 that? 23 A. I don't recall her still taking that. 24 Q. Okay. At one point in time she was taking 25 it?
Page 43 1 was -- she had a machine. So it just depends on how 2 good it was. I don't remember how her treatment was 3 going at that time. 4 Q. Okay. Was she -- she testified that she 5 fell asleep at the wheel and that was why this 6 accident took place. 7 MR. RANALDO: Object to the form. 8 THE WITNESS: That is a symptom of sleep 9 apnea. That can happen. It doesn't happen that 10 often, but it can happen. 11 BY MR. TWOMBLEY: 12 Q. Well, let me ask you this: Did your wife 13 tell you why the accident took place, how it happened? 14 A. Yes, she did. 15 Q. And what did she tell you? 16 A. She told me that she had dozed off and, 17 like, woke up right before and tried to swerve to miss 18 hitting your client. 19 COURT REPORTER: And, Mr. Niverson, I just 20 need you to try to keep your face towards your phone. 21 When you turn away I can't hear you as well. 22 THE WITNESS: Okay. All right. 23 BY MR. TWOMBLEY: 24 Q. Say that again while you were looking at 25 the phone because we can't hear you whenever you	Page 45 1 A. Yes, she was. 2 Q. Do you know if she was taking it in 2017 3 when this accident took place? 4 A. I do believe so. 5 Q. Okay. Did you ever have any concern with 6 her either waking up at 2 a.m. in the morning and 7 driving to Bluffton or to Beaufort and be there by 8 3 a.m. in 2017? 9 A. No, I had not. We had been doing this for 10 a while, both of us on and off, so -- 11 Q. So I guess you're saying that since y'all 12 had been doing it for a while on and off and hadn't 13 had any problems you thought it was okay? 14 A. Yes. 15 Q. Okay. Well, let me ask you this: After 16 the accident did your wife continue to do this? 17 A. Yes, she did. 18 Q. So even after the accident, now that she 19 had had a problem, you continued -- 20 A. No. 21 Q. -- you continued to think it was a good 22 idea to allow her to do it, right? 23 A. Yes. 24 Q. If you had to go back and do it over would 25 you do anything different?

Page 46 1 A. No. 2 MR. GRIFFITH: And I object to the form of 3 the question. I was trying to get it off mute. 4 BY MR. TWOMBLEY: 5 Q. Do you know the difference between -- or 6 tell me what if anything you understand the difference 7 is between an employee and an independent contractor. 8 A. An employee actually works for a company. 9 You get paid to do what they want you to do. An 10 independent contractor pretty much is just you can do 11 what you want to with your customers just in your 12 area. Starr Distributing can't tell us, you know, we 13 have to go in a certain order to our customers. We 14 had the right to do like our own -- as long as we stay 15 in our area, we can do it any way we want. Just Starr 16 can't tell us how to run it. 17 Q. But Starr does -- when you say your 18 customers, these are actually customers of Beaufort 19 Gazette, correct? 20 A. What was that again? 21 Q. When you say your customers, these are 22 actually customers of the Beaufort Gazette, right? 23 A. Correct. 24 Q. And Starr Distributing does give you that 25 list of customers, right?	Page 48 1 BY MR. TWOMBLEY: 2 Q. Is that right? 3 A. Yes. Yes. 4 Q. I think that's all I've got for now, 5 Mr. Niverson. Some of these other lawyers may have 6 some questions for you. Thank you. 7 MS. TILLMAN: Yes. Hang on one minute. 8 I'm trying to -- this is Ainsley Tillman. 9 THE WITNESS: Hang on one second. I'm 10 having trouble with my phone real quick. 11 MS. TILLMAN: Sure. Would you like to take 12 a three minute break? 13 THE WITNESS: Sure. 14 (A short recess was taken.) 15 CROSS-EXAMINATION 16 BY MS. TILLMAN: 17 Q. Mr. Niverson, my name is Ainsley Tillman. 18 I represent Starr Distributing. I just have a very 19 few questions for you. I am going to attempt to share 20 my screen with you. I may not be as skilled at 21 Ashley, but -- all right. Mr. Niverson, can you see 22 my screen? I've got what Mr. Twombley marked as 23 Exhibit 1 to your deposition. It's the Starr 24 Distributing independent contractor distribution 25 agreement. Can you see it?
Page 47 1 A. Correct. 2 Q. And they give you the changes to the list 3 that are made on a daily basis, right? 4 MS. TILLMAN: Object to the form. 5 THE WITNESS: Yes. 6 BY MR. TWOMBLEY: 7 Q. And they tell you -- they tell you what you 8 have to do for each customer and who gets which paper 9 or which publication, right? 10 MS. TILLMAN: Object to the form. 11 THE WITNESS: Can you repeat that again? 12 BY MR. TWOMBLEY: 13 Q. Starr Distributing tells you which customer 14 gets which publication? 15 A. Correct. 16 Q. And they tell you the time that you've got 17 to drop the papers off or the publications off, in 18 between 3 and 6 a.m.? 19 A. Correct. 20 Q. I mean, correct me if I'm wrong, but it 21 sounds like the only thing they don't tell you is what 22 order you have to go in as far as who gets the first 23 paper, who gets the second, who gets the third one, 24 but they do tell you everything else? 25 MS. TILLMAN: Object to the form.	Page 49 1 A. Yes, I can. 2 Q. I'm scrolling through it now, and, 3 Mr. Niverson, are these your initials on the bottom of 4 the page? 5 A. Yes, they are. 6 Q. And are your initials on the bottom of page 7 2 as well? 8 A. Correct. Yes. 9 Q. And then now I'm on page 3. Are these your 10 initials at the bottom of page 3? 11 A. Yes. 12 Q. And, Mr. Niverson, is this to your 13 understanding a contract between you and Starr 14 Distributing? 15 A. Yes, it is. 16 Q. And to your understanding does this 17 contract govern your relationship with Starr 18 Distributing? 19 A. Yes. 20 Q. And what is that relationship called? 21 A. Independent contractor. 22 Q. All right. And Mr. Twombley asked you 23 about a number of the paragraphs in here. I'm going 24 to ask you about paragraph No. 11, which is at the 25 bottom of page 1, and can you see it all right?

Page 50 1 A. Something is going on with my phone. Okay. 2 Yep. 3 Q. Can you see paragraph 11? 4 A. Yes. 5 Q. Okay. Can you read to me subparagraph A? 6 A. It says contractor alone -- this phone 7 stuff keeps happening. Give me one second. Stuff 8 keeps coming over my phone. There we go. 9 "Contractor alone will decide the number and type 10 of vehicles contractor needs to perform his or her 11 obligations under this contract." 12 Q. All right. And what do you understand that 13 subparagraph A to mean? 14 A. That we can use multiple vehicles if we 15 wanted to. It doesn't matter which vehicle or type 16 that we could use to perform our job. 17 Q. And did you typically use your vehicle to 18 deliver newspapers? 19 A. Yes. 20 Q. And I think Mrs. Niverson testified that 21 you have one vehicle between you and Mrs. Niverson; is 22 that correct? 23 A. Correct. 24 Q. All right. And would you read for me 25 subparagraph B, please.	Page 52 1 you were driving or whether you've asked your wife to 2 drive, under the terms of this contract that is your 3 responsibility; is that accurate? 4 A. Yes. 5 Q. And how about would you please read 6 subparagraph D for me. 7 A. "Contractor agrees to obtain from insurers 8 of contractor's choice which are licensed to do 9 business in the states where contractor shall perform 10 this contract, and to maintain in force for the 11 duration of this contract, insurance." 12 Q. So is it your understanding that under this 13 contract you were required to maintain insurance on 14 your vehicle? 15 A. Yes. Yes. 16 Q. And did you have that insurance in 2017 at 17 the time of the accident that is the subject of this 18 lawsuit? 19 A. Yes. 20 Q. And is that because you were obligated to 21 have that insurance under the terms of your 22 independent contractor agreement with Starr 23 Distributing? 24 A. No. 25 Q. Is that because you had a car and you
Page 51 1 A. "Contractor agrees that the receipt, 2 transportation, distribution and delivery by 3 contractor of copies of newspapers shall be made only 4 in vehicles under his/her control or direction." 5 Q. Okay. Based on that paragraph is that what 6 you did? Did you deliver papers only in vehicles that 7 were under your control? 8 A. Yes. 9 Q. And would you read subparagraph C for me, 10 please. 11 A. As an independent contractor -- I'm sorry. 12 It says as an independent contractor, contractor 13 acknowledges and agrees that in performance of this 14 agreement he/she alone is responsible for any property 15 damage, bodily injury or death caused by contractor, 16 his/her agents and employees. Contractors -- 17 Q. I'm very sorry to interrupt you. If I 18 could stop you right there, which is midway through 19 subparagraph C, what is your understanding of what you 20 just read in subparagraph C? 21 A. That if anything happens while we're doing 22 our routes it's our responsibility. It's my 23 responsibility not Starr Distributing. 24 Q. And, so, your understanding is that if 25 something happens in the course of delivery, whether	Page 53 1 needed insurance? 2 A. Yes. 3 Q. Bear with me for one minute. 4 Let's talk about the day of the accident that is 5 the subject of this lawsuit. Were you or your wife 6 driving the vehicle at the time of the accident? 7 A. My wife was. 8 Q. And at the time of the accident was she on 9 her way to pick up newspapers? 10 A. Yes. 11 Q. Is it your understanding that she was on 12 her way and she had not gotten yet to the facility 13 where she picked up newspapers? 14 A. Correct. 15 Q. And had you asked her to drive the route 16 for you that morning? 17 A. Yes. That day she was actually driving it. 18 I had asked her to, yes. 19 Q. All right. Thank you very much for your 20 time. I don't have any further questions for you. 21 A. Thank you. 22 MR. GRIFFITH: There being nothing from 23 Dan, I assume we're through? 24 MR. TWOMBLEY: I don't have anything else. 25 MR. RANALDO: I have no questions.

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1MR. GRIFFITH: Okay. Mr. Niverson, you're

2done. Go take a nap.

3THE WITNESS: Thank you.

4COURT REPORTER: Mr. Griffith, will you be

5ordering a copy of this transcript, sir?

6MR. GRIFFITH: Sure.

7COURT REPORTER: Electronic and hard copy,

8is that what you said before?

9MR. GRIFFITH: Yeah, that would be good.

10He will read and sign.

11COURT REPORTER: Mr. Timmerman, will you be

12ordering a copy of this transcript, sir?

13MR. TIMMERMAN: Yes. Electronic, please.

14COURT REPORTER: Ms. Tillman, will you be

15ordering a copy of this transcript?

16MS. TILLMAN: Yes, please. Electronic.

17COURT REPORTER: Mr. Ranaldo, will you be

18ordering a copy of this transcript?

19MR. RANALDO: Yes, please. Electronic.

20(The witness, after having been advised of

21his right to read and sign this transcript, does not

22waive that right.)

23(Deposition was concluded at 3:13 p.m.)

24

25

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1CERTIFICATE OF REPORTER

2

3I, Mindy Vislay, Court Reporter and Notary

4Public for the State of South Carolina at Large, do

5hereby certify that the foregoing transcript is a

6true, accurate, and complete record.

7I further certify that I am neither related to

8nor counsel for any party to the cause pending or

9interested in the events thereof.

10Witness my hand, I have hereunto affixed my

11official seal this 24th day of September, 2020, at

12Indian Land, Lancaster County, South Carolina.

13

14

15

16

17

18Mindy L Vislay

19

20

21

22Mindy Vislay,

23Court Reporter

24My Commission expires

25August 29, 2027

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1E Mitchell Griffith

2mgriffith@griffithfreeman.com

3September 25, 2020

4RE: Murphy, Charles Waymon v. Niverson, Lori Ann

59/15/2020, Arthur C Niverson (#4205351)

6The above-referenced transcript is available for

7review.

8Within the applicable timeframe, the witness should

9read the testimony to verify its accuracy. If there are

10any changes, the witness should note those with the

11reason, on the attached Errata Sheet.

12The witness should sign the Acknowledgment of

13Deponent and Errata and return to the deposing attorney.

14Copies should be sent to all counsel, and to Veritext at

15litsup-ga@veritext.com.

16

17Return completed errata within 30 days from

18receipt of testimony.

19If the witness fails to do so within the time

20allotted, the transcript may be used as if signed.

21

22Yours,

23Veritext Legal Solutions

24

25

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---	--

Exhibit 3: Lori Ann Niverson transcript



Deposition of:
Lori Ann Niverson

September 15, 2020

In the Matter of:
**Murphy, Charles Waymon Vs.
Niverson, Lori Ann**

A. William Roberts, Jr & Assoc.
800-743-3376 | calendar-awr@veritext.com | www.veritext.com

Page 1

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF BEAUFORT

3 CHARLES WAYMON MURPHY,

4 Plaintiff,

5 vs. CIVIL ACTION NO. 2018-CP-07-02069

6 LORI ANN NIVERSON; STARR DISTRIBUTING, LLC,

7 Defendants.

8 STARR DISTRIBUTING, LLC,

9 Third-Party Plaintiff,

10 vs.

11 ARTHUR C. NIVERSON,

12 Third-Party Defendant.

13 DEPOSITION OF: LORI ANN NIVERSON

14 DATE: September 15, 2020

15 TIME: 10:18 a.m.

16 LOCATION: 2217 Hawthorne Street

Savannah, Georgia

17 TAKEN BY: Counsel for the Plaintiff

18 REPORTED BY: MINDY VISLAY (appearing by VTC)

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21

22

23

24

25

Page 2 1 APPEARANCES OF COUNSEL: 2 ATTORNEYS FOR PLAINTIFF CHARLES WAYMON MURPHY (appearing by VTC): 3 4 TWENGE & TWOMBLEY LAW FIRM BY: J. ASHLEY TWOMBLEY 311 Carteret Street 5 Beaufort, South Carolina 29902 843-982-0100 6 twombley@twlawfirm.com 7 8 ATTORNEYS FOR DEFENDANT LORI ANN NIVERSON (appearing by VTC): 9 CLAWSON AND STAUBES, LLC BY: DANIEL P. RANALDO 10 126 Seven Farms Drive Suite 200 11 Charleston, South Carolina 29492 843-577-2026 12 dranaldo@clawsonandstaubes.com 13 14 ATTORNEYS FOR THE DEFENDANT STARR DISTRIBUTING, LLC (appearing by VTC): 15 FORD WALLACE THOMSON, LLC BY: AINSLEY F. TILLMAN 16 715 King Street Charleston, South Carolina 29403 17 843-277-2011 ainsley.tillman@fordwallace.com 18 19 ATTORNEYS FOR THE DEFENDANT STARR DISTRIBUTING, LLC (appearing by VTC): 20 21 BRAITHWAITE TIMMERMAN, LLC BY: TERENCE PAUL TIMMERMAN 22 759 Richland Avenue West Aiken, South Carolina 29801 803-649-4144 23 paul@btcarolinlaw.com 24 25	Page 3 1 ATTORNEYS FOR THE DEFENDANT ARTHUR C. NIVERSON (appearing by VTC): 2 3 GRIFFITH, FREEMAN & LIIPFERT, LLC BY: KELLY DEAN 600 Monson Street 4 Beaufort, South Carolina 29902 843-521-4242 5 kdean@griffithfreeman.com 6 7 ATTORNEYS FOR DEFENDANT ARTHUR C. NIVERSON (appearing by VTC): 8 GRIFFITH, FREEMAN & LIIPFERT, LLC BY: E. MITCHELL GRIFFITH 9 600 Monson Street Beaufort, South Carolina 29902 10 843-521-4242 mgriffith@griffithfreeman.com 11 12 ALSO PRESENT: Chris Woods 13 14 (INDEX AT REAR OF TRANSCRIPT) 15 16 17 18 19 20 21 22 23 24 25	Page 4 1 PROCEEDINGS 2 COURT REPORTER: Due to the need for this 3 deposition to take place remotely, the parties will 4 stipulate that the court reporter may swear in the 5 witness over the Veritext virtual videoconference and 6 that the witness has verified that she is in fact Lori 7 Niverson. 8 MR. TWOMBLEY: Yeah, I agree. This is 9 Ashley Twombley. 10 MR. RANALDO: Dan Ranaldo. I agree. 11 MS. DEAN: Kelly Dean. I agree. 12 MS. TILLMAN: Ainsley Tillman. I agree. 13 THE WITNESS: Lori Niverson. I agree. 14 MR. TIMMERMAN: Paul Timmerman. I agree. 15 LORI ANN NIVERSON, 16 Being first duly sworn, testified as follows: 17 DIRECT EXAMINATION 18 BY MR. TWOMBLEY: 19 Q. Good morning, Ms. Niverson. My name is 20 Ashley Twombley. I'm a lawyer here in Beaufort, South 21 Carolina, and I represent the plaintiff in this 22 action, and we're here today to take your deposition. 23 Have you ever had your deposition taken before? 24 A. No. 25 Q. Okay. Well, the court reporter mentioned Page 5 1 this, but I'm gonna be asking questions, and you're 2 gonna be required to respond to them, and she's gonna 3 take down my questions and the answers that you give 4 so they can be used later in court if necessary. Do 5 you understand that? 6 A. Yes. 7 Q. Okay. We need you to give verbal responses 8 to the questions so she can type down what your answer 9 is, so I'll try to remind you to do that as we move 10 along. Is that fair? 11 A. Yes. 12 Q. Okay. If you have any questions about my 13 questions you let me know, otherwise we will assume 14 that you understood the question and are providing a 15 truthful answer. Is that fair? 16 A. Yes. 17 Q. Okay. Obviously we're not in court today, 18 but the court reporter placed you under oath, and the 19 oath that you took to tell the truth and the whole 20 truth and nothing but the truth, that's the same oath 21 you'd take if we were in court and a judge were 22 present, and the same penalties of perjury apply to 23 the testimony you give today even though we're not in 24 court. Do you understand that? 25 A. Yes.
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Page 6	Page 8
1 Q. Okay. And of course the oath requires you 2 not only to tell the truth but to tell the whole truth 3 and to provide a complete answer to questions. Do you 4 understand that? 5 A. Yes. 6 Q. You mentioned that someone was in the room 7 with you today. Mr. Woods. Is he your roommate you 8 said? 9 A. Yes. 10 Q. Okay. Once the deposition gets started, 11 and it's now started, the rules require and provide 12 that you're not allowed to talk to anybody about your 13 testimony, about any of the questions that I'm asking 14 you, any questions that I might ask, or any of the 15 responses that you're giving. Do you understand that 16 rule? 17 A. I only talked -- (audio distortion.) 18 (Court reporter request for clarification.) 19 THE WITNESS: I only talked to the Zoom 20 video people. 21 BY MR. TWOMBLEY: 22 Q. Correct. That means that at a break, if we 23 take a break, that you're not allowed to talk to 24 Mr. Woods about the questions that are being asked or 25 any of the responses that you're giving. Do you	1 A. Me and my husband. 2 Q. Okay. How long have you lived at that 3 location in Savannah? 4 A. I think it's five years. 5 Q. Did Mr. Woods say something? I saw you 6 looking at him and -- 7 A. Okay. I let him know that. He was in the 8 restroom when you were telling me that. He just came 9 back into the room. 10 Q. Okay. 11 (Court reporter addresses continued audio 12 distortion.) 13 BY MR. TWOMBLEY: 14 Q. Are you able to hear us okay, Ms. Niverson? 15 A. I can hear you fine. 16 Q. Okay. Yeah, I'm getting a little distorted 17 audio signal as well, so try to speak slowly and 18 clearly so we can understand your answers. Okay? 19 A. Okay. 20 Q. All right. How long have you lived at that 21 location? 22 A. I believe it's going on five years. 23 Q. Okay. And who else has lived there with 24 you for the past five years? 25 A. Repeat that.
Page 7	Page 9
1 understand that? 2 A. Okay. I understand. 3 Q. And he's not allowed to give you any hand 4 signals or any thumbs up or thumbs down in any way 5 shaping the testimony that you may give. Do you 6 understand that? 7 A. I understand. 8 Q. Okay. Do you feel that he needs to be in 9 the room while you're being deposed? 10 A. Well, I'm in my living room, and that's 11 where he is, and he's no part of this, but -- 12 Q. Okay. All right. Do you agree to follow 13 the rules and not receive any communications from him 14 or anyone else while the deposition is proceeding? 15 A. I agree. 16 Q. Okay. All right. Do you have any 17 questions before we get started? 18 A. No. 19 Q. Okay. Ms. Niverson, if you would start by 20 giving us your full name and address, please. 21 A. Lori Ann Niverson. [REDACTED], 22 Savannah, Georgia 31404. 23 Q. And is that an apartment? 24 A. No. It's a house. 25 Q. Okay. Who owns that house?	1 Q. Who else lives there with you? Who has 2 lived there with you during the past five years? 3 A. My husband, and for the past three years my 4 roommate. 5 Q. Is that like a two bedroom apartment -- I 6 mean two bedroom house? A three bedroom house? 7 A. Three bedroom house. 8 Q. Are you related to Mr. Woods or is your 9 husband related to him? 10 A. No. 11 Q. Okay. Does he pay rent over there? 12 A. Yes. 13 Q. And I may have asked you this, but who owns 14 the house? 15 A. My husband and myself. 16 Q. Okay. Ms. Niverson, tell me briefly. What 17 is your educational background? Did you graduate from 18 high school? 19 A. Yes. 20 Q. Where did you go to high school? 21 A. Beaufort High School. 22 Q. Okay. Did you have any formal education 23 after Beaufort High School? 24 A. No. 25 Q. Okay. And how old are you?

Page 10	Page 12
1 A. Fifty. 2 Q. And do you have a job? 3 A. Currently, no. 4 Q. What was the last job that you had? 5 A. I was a dishwasher at the Village Bar & 6 Grill until the Covid pandemic. 7 Q. Where is the Village Bar & Grill? 8 A. In Savannah. 9 Q. And how long did you work at the Village 10 Bar & Grill? 11 A. Just like a month-and-a-half. 12 Q. All right. I'm just going to kind of go, 13 you know, back in time and go through your employment 14 history. What was your job before you worked at the 15 Village Bar & Grill? 16 A. I delivered newspapers. 17 Q. Okay. And who did you deliver newspapers 18 for? 19 A. Starr Distributing. 20 Q. When did you stop doing that? 21 A. I don't remember. 22 Q. I mean, was it -- was it in the past, you 23 know, three years or a year or -- 24 A. I think it's -- if I recall, it's been like 25 one or two years since I've been doing it because my	1 appointment? 2 A. Beaufort. 3 Q. Was that an appointment for you or was it 4 an appointment for him? 5 A. Me. 6 Q. So he was driving you to a doctor's 7 appointment and he got into a traffic accident? 8 A. Correct. 9 Q. Okay. And who was at fault in the 10 accident, was it your husband's fault or somebody 11 else's fault? 12 A. I don't honestly know because it was like a 13 pileup, a chain reaction, and nobody was ticketed. 14 Q. Okay. So it was a pileup and a chain 15 reaction and nobody was ticketed? 16 A. It was a three-car pileup. 17 Q. And you said that happened approximately 18 one to two years ago? 19 A. Correct. 20 Q. Okay. And when that accident happened did 21 you -- from that day forward you never worked at Starr 22 Distributing anymore after that day? 23 MR. RANALDO: Object to the form. 24 MS. DEAN: Object to the form. 25 MS. TILLMAN: And I'll also object to the
Page 11	Page 13
1 husband totaled the car and I wasn't able to go back 2 to Beaufort. 3 Q. Does your husband still work for Starr 4 Distributing? 5 A. No. 6 Q. Okay. Did his employment there end around 7 the same time yours did? 8 MR. RANALDO: Object to the form. 9 MS. TILLMAN: Object to the form. 10 BY MR. TWOMBLEY: 11 Q. You can still answer. 12 A. None of us work there no more. 13 Q. But when you stopped working there was that 14 at the same time that your husband stopped working 15 there? 16 A. Yes. 17 Q. Okay. And you said your husband was in a 18 traffic accident. He wrecked the car and totaled it? 19 A. Yes. 20 Q. Okay. What was the -- can you tell me 21 about that accident? 22 A. We were heading to a doctor's appointment. 23 Q. Okay. And was your husband driving? 24 A. Yes. 25 Q. Okay. And where was the doctor's	1 form. 2 BY MR. TWOMBLEY: 3 Q. And, Ms. Niverson, just so you know, the 4 other attorneys may be objecting to some of the 5 questions that I'm asking, but that doesn't mean you 6 don't have to answer it, and, so, don't worry about 7 those objections. You just worry about providing a 8 truthful answer to the question. Okay? 9 A. Okay. 10 Q. All right. From the day of the accident 11 that your husband was in when he was taking you to the 12 doctor's appointment did you cease working for Starr 13 Distributing on that day forward? 14 A. Yes. 15 Q. And did your husband, did he stop working 16 for Starr on that day forward? 17 MS. TILLMAN: Object to form. 18 THE WITNESS: Yes. 19 BY MR. TWOMBLEY: 20 Q. And was that tied or somehow related to the 21 fact that you no longer had a vehicle? 22 A. Correct. 23 Q. Okay. Why did you and your husband stop 24 working for Starr on the day of this accident? 25 MR. RANALDO: Object to the form.

Page 14 1 MS. DEAN: Object to the form. 2 MS. TILLMAN: Object to the form. 3 BY MR. TWOMBLEY: 4 Q. You can go ahead and answer. 5 A. You have to have a vehicle. Our vehicle 6 was totaled. 7 Q. Okay. How do you know you had to have a 8 vehicle? 9 A. You go to people's houses. You have to 10 have a vehicle to deliver papers. 11 Q. So your testimony is that if you don't have 12 a vehicle that you cannot do this job? 13 A. Correct. 14 Q. Okay. Did anyone ever offer to provide a 15 vehicle for you? 16 A. There was a loaner car that you could 17 sometimes use if no one else had it. 18 Q. Okay. Why didn't you use the loaner car? 19 A. Because I live in Savannah and the job is 20 in Beaufort. 21 Q. All right. How long had you worked for 22 Starr Distributing prior to the day of -- 23 MS. TILLMAN: I object to the form. 24 MS. DEAN: Object to form. 25 MR. TWOMBLEY: If y'all will let me try to	Page 16 1 THE WITNESS: I don't recall how long I 2 worked there because Starr took over from the Beaufort 3 Gazette. 4 BY MR. TWOMBLEY: 5 Q. All right. So were you working for the 6 Beaufort Gazette prior to the time that Starr took 7 over? 8 MR. RANALDO: Object to the form. 9 THE WITNESS: Correct. 10 BY MR. TWOMBLEY: 11 Q. And, so, I guess did the job change when 12 Starr took over? 13 MS. TILLMAN: Object to the form. 14 THE WITNESS: No. 15 BY MR. TWOMBLEY: 16 Q. Was it you had a different I guess person 17 you were responsible to and you were still doing more 18 or less the same thing? Is that a fair 19 characterization? 20 MR. RANALDO: Object to the form. 21 MS. TILLMAN: I also object to the form. 22 BY MR. TWOMBLEY: 23 Q. Is that a fair characterization, 24 Ms. Niverson? 25 A. Yes.
Page 15 1 finish the question, then you can get your objections 2 out. 3 MS. TILLMAN: Sorry. 4 BY MR. TWOMBLEY: 5 Q. My question is, Ms. Niverson, how long had 6 you worked for Starr Distributing prior to the time 7 you got in this accident where the car was totaled 8 when you were on the way to a doctor's appointment? 9 MR. RANALDO: Object to the form. 10 MS. TILLMAN: I also object to the form. 11 This is Ainsley. 12 MS. DEAN: Object to the form. 13 BY MR. TWOMBLEY: 14 Q. Do you understand the question, 15 Ms. Niverson? 16 A. No. 17 Q. How long did you work at Starr 18 Distributing? 19 MS. TILLMAN: I object to the form. 20 MR. RANALDO: Object to the form. 21 MS. DEAN: Object to the form. 22 BY MR. TWOMBLEY: 23 Q. You can answer. 24 A. I don't recall -- (audio distortion.) 25 (Court reporter request for clarification.)	Page 17 1 Q. Did you and your husband start the job 2 delivering newspapers at around the same time? 3 MS. TILLMAN: I object to the form. 4 MS. DEAN: Object to the form. 5 MR. RANALDO: Object to the form. 6 BY MR. TWOMBLEY: 7 Q. Ms. Niverson, each time that I ask you a 8 question, even though they object, you need to go 9 ahead and answer. Okay? 10 A. Okay. 11 Q. So the question is, did you and your 12 husband start that job around the same time? 13 A. No. 14 Q. Okay. When did you start and when did your 15 husband start? 16 A. I started in 2007 at the Beaufort Gazette. 17 I don't recall what year it was my husband took over 18 the contract. 19 Q. Was there a period of time when both you 20 and your husband were delivering newspaper or did he 21 take over your job? 22 MS. TILLMAN: I object to the form. 23 MR. RANALDO: Object to the form. 24 MS. DEAN: Object to the form. 25 THE WITNESS: What was the question again?

Page 18	1 BY MR. TWOMBLEY: 2 Q. Was there a time when you and your husband 3 were both working delivering newspapers or did he take 4 your place with respect to the job? 5 A. There are certain days we would work 6 together. 7 Q. When you say work together, were you in 8 different -- doing different routes or were you just 9 riding together on the same route? 10 A. Riding together doing the same route. 11 Q. All right. Do you know approximately when 12 Starr Distributing took over for the Beaufort Gazette? 13 MS. TILLMAN: Object to the form. 14 THE WITNESS: No. 15 BY MR. TWOMBLEY: 16 Q. Okay. Do you have an estimate of when that 17 may have been? 18 A. No. 19 Q. You have no memory of that as far as the 20 timing? 21 A. No. 22 Q. Tell me about -- well, let me just ask you 23 this. I've been provided with a distribution 24 agreement for your husband that memorializes what he's 25 supposed to do for Starr Distributing and when he's	Page 20	1 Distributing. 2 MR. TWOMBLEY: Okay. Do you know of any 3 reason why those documents wouldn't have been 4 produced? 5 MS. TILLMAN: Would you like me to ask some 6 clarifying questions of the witness? 7 MR. TWOMBLEY: No. 8 MS. TILLMAN: I mean, they were not 9 produced because we don't have them. 10 MR. TWOMBLEY: Are you saying they don't 11 exist or that -- I mean, is there an independent 12 contract or distribution agreement with Ms. Niverson? 13 MS. TILLMAN: I thought I would appear in 14 person. I would be glad to ask Ms. Niverson some 15 questions to clarify. I don't believe such any 16 document exists, but if you want to ask her questions, 17 or I will, just let me know. 18 MR. TWOMBLEY: All right. Well, I mean, if 19 you say you don't think they exist, then I'll just 20 move forward. 21 MS. TILLMAN: I don't think they exist. 22 (Court reporter request for clarification.) 23 MR. TWOMBLEY: Well, just so the record's 24 clear, what I called it is a Starr Distributing 25 independent contractor distribution agreement, but I
Page 19	1 supposed to do it and how he's going to get paid. 2 Did you ever -- do you remember ever signing any 3 type of agreement like this with Starr Distributing? 4 MR. RANALDO: Object to the form. 5 MS. TILLMAN: I object to the form. Sorry 6 to interrupt you. 7 BY MR. TWOMBLEY: 8 Q. I'm sorry, Ms. Niverson? 9 A. I cannot see the document you're holding, 10 so I can't provide you an answer. 11 Q. Okay. Well, do you remember signing any 12 documents with Starr Distributing? 13 A. At one point, yes. 14 MR. TWOMBLEY: Guys, I don't have any of 15 the documents that Ms. Niverson would have signed. 16 Does anybody care to address that? If not, I'll just 17 pause the deposition and go take a look and make sure 18 I don't have them, because I'm not aware of having 19 any. Ainsley, do you have those documents? 20 MS. TILLMAN: Ashley, no, we don't. 21 MR. TWOMBLEY: Who is representing Starr 22 Distributing? I thought it was you, Ainsley, but is 23 it Paul? 24 MS. TILLMAN: I am representing Starr 25 Distributing, and Paul is also representing Starr	Page 21	1 think the question to Ms. Niverson was whether or not 2 she ever signed any documents with Starr Distributing 3 that would outline what her duties and 4 responsibilities were and how she was going to be 5 compensated for meeting those duties and 6 responsibilities, and I think Ms. Niverson -- 7 BY MR. TWOMBLEY: 8 Q. And, Ms. Niverson, you correct me if I'm 9 wrong, but you said your memory was you had signed 10 some documents of that nature; is that right? 11 MR. RANALDO: Object to the form. 12 THE WITNESS: I thought the very first year 13 of Starr taking over that it was in my name, but I 14 could be wrong, because we had the same contract for 15 Beaufort Gazette, but I thought that the first year 16 was in my name. I could be wrong though. 17 MR. TWOMBLEY: Okay. Did you get all that, 18 Madam Court Reporter? 19 (Wherein, a portion of the record was read 20 by the court reporter.) 21 MR. TWOMBLEY: Okay. All right. 22 BY MR. TWOMBLEY: 23 Q. Is that right, Ms. Niverson? 24 A. Correct. 25 Q. For some reason, Ms. Niverson, we're having

Page 22	1 a difficult time hearing you. Everyone else seems to 2 be really clear and crisp, but your answers are kind 3 of breaking up, and I'm worried that the record may 4 not be exactly accurate. 5 MR. TWOMBLEY: So I guess I'll just rely on 6 you, Madam Court Reporter. 7 COURT REPORTER: I will ask her to repeat 8 everything I cannot understand clearly, sir. I 9 promise. 10 MR. TWOMBLEY: All right. Thank you. 11 BY MR. TWOMBLEY: 12 Q. Ms. Niverson, tell me what your -- when you 13 first started working at Starr did you have to apply 14 for that job? 15 MS. TILLMAN: Object to form. 16 MR. RANALDO: Object to form. 17 MS. DEAN: Object to the form. 18 BY MR. TWOMBLEY: 19 Q. You can go ahead and answer. 20 A. No. 21 Q. Okay. How did you get the job? 22 A. I was already employed by the Beaufort 23 Gazette. Nothing changed when Starr took over. It's 24 the same -- (audio distortion.) 25 (Court reporter request for clarification.)	Page 24	1 way? 2 MS. TILLMAN: I object to the form. 3 THE WITNESS: I don't know. 4 BY MR. TWOMBLEY: 5 Q. Well, I guess the answer would be none that 6 you remember, none that you know of? 7 A. That's not what I said. I said I don't 8 know. 9 Q. Okay. Well, tell me about any policies, 10 procedures or guidelines that you were required to 11 follow at Starr. 12 MR. RANALDO: Object to the form. 13 MS. TILLMAN: I object to the form. 14 THE WITNESS: We had a certain time that we 15 had to be done with our paper route. 16 BY MR. TWOMBLEY: 17 Q. Okay. Anything else? 18 A. No. 19 Q. Who started working with Starr first, was 20 it you or was it your husband? 21 MR. RANALDO: Object to the form. 22 MS. TILLMAN: Object to the form. 23 MS. DEAN: Object to the form. 24 THE WITNESS: Me. 25 BY MR. TWOMBLEY:
Page 23	1 THE WITNESS: I was already employed by the 2 Beaufort Gazette. When Starr took over nothing 3 changed except the new contract. 4 BY MR. TWOMBLEY: 5 Q. So did you have to -- when you started 6 working for Starr did you have to pass any type of 7 test or go through any type of training or get 8 qualified in any particular way before Starr would 9 allow you to work with them? 10 MS. TILLMAN: I object to the form. 11 MR. RANALDO: I object to the form. 12 THE WITNESS: No. 13 BY MR. TWOMBLEY: 14 Q. To the best of your knowledge and memory, 15 did you ever have any type of training or any type of 16 background check or any other type of qualifications 17 or standards that you had to meet in order to work 18 with Starr Distributing? 19 MR. RANALDO: Object to the form. 20 MS. TILLMAN: I object to the form. 21 THE WITNESS: No. 22 BY MR. TWOMBLEY: 23 Q. To your knowledge, did Starr Distributing 24 have any type of written policies or procedures or 25 guidelines that you had to meet or adhere to in any	Page 25	1 Q. I think you said previously that you 2 weren't sure if the contract was in your name or in 3 your husband's name at one point in time. Why would 4 the -- why would the name of the person whose name the 5 contract would be in, why would that have switched 6 between you and your husband? 7 MR. RANALDO: Object to the form. 8 MS. TILLMAN: I also object to the form. 9 THE WITNESS: I originally started with -- 10 (audio distortion.) 11 (Court reporter addresses audio distortion 12 and requests clarification of testimony.) 13 THE WITNESS: Okay. I started with the 14 Beaufort Gazette in 2007. By the time Starr took over 15 I was not sure if I was going to continue or not, so 16 my husband was going to try to keep it. 17 BY MR. TWOMBLEY: 18 Q. Why were you not sure if you wanted to 19 continue delivering newspapers when Starr took over? 20 A. That was just my option. 21 Q. Okay. But, I mean, was -- I mean, what was 22 going on in your life why you didn't want to continue 23 having employment? 24 MS. TILLMAN: I object to the form. 25 THE WITNESS: There's no answer for you.

Page 26	1 BY MR. TWOMBLEY: 2 Q. I'm sorry? 3 A. I don't have an answer for you. 4 Q. I mean, did you find another job or did 5 you -- you know, did you have some health issues that 6 prevented you from continuing to do it, or what, or 7 did you just -- 8 A. I wasn't sure if I wanted to continue to do 9 it or not. 10 Q. Okay. Did you have some health issues that 11 factored into that decision? 12 A. I have health issues. I don't recall if 13 that was part of my decision or not. That was years 14 ago. 15 Q. Can you tell me generally what your health 16 issues are? 17 A. I have back issues. Diabetic. I have my 18 blood pressure, high cholesterol, and at the time, 19 before, up until three years ago I had sleep apnea. 20 Q. All right. So, back issues, diabetes, high 21 blood pressure, high cholesterol and sleep apnea? 22 A. I don't currently have the apnea anymore. 23 Q. But you had that? 24 A. I had it. 25 Q. Okay. When did the -- when did you no	Page 28	1 years. 2 Q. How long did it take you to lose the weight 3 after you had the surgery? 4 A. It's constantly a work in progress. I've 5 had it three years ago. 6 Q. Okay. So at the time that this accident 7 occurred that we're here about today with Mr. Murphy 8 you would have been a month or two after your 9 bariatric surgery? 10 A. That wouldn't be right if I had my surgery 11 in July and the accident was in September. 12 Q. Well, August and then September. So that 13 would be about two months afterwards, right? 14 A. Oh, yeah. 15 Q. Does that sound right to you that you would 16 have had your surgery in July and then two months 17 later you would have been in this accident with 18 Mr. Murphy? 19 A. Yes. 20 Q. Okay. Who is your -- who is your primary 21 care doctor? 22 A. Currently Dr. Jauhar. 23 Q. How do you spell that? 24 A. I don't know. 25 Q. Can you say it again?
Page 27	1 longer have sleep apnea? 2 MR. RANALDO: Object to the form. 3 THE WITNESS: About two years now. 4 BY MR. TWOMBLEY: 5 Q. And how did the sleep apnea go away? 6 MR. RANALDO: Object to the form. 7 BY MR. TWOMBLEY: 8 Q. Did you receive treatment for it or did you 9 get cured or did you start taking medicine that helped 10 with that or what happened? 11 A. I lost a lot of weight. 12 Q. About how much weight did you lose? 13 A. Close to a hundred pounds. 14 Q. How did you lose all the weight? 15 A. Surgery. 16 Q. What type of surgery did you have? 17 A. Bariatric surgery. 18 Q. Okay. Which one did you have? 19 A. The sleeve. 20 Q. Do you know approximately when you had that 21 surgery? 22 A. July 24th -- wait a second. I think it was 23 2017 because on July 24th I was three years out. 24 Q. So you think you had it on July 24, 2017? 25 A. Yeah. Because 2020 would have been three	Page 29	1 A. Jauhar. 2 Q. And does he work with a medical practice? 3 A. She has her own office. 4 Q. Where is her office? 5 A. Savannah. 6 Q. Where in Savannah? 7 A. I don't know the address. 8 Q. What area of town is it? 9 A. I don't remember. I don't know the name of 10 the road. 11 Q. You don't know what area of town it's in? 12 A. All I know is Savannah. 13 Q. Do you know how to get there? Can you 14 drive there if you have to? 15 A. Yeah. I can tell you how to get there from 16 my house. 17 Q. How do you get there from your house? 18 A. Go to President Street, turn right and head 19 towards -- (audio distortion) -- Island. 20 COURT REPORTER: What island, ma'am? 21 THE WITNESS: Wilmington. 22 BY MR. TWOMBLEY: 23 Q. Is that the street that it's on? 24 A. President turns into another name after you 25 get so far. I don't know what the name of the road

Page 30	Page 32
1 is, but it's off that road.	1 Q. What was his other job?
2 Q. How long has Dr. Jauhar been your -- go	2 A. He works for Bimbo Bakeries.
3 ahead.	3 Q. Bimbo?
4 A. I think it might be called Highway 80. I'm	4 A. Yes.
5 not sure.	5 Q. B-I-M-B-O?
6 Q. Okay. How long has Dr. Jauhar been your	6 A. Correct.
7 doctor?	7 Q. What is Bimbo Bakeries?
8 A. Around two to three years.	8 A. Entenmann's cake, Thomas English muffins,
9 Q. Was she your doctor at the time that this	9 Sara Lee bread. Stuff like that.
10 accident happened in September of 2017?	10 Q. Where is Bimbo Bakeries located?
11 A. No.	11 A. Currently in Pooler, Georgia.
12 Q. Who was your doctor then?	12 Q. So does your husband have a -- at the time
13 A. Dr. Andrea Hucks.	13 of this accident in September of 2017, you're saying
14 Q. Andrea what?	14 his other job, you meant other than the one at Starr
15 A. Hucks.	15 Distributing?
16 Q. H-U-C-K-S?	16 MS. TILLMAN: Object to the form.
17 A. Correct.	17 MS. DEAN: Object to the form.
18 Q. And where does Dr. Hucks work?	18 THE WITNESS: Right.
19 A. By Beaufort Memorial Hospital.	19 BY MR. TWOMBLEY:
20 Q. Was she your primary doctor back in 2017?	20 Q. So he was working two jobs at that time?
21 A. As I recall, yes.	21 A. Correct. That's why I was trying to do the
22 Q. Okay. What other doctors were you seeing	22 paper route for him.
23 in September of 2017?	23 Q. All right.
24 A. I think she was the only doctor.	24 A. He was -- (audio distortion) -- and I was
25 Q. Who was your bariatric doctor?	25 trying to help -- (audio distortion.)
Page 31	Page 33
1 A. It was Dr. Whipple.	1 (Court reporter request for clarification.)
2 Q. Dr. Whipple?	2 THE WITNESS: He was doing the paper route,
3 A. Yes.	3 and his other job was his main job. So I was helping
4 Q. Where does he work?	4 with the paper route to try and keep it going even
5 A. Memorial Health Hospital.	5 though I didn't want to do the whole thing myself.
6 Q. That's down in Savannah?	6 BY MR. TWOMBLEY:
7 A. Yes.	7 Q. Why didn't you want to do the whole thing
8 Q. And, so, between Dr. Hucks and Dr. Whipple,	8 yourself?
9 those were the only two doctors you were seeing in	9 A. Because I had been doing it already, and I
10 September of 2017?	10 was going to stop, and that's why he took it over
11 A. That I recall, yes.	11 because he didn't want it to stop, and so I helped
12 Q. Okay. Where were you getting your	12 with him.
13 prescriptions filled?	13 Q. But why didn't you want to do it?
14 A. At the time, I believe we had to do mail	14 A. I thought I already answered that.
15 order through my husband's company.	15 Q. Well --
16 Q. Who was that?	16 A. I was doing it for so long I was ready to
17 A. Express Scripts.	17 not want to do it every day.
18 Q. When you say through your husband's	18 Q. Okay. You got tired of it. Is that right?
19 company, what company was that?	19 A. I didn't say that.
20 A. It was the insurance. Blue Cross Blue	20 Q. Well, why did you not want to do it
21 Shield. We were required to do mail order for	21 anymore?
22 prescriptions for routine drugs.	22 A. I already answered that.
23 Q. How did you and your husband have health	23 Q. Well, I thought you said basically that you
24 insurance through Blue Cross Blue Shield?	24 got tired of it and you didn't want to do it anymore,
25 A. Through my husband's other job.	25 and you said no that's not what I said. So how would

Page 34	Page 36
1 you describe your rationale for no longer wanting to	1 A. I don't know. Since I was a kid.
2 do this paper route?	2 Q. Did the people at Starr Distributing know
3 A. I'd been doing it since 2007. I wanted a	3 that you suffered from sleep apnea in 2017?
4 break, and I agreed to help without letting go of the	4 MR. RANALDO: Object to the form.
5 route completely. That's why my husband was taking it	5 MS. TILLMAN: Object to the form.
6 over.	6 THE WITNESS: I don't know.
7 Q. Okay. What prescription medications were	7 BY MR. TWOMBLEY:
8 you taking in 2017?	8 Q. To your memory, did anyone ever ask you if
9 A. I know insulin. I don't remember the brand	9 you have any --
10 name of it, but insulin.	10 A. No.
11 Q. Okay.	11 Q. Okay. Did Starr Distributing know that you
12 A. Metformin. Benazepril.	12 were going to be driving on the day of the accident,
13 Q. Benazepril?	13 that you were going to be handling the route?
14 A. It's blood pressure. I don't remember the	14 A. Yes.
15 name of the cholesterol medicine.	15 Q. Why do you say that? How do you know they
16 Q. Anything else?	16 knew?
17 A. Not that I recall.	17 A. Because there were certain days that I was
18 Q. Were you taking anything for the sleep	18 doing it.
19 apnea?	19 Q. Did you have to get their permission to be
20 A. No. I slept with a BiPAP machine.	20 able to do it?
21 Q. Were you taking anything for your back?	21 A. No.
22 A. No.	22 Q. Did anyone other than you and your husband
23 Q. What type of back problems did you have?	23 ever handle the paper route?
24 A. I had back surgery. I had rods and screws.	24 MS. TILLMAN: Object to the form.
25 Q. When did you have your back surgery?	25 THE WITNESS: Only if we went out of town.
Page 35	Page 37
1 A. I don't recall, but it's been years now.	1 BY MR. TWOMBLEY:
2 Q. Okay. You weren't taking any --	2 Q. Okay. What would happen when you went out
3 A. In 2012 or something.	3 of town?
4 Q. Okay. Were you taking any pain medications	4 A. You had to find someone to cover the route.
5 in 2017?	5 Q. How would you do that?
6 A. No.	6 A. Ask people to help.
7 Q. Were you taking any pain medications after	7 Q. Okay. Other than just asking someone that
8 your surgery to help with any issues of pain from the	8 you know, did you have to get approval from Starr in
9 surgery?	9 any way or --
10 A. Which surgery are you talking about?	10 A. You let them know.
11 Q. Well, any surgery, but in particular I was	11 Q. Okay. Did you have to get their approval,
12 talking about the bariatric surgery that you had	12 I mean, or if you found someone, and they agreed to do
13 two months prior to the accident.	13 it, Starr was always fine with it?
14 A. No. I was not taking any.	14 MS. TILLMAN: Object to the form.
15 Q. And, so, to the best of your knowledge and	15 BY MR. TWOMBLEY:
16 memory, in September of 2017 you were not taking any	16 Q. The answer was -- what was the answer,
17 pain medications?	17 please?
18 A. I know for a fact I was not taking no pain	18 A. Yes.
19 medicine.	19 Q. Okay. Tell me about your typical workday
20 Q. Okay. Do you smoke?	20 on or around, you know, September 30th of 2017 when
21 A. Yes.	21 this accident happened. You know, just go back to
22 Q. How much do you smoke?	22 maybe the day before. What was your typical day like
23 A. A pack a day.	23 with respect to the newspaper route?
24 Q. And did you -- how long have you been	24 MS. TILLMAN: Object to the form.
25 smoking?	25 MR. RANALDO: Object to the form.

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1 THE WITNESS: I would get up at 1:30 a.m. 2 and drive the paper route in Beaufort. 3 BY MR. TWOMBLEY: 4 Q. Let's take it step by step. You'd get up 5 at your house in Savannah at 1:30? 6 A. Correct. 7 Q. In the morning? 8 A. Correct. 9 Q. Where would you first go? 10 A. Sometimes I would stop by the Bluffton 11 location and pick up Savannah Morning News and then go 12 straight to Beaufort. 13 (Court reporter request for clarification.) 14 THE WITNESS: Go to the Beaufort location. 15 BY MR. TWOMBLEY: 16 Q. And, so, where is the Bluffton location? 17 A. At the time, it was on Bucks Island Road. 18 Q. Is that where the Beaufort Gazette building 19 is? 20 A. No. 21 Q. Okay. Was this a separate facility where 22 you'd pick up your papers? 23 A. I would only pick up Savannah Morning News 24 on my way to the Beaufort. 25 Q. And when you say to the Beaufort location,	1 ma'am. 2 (Wherein, a portion of the record was read 3 by the court reporter.) 4 THE WITNESS: Correct. Yes. A paper box 5 to put the paper in. 6 BY MR. TWOMBLEY: 7 Q. So who would provide the paperwork to you, 8 would that be somebody at Starr Distributing? 9 A. Yes. They printed it out each night. 10 Q. And that would be I guess a list of 11 everyone that they wanted you to go deliver a paper 12 to? 13 A. It would not be addresses. It would just 14 be a paper count. 15 (Court reporter request for clarification 16 due to audio distortion.) 17 MR. TWOMBLEY: Yeah. I couldn't hear that 18 either. 19 THE WITNESS: It would just be a paper 20 count of how many papers you needed unless someone 21 stopped their paper or started up a paper. 22 BY MR. TWOMBLEY: 23 Q. And, so, on that paperwork that you got 24 every day there wouldn't be an address associated with 25 each paper?
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1 where was the Beaufort location? 2 A. Laurel Bay Road. 3 Q. And, so, what was at the Beaufort location 4 at Laurel Bay Road? Was there a warehouse there? 5 A. It's a warehouse. 6 Q. Whose warehouse was it? 7 A. Starr Distributing. 8 Q. Okay. And what would happen when you would 9 arrive at Starr Distributing? 10 A. You would get your newspaper for your 11 route. 12 Q. Okay. I mean, just kind of walk me through 13 the process. I don't know anything about what you 14 would do, but -- I mean, did you have to go in and put 15 the papers together? Did you have to fold them? Did 16 you have to put them in bags? Were there other people 17 there? I mean, walk me through what you'd do on a 18 typical morning. 19 A. You pick up your paperwork which lets you 20 know how many customers you have from Starr. You get 21 the amount of papers you need and you bag some of them 22 that don't have a paper box. As you finish your 23 papers, rolling them, you go deliver them to the 24 houses. 25 COURT REPORTER: Let me clarify one part,	1 A. No. 2 Q. How would you know who had stopped and who 3 had started? 4 A. Like I told you, that paperwork would tell 5 you if someone started or stopped. That's the only 6 address that would be on there. You knew your paper 7 route from doing it over and over the same route every 8 day. 9 Q. All right. So you had a predetermined 10 route, and it sounds like daily that might change with 11 people being added to the route or taken off the 12 route? 13 MR. RANALDO: Object to the form. 14 MS. TILLMAN: I object to the form. 15 BY MR. TWOMBLEY: 16 Q. I mean, is that correct? 17 A. Right. 18 Q. That's correct? 19 A. Correct. 20 Q. Where did you get the original route from? 21 A. The Beaufort Gazette. 22 Q. And then I guess after Starr took over you 23 would have received that from Starr? 24 MS. TILLMAN: I object to the form. 25 THE WITNESS: It didn't change when Starr

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1 took over. You had your same route from Beaufort 2 Gazette. 3 BY MR. TWOMBLEY: 4 Q. Who was in charge of deciding what route 5 you would drive and whether or not your route changed? 6 A. When you get hired, you get -- (audio 7 distortion) -- and once you get that route you don't 8 change that. You keep it. 9 (Court reporter request for clarification.) 10 THE WITNESS: An assigned route, and that 11 route does not change. 12 BY MR. TWOMBLEY: 13 Q. So when you were hired you were assigned a 14 route by Beaufort Gazette? 15 A. Correct. 16 Q. And you're telling me that nobody's route 17 ever changed? 18 A. I didn't say that. It changes when people 19 add a subscription or cancel it, but once you're 20 assigned a route that's your route. 21 Q. Well, I guess it would have been either 22 Beaufort Gazette or Starr that would be the 23 responsible party for assigning the routes? 24 MS. TILLMAN: Object to the form. 25 BY MR. TWOMBLEY:	1 yes. 2 Q. But where you got them, though, you got 3 them from Starr Distributing, right? 4 COURT REPORTER: I think maybe she's 5 frozen. 6 MR. TWOMBLEY: I'll tell you what we do, I 7 think this is a good time to take a five-minute break, 8 and, Dan, we'll let you try to reach out. 9 MR. RANALDO: Looks like it unfroze. 10 MR. TWOMBLEY: Are you back, Ms. Niverson? 11 THE WITNESS: Yes. 12 MR. TWOMBLEY: Okay. I'm fine to keep 13 going if everybody else is. 14 MR. RANALDO: I'm fine. 15 BY MR. TWOMBLEY: 16 Q. Ms. Niverson, we were talking about the 17 paperwork on a typical morning that you would get from 18 Starr Distributing, and then we were talking about the 19 papers, and I believe you were saying that Starr 20 Distributing would have provided you with the actual 21 newspapers? 22 A. Correct. 23 MS. TILLMAN: Object to the form. 24 BY MR. TWOMBLEY: 25 Q. Okay. And then you said some of the papers
Page 43	Page 45
1 Q. Is that right, Ms. Niverson? 2 A. They offered the route and location. You 3 choose to take it or not. 4 Q. Okay. They would have been the ones who 5 came up with the route and said this is the route, if 6 you take the position this is where you'll need to go? 7 MS. TILLMAN: Object to the form. 8 THE WITNESS: Correct. 9 BY MR. TWOMBLEY: 10 Q. And I guess if that changed from day-to-day 11 you would find out each morning when you got your 12 paperwork from Starr Distributing at the warehouse on 13 Laurel Bay Road? 14 MR. RANALDO: Object to the form. 15 THE WITNESS: Correct. 16 MS. TILLMAN: Object to the form. 17 BY MR. TWOMBLEY: 18 Q. And, so, Starr Distributing would have 19 provided that paperwork to you, right? 20 MS. TILLMAN: Object to the form. 21 THE WITNESS: Yes. 22 BY MR. TWOMBLEY: 23 Q. And Starr Distributing would have -- they 24 would have provided the actual papers? 25 A. They're delivered to the warehouse. So,	1 had to be bagged; is that right? 2 A. Correct. 3 Q. Okay. And where would you do the bagging, 4 at the Starr Distributing warehouse? 5 A. Correct. 6 Q. And who provided the bags to you? 7 A. We purchased them from Starr Distributing. 8 Q. Okay. But who provided them to you? Who 9 gave them to you? 10 A. Starr Distributing. We paid for them. 11 Q. Or sometimes there were inserts that had to 12 go in the papers, coupons and things of that nature? 13 A. On Sundays. 14 Q. Okay. And who would provide those to you? 15 A. It comes with the newspaper automatically. 16 Q. Okay. And that would mean that it came 17 from Starr Distributing? 18 A. Correct. 19 Q. Okay. How did you know which papers needed 20 to be bagged up and which papers didn't need to be 21 bagged up? 22 A. Because you knew your route. You knew who 23 had a paper box and who don't. 24 Q. Okay. Would that be on the paperwork in 25 some way on the original route?

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1 MR. RANALDO: Object to the form.
2 THE WITNESS: No.
3 MS. TILLMAN: Sorry. I'm late, but object
4 to the form.
5 BY MR. TWOMBLEY:
6 Q. So after you would get the papers in the
7 bags and roll them up, what would you do next?
8 A. Go deliver them.
9 Q. I've never delivered papers before, so I'm
10 sorry if some of these questions sound a little basic,
11 but did you have kind of a box or a carrier or
12 something that you would use to get them out to your
13 vehicle?
14 A. They had carts.
15 Q. Okay. Are these like rolling-type carts?
16 A. They had wheels, yes. They had wheels.
17 Q. All right. And where did the carts come
18 from?
19 A. Starr Distributing.
20 Q. Okay. So you would use the carts to roll
21 the papers from where you had rolled them in the Starr
22 Distributing warehouse out to your vehicle?
23 A. No.
24 Q. All right.
25 A. I would sit in my car to roll the papers.

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1 Q. Okay.
2 A. I would go to the car to roll papers and go
3 sit in my car to roll them.
4 (Court reporter request for clarification.)
5 THE WITNESS: I would put the newspapers in
6 the rolling cart, roll that cart to my car, unload the
7 papers into my car, take the cart back into the
8 building, come back to my car and roll the papers.
9 BY MR. TWOMBLEY:
10 Q. Did you have any type of cart or box inside
11 the car that you would put the rolled papers in?
12 A. Yes.
13 Q. Okay. What did those look like?
14 A. It was one giant box that says Bimbo
15 Bakeries on it. It's a cake box from my husband's
16 bakery. It filled up my whole entire front seat, and
17 I -- (audio distortion.)
18 (Court reporter request for clarification.)
19 THE WITNESS: I would scoot the seat all
20 the way forward to secure the box tightly between the
21 seat and the dash.
22 BY MR. TWOMBLEY:
23 Q. Okay. And then I guess you would take the
24 paperwork that you had received that morning and all
25 the papers and then you were off on your route?

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1 MS. TILLMAN: Object to the form.
2 THE WITNESS: Correct.
3 BY MR. TWOMBLEY:
4 Q. About how long would it take you to
5 complete your route?
6 A. If I remember, two to three hours.
7 Q. Okay. And what would you do at the end of
8 the route?
9 Ms. Niverson, I'm not trying to be rude to you,
10 but, I mean, it's clear -- wait. Hold on a minute.
11 Hold on a minute. It's clear that you're talking with
12 and having a conversation with Mr. Woods. We can
13 see --
14 A. My dog just threw up on my carpet. My dog
15 just threw up on my carpet. If you'd like, I can show
16 you where he just threw up. That's what I'm pointing
17 to because he's going to have to clean it up. So my
18 dog just threw up on my carpet.
19 Q. I'll tell you what we'll do. I think we'll
20 take a five-minute break so you can attend to that.
21 Okay?
22 (A short recess was taken.)
23 BY MR. TWOMBLEY:
24 Q. Ms. Niverson, we had reached the point I
25 think where you're at the end of your paper route, and

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1 I was about to ask you some questions about what
2 happens when you are done with your route, and, so,
3 when you're done with the route, and you've delivered
4 all the papers, do you have to report back to Starr,
5 or what is the protocol?
6 A. You go home.
7 Q. Do you have to report back to Starr or
8 anything of that nature?
9 MS. TILLMAN: Object to the form.
10 THE WITNESS: No.
11 BY MR. TWOMBLEY:
12 Q. Do you have to report to anyone to let them
13 know that the route's been done?
14 A. No.
15 Q. What if there was an issue, if you were
16 short on papers or if you ran into a problem, what
17 would you do?
18 A. You would call back to the person who's
19 running the warehouse or you would call Tony.
20 Q. And Tony --
21 A. Tony Starr.
22 Q. Tony Starr. And he's with Starr
23 Distributing?
24 A. Yes.
25 Q. Was he the person who would be able to

Page 50	Page 52
1 address whatever issue had come up?	1 Q. And those instructions would have changed
2 A. Yes.	2 daily?
3 MS. TILLMAN: Object to the form.	3 MR. RANALDO: Object to the form.
4 BY MR. TWOMBLEY:	4 MS. TILLMAN: Object to the form.
5 Q. So as far as the route that you were	5 THE WITNESS: It can.
6 required to drive, those instructions, those would	6 BY MR. TWOMBLEY:
7 have been given to you by the Beaufort Gazette at the	7 Q. Okay. It was subject to change daily?
8 time the initial route was agreed to, right?	8 MR. RANALDO: Object to the form.
9 MR. RANALDO: Object to the form.	9 MS. TILLMAN: Object to the form.
10 MS. TILLMAN: I object to the form.	10 THE WITNESS: Correct.
11 BY MR. TWOMBLEY:	11 BY MR. TWOMBLEY:
12 Q. Is that right, Ms. Niverson?	12 Q. On average how often would you have someone
13 A. You were given a route and you followed	13 either added to a route or taken off the route?
14 that same route every day.	14 A. That's hard to answer because it could be
15 Q. But what I'm trying to make sure I	15 daily. It's the customer's choice to either be added
16 understand is that the route, as far as what it	16 or to be stopped.
17 consisted of, where you would have to go and how many	17 Q. So that was very, very common that the
18 papers it included, that would have been created by	18 instructions would have changed?
19 Beaufort Gazette and given to the person driving the	19 MS. TILLMAN: Object to the form.
20 route to follow the route, correct?	20 MR. RANALDO: Object to the form.
21 MR. RANALDO: Object to the form.	21 THE WITNESS: Correct.
22 MS. TILLMAN: I object to the form.	22 BY MR. TWOMBLEY:
23 THE WITNESS: Correct.	23 Q. Did anyone at Starr Distributing supervise
24 BY MR. TWOMBLEY:	24 you in any way?
25 Q. Okay. And daily, as changes needed to be	25 MS. TILLMAN: Object to the form.
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1 made to the route, whether it needed to be adding	1 THE WITNESS: No.
2 someone to the route or changing it or taking someone	2 BY MR. TWOMBLEY:
3 off the route, those instructions would have been	3 Q. Did anyone at Starr Distributing ever
4 given to you each morning when you went to the	4 evaluate your performance in any way?
5 warehouse to pick up your paperwork?	5 MS. TILLMAN: Object to the form.
6 MR. RANALDO: Object to the form.	6 THE WITNESS: No.
7 MS. TILLMAN: Object to the form.	7 BY MR. TWOMBLEY:
8 THE WITNESS: Correct.	8 Q. Did you have a set time that you were
9 BY MR. TWOMBLEY:	9 required to be at Starr Distributing to start the
10 Q. And did you have any choice in the matter	10 route?
11 as to whether you said, well, I don't want to add this	11 A. No. We had a time that we had to be done
12 person or I don't want to take this person off, or	12 by.
13 were you required to follow the instructions you were	13 (Mr. Griffith joined the deposition.)
14 given?	14 BY MR. TWOMBLEY:
15 MS. TILLMAN: Object to the form.	15 Q. So there wasn't a start time, so to speak,
16 MR. RANALDO: Object to the form.	16 but there was a time that you must be finished by?
17 THE WITNESS: You followed the paper route.	17 A. Correct.
18 BY MR. TWOMBLEY:	18 Q. And who told you that time that you had to
19 Q. Okay. So you had to follow the	19 be finished by?
20 instructions not only of the original route but also	20 MS. TILLMAN: Object to the form.
21 changes and deletions from the route?	21 BY MR. TWOMBLEY:
22 MR. RANALDO: Object to the form.	22 Q. Who gave you those instructions?
23 MS. TILLMAN: Object to the form.	23 MS. TILLMAN: Objection.
24 THE WITNESS: Correct.	24 THE WITNESS: Starr.
25 BY MR. TWOMBLEY:	25 (Court reporter request for clarification

Page 54 1 due to audio distortion.) 2 THE WITNESS: Starr Distributing. 3 BY MR. TWOMBLEY: 4 Q. Now, how did you get compensated for the 5 work that you did? 6 MS. TILLMAN: Object to the form. 7 THE WITNESS: Direct deposit from Starr 8 Distributing. 9 BY MR. TWOMBLEY: 10 Q. But how was that number calculated? I 11 mean, how much did you get paid? 12 A. Per paper. 13 Q. Okay. Did you get paid for any other other 14 than per paper? 15 A. What do you mean? 16 Q. Well, did you ever get any bonuses or 17 anything like that? 18 A. He would sometimes have contests like an 19 extra cash bonus at the end of a month, but it wasn't 20 all the time. 21 Q. And "he," would that be Mr. Starr of Starr 22 Distributing? 23 A. Correct. 24 Q. Who was allowed to participate in those 25 contests for the bonus?	Page 55 1 A. All of the paper carriers. 2 Q. Okay. What were the -- what were the -- 3 what did you have to do to get the bonus? 4 MS. TILLMAN: Object to the form. 5 THE WITNESS: (Audio distortion) -- all 6 month. 7 BY MR. TWOMBLEY: 8 Q. I'm sorry? 9 A. You try to go all month and have no 10 complaints from your customers. 11 Q. How would you know whether or not you had a 12 complaint? 13 A. It would show on your paperwork the next 14 morning. 15 Q. That would be on the paperwork you would 16 pick it up from Starr Distributing each morning? 17 A. Correct. 18 Q. So would the customer complain to Starr 19 Distributing? 20 A. They would call into like a customer 21 service number, like if you missed them, and then 22 that's recorded on the paperwork and printed out with 23 your normal paperwork every morning. It would be on 24 your paperwork. 25 Q. Why didn't they call you if you were the	Page 56 1 one delivering their paper? 2 MR. RANALDO: Object to the form. 3 THE WITNESS: Some of your customers would 4 if they chose to. 5 BY MR. TWOMBLEY: 6 Q. Well, why wouldn't all of them contact you? 7 MR. RANALDO: Object to the form. 8 THE WITNESS: I can't answer that. I'm not 9 them. 10 BY MR. TWOMBLEY: 11 Q. I mean, how would a customer know who to 12 complain to if they had an issue with their paper 13 being delivered? 14 A. I can't answer that either. I can only 15 assume looking up the phone number. 16 Q. And they would look up the phone number I 17 guess of either Beaufort Gazette or Starr 18 Distributing? 19 MR. RANALDO: Object to the form. 20 THE WITNESS: I can only assume. 21 BY MR. TWOMBLEY: 22 Q. I mean, unless someone knew you personally 23 or knew your name, I mean, they would have no idea 24 that you were the person on the paper route, right? 25 A. That's not necessarily correct.	Page 57 1 Q. Well, how would they -- I'm just giving an 2 example, and I don't know, but I get the paper here in 3 my office. I don't know who the person that delivers 4 it is. How would somebody -- 5 A. At Christmastime -- at Christmastime we 6 usually pass out Christmas cards that have our name 7 and address and phone number on them. Some people 8 keep them and some people don't. 9 Q. Okay. Was that -- is that something you 10 just choose to do personally? 11 A. Everybody did it. 12 Q. Where would you get the Christmas cards 13 from? Where would you get the Christmas cards from? 14 A. You'd buy them yourself. 15 Q. How do you know that everybody would give 16 them out? 17 A. Because we all would talk. We all knew 18 each other. All of us carriers were friends. We knew 19 each other. We did our papers in the parking lot 20 together. 21 Q. Now, I saw on some of these paperwork that 22 I was provided by Starr -- well, let me ask you this. 23 Would you ever provide any paperwork to Starr 24 regarding your route, like a report that you had 25 completed the route or any type of report of how many
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Page 58 1 papers you had delivered for, you know, a certain time 2 period? 3 MS. TILLMAN: Object to the form. 4 THE WITNESS: The only thing is they'd want 5 an updated version of our route so they would have a 6 current copy on file of, like, our customers. 7 BY MR. TWOMBLEY: 8 Q. Okay. Well, wouldn't they have all that 9 information? 10 A. They could print it out, but it's not 11 always accurate, and we would provide a turn by turn 12 of the route, that way, if we ever broke down or an 13 emergency happened, and they had to cover the route, 14 they would have a turn by turn of each customer if we 15 couldn't do the route and they had to. 16 Q. But as far as who was on the route and 17 whether or not people were added or taken away, I 18 mean, the only place that information would have come 19 from is from Starr Distributing, right? 20 A. They're the ones that print the paperwork. 21 I don't know where it originates from. 22 Q. I gotcha. But that's the only place you 23 would have ever received it from is Starr 24 Distributing, correct? 25 A. Yes. Once in a while a customer would call	Page 60 1 MS. TILLMAN: Object to the form. 2 THE WITNESS: Bi-weekly. 3 BY MR. TWOMBLEY: 4 Q. Every two weeks? 5 A. Right. 6 Q. Did Starr take taxes out of your paycheck? 7 MS. TILLMAN: Object to the form. 8 THE WITNESS: No. 9 BY MR. TWOMBLEY: 10 Q. When you were working for the Beaufort 11 Gazette before Starr took over did they take out 12 taxes? 13 MS. TILLMAN: Object to the form. 14 THE WITNESS: No. 15 BY MR. TWOMBLEY: 16 Q. Ms. Niverson, if you decided -- and I don't 17 want to put words in your mouth, but it sounds like 18 after the accident that you and your husband got in 19 when you were on the way to the doctor, that after 20 that accident you just decided because you didn't have 21 a car that you were going to quit this paper route; is 22 that right? 23 A. I had no option. I had no vehicle to drive 24 from Savannah to Beaufort. 25 Q. Okay. Did you understand that you had the
Page 59 1 you and let you know they're going on vacation, and 2 then you could, you know, stop them yourself or let 3 Starr know, but mainly it all came from Starr. 4 Q. Okay. Now, I see on some of those 5 paperworks that there are tips on here. 6 A. Correct. 7 Q. How would a customer go about tipping their 8 paper route delivery person? 9 A. That information is only on our pay stub, 10 and they can do that by including a tip when they pay 11 their monthly -- their subscription bill to the paper. 12 Q. Okay. I'll have to look more closely at my 13 bill. So what you're saying is, to the best of your 14 knowledge, whenever a customer of the Beaufort Gazette 15 gets a bill, and they subscribe, you know, to get the 16 paper delivered every day, and they pay their bill, 17 there's somewhere on that form that you can pay for 18 the paper plus you can add a tip to your delivery 19 person? 20 A. To the best of my knowledge, yes. 21 Q. Okay. And that tip I guess gets reported 22 to the Beaufort Gazette, to Starr, and then from Starr 23 it ends up on your pay stub? 24 A. Correct. 25 Q. And how often would you get paid by Starr?	Page 61 1 right to do that, that you had the right to call Starr 2 and say I quit because I no longer have a car? 3 MR. RANALDO: Object to the form. 4 MS. TILLMAN: Object to the form. 5 THE WITNESS: I never told Starr that I 6 quit. I told Tony I had no vehicle and I had no way. 7 (Court reporter request for clarification.) 8 THE WITNESS: No way to get to Beaufort. 9 BY MR. TWOMBLEY: 10 Q. Well, I understand you may not have used 11 the words you quit, but, I mean, by telling Tony 12 that -- you know, that you had no vehicle and you had 13 no way to handle the paper route anymore, I mean, 14 wasn't that effectively telling him, you know, that 15 you were no longer going to be able to handle the 16 route? 17 MS. TILLMAN: Object to the form. 18 THE WITNESS: Correct. 19 BY MR. TWOMBLEY: 20 Q. And did Tony complain about that? 21 A. No. He understood. 22 Q. Okay. Did you understand that Mr. Tony 23 could take away your route from you if he wanted to if 24 he wasn't satisfied with the job you were doing? 25 MS. TILLMAN: Object to the form.

Page 62 1 THE WITNESS: Yes. 2 BY MR. TWOMBLEY: 3 Q. Okay. I mean, during the time you worked 4 at Starr Distributing did you know people who had 5 their paper route taken away because of performance 6 issues? 7 MS. TILLMAN: Object to the form. 8 THE WITNESS: I don't recall. 9 BY MR. TWOMBLEY: 10 Q. Okay. Did you know of people who quit 11 their paper route suddenly and unexpectedly for 12 various reasons? 13 A. No. 14 Q. On these invoices that I mentioned earlier 15 there's a car allowance if \$25. It's not per day. I 16 guess it's per pay period. What do you know about the 17 car allowance? 18 MR. RANALDO: Object to the form. 19 MS. TILLMAN: Object to the form. 20 THE WITNESS: That was for me stopping in 21 Bluffton and picking up the Savannah Morning News to 22 transport them with me to the Beaufort location. 23 COURT REPORTER: One moment, counsel. I 24 have to check something. 25 (A short recess was then taken.)	Page 64 1 A. No. 2 Q. So you were on the way to pick up the 3 Savannah Morning News when the accident occurred? 4 A. I don't remember if I was picking them up 5 that day or not. 6 Q. Okay. Well, do you remember having to go 7 back and pick them up and bring them back to Beaufort? 8 A. No. Because my car was totaled. 9 Q. Do you know if anybody else had to go back 10 and pick them up? 11 A. They might have caught it in time to put 12 the papers on the truck to transport the Beaufort 13 Gazette papers from Bluffton to Beaufort. 14 Q. Well, this accident occurred on Speedway 15 Boulevard. Are you familiar with Speedway Boulevard? 16 A. Nope. 17 Q. Do you remember where the accident took 18 place? 19 A. I've never heard it called Speedway 20 Boulevard. 21 Q. What do you call the name of that street? 22 A. Highway 17. 23 Q. And where was it on Highway 17? 24 A. Right close to -- 25 Q. Go ahead. I'm sorry.
Page 63 1 BY MR. TWOMBLEY: 2 Q. So the \$25 a day was for the service of 3 picking up the papers from Beaufort and bringing them 4 to Beaufort? I'm sorry. Bluffton rather than 5 Beaufort. 6 A. It wasn't \$25 a day, and it was for picking 7 up the Savannah Morning Newspaper and bringing them to 8 Beaufort with me. 9 Q. All right. Yeah, I apologize. I didn't 10 mean to say per day. But I guess that would have been 11 per pay period? Right? 12 A. Per week. 13 Q. Okay. Per week. So let's talk about the 14 day of the accident for a moment. The accident 15 happened on September 20, 2017. Is that consistent 16 with your memory? 17 A. Yes. 18 Q. Okay. Presumably you woke up at your house 19 that morning to start the day? 20 A. Yes. 21 Q. And then you were -- where were you going 22 to and from? 23 A. From my home to Beaufort. 24 Q. Okay. Had you picked up the Savannah 25 Morning News at the time the accident took place?	Page 65 1 A. Close to the turnoff of A1A by Club Karma. 2 Q. Okay. And those are those strip joints. I 3 guess are those in -- I don't know if they're in South 4 Carolina or Georgia, but they're on the way to 5 Savannah, right? 6 A. Yeah. They're right over the Talmadge 7 Bridge which means it's South Carolina. 8 Q. Where would you pick up the Savannah 9 Morning Newspapers each morning? 10 A. In Bluffton up on Island Parkway. 11 Q. Okay. 12 A. Or Buck Island Road. I don't remember what 13 it's called. 14 Q. So you would have been on the way to pick 15 those papers up at the time the collision took place? 16 MR. RANALDO: Object to the form. 17 MS. TILLMAN: Object to the form. 18 THE WITNESS: I don't recall whether I was 19 picking them up or not. 20 BY MR. TWOMBLEY: 21 Q. Didn't you have to get them every morning? 22 A. Sometimes no. 23 Q. And tell me about the accident and what 24 happened. 25 A. I was heading to -- I don't know if it was

Page 66	1 Bluffton or Beaufort that night. I had gotten up. I 2 was still tired, but I knew I had to do my paper 3 route. I came off the Talmadge Bridge, and it went 4 around a curve, and I dozed real briefly. When I woke 5 up I saw that the vehicles were stopped, and then -- I 6 don't remember Mr. Murphy, and there was a 7 construction vehicle like in front of him. When I saw 8 it, I slammed my brakes -- (audio distortion) -- but I 9 was not going to have time to stop, so I tried to 10 swerve off the road to the right to avoid him, and I 11 made contact -- 12 Q. Can you slow down a little bit, because 13 we've got a bad connection, and I can tell it's hard 14 for the court reporter to take down what you're 15 saying. So if you could just start back over that you 16 were on Highway 17, and what happened next? 17 A. And I dozed for a brief second. When I 18 woke right back up I saw the vehicles stopped. I 19 slammed my brakes instantly but realized I was still 20 not going to be able to avoid the vehicles, so I tried 21 swerving off to the side of the road to avoid him. 22 Q. But you were unable to avoid him? 23 A. Yes. I hit the passenger rear bumper. 24 Q. And did you say you dozed for a moment? 25 A. Correct.	Page 68	1 MR. RANALDO: Object to the form. 2 THE WITNESS: It's possible, but I can't 3 answer for sure. I'm not a doctor. 4 BY MR. TWOMBLEY: 5 Q. Did your doctor know that you were driving 6 a paper route every day that required you to be at the 7 Starr Distributing warehouse at 3 a.m. every morning? 8 MS. TILLMAN: Object to the form. 9 MR. RANALDO: Object to the form. 10 THE WITNESS: Yes. 11 BY MR. TWOMBLEY: 12 Q. Were you required to be at the warehouse 13 every day by 3 a.m.? 14 MS. TILLMAN: Object to the form. 15 MR. RANALDO: Object to the form. 16 THE WITNESS: I think at one point they 17 made an assigned time to be there by. I don't 18 remember for sure because I was always on time anyway. 19 BY MR. TWOMBLEY: 20 Q. I'm just reading from this agreement that 21 your husband signed. The first sentence says each 22 carrier must be at the warehouse by 3 a.m. every day. 23 Were all of the carriers required to be at the 24 warehouse by 3 a.m. every day? 25 MS. TILLMAN: Object to the form.
Page 67	1 Q. Okay. So you fell asleep at the wheel? 2 MR. RANALDO: Object to the form. 3 THE WITNESS: Yes. 4 BY MR. TWOMBLEY: 5 Q. Okay. And do you know how long you had 6 been asleep? 7 MR. RANALDO: Object to the form. 8 THE WITNESS: It was instant. 9 BY MR. TWOMBLEY: 10 Q. Do you know why you fell asleep at the 11 wheel? 12 MR. RANALDO: Object to the form. 13 THE WITNESS: I was tired still. 14 BY MR. TWOMBLEY: 15 Q. Do you know why you were tired? 16 A. No. 17 Q. Had you done anything unusual the day 18 before? 19 A. No. 20 Q. Had you ever fallen asleep at the wheel 21 prior to this? 22 A. No. 23 Q. Do you think that the fact that you fell 24 asleep had anything to do with the sleep apnea that 25 you were suffering from?	Page 69	1 MR. RANALDO: Object to the form. 2 THE WITNESS: If that's what the contract 3 says, I guess so. 4 BY MR. TWOMBLEY: 5 Q. It says on the same contract that it's a 6 one year contract that can be canceled by Starr 7 Distributing at any time for any reasonable reason 8 noted above or otherwise. Was that consistent with 9 your understanding of what Starr Distributing's 10 authority was? 11 MR. RANALDO: Object to the form. 12 MS. TILLMAN: Object to the form. 13 THE WITNESS: Yes. 14 BY MR. TWOMBLEY: 15 Q. Did you continue driving this paper route 16 after this accident? 17 A. Yes. 18 Q. Did you ever seek any medical treatment or 19 medical opinion from a doctor as to whether or not you 20 should continue to be driving with your sleep apnea in 21 light of the fact that you had fallen asleep at the 22 wheel? 23 MR. RANALDO: Object to the form. 24 THE WITNESS: I told my doctors what 25 happened, and they prescribed me medicine.

Page 70	1 BY MR. TWOMBLEY: 2 Q. What medicine did they prescribe you? 3 A. Armodafinil. 4 Q. What is Armodafinil? 5 A. It's like to keep you alert. 6 Q. And you had never been prescribed that 7 before the accident? 8 A. No. 9 Q. Who would have prescribed that to you? 10 A. If I recall, it was Dr. Hucks. 11 Q. And would you have gotten that through 12 Express Scripts? 13 A. I don't remember because we were allowed to 14 refill three times at a normal pharmacy, but after 15 that we couldn't do it no more at a normal pharmacy. 16 Q. If you had had to use a normal pharmacy and 17 not Express Scripts what pharmacy would you have used? 18 A. I'm thinking Walgreens -- not Walgreens -- 19 Walmart, but I'm not a hundred percent sure. 20 Q. What other options do you think it might 21 be? Walmart. What else? 22 A. CVS or Walgreens. 23 Q. Where is the Walmart pharmacy that you 24 would have filled a prescription at? 25 A. Robert Smalls Parkway in Beaufort.
Page 71	1 Q. How about the CVS? 2 A. Where was CVS? If I recall, it was on 3 Ribaut Road. 4 Q. How about the Walgreens? 5 A. The only one I remember being is Ladys 6 Island. 7 Okay. This was filled at Walgreens. I have the 8 bottle. That's what I was looking for. And being 9 that the accident happened while I was here, it would 10 have been Walgreens here. It was filled at my 11 Walgreens. 12 Q. Okay. 13 A. See? This is the bottle. 14 Q. Can you hold that up one more time so I can 15 get the correct spelling? Okay. Ms. Niverson, I 16 think that's all I've got. I don't know if any of 17 these other lawyers have got any questions or not. I 18 appreciate your time. 19 MS. TILLMAN: I have a couple questions for 20 you. 21 CROSS-EXAMINATION 22 MS. TILLMAN: 23 Q. Ms. Niverson, how are you doing today? 24 A. Fine. Thank you. And you? 25 Q. I'm doing well. I'm Ainsley Tillman. I
Page 72	1 represent Starr Distributing, and I wanted to go back 2 a little bit and clarify about a couple of the 3 questions that Mr. Twombley asked you. 4 Mr. Twombley referred to a contract frequently in 5 his questions of you. Was that contract with Arthur 6 Niverson and Starr Distributing that Mr. Twombley was 7 referring to? 8 A. Correct. 9 Q. So it was Arthur Niverson who was an 10 independent contractor for Starr Distributing; is that 11 correct? 12 MR. TWOMBLEY: Object to the form. 13 THE WITNESS: As far as I believe, that's 14 what it's called is an independent contract. 15 BY MS. TILLMAN: 16 Q. Okay. Tell me about your relationship with 17 Arthur Niverson. Is he -- is it Niverson or Niverson 18 before I pronounce it incorrectly? 19 A. Niverson. 20 Q. Niverson. Sorry about that. And tell me 21 about your relationship with Arthur Niverson. Is he 22 your husband? 23 A. He's my husband. We've been married 24 31 years. 25 Q. That's a good long time. It is. So did
Page 73	1 Arthur ask you to deliver newspapers for him? 2 A. He had a regular job, and when I was going 3 to give up the paper he wanted to take it over to not 4 lose the money, so I told him I would agree to keep 5 doing it, but I didn't want it in my name because I 6 didn't want to keep doing it. 7 Q. So he asked you to do it while he was 8 working for Bimbo Bakeries; is that correct? 9 MR. TWOMBLEY: Object to the form. 10 THE WITNESS: I don't remember how it all 11 came about. That was -- I don't know how many years 12 ago. 13 BY MS. TILLMAN: 14 Q. At the time of this accident we've been 15 talking about today that is the subject of this 16 lawsuit were you delivering papers for Arthur 17 Niverson? 18 MR. TWOMBLEY: Object to the form. 19 THE WITNESS: Yes. 20 BY MS. TILLMAN: 21 Q. And were you delivering -- did he tell you 22 what route you would be delivering the papers? 23 MR. TWOMBLEY: Object to the form, leading, 24 mischaracterizes the testimony. 25 BY MS. TILLMAN:

Page 74 1 Q. And you can answer. 2 A. No. It's the same route from the very 3 beginning starting with when Beaufort Gazette owned 4 it. 5 Q. Okay. And I wanted to ask you about that 6 because, like Mr. Twombly, I have never delivered 7 papers before, and you talked earlier about that 8 carriers would provide a turn by turn of the route. 9 Can you tell me about that. What does that mean? 10 A. It's directions step by step of what your 11 entire paper route is. That way, if anything ever 12 happened, and you couldn't show up for your route or 13 you had an emergency, they could provide that turn by 14 turn for someone to cover your route that has no idea 15 where your route even is. 16 Q. I see. So the carriers like Arthur 17 Niverson would provide that route; is that accurate? 18 MR. TWOMBLY: Object to the form. 19 THE WITNESS: Arthur or myself. It wasn't 20 required all the time, like maybe once a year to 21 update it. 22 BY MS. TILLMAN: 23 Q. And, so, if I'm understanding what you're 24 saying correctly, the carriers were able to decide 25 their route, the direction that they would go and how	Page 76 1 Q. I see. If Arthur asked you to drive his 2 paper route how would he get to his bakery job? 3 A. I would drive him and drop him off so I 4 could have the car. 5 Q. Sorry. I'm looking through my notes 6 because Ashley already asked a lot of the questions on 7 my list. 8 When you were -- was it Arthur who was paid by 9 Starr Distributing or was it you? 10 A. Arthur. 11 Q. Did you ever receive a check from Starr 12 Distributing? 13 A. I don't remember. 14 Q. And you said earlier that you -- and your 15 phone was breaking up so I couldn't hear you clearly. 16 You said earlier that you on the day of the 17 accident -- the accident occurred right after you came 18 over that bridge from Savannah into South Carolina; is 19 that correct? 20 A. Not right off the bridge, but I was on that 21 same street connected to the bridge. 22 Q. I see. 23 A. It was down -- it was right before like the 24 turn on that road A1A which will take you to Bluffton 25 or Beaufort.
Page 75 1 they would take the papers; is that accurate? 2 MR. TWOMBLY: Object to the form. 3 THE WITNESS: Correct. As long as you 4 delivered to every address that was on the assigned 5 route, they don't care which way you deliver it as 6 long as you deliver the whole thing to everybody. 7 BY MS. TILLMAN: 8 Q. So would the carriers come up with what 9 they felt was the best way to deliver those papers and 10 that would be their route that they would take? 11 MR. TWOMBLY: Object to the form. 12 THE WITNESS: Correct. As long as you did 13 the assigned addresses they don't care which way you 14 drive it. 15 BY MS. TILLMAN: 16 Q. And how many cars -- in 2017 how many cars 17 did you and your husband own together? Were you a one 18 car family or a two car family? 19 A. One. 20 Q. And who owned the car, was it Arthur or 21 you? Whose name was the title in? 22 A. Both. 23 Q. How did you decide who got to use the car 24 on any particular day? 25 A. Whoever needed it at the time got it.	Page 77 1 Q. I see. And you said you couldn't remember 2 if you were picking up the Savannah papers; is that 3 correct? 4 A. Correct. 5 Q. And if you didn't pick up the Savannah 6 papers then what would you do? 7 A. Just go straight to Beaufort. 8 Q. Did you have any newspapers in your car at 9 the time that the accident occurred? 10 A. No. 11 Q. I don't have any further questions. Thank 12 you for your time. 13 A. Thank you. 14 MR. TWOMBLY: Dan. Mitch. Do you have 15 anything? 16 CROSS-EXAMINATION 17 BY MR. GRIFFITH: 18 Q. Ms. Niverson, my name is Mitch Griffith. I 19 represent your husband. I have just one or two 20 questions. I'm sorry I'm a little late. Can you hear 21 me? 22 A. Yes. 23 Q. All right. As I understand, you woke up 24 that morning and you were -- did you have your papers 25 at that time?

Page 78	Page 80
1 A. No. 2 Q. So you were on the way to work at that 3 time? 4 MR. TWOMBLEY: Object to the form. 5 MS. TILLMAN: Object to the form. 6 BY MR. TWOMBLEY: 7 Q. You were on the way to work, correct? 8 A. Correct. But work does not start until I 9 get there. 10 Q. Okay. That's what I want to make sure of. 11 You were not at work at the time of this accident; is 12 that correct? 13 A. That's correct. 14 Q. All right. And you were in your own car 15 and had no papers to deliver at that time; is that 16 correct? 17 A. Correct. 18 Q. All right. And when you got to the papers 19 you'd pick them up, and that's when you started work 20 is when you started delivering papers? 21 MR. TWOMBLEY: Object to the form. 22 THE WITNESS: When you're there that's when 23 you start. 24 MR. GRIFFITH: That's all the questions 25 I've got. Thank you.	1 MR. RANALDO: Object to the form. 2 MS. TILLMAN: I also object to the form. 3 THE WITNESS: Until I reach a location I am 4 not considered at work. 5 BY MR. TWOMBLEY: 6 Q. Well, I think that's a legal question. I'm 7 just asking you. Part of your responsibilities was to 8 go get those papers from Bluffton and to drive them to 9 Beaufort, correct? 10 MR. RANALDO: Object to the form. 11 MS. TILLMAN: Object to the form. 12 THE WITNESS: That's correct. But I am not 13 at the job until I get to that location. I don't get 14 paid for traveling time, so that is not counted as 15 work time. 16 BY MR. TWOMBLEY: 17 Q. But that was part of your job was to get 18 those papers from Bluffton and take them to Beaufort, 19 right? 20 MR. RANALDO: Object to the form. 21 MS. TILLMAN: Object to the form. 22 THE WITNESS: That is correct. 23 BY MR. TWOMBLEY: 24 Q. Okay. And that's what you were in the 25 process of doing was going to get the papers from
Page 79	Page 81
1 THE WITNESS: Thank you. 2 MR. TWOMBLEY: Ms. Niverson, this is 3 Mr. Twombley. 4 I don't want to jump ahead. Dan, do you have 5 anything? 6 MR. RANALDO: Not at this time. 7 REDIRECT EXAMINATION 8 BY MR. TWOMBLEY: 9 Q. Ms. Niverson, one of the things you were 10 supposed to be doing, though, was to pick those papers 11 up from the Bluffton location and to take those over 12 to Beaufort, correct? 13 MS. TILLMAN: Object to the form. 14 THE WITNESS: Correct. But that's not part 15 of my route. 16 BY MR. TWOMBLEY: 17 Q. Well, I understand that, but I think they 18 called that the relay service that you were providing, 19 correct? 20 A. Correct. But I hadn't gotten there. 21 MR. RANALDO: Object to the form. 22 BY MR. TWOMBLEY: 23 Q. I understand. But that was part of your 24 job, though, was to drive to Bluffton, get those 25 papers and to take them to Beaufort, right?	1 Bluffton and taking them to Beaufort at the time the 2 accident occurred? 3 MS. TILLMAN: Object to the form. 4 MR. RANALDO: Object to the form. 5 THE WITNESS: I didn't agree or say that. 6 I said I don't remember. There were times I did not 7 pick them up and times I did pick them up. Sometimes 8 they would get put on the truck before I'd get there 9 if I didn't get there early. So I never told you that 10 I was for sure going there. I told you I didn't 11 remember. 12 BY MR. TWOMBLEY: 13 Q. All right. So you don't remember whether 14 or not you were going to get the papers from Bluffton 15 or not, right? 16 MS. TILLMAN: Object to the form. 17 THE WITNESS: Correct. I've told you that 18 answer each time you've asked me. 19 BY MR. TWOMBLEY: 20 Q. Okay. Ms. Niverson, do you know the 21 difference between an independent contractor and an 22 employee? 23 MR. RANALDO: Object to the form. 24 MS. TILLMAN: Object to the form. 25 THE WITNESS: No.

Page 82	1 BY MR. TWOMBLEY: 2 Q. I mean, did you consider yourself an 3 employee of Starr Distributing? 4 MS. TILLMAN: Object to the form. 5 THE WITNESS: Why would I? The contract is 6 not in my name. 7 BY MR. TWOMBLEY: 8 Q. Well, other than the fact that the contract 9 might not be in your name, I mean, I think we 10 established you did sign some paperwork. You weren't 11 sure what you signed, but putting that issue aside, 12 other than the fact that the contract may not have 13 been in your name, is there any other reason? 14 MR. RANALDO: Object to the form. 15 MS. TILLMAN: Object to the form. 16 THE WITNESS: There was a paycheck issued 17 from Starr, but that's not considered an employee. 18 BY MR. TWOMBLEY: 19 Q. Okay. This contract talks about return 20 sheets being -- it says return sheets must be provided 21 to Starr Distributing daily. Do you know what a 22 return sheet is? 23 A. No. Because I didn't have to return 24 nothing. That sounds like people who use paper boxes. 25 Like you put your quarter in the box to get a paper.	Page 84	1 be made and the number of products to be delivered at 2 each location. 3 I mean, is that what Starr Distributing would do? 4 MR. RANALDO: Object to the form. 5 MS. TILLMAN: Object to the form. 6 THE WITNESS: You do not get a list of 7 everybody's addresses every day. You're given that in 8 the beginning, and it's not in any particular order. 9 The only thing you get daily is the stops and starts. 10 BY MR. TWOMBLEY: 11 Q. Okay. But, I mean, they provide you with 12 the list, whether it's at the beginning of the 13 relationship or changes to it during the middle, they 14 give you the list of everywhere you have to go -- 15 MS. TILLMAN: Object to the form. 16 THE WITNESS: Correct. 17 BY MR. TWOMBLEY: 18 Q. -- right? And the turn by turn 19 instructions that you provide or that the paper 20 carrier would provide, that would just be your 21 personal preference whether or not you turned left and 22 went this way or turned right and went that way, but 23 that wouldn't change where you had to go each day; is 24 that right? 25 MS. TILLMAN: Object to the form.
Page 83	1 That may be what that is, but I'm not sure. I did not 2 have to return anything daily. 3 Q. Now, I want to ask you just a question 4 about these turn by turn directions, and I just want 5 to make sure I understand that correctly. It's my 6 understanding that either Starr Distributing or 7 Beaufort Gazette, they provided you with the route 8 that you were required to -- well, let me use a 9 different word other than route, but they provided you 10 with the list of their customers that they wanted 11 papers delivered to each morning, correct? 12 MS. TILLMAN: Object to the form. 13 THE WITNESS: Correct. 14 BY MR. TWOMBLEY: 15 Q. Okay. And that would change daily? Could 16 change daily? Maybe not every day, but it was subject 17 to change daily? 18 A. The only thing you got daily was the 19 changes. 20 Q. I gotcha, but I'm just -- it says delivery 21 area may be revised on a weekly basis as necessary to 22 fulfill Starr Distributing's overall delivery 23 obligations. Starr Distributing will provide 24 contractor with delivery manifest daily. The manifest 25 will designate each location where deliveries are to	Page 85	1 COURT REPORTER: Mr. Twombley, I couldn't 2 hear the witness's answer over the objection. 3 MR. TWOMBLEY: Oh. I think she said yes. 4 THE WITNESS: Correct. 5 BY MR. TWOMBLEY: 6 Q. Have you ever worked for any anybody in 7 your life or have you ever known anyone that worked 8 for anybody in your life that would provide their 9 employer with a specific route and road that they were 10 required to drive when getting in between point A and 11 point B? 12 MR. RANALDO: Object to the form. 13 BY MR. TWOMBLEY: 14 Q. Have you ever experienced anything like 15 that? 16 A. No. 17 Q. Okay. Did you get injured in this 18 accident? 19 A. I did not seek medical treatment. I was 20 fine. 21 Q. Okay. Did you file a Workers' Comp claim? 22 A. No. 23 Q. Why didn't you file a Workers' Comp -- 24 A. It wouldn't have been work-related. I was 25 not at work. It wouldn't have been work-related.

Page 86 1 There would be no reason to file that. And I was not 2 injured. I hurt my finger, but it wasn't medically 3 necessary for it to be looked at. 4 Q. Okay. So the reasons you didn't file a 5 Workers' comp claim were two in your mind. Number 6 one, you didn't think you were at work, and, number 7 two, you didn't get injured? 8 A. No. I knew for a fact I was not at work, 9 and I was not injured other than my finger. 10 Q. Well, let me ask you this. If you had been 11 hurt while you were rolling up the papers and putting 12 them in the bags, would you have thought you had the 13 ability to file a Workers' Compensation claim then? 14 MR. RANALDO: Object to the form. 15 MS. TILLMAN: Object to the form. 16 THE WITNESS: No. Because you're not going 17 to get hurt sitting in your car rolling papers. 18 That's not a legitimate question. 19 BY MR. TWOMBLEY: 20 Q. Well, can you assume that you might have 21 gotten hurt in some way? 22 A. I'm not going to pretend to answer your 23 question by pretending I got hurt when I didn't. Ask 24 me a question that's fact, and I'll answer you, but 25 I'm not going to pretend a situation to give you an	Page 88 1 Facebook that you had a broke finger? 2 A. Yeah. I told you I hurt my finger. I just 3 told you a minute ago. I said, yeah, I hurt my finger 4 in the accident. I didn't seek medical treatment. 5 Q. Okay. I'm just asking if you remember 6 posting on Facebook about it. 7 A. Do I remember posting on Facebook? No. 8 That was three years ago. And if you know I have a 9 Facebook page why did you ask me about it? 10 Q. I wanted to see if you were going to tell 11 the truth about it. That's one of the reasons we're 12 here today. 13 A. I don't remember if I posted. That was 14 three years ago. I post on Facebook every day. 15 Q. Do you remember posting that you blacked 16 out from your diabetes? 17 A. I never told you I blacked out from 18 diabetes. I never said that. I don't know where you 19 got that from. You're making up stuff. 20 Q. Do you have any social media accounts other 21 than Facebook? 22 A. I think I opened an Instagram and a 23 Twitter, but I don't know how to use them so I've 24 never used them. 25 Q. Ms. Niverson, that's all I've got.
Page 87 1 answer. 2 Q. All right. Well, if you had been hurt 3 while you were working delivering these papers -- 4 A. I was not hurt. There's no answer for you. 5 I'm not going to pretend in a hypo -- hypo whatever. 6 I'm not going to pretend if I did get hurt. There's 7 no answer to that. I answered you. No. 8 Q. Okay. It's not that important. 9 Ms. Niverson, do you have a Facebook page? 10 A. This is real, so why do I want to pretend 11 when in a real life situation I'm not going to do that 12 to give you an answer you may want to hear? This is 13 real not pretend. I'm not going to pretend to give 14 you an answer. 15 Q. It's fine. It's not that important, and I 16 don't have time to explain why we would do that, so 17 we'll just move on with the next question. Okay? 18 A. Okay. 19 Q. Do you have a Facebook page? 20 A. Yes, I do. 21 Q. And did you make any posts on your Facebook 22 page about this accident? 23 A. I don't know. That was three years ago. 24 Q. I saw one post where you were -- you said 25 you had a broke finger. Do you remember posting on	Page 89 1 A. Thank you. 2 MR. RANALDO: I don't have any questions. 3 Mitch? Ainsley? 4 MS. TILLMAN: No further questions. 5 MR. TWOMBLEY: Mitch, have you got anything 6 else before we turn Ms. Niverson loose? 7 COURT REPORTER: Mr. Griffith, are you with 8 us? 9 MS. TILLMAN: I think he might not be 10 because he doesn't have -- we may have lost him. 11 MR. TWOMBLEY: Well, I hate to say it, but 12 we probably ought to wait just to make sure if he 13 doesn't have anything more, otherwise you might be 14 subject to coming back, Ms. Niverson, and we don't 15 want to make you do that. 16 MS. TILLMAN: Ashley, do you want to maybe 17 take a break and we can see if can we contact him off 18 of this platform? 19 MR. TWOMBLEY: Yeah, that's fine with me. 20 (A short recess was taken.) 21 BY MR. TWOMBLEY: 22 Q. Ms. Niverson, I thought of just a couple 23 other quick questions I wanted to ask you while we 24 were waiting on Mr. Griffith. 25 How would you find out each morning whether or not

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1 you had to stop by Bluffton and pick up the papers and
2 take them to Beaufort or not?
3 MS. TILLMAN: Object to the form.
4 THE WITNESS: For the most part, I would go
5 there. If I was running late I would not. If the
6 papers showed up early and they were put on the truck
7 they would let me know.
8 BY MR. TWOMBLEY:
9 Q. Did you get -- I'm sorry. So how would you
10 find out each morning whether or not that you needed
11 to -- that you were going to be -- that you needed to
12 stop by Bluffton or not stop by Bluffton?
13 A. Because I was doing it on the average
14 steadily. I don't remember if I was doing it steadily
15 or not during the accident. I would do it every day
16 unless I got a call saying that the papers were
17 already put on the truck to head to Beaufort, or if I
18 was running late I would call them and tell them to
19 put them on the truck if it's not too late.
20 Q. Okay. So each day you were expected as
21 part of the normal course to get up early enough so
22 you could stop at Bluffton, get the papers and take
23 them to Beaufort?
24 MR. RANALDO: Object to the form.
25 MS. TILLMAN: Object to the form.

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1 THE WITNESS: At one point, yes.
2 BY MR. TWOMBLEY:
3 Q. Well, how about in September of 2017?
4 A. That was three years ago. I told you I
5 don't remember if I was doing it steadily or not then.
6 Q. Okay. But if you were not going to be
7 required to stop by Bluffton you would have received a
8 phone call to say they were already on the truck or
9 you would have called somebody and said I'm running
10 late and I don't have time to pick those up for you
11 this morning?
12 MS. TILLMAN: Object to the form.
13 THE WITNESS: Correct.
14 BY MR. TWOMBLEY:
15 Q. Okay. And what time were you supposed to
16 pick them up by?
17 MS. TILLMAN: Object to the form.
18 THE WITNESS: When I got there. There was
19 not an exact time to be there.
20 BY MR. TWOMBLEY:
21 Q. Well, you said if you were running late
22 you'd have to call them and tell them. I mean, what
23 was considered running late?
24 A. I needed to be at the Beaufort Gazette in
25 time to get my papers and roll them and be done with

Page 92

1 my route by a certain time.
2 Q. Okay. And those would have been the
3 instructions given to you by Starr Distributing?
4 MS. TILLMAN: Object to the form.
5 THE WITNESS: If you read the contract, we
6 had to have our route done by 6 a.m. I had to start
7 by a certain time to be done by that time.
8 BY MR. TWOMBLEY:
9 Q. Well, the contract just says you have to be
10 there by 3 a.m. every day. It doesn't say you have to
11 finish by a certain time.
12 A. Well, it was stated to everybody that we
13 had to be done with our route by 6 a.m. -- (audio
14 distortion.)
15 (Court reporter request for clarification.)
16 BY MR. TWOMBLEY:
17 Q. If you can slow down, Ms. Niverson, and
18 talk slower, because there's two problems. Number
19 one, there's a bad connection. Number two, you're
20 talking really really fast so it makes it even more
21 difficult.
22 A. Everybody knew that we had to be done by a
23 certain time. It was supposed to be six o'clock. It
24 was either six or 6:30, I don't remember exactly, but
25 after that time is when customers could call into the

Page 93

1 customer service number and complain that their paper
2 was missing or whatever.
3 Q. Okay. Before Starr Distributing took over
4 were you required to get the papers in Bluffton and
5 take them to Beaufort?
6 MS. TILLMAN: Object to the form.
7 THE WITNESS: No.
8 BY MR. TWOMBLEY:
9 Q. So that was something new that was added to
10 your responsibilities when Starr Distributing took
11 over?
12 MR. RANALDO: Object to the form.
13 MS. TILLMAN: Object to the form.
14 THE WITNESS: Correct. With Beaufort
15 Gazette we didn't have other papers. It was just
16 Beaufort Gazette and Island Packet. That was it.
17 BY MR. TWOMBLEY:
18 Q. Okay. All right. About how long would it
19 take you to get from your house to Beaufort each day?
20 A. An hour.
21 Q. And if you had to stop by Bluffton, about
22 how long would that take?
23 A. From where, my home to Beaufort or from my
24 home to Bluffton? From where?
25 Q. Well, I'm just saying if you had to stop by

Page 94	Page 96
1 Bluffton and pick up those papers would that add	1 CERTIFICATE OF REPORTER
2 five minutes or ten minutes to the route? How long	2
3 would that add to the route?	3 I, Mindy Vislay, Court Reporter and Notary
4 MS. TILLMAN: Object to the form.	4 Public for the State of South Carolina at Large, do
5 THE WITNESS: Twenty to 30 minutes	5 hereby certify that the foregoing transcript is a
6 depending on how long it took me to get the papers and	6 true, accurate, and complete record.
7 put them in my car waiting to get them.	7 I further certify that I am neither related to
8 Q. All right. That's all I've got.	8 nor counsel for any party to the cause pending or
9 MR. RANALDO: Is Mitch still with us?	9 interested in the events thereof.
10 MR. GRIFFITH: I am here.	10 Witness my hand, I have hereunto affixed my
11 COURT REPORTER: Does anyone else have any	11 official seal this 24th day of September, 2020, at
12 questions?	12 Indian Land, Lancaster County, South Carolina.
13 MR. GRIFFITH: I do not.	13
14 MR. TWOMBLEY: I don't have any.	14
15 MR. RANALDO: I have no questions.	15
16 MS. TILLMAN: I don't have anymore	16
17 questions.	17
18 MR. TIMMERMAN: None from me. Thank you.	18
19 COURT REPORTER: Mr. Ranaldo, will you be	19
20 ordering a copy of this transcript, sir?	20
21 MR. RANALDO: An E-tran transcript, please.	21
22 COURT REPORTER: Mr. Griffith, will you be	22
23 ordering a copy of this transcript, sir?	23
24 MR. GRIFFITH: Yes. Both, please.	24
25 COURT REPORTER: Ms. Tillman, will you be	25
Page 95	Page 97
1 ordering a copy of this transcript, ma'am?	1 INDEX
2 MS. TILLMAN: Yes, please. E-tran is	2 Page Line
3 great.	3 LORI ANN NIVERSON 4 15
4 COURT REPORTER: Mr. Timmerman, will you be	4 DIRECT EXAMINATION
5 ordering a copy of this transcript?	5 BY MR. TWOMBLEY 4 17
6 MR. TIMMERMAN: E-tran, please.	6 CROSS-EXAMINATION
7 (The witness, after having been advised of	7 BY MS. TILLMAN 71 21
8 her right to read and sign this transcript, waives	8 CROSS-EXAMINATION
9 that right.)	9 BY MR. GRIFFITH 77 16
10 (Deposition was concluded at 1:35 p.m.)	10 REDIRECT EXAMINATION
11	11 BY MR. TWOMBLEY 79 7
12	12 CERTIFICATE OF REPORTER 96 1
13	13
14	14 REQUESTED INFORMATION INDEX
15	15
16	16 (No Information Requested)
17	17
18	18 EXHIBITS
19	19
20	20 (No exhibits were marked)
21	21
22	22
23	23
24	24
25	25

Exhibit 4: Independent Contractor Agreement



**Starr Distributing
Independent Contractor Distribution Agreement**

1. Each carrier must be at the warehouse by 3:00am every day. If you arrive any later than 4:00 am, you will be charged \$20 per 10 minutes until you get your newspapers and are able to exit the warehouse. *Our warehouse Manager is only supposed to be there until 4am daily and 4:30am Sundays.
2. Contractor acknowledges and agrees that home delivery Subscriber complaints may cause a decrease in the number of Subscribers. Contractors agrees that the number of Subscriber complaints regarding delivery service should not exceed 1.50 per one thousand newspapers delivered daily.
3. Contractor agrees to pay to Starr Distributing \$2.00 for each missed delivery, wet paper not double bagged, each start or restart including vacation starts and restarts not started and for each stop not stopped (including vacation stops and will call stops).
4. Failure to pick up and deliver papers by Contractor will be considered abandonment and cause for immediate termination of contract. This includes all publications including the TMC products (Extras).
5. Contractor agrees to deliver any Additional products in good condition and to reasonable satisfaction of all subscribers, to all locations listed on the manifest. Contractor also agrees to deliver whatever preprinted advertising circulars, subscriber statements and or any other materials Starr Distributing may ask Contractor to deliver in connection with the Additional products.
6. Delivery area may be revised on a weekly basis as necessary to fulfill Starr Distributing's overall delivery obligations. Starr Distributing will provide Contractor with delivery manifest daily. The manifest will designate each location where deliveries are to be made and the number of products to be delivered at each location.
7. Contractor understands that this Agreement is with the Contractor and the Contractor is responsible for the delivery of all additional products.
8. Starr Distributing reserves the right to put in place any further security limitations as it deems necessary and the Contractor agrees to abide by those limitations.
9. Should Contractor fail to observe security limitations as set forth by Starr Distributing and its Agents or subvert those limitations by providing access to unauthorized individuals to the computer system or route delivery lists provided, Contractor shall be in violation of this Agreement and Contractor may be terminated for cause.
10. Information obtained from Starr Distributing or its Agent's computer system shall not be used for resale or use other than the administration and operation of the Contractor's business with Starr Distributing, its Agents and its Subscribers.
11. Vehicles/Insurance: A) Contractor alone will decide the number and type of vehicles Contractor needs to perform his/her obligations under this contract. B) Contractor agrees that the receipt, transportation, distribution and delivery by Contractor of copies of newspapers shall be made only in vehicles under his/her control or direction. C) As an independent contractor, Contractor acknowledges and agrees that in performance of this Agreement, he/she alone is responsible for any property damage, bodily injury or death caused by Contractor, his/her agents and employees. Contractor agrees, as an independent contractor, that neither Contractor nor Contractor's agents, sub-contractors or employees is eligible for worker's compensation benefits from Starr Distributing in the event Contractor and/or Contractor's agents, sub-contractors or employees is injured while performing Contractor's services pursuant to this Agreement. D) Contractor agrees to obtain from insurers of Contractor's choice which are licensed to do business in the states where Contractor shall perform this contract, and to maintain in force for the duration of this

contract., insurance. E) If Contractor requires the use of a Starr Distributing vehicle, there will be a charge of \$20 per day during the use of said vehicle and to replenish gasoline used during that time.

12. Contractor may be required to carry an Agilis device provided by Starr Distributing at no cost to the Contractor. This device is only used when on delivery routes and is used for tracking location.
13. Contractor must have a turn by turn for their delivery route(s) done within 1 month of the date of this contract. If this is not received within 1 month, then Starr Distributing or its Agents will charge \$100 per route to create said turn by turn(s). It is imperative that these be done in cases of emergency.
14. Contractor must provide at least a 30-day notice and be able to train their new route replacement. If a 30-day notice is not provided, then the Contractor will be charged \$50 per day until a new Contractor (Carrier) is trained properly.
15. Contractor will not hold Starr Distributing responsible for any injuries or accidents that may occur in the warehouse areas, including all areas inside and outside warehouse.
16. **Single Copy Carriers must provide returns sheet to Starr Distributing daily.** All return sheets for Sunday must be turned in by Monday at 1pm or you will not receive credit and you will be charged for your single copy newspapers per the manifests. These can be called in or text to 843-263-1524 or emailed to starrdistributing@gmail.com.
17. This is a one year contract and can be cancelled by Starr Distributing at any time for any reasonable reason noted above or otherwise.
18. You will be notified of any other addendums to this contract if such addendums are made.
19. See Schedule of Fees and Rates attached

IN WITNESS WHEREOF, Contractor and Starr Distributing, by and through its duly authorized representative, have caused this instrument to be executed at 45 Laurel Bay Rd, Unit 6, Beaufort, SC 29906 this _____ day of _____, _____ to be effective on the _____ day of _____, _____ and end exactly 1 year from this date.

STARR DISTRIBUTING

BY _____

CONTRACTOR

Print name _____

Signature 2217 Hawthorne St

Address Savannah GA 31404

Email Address _____

Phone Number _____

SSN [REDACTED]

Starr Distributing Schedule of Fees and Rates

Starr Distributing agrees to pay the Contractor the following fees:

\$ _____ per piece for delivery of an additional advertising product sample with the Newspaper.

\$ 7 per piece for Delivery of The Wall Street Journal to each Subscriber.

\$ 7 per piece for Delivery of USA Today to each Subscriber.

\$ 7 per piece for Delivery of SMN to each Subscriber.

\$ N/A per piece for Delivery of NYT to each Subscriber.

\$ 13 per piece for Delivery of The Beaufort Gazette on a Monday through Saturday to each Subscriber.

\$ 13 per piece for Delivery of The Beaufort Gazette on a Sunday to each Subscriber.

\$ _____ per piece for Delivery of bulk, Newspaper In Education newspapers to specific drop location(s).

\$ -- per piece for Delivery of TV Books.

\$.07 per piece for Delivery of TMC Products.

\$.19 per piece for Delivery of Post & Courier.

\$.06 per piece for Delivery of The Beaufort Today.

\$ _____ per hour for Warehouse Manager.

\$ _____ per week for delivery of _____ Single Copy route.

\$ 25^w car allowance for Relay

AGREED:

STARR DISTRIBUTING

BY _____

CONTRACTOR

Print name Arthur C. Niversant

Signature Arthur C. Niversant

Date 11/2/16

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

COURT OF COMMON PLEAS

CIVIL CASE NO.: 2018-CP-07-2069

CHARLES WAYMON MURPHY,

Plaintiff,

v.

LORI ANN NIVERSON; STARR
DISTRIBUTING, LLC,

Defendants,

STARR DISTRIBUTING, LLC,

Third-Party Plaintiff,

v.

ARTHUR C. NIVERSON,

Third-Party Defendant.

**MEMORANDUM IN OPPOSITION TO
SUMMARY JUDGMENT**

This case arises out of a traffic accident involving Plaintiff Charles Murphy and Lori Niverson. Plaintiff has brought claims against Starr Distributing, alleging that Defendant Lori Niverson was a) an employee of Starr at the time of the accident, making Starr responsible for Plaintiff's injuries under the theory of *respondent superior*, and b) in the event the Court concludes that Defendant Lori Niverson was not an employee of Starr, a direct claim against Starr for Starr's own conduct in negligently hiring and failing to properly supervise Defendant Lori Niverson. Complaint at 4-5.

Starr has asserted a third party claim against Defendant Arthur Niverson, Defendant Lori Niverson's husband. Starr alleges that Defendant Arthur Niverson is liable to Starr for equitable indemnity, negligence, breach of contract, and contractual indemnity.

Currently before the Court is Defendant Starr Distributing's Motion for Summary Judgment as to Plaintiff's claims against Starr. Resolution of the motion essentially requires the Court to determine if there is a scintilla of evidence to support Plaintiff's allegations that Lori Niverson was working for Starr at the time of the collision, and whether there is a scintilla of evidence to support one of the five exceptions to what is known as the "Going and Coming Rule." Because Lori Niverson's own testimony shows that she was working for Starr at the time of the collision, and because there is significant evidence to support 4 of the 5 well settled exceptions to the Going and Coming Rule, Starr's Motion for summary judgment is due to be denied.

Argument

A. Significant evidence supports Plaintiff's claim that Lori Niverson was working for Starr Distributing at the time of the accident, creating an issue of fact that defeats summary judgment.

Starr Distributing argues that it is entitled to summary judgment on Plaintiff's claim for negligence/respondent superior because "the general rule is that an employer is not vicariously liable for the negligent acts of an independent contractor." This suggests that Lori Niverson was an independent contractor for Starr. Starr further argues that Defendant Lori Niverson had "no legal relationship" with Starr and did not work for Starr as either "an employee of nor an independent contractor with Starr Distributing," and further, that Lori Niverson was simply filling in for her husband, Arthur Niverson, at the time of the collision.

Starr's arguments are belied by Lori Niverson's sworn deposition testimony describing her relationship with Starr Distributing. For example, in response to questions about how long *she worked for* Starr, Lori Niverson testified:

Q. How long did you work at Starr Distributing?

. . . .

A. I don't recall -- (audio distortion.) (Court reporter request for clarification.)

THE WITNESS: I don't recall how long *I worked there* because Starr took over from the Beaufort Gazette.

BY MR. TWOMBLEY:

Q. All right. So were *you* working for the Beaufort Gazette prior to the time that Starr took over?

MR. RANALDO: Object to the form.

THE WITNESS: Correct.

See Deposition of Lori Niverson p.15 ln 17-25 and p. 16 line 1-9 (emphasis added) (Exhibit 1).

When questioned about how she obtained her job with Starr, Niverson testified:

Q. Ms. Niverson, tell me what your -- when *you* first started working at Starr did you have to apply for that job?

. . . .

A. No.

Q. Okay. How did *you* get the job?

A. I was already ***employed by the Beaufort Gazette. Nothing changed when Starr took over.*** It's the same -- (audio distortion.)

Id. p. 22 ln 12-24 (emphasis added).

Despite arguing that it had no relationship with Lori Niverson, Mrs. Niverson testified that she was already "employed" with the Beaufort Gazette when Starr Distributing took over, and further, that "nothing changed" with respect to her employment when Starr took over. Starr's

assertion that there is no evidence to support Plaintiff's argument that Mrs. Niverson was "employed by" Starr ignores the sworn testimony of Mrs. Niverson.

Regarding the day on which the accident occurred, Mrs. Niverson testified that Starr knew "she was going to be driving on the day of the accident" because they knew "there were certain days that I was doing it." Id. p. 36 ln 11-18. This testimony belies Starr's argument that Lori Niverson was simply filling in for her husband on the day in question, because Starr knew "there were certain days" Mrs. Niverson was scheduled to handle the route.

There is additional evidence showing Lori Niverson was not working for her husband, and instead, was working for Starr. For example, Mrs. Niverson testified:

- If she had a problem with the paper route, she would call "Tony Starr" with "Starr Distributing" and that he would be able to address "whatever issue came up." Depo at 49-50;
- She was not given a start time but a time in which the route had to be finished by, and that those instructions was given to her by "Starr Distributing." Depo at 54, ln 1;
- When asked how *she* gets compensated for her work, she testified "Direct deposit from Starr Distributing." Depo at 54 ln 7-8;
- When asked if she ever received a bonus, Mrs. Niverson testified Mr. Starr "would sometimes have contests like an extra cash bonus at the end of a month, but it wasn't all the time." Depo at 54 ln 16-25.
- When asked, "how often would *you* get paid *by Starr*," Mrs. Niverson testified she was paid by Starr "every two weeks." Depo at 59, ln 25 and p. 60, ln 4 (emphasis added).

- When asked if Starr took taxes out of “your paycheck,” Mrs. Niverson testified “No.” Depo at 60, ln 6-8.
- Following the accident, Mrs. Niverson contacted Starr Distributing and told Tony Starr, the owner of Starr Distributing, that she no longer had a vehicle and was no longer able to handle the paper route in question: “I told Tony I had no vehicle, and I had no way. No way to get to Beaufort. Q. Well, I understand *you* may not have used the words you quit, but, I mean, by telling Tony that -- you know, that *you* had no vehicle, and you had no way to handle the paper route anymore, I mean, wasn't that effectively telling him, you know, that *you* were no longer going to be able to handle the route? . . . THE WITNESS: Correct.” Depo at 61, ln 5-18.
- Mrs. Niverson testified that after the accident, she decided to no longer handle the route because her car was damaged in the accident in question: “I had no option, I had no vehicle to drive from Savannah to Beaufort.” Depo p. 60, ln 16-25 and 61 ln 1-2.

Defendant Lori Niverson’s own deposition testimony creates issues of fact as to whether she was working for Starr at the time of the accident, and in no event does her testimony support Starr’s argument that Starr had “no relationship” at all with Defendant Lori Niverson. Accordingly, summary judgment on the negligence/respondent superior claim is due to be denied.

B. Significant evidence supports Plaintiff’s claim that Lori Niverson was not simply “on her way to work” at the time of the collision but was engaged in conduct defeating the “Going and Coming Rule.”

Starr argues that Mrs. Niverson was simply “on her way to work” when the collision at issue occurred because Mrs. Niverson had not yet reached Starr Distributing in Beaufort, South Carolina to pick up her individual papers to begin her individual paper route. Even if Mrs.

Niverson had not begun her individual paper route, Mrs. Niverson testified that in addition to that route, it was also part of her “job” to “pick up [the Savannah Morning news] from the Bluffton location and to take those over to Beaufort” before she started her “route.” Id. p. 79, ln 9-20. This is referred to as a “relay service,” which is a separate and distinct task from Mrs. Niverson’s paper route. When asked how often she was required to perform the relay service for Starr, Niverson testified “I would do it every day unless I got a call saying that the papers were already put on the truck to head to Beaufort, or if I was running late I would call them and tell them to put them on the truck if it’s not too late.” Depo 90, ln 9-19. Mrs. Niverson testified that she was paid “\$25” “per week” for “picking up the Savannah Morning News to transport them with me to the Beaufort location.” Depo at 62, ln 14-22, and p. 63, ln 1-12.

While it is well settled in South Carolina that an employee going to or coming from the place where he/she works is not engaged in performing a service growing out of and incidental to his employment, and thus, an injury from an accident at such time does not arise out of and in the course of his employment, *Wofford v. City of Spartanburg ex rel. S.C. Mun. Ins. Tr.*, 415 S.C. 152, 159, 781 S.E.2d 146, 149–50 (Ct. App. 2015) – the Going and Coming Rule – it is equally well settled that South Carolina has recognized five exceptions to the rule. Among these are where “(1) the means of transportation is provided by the employer, *or* the time that is consumed is paid for or included in the wages; (2) the employee, on his way to or from his work, is still charged with some duty *or task in connection with his employment*; (3) the way to work is inherently dangerous and is either the exclusive way or is constructed and maintained by the employer; (4) the injury occurred in close proximity to the workplace and there is an express or implied requirement that the employee *use that approach in going to and coming from work*; and (5) an employee is injured while performing a special *task, service, mission, or errand* for his employer, even before or after

customary working hours, or on a day on which he does not ordinarily work.” *Id.* at 95–96, 495 S.E.2d at 449.

Here, exceptions 1, 2, 4 and 5 all apply to defeat summary judgment. Exception 1 applies because Niverson was paid \$25 per week for relaying the Savannah Morning News papers from Bluffton. The payment is for “the time that is consumed” by Niverson in stopping to pick up the papers and in relaying them to Beaufort. Exception 2 applies because even if Niverson was not at work when the accident occurred, she was on her way to work and charged with “some duty or task in connection with her employment,” i.e., picking up the Savannah Morning News and relaying those papers to Beaufort before she started her individual paper route. Exception 4 applies, because the injury occurred in close proximity to the workplace and because there was an “express or implied requirement that the employee use that approach in going to and coming from work.” Specifically, the requirement that Niverson use that “approach in going to work” was an expressed requirement for the relay service, as Niverson was obligated to pick up the papers from a designated place in Bluffton each day. In other words, Niverson was required to go to a specific location to pick up the papers and then relay them to Beaufort.

Finally, Exception 5 is applicable because Niverson was performing a service, mission, or errand for Starr, during her customary working hours, or on a day on which Starr knew she would be working.¹ Again, the service being performed was relaying the Savannah Morning paper from Bluffton to Beaufort.

¹ Starr’s reliance on *McDaniel v. Bus Terminal Rest. Mgmt. Corp.*, 271 S.C. 299, 302, 247 S.E.2d 321, 322 (1978) is misplaced. In *McDaniel*, the South Carolina Supreme Court found that “[t]he underlying basis of the ‘special errand’ doctrine is that the general rule excluding injuries incurred during the trip to or from work should **not apply if the journey** to or from work was part of a special errand or mission for the employer *or if the journey itself was a substantial part of the service for which the worker was employed.*” Here, it is beyond dispute that picking up the Savannah Morning paper was a substantial part of the service for which Niverson was employed. If fact, Starr acknowledges that it was a “routine and regular occurrence,” and the evidence shows that Starr paid Niverson \$25 per week for this “routine and regular occurrence.” This testimony clearly invokes Exception 5 and defeats summary judgment.

Because Plaintiff has identified significant evidence to support the application of 4 of the 5 exceptions to the Going and Coming rule, summary judgment is due to be denied.

C. Plaintiff's claim against Starr for its own negligence.

Despite initially asserting its moving for summary judgment on "all of Plaintiff's claims," (Memo at 1), Starr does not make any arguments or submit any evidence related to Plaintiff's claim against Starr for Starr's own negligence in negligently hiring, supervising and retaining Niverson. Presumably, Starr's effort to dismiss this claim will rise and fall on the Court's resolution of Starr's argument that it has "no legal relationship: with Mrs. Niverson. In other words, if the Court finds there is a scintilla of evidence to show there was some relationship between Starr and Niverson, summary judgment on this claim would also fail.

TWENGE + TWOMBLEY LAW FIRM

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 Attorneys for Plaintiff

Beaufort, South Carolina

January 26, 2021



Deposition of:
Lori Ann Niverson

September 15, 2020

In the Matter of:
**Murphy, Charles Waymon Vs.
Niverson, Lori Ann**

A. William Roberts, Jr & Assoc.
800-743-3376 | calendar-awr@veritext.com | www.veritext.com

Page 1

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF BEAUFORT

3 CHARLES WAYMON MURPHY,

4 Plaintiff,

5 vs. CIVIL ACTION NO. 2018-CP-07-02069

6 LORI ANN NIVERSON; STARR DISTRIBUTING, LLC,

7 Defendants.

8 STARR DISTRIBUTING, LLC,

9 Third-Party Plaintiff,

10 vs.

11 ARTHUR C. NIVERSON,

12 Third-Party Defendant.

13 DEPOSITION OF: LORI ANN NIVERSON

14 DATE: September 15, 2020

15 TIME: 10:18 a.m.

16 LOCATION: 2217 Hawthorne Street
17 Savannah, Georgia

18 TAKEN BY: Counsel for the Plaintiff

19 REPORTED BY: MINDY VISLAY (appearing by VTC)

20 _____

21 _____

22 _____

23 _____

24 _____

25 _____

Lori Ann Niverson
Murphy, Charles Waymon Vs. Niverson, Lori Ann

September 15, 2020

ELECTRONICALLY FILED - 2021 Jan 26 9:43 AM - BEAUFORT - COMMON PLEAS - CASE#2018CP0702069

Page 2 1 APPEARANCES OF COUNSEL: 2 ATTORNEYS FOR PLAINTIFF CHARLES WAYMON MURPHY (appearing by VTC): 3 4 TWENGE & TWOMBLEY LAW FIRM BY: J ASHLEY TWOMBLEY 311 Carteret Street 5 Beaufort, South Carolina 29902 843-982-0100 6 twombley@twlawfirm.com 7 8 ATTORNEYS FOR DEFENDANT LORI ANN NIVERSON (appearing by VTC): 9 CLAWSON AND STAUBES, LLC BY: DANIEL P RANALDO 10 126 Seven Farms Drive Suite 200 11 Charleston, South Carolina 29492 843-577-2026 12 dranaldo@clawsonandstaubes.com 13 14 ATTORNEYS FOR THE DEFENDANT STARR DISTRIBUTING, LLC (appearing by VTC): 15 FORD WALLACE THOMSON, LLC BY: AINSLEY F TILLMAN 16 715 King Street Charleston, South Carolina 29403 17 843-277-2011 ainsley.tillman@fordwallace.com 18 19 ATTORNEYS FOR THE DEFENDANT STARR DISTRIBUTING, LLC (appearing by VTC): 20 21 BRAITHWAITE TIMMERMAN, LLC BY: TERENCE PAUL TIMMERMAN 759 Richland Avenue West 22 Aiken, South Carolina 29801 803-649-4144 23 paul@btcarolinawalaw.com 24 25	Page 3 1 ATTORNEYS FOR THE DEFENDANT ARTHUR C. NIVERSON (appearing by VTC): 2 3 GRIFFITH, FREEMAN & LIIPFERT, LLC BY: KELLY DEAN 600 Monson Street 4 Beaufort, South Carolina 29902 843-521-4242 5 kdean@griffithfreeman.com 6 7 ATTORNEYS FOR DEFENDANT ARTHUR C. NIVERSON (appearing by VTC): 8 GRIFFITH, FREEMAN & LIIPFERT, LLC BY: E. MITCHELL GRIFFITH 9 600 Monson Street Beaufort, South Carolina 29902 10 843-521-4242 mgriffith@griffithfreeman.com 11 12 ALSO PRESENT: Chris Woods 13 14 (INDEX AT REAR OF TRANSCRIPT) 15 16 17 18 19 20 21 22 23 24 25	Page 4 1 PROCEEDINGS 2 COURT REPORTER: Due to the need for this 3 deposition to take place remotely, the parties will 4 stipulate that the court reporter may swear in the 5 witness over the Veritext virtual videoconference and 6 that the witness has verified that she is in fact Lori 7 Niverson. 8 MR. TWOMBLEY: Yeah, I agree. This is 9 Ashley Twombley. 10 MR. RANALDO: Dan Ranaldo. I agree. 11 MS. DEAN: Kelly Dean. I agree. 12 MS. TILLMAN: Ainsley Tillman. I agree. 13 THE WITNESS: Lori Niverson. I agree. 14 MR. TIMMERMAN: Paul Timmerman. I agree. 15 LORI ANN NIVERSON, 16 Being first duly sworn, testified as follows: 17 DIRECT EXAMINATION 18 BY MR. TWOMBLEY: 19 Q. Good morning, Ms. Niverson. My name is 20 Ashley Twombley. I'm a lawyer here in Beaufort, South 21 Carolina, and I represent the plaintiff in this 22 action, and we're here today to take your deposition. 23 Have you ever had your deposition taken before? 24 A. No. 25 Q. Okay. Well, the court reporter mentioned Page 5 1 this, but I'm gonna be asking questions, and you're 2 gonna be required to respond to them, and she's gonna 3 take down my questions and the answers that you give 4 so they can be used later in court if necessary. Do 5 you understand that? 6 A. Yes. 7 Q. Okay. We need you to give verbal responses 8 to the questions so she can type down what your answer 9 is, so I'll try to remind you to do that as we move 10 along. Is that fair? 11 A. Yes. 12 Q. Okay. If you have any questions about my 13 questions you let me know, otherwise we will assume 14 that you understood the question and are providing a 15 truthful answer. Is that fair? 16 A. Yes. 17 Q. Okay. Obviously we're not in court today, 18 but the court reporter placed you under oath, and the 19 oath that you took to tell the truth and the whole 20 truth and nothing but the truth, that's the same oath 21 you'd take if we were in court and a judge were 22 present, and the same penalties of perjury apply to 23 the testimony you give today even though we're not in 24 court. Do you understand that? 25 A. Yes.
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1 Q. Okay. And of course the oath requires you 2 not only to tell the truth but to tell the whole truth 3 and to provide a complete answer to questions. Do you 4 understand that? 5 A. Yes. 6 Q. You mentioned that someone was in the room 7 with you today. Mr. Woods. Is he your roommate you 8 said? 9 A. Yes. 10 Q. Okay. Once the deposition gets started, 11 and it's now started, the rules require and provide 12 that you're not allowed to talk to anybody about your 13 testimony, about any of the questions that I'm asking 14 you, any questions that I might ask, or any of the 15 responses that you're giving. Do you understand that 16 rule? 17 A. I only talked -- (audio distortion.) 18 (Court reporter request for clarification.) 19 THE WITNESS: I only talked to the Zoom 20 video people. 21 BY MR. TWOMBLEY: 22 Q. Correct. That means that at a break, if we 23 take a break, that you're not allowed to talk to 24 Mr. Woods about the questions that are being asked or 25 any of the responses that you're giving. Do you	1 A. Me and my husband. 2 Q. Okay. How long have you lived at that 3 location in Savannah? 4 A. I think it's five years. 5 Q. Did Mr. Woods say something? I saw you 6 looking at him and -- 7 A. Okay. I let him know that. He was in the 8 restroom when you were telling me that. He just came 9 back into the room. 10 Q. Okay. 11 (Court reporter addresses continued audio 12 distortion.) 13 BY MR. TWOMBLEY: 14 Q. Are you able to hear us okay, Ms. Niverson? 15 A. I can hear you fine. 16 Q. Okay. Yeah, I'm getting a little distorted 17 audio signal as well, so try to speak slowly and 18 clearly so we can understand your answers. Okay? 19 A. Okay. 20 Q. All right. How long have you lived at that 21 location? 22 A. I believe it's going on five years. 23 Q. Okay. And who else has lived there with 24 you for the past five years? 25 A. Repeat that.
Page 7	Page 9
1 understand that? 2 A. Okay. I understand. 3 Q. And he's not allowed to give you any hand 4 signals or any thumbs up or thumbs down in any way 5 shaping the testimony that you may give. Do you 6 understand that? 7 A. I understand. 8 Q. Okay. Do you feel that he needs to be in 9 the room while you're being deposed? 10 A. Well, I'm in my living room, and that's 11 where he is, and he's no part of this, but -- 12 Q. Okay. All right. Do you agree to follow 13 the rules and not receive any communications from him 14 or anyone else while the deposition is proceeding? 15 A. I agree. 16 Q. Okay. All right. Do you have any 17 questions before we get started? 18 A. No. 19 Q. Okay. Ms. Niverson, if you would start by 20 giving us your full name and address, please. 21 A. Lori Ann Niverson. 2217 Hawthorne Street, 22 Savannah, Georgia 31404. 23 Q. And is that an apartment? 24 A. No. It's a house. 25 Q. Okay. Who owns that house?	1 Q. Who else lives there with you? Who has 2 lived there with you during the past five years? 3 A. My husband, and for the past three years my 4 roommate. 5 Q. Is that like a two bedroom apartment -- I 6 mean two bedroom house? A three bedroom house? 7 A. Three bedroom house. 8 Q. Are you related to Mr. Woods or is your 9 husband related to him? 10 A. No. 11 Q. Okay. Does he pay rent over there? 12 A. Yes. 13 Q. And I may have asked you this, but who owns 14 the house? 15 A. My husband and myself. 16 Q. Okay. Ms. Niverson, tell me briefly. What 17 is your educational background? Did you graduate from 18 high school? 19 A. Yes. 20 Q. Where did you go to high school? 21 A. Beaufort High School. 22 Q. Okay. Did you have any formal education 23 after Beaufort High School? 24 A. No. 25 Q. Okay. And how old are you?

Page 10	Page 12
1 A. Fifty. 2 Q. And do you have a job? 3 A. Currently, no. 4 Q. What was the last job that you had? 5 A. I was a dishwasher at the Village Bar & 6 Grill until the Covid pandemic. 7 Q. Where is the Village Bar & Grill? 8 A. In Savannah. 9 Q. And how long did you work at the Village 10 Bar & Grill? 11 A. Just like a month-and-a-half. 12 Q. All right. I'm just going to kind of go, 13 you know, back in time and go through your employment 14 history. What was your job before you worked at the 15 Village Bar & Grill? 16 A. I delivered newspapers. 17 Q. Okay. And who did you deliver newspapers 18 for? 19 A. Starr Distributing. 20 Q. When did you stop doing that? 21 A. I don't remember. 22 Q. I mean, was it -- was it in the past, you 23 know, three years or a year or -- 24 A. I think it's -- if I recall, it's been like 25 one or two years since I've been doing it because my	1 appointment? 2 A. Beaufort. 3 Q. Was that an appointment for you or was it 4 an appointment for him? 5 A. Me. 6 Q. So he was driving you to a doctor's 7 appointment and he got into a traffic accident? 8 A. Correct. 9 Q. Okay. And who was at fault in the 10 accident, was it your husband's fault or somebody 11 else's fault? 12 A. I don't honestly know because it was like a 13 pileup, a chain reaction, and nobody was ticketed. 14 Q. Okay. So it was a pileup and a chain 15 reaction and nobody was ticketed? 16 A. It was a three-car pileup. 17 Q. And you said that happened approximately 18 one to two years ago? 19 A. Correct. 20 Q. Okay. And when that accident happened did 21 you -- from that day forward you never worked at Starr 22 Distributing anymore after that day? 23 MR. RANALDO: Object to the form. 24 MS. DEAN: Object to the form. 25 MS. TILLMAN: And I'll also object to the
Page 11	Page 13
1 husband totaled the car and I wasn't able to go back 2 to Beaufort. 3 Q. Does your husband still work for Starr 4 Distributing? 5 A. No. 6 Q. Okay. Did his employment there end around 7 the same time yours did? 8 MR. RANALDO: Object to the form. 9 MS. TILLMAN: Object to the form. 10 BY MR. TWOMBLEY: 11 Q. You can still answer. 12 A. None of us work there no more. 13 Q. But when you stopped working there was that 14 at the same time that your husband stopped working 15 there? 16 A. Yes. 17 Q. Okay. And you said your husband was in a 18 traffic accident. He wrecked the car and totaled it? 19 A. Yes. 20 Q. Okay. What was the -- can you tell me 21 about that accident? 22 A. We were heading to a doctor's appointment. 23 Q. Okay. And was your husband driving? 24 A. Yes. 25 Q. Okay. And where was the doctor's	1 form. 2 BY MR. TWOMBLEY: 3 Q. And, Ms. Niverson, just so you know, the 4 other attorneys may be objecting to some of the 5 questions that I'm asking, but that doesn't mean you 6 don't have to answer it, and, so, don't worry about 7 those objections. You just worry about providing a 8 truthful answer to the question. Okay? 9 A. Okay. 10 Q. All right. From the day of the accident 11 that your husband was in when he was taking you to the 12 doctor's appointment did you cease working for Starr 13 Distributing on that day forward? 14 A. Yes. 15 Q. And did your husband, did he stop working 16 for Starr on that day forward? 17 MS. TILLMAN: Object to form. 18 THE WITNESS: Yes. 19 BY MR. TWOMBLEY: 20 Q. And was that tied or somehow related to the 21 fact that you no longer had a vehicle? 22 A. Correct. 23 Q. Okay. Why did you and your husband stop 24 working for Starr on the day of this accident? 25 MR. RANALDO: Object to the form.

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1 MS. DEAN: Object to the form.	1 THE WITNESS: I don't recall how long I
2 MS. TILLMAN: Object to the form.	2 worked there because Starr took over from the Beaufort
3 BY MR. TWOMBLEY:	3 Gazette.
4 Q. You can go ahead and answer.	4 BY MR. TWOMBLEY:
5 A. You have to have a vehicle. Our vehicle	5 Q. All right. So were you working for the
6 was totaled.	6 Beaufort Gazette prior to the time that Starr took
7 Q. Okay. How do you know you had to have a	7 over?
8 vehicle?	8 MR. RANALDO: Object to the form.
9 A. You go to people's houses. You have to	9 THE WITNESS: Correct.
10 have a vehicle to deliver papers.	10 BY MR. TWOMBLEY:
11 Q. So your testimony is that if you don't have	11 Q. And, so, I guess did the job change when
12 a vehicle that you cannot do this job?	12 Starr took over?
13 A. Correct.	13 MS. TILLMAN: Object to the form.
14 Q. Okay. Did anyone ever offer to provide a	14 THE WITNESS: No.
15 vehicle for you?	15 BY MR. TWOMBLEY:
16 A. There was a loaner car that you could	16 Q. Was it you had a different I guess person
17 sometimes use if no one else had it.	17 you were responsible to and you were still doing more
18 Q. Okay. Why didn't you use the loaner car?	18 or less the same thing? Is that a fair
19 A. Because I live in Savannah and the job is	19 characterization?
20 in Beaufort.	20 MR. RANALDO: Object to the form.
21 Q. All right. How long had you worked for	21 MS. TILLMAN: I also object to the form.
22 Starr Distributing prior to the day of --	22 BY MR. TWOMBLEY:
23 MS. TILLMAN: I object to the form.	23 Q. Is that a fair characterization,
24 MS. DEAN: Object to form.	24 Ms. Niverson?
25 MR. TWOMBLEY: If y'all will let me try to	25 A. Yes.
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1 finish the question, then you can get your objections	1 Q. Did you and your husband start the job
2 out.	2 delivering newspapers at around the same time?
3 MS. TILLMAN: Sorry.	3 MS. TILLMAN: I object to the form.
4 BY MR. TWOMBLEY:	4 MS. DEAN: Object to the form.
5 Q. My question is, Ms. Niverson, how long had	5 MR. RANALDO: Object to the form.
6 you worked for Starr Distributing prior to the time	6 BY MR. TWOMBLEY:
7 you got in this accident where the car was totaled	7 Q. Ms. Niverson, each time that I ask you a
8 when you were on the way to a doctor's appointment?	8 question, even though they object, you need to go
9 MR. RANALDO: Object to the form.	9 ahead and answer. Okay?
10 MS. TILLMAN: I also object to the form.	10 A. Okay.
11 This is Ainsley.	11 Q. So the question is, did you and your
12 MS. DEAN: Object to the form.	12 husband start that job around the same time?
13 BY MR. TWOMBLEY:	13 A. No.
14 Q. Do you understand the question,	14 Q. Okay. When did you start and when did your
15 Ms. Niverson?	15 husband start?
16 A. No.	16 A. I started in 2007 at the Beaufort Gazette.
17 Q. How long did you work at Starr	17 I don't recall what year it was my husband took over
18 Distributing?	18 the contract.
19 MS. TILLMAN: I object to the form.	19 Q. Was there a period of time when both you
20 MR. RANALDO: Object to the form.	20 and your husband were delivering newspaper or did he
21 MS. DEAN: Object to the form.	21 take over your job?
22 BY MR. TWOMBLEY:	22 MS. TILLMAN: I object to the form.
23 Q. You can answer.	23 MR. RANALDO: Object to the form.
24 A. I don't recall -- (audio distortion.)	24 MS. DEAN: Object to the form.
25 (Court reporter request for clarification.)	25 THE WITNESS: What was the question again?

Page 18	1 BY MR. TWOMBLEY: 2 Q. Was there a time when you and your husband 3 were both working delivering newspapers or did he take 4 your place with respect to the job? 5 A. There are certain days we would work 6 together. 7 Q. When you say work together, were you in 8 different -- doing different routes or were you just 9 riding together on the same route? 10 A. Riding together doing the same route. 11 Q. All right. Do you know approximately when 12 Starr Distributing took over for the Beaufort Gazette? 13 MS. TILLMAN: Object to the form. 14 THE WITNESS: No. 15 BY MR. TWOMBLEY: 16 Q. Okay. Do you have an estimate of when that 17 may have been? 18 A. No. 19 Q. You have no memory of that as far as the 20 timing? 21 A. No. 22 Q. Tell me about -- well, let me just ask you 23 this. I've been provided with a distribution 24 agreement for your husband that memorializes what he's 25 supposed to do for Starr Distributing and when he's	Page 20	1 Distributing. 2 MR. TWOMBLEY: Okay. Do you know of any 3 reason why those documents wouldn't have been 4 produced? 5 MS. TILLMAN: Would you like me to ask some 6 clarifying questions of the witness? 7 MR. TWOMBLEY: No. 8 MS. TILLMAN: I mean, they were not 9 produced because we don't have them. 10 MR. TWOMBLEY: Are you saying they don't 11 exist or that -- I mean, is there an independent 12 contract or distribution agreement with Ms. Niverson? 13 MS. TILLMAN: I thought I would appear in 14 person. I would be glad to ask Ms. Niverson some 15 questions to clarify. I don't believe such any 16 document exists, but if you want to ask her questions, 17 or I will, just let me know. 18 MR. TWOMBLEY: All right. Well, I mean, if 19 you say you don't think they exist, then I'll just 20 move forward. 21 MS. TILLMAN: I don't think they exist. 22 (Court reporter request for clarification.) 23 MR. TWOMBLEY: Well, just so the record's 24 clear, what I called it is a Starr Distributing 25 independent contractor distribution agreement, but I
Page 19	1 supposed to do it and how he's going to get paid. 2 Did you ever -- do you remember ever signing any 3 type of agreement like this with Starr Distributing? 4 MR. RANALDO: Object to the form. 5 MS. TILLMAN: I object to the form. Sorry 6 to interrupt you. 7 BY MR. TWOMBLEY: 8 Q. I'm sorry, Ms. Niverson? 9 A. I cannot see the document you're holding, 10 so I can't provide you an answer. 11 Q. Okay. Well, do you remember signing any 12 documents with Starr Distributing? 13 A. At one point, yes. 14 MR. TWOMBLEY: Guys, I don't have any of 15 the documents that Ms. Niverson would have signed. 16 Does anybody care to address that? If not, I'll just 17 pause the deposition and go take a look and make sure 18 I don't have them, because I'm not aware of having 19 any. Ainsley, do you have those documents? 20 MS. TILLMAN: Ashley, no, we don't. 21 MR. TWOMBLEY: Who is representing Starr 22 Distributing? I thought it was you, Ainsley, but is 23 it Paul? 24 MS. TILLMAN: I am representing Starr 25 Distributing, and Paul is also representing Starr	Page 21	1 think the question to Ms. Niverson was whether or not 2 she ever signed any documents with Starr Distributing 3 that would outline what her duties and 4 responsibilities were and how she was going to be 5 compensated for meeting those duties and 6 responsibilities, and I think Ms. Niverson -- 7 BY MR. TWOMBLEY: 8 Q. And, Ms. Niverson, you correct me if I'm 9 wrong, but you said your memory was you had signed 10 some documents of that nature; is that right? 11 MR. RANALDO: Object to the form. 12 THE WITNESS: I thought the very first year 13 of Starr taking over that it was in my name, but I 14 could be wrong, because we had the same contract for 15 Beaufort Gazette, but I thought that the first year 16 was in my name. I could be wrong though. 17 MR. TWOMBLEY: Okay. Did you get all that, 18 Madam Court Reporter? 19 (Wherein, a portion of the record was read 20 by the court reporter.) 21 MR. TWOMBLEY: Okay. All right. 22 BY MR. TWOMBLEY: 23 Q. Is that right, Ms. Niverson? 24 A. Correct. 25 Q. For some reason, Ms. Niverson, we're having

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1 a difficult time hearing you. Everyone else seems to 2 be really clear and crisp, but your answers are kind 3 of breaking up, and I'm worried that the record may 4 not be exactly accurate. 5 MR. TWOMBLEY: So I guess I'll just rely on 6 you, Madam Court Reporter. 7 COURT REPORTER: I will ask her to repeat 8 everything I cannot understand clearly, sir. I 9 promise. 10 MR. TWOMBLEY: All right. Thank you. 11 BY MR. TWOMBLEY: 12 Q. Ms. Niverson, tell me what your -- when you 13 first started working at Starr did you have to apply 14 for that job? 15 MS. TILLMAN: Object to form. 16 MR. RANALDO: Object to form. 17 MS. DEAN: Object to the form. 18 BY MR. TWOMBLEY: 19 Q. You can go ahead and answer. 20 A. No. 21 Q. Okay. How did you get the job? 22 A. I was already employed by the Beaufort 23 Gazette. Nothing changed when Starr took over. It's 24 the same -- (audio distortion.) 25 (Court reporter request for clarification.)	1 way? 2 MS. TILLMAN: I object to the form. 3 THE WITNESS: I don't know. 4 BY MR. TWOMBLEY: 5 Q. Well, I guess the answer would be none that 6 you remember, none that you know of? 7 A. That's not what I said. I said I don't 8 know. 9 Q. Okay. Well, tell me about any policies, 10 procedures or guidelines that you were required to 11 follow at Starr. 12 MR. RANALDO: Object to the form. 13 MS. TILLMAN: I object to the form. 14 THE WITNESS: We had a certain time that we 15 had to be done with our paper route. 16 BY MR. TWOMBLEY: 17 Q. Okay. Anything else? 18 A. No. 19 Q. Who started working with Starr first, was 20 it you or was it your husband? 21 MR. RANALDO: Object to the form. 22 MS. TILLMAN: Object to the form. 23 MS. DEAN: Object to the form. 24 THE WITNESS: Me. 25 BY MR. TWOMBLEY:
Page 23	Page 25
1 THE WITNESS: I was already employed by the 2 Beaufort Gazette. When Starr took over nothing 3 changed except the new contract. 4 BY MR. TWOMBLEY: 5 Q. So did you have to -- when you started 6 working for Starr did you have to pass any type of 7 test or go through any type of training or get 8 qualified in any particular way before Starr would 9 allow you to work with them? 10 MS. TILLMAN: I object to the form. 11 MR. RANALDO: I object to the form. 12 THE WITNESS: No. 13 BY MR. TWOMBLEY: 14 Q. To the best of your knowledge and memory, 15 did you ever have any type of training or any type of 16 background check or any other type of qualifications 17 or standards that you had to meet in order to work 18 with Starr Distributing? 19 MR. RANALDO: Object to the form. 20 MS. TILLMAN: I object to the form. 21 THE WITNESS: No. 22 BY MR. TWOMBLEY: 23 Q. To your knowledge, did Starr Distributing 24 have any type of written policies or procedures or 25 guidelines that you had to meet or adhere to in any	1 Q. I think you said previously that you 2 weren't sure if the contract was in your name or in 3 your husband's name at one point in time. Why would 4 the -- why would the name of the person whose name the 5 contract would be in, why would that have switched 6 between you and your husband? 7 MR. RANALDO: Object to the form. 8 MS. TILLMAN: I also object to the form. 9 THE WITNESS: I originally started with -- 10 (audio distortion.) 11 (Court reporter addresses audio distortion 12 and requests clarification of testimony.) 13 THE WITNESS: Okay. I started with the 14 Beaufort Gazette in 2007. By the time Starr took over 15 I was not sure if I was going to continue or not, so 16 my husband was going to try to keep it. 17 BY MR. TWOMBLEY: 18 Q. Why were you not sure if you wanted to 19 continue delivering newspapers when Starr took over? 20 A. That was just my option. 21 Q. Okay. But, I mean, was -- I mean, what was 22 going on in your life why you didn't want to continue 23 having employment? 24 MS. TILLMAN: I object to the form. 25 THE WITNESS: There's no answer for you.

Page 26	1 BY MR. TWOMBLEY: 2 Q. I'm sorry? 3 A. I don't have an answer for you. 4 Q. I mean, did you find another job or did 5 you -- you know, did you have some health issues that 6 prevented you from continuing to do it, or what, or 7 did you just -- 8 A. I wasn't sure if I wanted to continue to do 9 it or not. 10 Q. Okay. Did you have some health issues that 11 factored into that decision? 12 A. I have health issues. I don't recall if 13 that was part of my decision or not. That was years 14 ago. 15 Q. Can you tell me generally what your health 16 issues are? 17 A. I have back issues. Diabetic. I have my 18 blood pressure, high cholesterol, and at the time, 19 before, up until three years ago I had sleep apnea. 20 Q. All right. So, back issues, diabetes, high 21 blood pressure, high cholesterol and sleep apnea? 22 A. I don't currently have the apnea anymore. 23 Q. But you had that? 24 A. I had it. 25 Q. Okay. When did the -- when did you no	Page 28	1 years. 2 Q. How long did it take you to lose the weight 3 after you had the surgery? 4 A. It's constantly a work in progress. I've 5 had it three years ago. 6 Q. Okay. So at the time that this accident 7 occurred that we're here about today with Mr. Murphy 8 you would have been a month or two after your 9 bariatric surgery? 10 A. That wouldn't be right if I had my surgery 11 in July and the accident was in September. 12 Q. Well, August and then September. So that 13 would be about two months afterwards, right? 14 A. Oh, yeah. 15 Q. Does that sound right to you that you would 16 have had your surgery in July and then two months 17 later you would have been in this accident with 18 Mr. Murphy? 19 A. Yes. 20 Q. Okay. Who is your -- who is your primary 21 care doctor? 22 A. Currently Dr. Jauhar. 23 Q. How do you spell that? 24 A. I don't know. 25 Q. Can you say it again?
Page 27	1 longer have sleep apnea? 2 MR. RANALDO: Object to the form. 3 THE WITNESS: About two years now. 4 BY MR. TWOMBLEY: 5 Q. And how did the sleep apnea go away? 6 MR. RANALDO: Object to the form. 7 BY MR. TWOMBLEY: 8 Q. Did you receive treatment for it or did you 9 get cured or did you start taking medicine that helped 10 with that or what happened? 11 A. I lost a lot of weight. 12 Q. About how much weight did you lose? 13 A. Close to a hundred pounds. 14 Q. How did you lose all the weight? 15 A. Surgery. 16 Q. What type of surgery did you have? 17 A. Bariatric surgery. 18 Q. Okay. Which one did you have? 19 A. The sleeve. 20 Q. Do you know approximately when you had that 21 surgery? 22 A. July 24th -- wait a second. I think it was 23 2017 because on July 24th I was three years out. 24 Q. So you think you had it on July 24, 2017? 25 A. Yeah. Because 2020 would have been three	Page 29	1 A. Jauhar. 2 Q. And does he work with a medical practice? 3 A. She has her own office. 4 Q. Where is her office? 5 A. Savannah. 6 Q. Where in Savannah? 7 A. I don't know the address. 8 Q. What area of town is it? 9 A. I don't remember. I don't know the name of 10 the road. 11 Q. You don't know what area of town it's in? 12 A. All I know is Savannah. 13 Q. Do you know how to get there? Can you 14 drive there if you have to? 15 A. Yeah. I can tell you how to get there from 16 my house. 17 Q. How do you get there from your house? 18 A. Go to President Street, turn right and head 19 towards -- (audio distortion) -- Island. 20 COURT REPORTER: What island, ma'am? 21 THE WITNESS: Wilmington. 22 BY MR. TWOMBLEY: 23 Q. Is that the street that it's on? 24 A. President turns into another name after you 25 get so far. I don't know what the name of the road

Page 30	Page 32
1 is, but it's off that road.	1 Q. What was his other job?
2 Q. How long has Dr. Jauhar been your -- go	2 A. He works for Bimbo Bakeries.
3 ahead.	3 Q. Bimbo?
4 A. I think it might be called Highway 80. I'm	4 A. Yes.
5 not sure.	5 Q. B-I-M-B-O?
6 Q. Okay. How long has Dr. Jauhar been your	6 A. Correct.
7 doctor?	7 Q. What is Bimbo Bakeries?
8 A. Around two to three years.	8 A. Entenmann's cake, Thomas English muffins,
9 Q. Was she your doctor at the time that this	9 Sara Lee bread. Stuff like that.
10 accident happened in September of 2017?	10 Q. Where is Bimbo Bakeries located?
11 A. No.	11 A. Currently in Pooler, Georgia.
12 Q. Who was your doctor then?	12 Q. So does your husband have a -- at the time
13 A. Dr. Andrea Hucks.	13 of this accident in September of 2017, you're saying
14 Q. Andrea what?	14 his other job, you meant other than the one at Starr
15 A. Hucks.	15 Distributing?
16 Q. H-U-C-K-S?	16 MS. TILLMAN: Object to the form.
17 A. Correct.	17 MS. DEAN: Object to the form.
18 Q. And where does Dr. Hucks work?	18 THE WITNESS: Right.
19 A. By Beaufort Memorial Hospital.	19 BY MR. TWOMBLEY:
20 Q. Was she your primary doctor back in 2017?	20 Q. So he was working two jobs at that time?
21 A. As I recall, yes.	21 A. Correct. That's why I was trying to do the
22 Q. Okay. What other doctors were you seeing	22 paper route for him.
23 in September of 2017?	23 Q. All right.
24 A. I think she was the only doctor.	24 A. He was -- (audio distortion) -- and I was
25 Q. Who was your bariatric doctor?	25 trying to help -- (audio distortion.)
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1 A. It was Dr. Whipple.	1 (Court reporter request for clarification.)
2 Q. Dr. Whipple?	2 THE WITNESS: He was doing the paper route,
3 A. Yes.	3 and his other job was his main job. So I was helping
4 Q. Where does he work?	4 with the paper route to try and keep it going even
5 A. Memorial Health Hospital.	5 though I didn't want to do the whole thing myself.
6 Q. That's down in Savannah?	6 BY MR. TWOMBLEY:
7 A. Yes.	7 Q. Why didn't you want to do the whole thing
8 Q. And, so, between Dr. Hucks and Dr. Whipple,	8 yourself?
9 those were the only two doctors you were seeing in	9 A. Because I had been doing it already, and I
10 September of 2017?	10 was going to stop, and that's why he took it over
11 A. That I recall, yes.	11 because he didn't want it to stop, and so I helped
12 Q. Okay. Where were you getting your	12 with him.
13 prescriptions filled?	13 Q. But why didn't you want to do it?
14 A. At the time, I believe we had to do mail	14 A. I thought I already answered that.
15 order through my husband's company.	15 Q. Well --
16 Q. Who was that?	16 A. I was doing it for so long I was ready to
17 A. Express Scripts.	17 not want to do it every day.
18 Q. When you say through your husband's	18 Q. Okay. You got tired of it. Is that right?
19 company, what company was that?	19 A. I didn't say that.
20 A. It was the insurance. Blue Cross Blue	20 Q. Well, why did you not want to do it
21 Shield. We were required to do mail order for	21 anymore?
22 prescriptions for routine drugs.	22 A. I already answered that.
23 Q. How did you and your husband have health	23 Q. Well, I thought you said basically that you
24 insurance through Blue Cross Blue Shield?	24 got tired of it and you didn't want to do it anymore,
25 A. Through my husband's other job.	25 and you said no that's not what I said. So how would

Page 34	Page 36
1 you describe your rationale for no longer wanting to	1 A. I don't know. Since I was a kid.
2 do this paper route?	2 Q. Did the people at Starr Distributing know
3 A. I'd been doing it since 2007. I wanted a	3 that you suffered from sleep apnea in 2017?
4 break, and I agreed to help without letting go of the	4 MR. RANALDO: Object to the form.
5 route completely. That's why my husband was taking it	5 MS. TILLMAN: Object to the form.
6 over.	6 THE WITNESS: I don't know.
7 Q. Okay. What prescription medications were	7 BY MR. TWOMBLEY:
8 you taking in 2017?	8 Q. To your memory, did anyone ever ask you if
9 A. I know insulin. I don't remember the brand	9 you have any --
10 name of it, but insulin.	10 A. No.
11 Q. Okay.	11 Q. Okay. Did Starr Distributing know that you
12 A. Metformin. Benazepril.	12 were going to be driving on the day of the accident,
13 Q. Benazepril?	13 that you were going to be handling the route?
14 A. It's blood pressure. I don't remember the	14 A. Yes.
15 name of the cholesterol medicine.	15 Q. Why do you say that? How do you know they
16 Q. Anything else?	16 knew?
17 A. Not that I recall.	17 A. Because there were certain days that I was
18 Q. Were you taking anything for the sleep	18 doing it.
19 apnea?	19 Q. Did you have to get their permission to be
20 A. No. I slept with a BiPAP machine.	20 able to do it?
21 Q. Were you taking anything for your back?	21 A. No.
22 A. No.	22 Q. Did anyone other than you and your husband
23 Q. What type of back problems did you have?	23 ever handle the paper route?
24 A. I had back surgery. I had rods and screws.	24 MS. TILLMAN: Object to the form.
25 Q. When did you have your back surgery?	25 THE WITNESS: Only if we went out of town.
Page 35	Page 37
1 A. I don't recall, but it's been years now.	1 BY MR. TWOMBLEY:
2 Q. Okay. You weren't taking any --	2 Q. Okay. What would happen when you went out
3 A. In 2012 or something.	3 of town?
4 Q. Okay. Were you taking any pain medications	4 A. You had to find someone to cover the route.
5 in 2017?	5 Q. How would you do that?
6 A. No.	6 A. Ask people to help.
7 Q. Were you taking any pain medications after	7 Q. Okay. Other than just asking someone that
8 your surgery to help with any issues of pain from the	8 you know, did you have to get approval from Starr in
9 surgery?	9 any way or --
10 A. Which surgery are you talking about?	10 A. You let them know.
11 Q. Well, any surgery, but in particular I was	11 Q. Okay. Did you have to get their approval,
12 talking about the bariatric surgery that you had	12 I mean, or if you found someone, and they agreed to do
13 two months prior to the accident.	13 it, Starr was always fine with it?
14 A. No. I was not taking any.	14 MS. TILLMAN: Object to the form.
15 Q. And, so, to the best of your knowledge and	15 BY MR. TWOMBLEY:
16 memory, in September of 2017 you were not taking any	16 Q. The answer was -- what was the answer,
17 pain medications?	17 please?
18 A. I know for a fact I was not taking no pain	18 A. Yes.
19 medicine.	19 Q. Okay. Tell me about your typical workday
20 Q. Okay. Do you smoke?	20 on or around, you know, September 30th of 2017 when
21 A. Yes.	21 this accident happened. You know, just go back to
22 Q. How much do you smoke?	22 maybe the day before. What was your typical day like
23 A. A pack a day.	23 with respect to the newspaper route?
24 Q. And did you -- how long have you been	24 MS. TILLMAN: Object to the form.
25 smoking?	25 MR. RANALDO: Object to the form.

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1 THE WITNESS: I would get up at 1:30 a m. 2 and drive the paper route in Beaufort. 3 BY MR. TWOMBLEY: 4 Q. Let's take it step by step. You'd get up 5 at your house in Savannah at 1:30? 6 A. Correct. 7 Q. In the morning? 8 A. Correct. 9 Q. Where would you first go? 10 A. Sometimes I would stop by the Bluffton 11 location and pick up Savannah Morning News and then go 12 straight to Beaufort. 13 (Court reporter request for clarification.) 14 THE WITNESS: Go to the Beaufort location. 15 BY MR. TWOMBLEY: 16 Q. And, so, where is the Bluffton location? 17 A. At the time, it was on Bucks Island Road. 18 Q. Is that where the Beaufort Gazette building 19 is? 20 A. No. 21 Q. Okay. Was this a separate facility where 22 you'd pick up your papers? 23 A. I would only pick up Savannah Morning News 24 on my way to the Beaufort. 25 Q. And when you say to the Beaufort location,	1 ma'am. 2 (Wherein, a portion of the record was read 3 by the court reporter.) 4 THE WITNESS: Correct. Yes. A paper box 5 to put the paper in. 6 BY MR. TWOMBLEY: 7 Q. So who would provide the paperwork to you, 8 would that be somebody at Starr Distributing? 9 A. Yes. They printed it out each night. 10 Q. And that would be I guess a list of 11 everyone that they wanted you to go deliver a paper 12 to? 13 A. It would not be addresses. It would just 14 be a paper count. 15 (Court reporter request for clarification 16 due to audio distortion.) 17 MR. TWOMBLEY: Yeah. I couldn't hear that 18 either. 19 THE WITNESS: It would just be a paper 20 count of how many papers you needed unless someone 21 stopped their paper or started up a paper. 22 BY MR. TWOMBLEY: 23 Q. And, so, on that paperwork that you got 24 every day there wouldn't be an address associated with 25 each paper?
Page 39	Page 41
1 where was the Beaufort location? 2 A. Laurel Bay Road. 3 Q. And, so, what was at the Beaufort location 4 at Laurel Bay Road? Was there a warehouse there? 5 A. It's a warehouse. 6 Q. Whose warehouse was it? 7 A. Starr Distributing. 8 Q. Okay. And what would happen when you would 9 arrive at Starr Distributing? 10 A. You would get your newspaper for your 11 route. 12 Q. Okay. I mean, just kind of walk me through 13 the process. I don't know anything about what you 14 would do, but -- I mean, did you have to go in and put 15 the papers together? Did you have to fold them? Did 16 you have to put them in bags? Were there other people 17 there? I mean, walk me through what you'd do on a 18 typical morning. 19 A. You pick up your paperwork which lets you 20 know how many customers you have from Starr. You get 21 the amount of papers you need and you bag some of them 22 that don't have a paper box. As you finish your 23 papers, rolling them, you go deliver them to the 24 houses. 25 COURT REPORTER: Let me clarify one part,	1 A. No. 2 Q. How would you know who had stopped and who 3 had started? 4 A. Like I told you, that paperwork would tell 5 you if someone started or stopped. That's the only 6 address that would be on there. You knew your paper 7 route from doing it over and over the same route every 8 day. 9 Q. All right. So you had a predetermined 10 route, and it sounds like daily that might change with 11 people being added to the route or taken off the 12 route? 13 MR. RANALDO: Object to the form. 14 MS. TILLMAN: I object to the form. 15 BY MR. TWOMBLEY: 16 Q. I mean, is that correct? 17 A. Right. 18 Q. That's correct? 19 A. Correct. 20 Q. Where did you get the original route from? 21 A. The Beaufort Gazette. 22 Q. And then I guess after Starr took over you 23 would have received that from Starr? 24 MS. TILLMAN: I object to the form. 25 THE WITNESS: It didn't change when Starr

Page 42	1 took over. You had your same route from Beaufort 2 Gazette. 3 BY MR. TWOMBLEY: 4 Q. Who was in charge of deciding what route 5 you would drive and whether or not your route changed? 6 A. When you get hired, you get -- (audio 7 distortion) -- and once you get that route you don't 8 change that. You keep it. 9 (Court reporter request for clarification.) 10 THE WITNESS: An assigned route, and that 11 route does not change. 12 BY MR. TWOMBLEY: 13 Q. So when you were hired you were assigned a 14 route by Beaufort Gazette? 15 A. Correct. 16 Q. And you're telling me that nobody's route 17 ever changed? 18 A. I didn't say that. It changes when people 19 add a subscription or cancel it, but once you're 20 assigned a route that's your route. 21 Q. Well, I guess it would have been either 22 Beaufort Gazette or Starr that would be the 23 responsible party for assigning the routes? 24 MS. TILLMAN: Object to the form. 25 BY MR. TWOMBLEY:	Page 44	1 yes. 2 Q. But where you got them, though, you got 3 them from Starr Distributing, right? 4 COURT REPORTER: I think maybe she's 5 frozen. 6 MR. TWOMBLEY: I'll tell you what we do, I 7 think this is a good time to take a five-minute break, 8 and, Dan, we'll let you try to reach out. 9 MR. RANALDO: Looks like it unfroze. 10 MR. TWOMBLEY: Are you back, Ms. Niverson? 11 THE WITNESS: Yes. 12 MR. TWOMBLEY: Okay. I'm fine to keep 13 going if everybody else is. 14 MR. RANALDO: I'm fine. 15 BY MR. TWOMBLEY: 16 Q. Ms. Niverson, we were talking about the 17 paperwork on a typical morning that you would get from 18 Starr Distributing, and then we were talking about the 19 papers, and I believe you were saying that Starr 20 Distributing would have provided you with the actual 21 newspapers? 22 A. Correct. 23 MS. TILLMAN: Object to the form. 24 BY MR. TWOMBLEY: 25 Q. Okay. And then you said some of the papers
Page 43	1 Q. Is that right, Ms. Niverson? 2 A. They offered the route and location. You 3 choose to take it or not. 4 Q. Okay. They would have been the ones who 5 came up with the route and said this is the route, if 6 you take the position this is where you'll need to go? 7 MS. TILLMAN: Object to the form. 8 THE WITNESS: Correct. 9 BY MR. TWOMBLEY: 10 Q. And I guess if that changed from day-to-day 11 you would find out each morning when you got your 12 paperwork from Starr Distributing at the warehouse on 13 Laurel Bay Road? 14 MR. RANALDO: Object to the form. 15 THE WITNESS: Correct. 16 MS. TILLMAN: Object to the form. 17 BY MR. TWOMBLEY: 18 Q. And, so, Starr Distributing would have 19 provided that paperwork to you, right? 20 MS. TILLMAN: Object to the form. 21 THE WITNESS: Yes. 22 BY MR. TWOMBLEY: 23 Q. And Starr Distributing would have -- they 24 would have provided the actual papers? 25 A. They're delivered to the warehouse. So,	Page 45	1 had to be bagged; is that right? 2 A. Correct. 3 Q. Okay. And where would you do the bagging, 4 at the Starr Distributing warehouse? 5 A. Correct. 6 Q. And who provided the bags to you? 7 A. We purchased them from Starr Distributing. 8 Q. Okay. But who provided them to you? Who 9 gave them to you? 10 A. Starr Distributing. We paid for them. 11 Q. Or sometimes there were inserts that had to 12 go in the papers, coupons and things of that nature? 13 A. On Sundays. 14 Q. Okay. And who would provide those to you? 15 A. It comes with the newspaper automatically. 16 Q. Okay. And that would mean that it came 17 from Starr Distributing? 18 A. Correct. 19 Q. Okay. How did you know which papers needed 20 to be bagged up and which papers didn't need to be 21 bagged up? 22 A. Because you knew your route. You knew who 23 had a paper box and who don't. 24 Q. Okay. Would that be on the paperwork in 25 some way on the original route?

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1 MR. RANALDO: Object to the form. 2 THE WITNESS: No. 3 MS. TILLMAN: Sorry. I'm late, but object 4 to the form. 5 BY MR. TWOMBLEY: 6 Q. So after you would get the papers in the 7 bags and roll them up, what would you do next? 8 A. Go deliver them. 9 Q. I've never delivered papers before, so I'm 10 sorry if some of these questions sound a little basic, 11 but did you have kind of a box or a carrier or 12 something that you would use to get them out to your 13 vehicle? 14 A. They had carts. 15 Q. Okay. Are these like rolling-type carts? 16 A. They had wheels, yes. They had wheels. 17 Q. All right. And where did the carts come 18 from? 19 A. Starr Distributing. 20 Q. Okay. So you would use the carts to roll 21 the papers from where you had rolled them in the Starr 22 Distributing warehouse out to your vehicle? 23 A. No. 24 Q. All right. 25 A. I would sit in my car to roll the papers.	1 MS. TILLMAN: Object to the form. 2 THE WITNESS: Correct. 3 BY MR. TWOMBLEY: 4 Q. About how long would it take you to 5 complete your route? 6 A. If I remember, two to three hours. 7 Q. Okay. And what would you do at the end of 8 the route? 9 Ms. Niverson, I'm not trying to be rude to you, 10 but, I mean, it's clear -- wait. Hold on a minute. 11 Hold on a minute. It's clear that you're talking with 12 and having a conversation with Mr. Woods. We can 13 see -- 14 A. My dog just threw up on my carpet. My dog 15 just threw up on my carpet. If you'd like, I can show 16 you where he just threw up. That's what I'm pointing 17 to because he's going to have to clean it up. So my 18 dog just threw up on my carpet. 19 Q. I'll tell you what we'll do. I think we'll 20 take a five-minute break so you can attend to that. 21 Okay? 22 (A short recess was taken.) 23 BY MR. TWOMBLEY: 24 Q. Ms. Niverson, we had reached the point I 25 think where you're at the end of your paper route, and
Page 47	Page 49
1 Q. Okay. 2 A. I would go to the car to roll papers and go 3 sit in my car to roll them. 4 (Court reporter request for clarification.) 5 THE WITNESS: I would put the newspapers in 6 the rolling cart, roll that cart to my car, unload the 7 papers into my car, take the cart back into the 8 building, come back to my car and roll the papers. 9 BY MR. TWOMBLEY: 10 Q. Did you have any type of cart or box inside 11 the car that you would put the rolled papers in? 12 A. Yes. 13 Q. Okay. What did those look like? 14 A. It was one giant box that says Bimbo 15 Bakeries on it. It's a cake box from my husband's 16 bakery. It filled up my whole entire front seat, and 17 I -- (audio distortion.) 18 (Court reporter request for clarification.) 19 THE WITNESS: I would scoot the seat all 20 the way forward to secure the box tightly between the 21 seat and the dash. 22 BY MR. TWOMBLEY: 23 Q. Okay. And then I guess you would take the 24 paperwork that you had received that morning and all 25 the papers and then you were off on your route?	1 I was about to ask you some questions about what 2 happens when you are done with your route, and, so, 3 when you're done with the route, and you've delivered 4 all the papers, do you have to report back to Starr, 5 or what is the protocol? 6 A. You go home. 7 Q. Do you have to report back to Starr or 8 anything of that nature? 9 MS. TILLMAN: Object to the form. 10 THE WITNESS: No. 11 BY MR. TWOMBLEY: 12 Q. Do you have to report to anyone to let them 13 know that the route's been done? 14 A. No. 15 Q. What if there was an issue, if you were 16 short on papers or if you ran into a problem, what 17 would you do? 18 A. You would call back to the person who's 19 running the warehouse or you would call Tony. 20 Q. And Tony -- 21 A. Tony Starr. 22 Q. Tony Starr. And he's with Starr 23 Distributing? 24 A. Yes. 25 Q. Was he the person who would be able to

Page 50	Page 52
1 address whatever issue had come up?	1 Q. And those instructions would have changed
2 A. Yes.	2 daily?
3 MS. TILLMAN: Object to the form.	3 MR. RANALDO: Object to the form.
4 BY MR. TWOMBLEY:	4 MS. TILLMAN: Object to the form.
5 Q. So as far as the route that you were	5 THE WITNESS: It can.
6 required to drive, those instructions, those would	6 BY MR. TWOMBLEY:
7 have been given to you by the Beaufort Gazette at the	7 Q. Okay. It was subject to change daily?
8 time the initial route was agreed to, right?	8 MR. RANALDO: Object to the form.
9 MR. RANALDO: Object to the form.	9 MS. TILLMAN: Object to the form.
10 MS. TILLMAN: I object to the form.	10 THE WITNESS: Correct.
11 BY MR. TWOMBLEY:	11 BY MR. TWOMBLEY:
12 Q. Is that right, Ms. Niverson?	12 Q. On average how often would you have someone
13 A. You were given a route and you followed	13 either added to a route or taken off the route?
14 that same route every day.	14 A. That's hard to answer because it could be
15 Q. But what I'm trying to make sure I	15 daily. It's the customer's choice to either be added
16 understand is that the route, as far as what it	16 or to be stopped.
17 consisted of, where you would have to go and how many	17 Q. So that was very, very common that the
18 papers it included, that would have been created by	18 instructions would have changed?
19 Beaufort Gazette and given to the person driving the	19 MS. TILLMAN: Object to the form.
20 route to follow the route, correct?	20 MR. RANALDO: Object to the form.
21 MR. RANALDO: Object to the form.	21 THE WITNESS: Correct.
22 MS. TILLMAN: I object to the form.	22 BY MR. TWOMBLEY:
23 THE WITNESS: Correct.	23 Q. Did anyone at Starr Distributing supervise
24 BY MR. TWOMBLEY:	24 you in any way?
25 Q. Okay. And daily, as changes needed to be	25 MS. TILLMAN: Object to the form.
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1 made to the route, whether it needed to be adding	1 THE WITNESS: No.
2 someone to the route or changing it or taking someone	2 BY MR. TWOMBLEY:
3 off the route, those instructions would have been	3 Q. Did anyone at Starr Distributing ever
4 given to you each morning when you went to the	4 evaluate your performance in any way?
5 warehouse to pick up your paperwork?	5 MS. TILLMAN: Object to the form.
6 MR. RANALDO: Object to the form.	6 THE WITNESS: No.
7 MS. TILLMAN: Object to the form.	7 BY MR. TWOMBLEY:
8 THE WITNESS: Correct.	8 Q. Did you have a set time that you were
9 BY MR. TWOMBLEY:	9 required to be at Starr Distributing to start the
10 Q. And did you have any choice in the matter	10 route?
11 as to whether you said, well, I don't want to add this	11 A. No. We had a time that we had to be done
12 person or I don't want to take this person off, or	12 by.
13 were you required to follow the instructions you were	13 (Mr. Griffith joined the deposition.)
14 given?	14 BY MR. TWOMBLEY:
15 MS. TILLMAN: Object to the form.	15 Q. So there wasn't a start time, so to speak,
16 MR. RANALDO: Object to the form.	16 but there was a time that you must be finished by?
17 THE WITNESS: You followed the paper route.	17 A. Correct.
18 BY MR. TWOMBLEY:	18 Q. And who told you that time that you had to
19 Q. Okay. So you had to follow the	19 be finished by?
20 instructions not only of the original route but also	20 MS. TILLMAN: Object to the form.
21 changes and deletions from the route?	21 BY MR. TWOMBLEY:
22 MR. RANALDO: Object to the form.	22 Q. Who gave you those instructions?
23 MS. TILLMAN: Object to the form.	23 MS. TILLMAN: Objection.
24 THE WITNESS: Correct.	24 THE WITNESS: Starr.
25 BY MR. TWOMBLEY:	25 (Court reporter request for clarification

Page 54 1 due to audio distortion.) 2 THE WITNESS: Starr Distributing. 3 BY MR. TWOMBLEY: 4 Q. Now, how did you get compensated for the 5 work that you did? 6 MS. TILLMAN: Object to the form. 7 THE WITNESS: Direct deposit from Starr 8 Distributing. 9 BY MR. TWOMBLEY: 10 Q. But how was that number calculated? I 11 mean, how much did you get paid? 12 A. Per paper. 13 Q. Okay. Did you get paid for any other other 14 than per paper? 15 A. What do you mean? 16 Q. Well, did you ever get any bonuses or 17 anything like that? 18 A. He would sometimes have contests like an 19 extra cash bonus at the end of a month, but it wasn't 20 all the time. 21 Q. And "he," would that be Mr. Starr of Starr 22 Distributing? 23 A. Correct. 24 Q. Who was allowed to participate in those 25 contests for the bonus?	Page 55 1 A. All of the paper carriers. 2 Q. Okay. What were the -- what were the -- 3 what did you have to do to get the bonus? 4 MS. TILLMAN: Object to the form. 5 THE WITNESS: (Audio distortion) -- all 6 month. 7 BY MR. TWOMBLEY: 8 Q. I'm sorry? 9 A. You try to go all month and have no 10 complaints from your customers. 11 Q. How would you know whether or not you had a 12 complaint? 13 A. It would show on your paperwork the next 14 morning. 15 Q. That would be on the paperwork you would 16 pick it up from Starr Distributing each morning? 17 A. Correct. 18 Q. So would the customer complain to Starr 19 Distributing? 20 A. They would call into like a customer 21 service number, like if you missed them, and then 22 that's recorded on the paperwork and printed out with 23 your normal paperwork every morning. It would be on 24 your paperwork. 25 Q. Why didn't they call you if you were the	Page 56 1 one delivering their paper? 2 MR. RANALDO: Object to the form. 3 THE WITNESS: Some of your customers would 4 if they chose to. 5 BY MR. TWOMBLEY: 6 Q. Well, why wouldn't all of them contact you? 7 MR. RANALDO: Object to the form. 8 THE WITNESS: I can't answer that. I'm not 9 them. 10 BY MR. TWOMBLEY: 11 Q. I mean, how would a customer know who to 12 complain to if they had an issue with their paper 13 being delivered? 14 A. I can't answer that either. I can only 15 assume looking up the phone number. 16 Q. And they would look up the phone number I 17 guess of either Beaufort Gazette or Starr 18 Distributing? 19 MR. RANALDO: Object to the form. 20 THE WITNESS: I can only assume. 21 BY MR. TWOMBLEY: 22 Q. I mean, unless someone knew you personally 23 or knew your name, I mean, they would have no idea 24 that you were the person on the paper route, right? 25 A. That's not necessarily correct.	Page 57 1 Q. Well, how would they -- I'm just giving an 2 example, and I don't know, but I get the paper here in 3 my office. I don't know who the person that delivers 4 it is. How would somebody -- 5 A. At Christmastime -- at Christmastime we 6 usually pass out Christmas cards that have our name 7 and address and phone number on them. Some people 8 keep them and some people don't. 9 Q. Okay. Was that -- is that something you 10 just choose to do personally? 11 A. Everybody did it. 12 Q. Where would you get the Christmas cards 13 from? Where would you get the Christmas cards from? 14 A. You'd buy them yourself. 15 Q. How do you know that everybody would give 16 them out? 17 A. Because we all would talk. We all knew 18 each other. All of us carriers were friends. We knew 19 each other. We did our papers in the parking lot 20 together. 21 Q. Now, I saw on some of these paperwork that 22 I was provided by Starr -- well, let me ask you this. 23 Would you ever provide any paperwork to Starr 24 regarding your route, like a report that you had 25 completed the route or any type of report of how many
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Page 58 1 papers you had delivered for, you know, a certain time 2 period? 3 MS. TILLMAN: Object to the form. 4 THE WITNESS: The only thing is they'd want 5 an updated version of our route so they would have a 6 current copy on file of, like, our customers. 7 BY MR. TWOMBLEY: 8 Q. Okay. Well, wouldn't they have all that 9 information? 10 A. They could print it out, but it's not 11 always accurate, and we would provide a turn by turn 12 of the route, that way, if we ever broke down or an 13 emergency happened, and they had to cover the route, 14 they would have a turn by turn of each customer if we 15 couldn't do the route and they had to. 16 Q. But as far as who was on the route and 17 whether or not people were added or taken away, I 18 mean, the only place that information would have come 19 from is from Starr Distributing, right? 20 A. They're the ones that print the paperwork. 21 I don't know where it originates from. 22 Q. I gotcha. But that's the only place you 23 would have ever received it from is Starr 24 Distributing, correct? 25 A. Yes. Once in a while a customer would call	Page 60 1 MS. TILLMAN: Object to the form. 2 THE WITNESS: Bi-weekly. 3 BY MR. TWOMBLEY: 4 Q. Every two weeks? 5 A. Right. 6 Q. Did Starr take taxes out of your paycheck? 7 MS. TILLMAN: Object to the form. 8 THE WITNESS: No. 9 BY MR. TWOMBLEY: 10 Q. When you were working for the Beaufort 11 Gazette before Starr took over did they take out 12 taxes? 13 MS. TILLMAN: Object to the form. 14 THE WITNESS: No. 15 BY MR. TWOMBLEY: 16 Q. Ms. Niverson, if you decided -- and I don't 17 want to put words in your mouth, but it sounds like 18 after the accident that you and your husband got in 19 when you were on the way to the doctor, that after 20 that accident you just decided because you didn't have 21 a car that you were going to quit this paper route; is 22 that right? 23 A. I had no option. I had no vehicle to drive 24 from Savannah to Beaufort. 25 Q. Okay. Did you understand that you had the
Page 59 1 you and let you know they're going on vacation, and 2 then you could, you know, stop them yourself or let 3 Starr know, but mainly it all came from Starr. 4 Q. Okay. Now, I see on some of those 5 paperworks that there are tips on here. 6 A. Correct. 7 Q. How would a customer go about tipping their 8 paper route delivery person? 9 A. That information is only on our pay stub, 10 and they can do that by including a tip when they pay 11 their monthly -- their subscription bill to the paper. 12 Q. Okay. I'll have to look more closely at my 13 bill. So what you're saying is, to the best of your 14 knowledge, whenever a customer of the Beaufort Gazette 15 gets a bill, and they subscribe, you know, to get the 16 paper delivered every day, and they pay their bill, 17 there's somewhere on that form that you can pay for 18 the paper plus you can add a tip to your delivery 19 person? 20 A. To the best of my knowledge, yes. 21 Q. Okay. And that tip I guess gets reported 22 to the Beaufort Gazette, to Starr, and then from Starr 23 it ends up on your pay stub? 24 A. Correct. 25 Q. And how often would you get paid by Starr?	Page 61 1 right to do that, that you had the right to call Starr 2 and say I quit because I no longer have a car? 3 MR. RANALDO: Object to the form. 4 MS. TILLMAN: Object to the form. 5 THE WITNESS: I never told Starr that I 6 quit. I told Tony I had no vehicle and I had no way. 7 (Court reporter request for clarification.) 8 THE WITNESS: No way to get to Beaufort. 9 BY MR. TWOMBLEY: 10 Q. Well, I understand you may not have used 11 the words you quit, but, I mean, by telling Tony 12 that -- you know, that you had no vehicle and you had 13 no way to handle the paper route anymore, I mean, 14 wasn't that effectively telling him, you know, that 15 you were no longer going to be able to handle the 16 route? 17 MS. TILLMAN: Object to the form. 18 THE WITNESS: Correct. 19 BY MR. TWOMBLEY: 20 Q. And did Tony complain about that? 21 A. No. He understood. 22 Q. Okay. Did you understand that Mr. Tony 23 could take away your route from you if he wanted to if 24 he wasn't satisfied with the job you were doing? 25 MS. TILLMAN: Object to the form.

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1 THE WITNESS: Yes. 2 BY MR. TWOMBLEY: 3 Q. Okay. I mean, during the time you worked 4 at Starr Distributing did you know people who had 5 their paper route taken away because of performance 6 issues? 7 MS. TILLMAN: Object to the form. 8 THE WITNESS: I don't recall. 9 BY MR. TWOMBLEY: 10 Q. Okay. Did you know of people who quit 11 their paper route suddenly and unexpectedly for 12 various reasons? 13 A. No. 14 Q. On these invoices that I mentioned earlier 15 there's a car allowance if \$25. It's not per day. I 16 guess it's per pay period. What do you know about the 17 car allowance? 18 MR. RANALDO: Object to the form. 19 MS. TILLMAN: Object to the form. 20 THE WITNESS: That was for me stopping in 21 Bluffton and picking up the Savannah Morning News to 22 transport them with me to the Beaufort location. 23 COURT REPORTER: One moment, counsel. I 24 have to check something. 25 (A short recess was then taken.)	1 A. No. 2 Q. So you were on the way to pick up the 3 Savannah Morning News when the accident occurred? 4 A. I don't remember if I was picking them up 5 that day or not. 6 Q. Okay. Well, do you remember having to go 7 back and pick them up and bring them back to Beaufort? 8 A. No. Because my car was totaled. 9 Q. Do you know if anybody else had to go back 10 and pick them up? 11 A. They might have caught it in time to put 12 the papers on the truck to transport the Beaufort 13 Gazette papers from Bluffton to Beaufort. 14 Q. Well, this accident occurred on Speedway 15 Boulevard. Are you familiar with Speedway Boulevard? 16 A. Nope. 17 Q. Do you remember where the accident took 18 place? 19 A. I've never heard it called Speedway 20 Boulevard. 21 Q. What do you call the name of that street? 22 A. Highway 17. 23 Q. And where was it on Highway 17? 24 A. Right close to -- 25 Q. Go ahead. I'm sorry.
Page 63	Page 65
1 BY MR. TWOMBLEY: 2 Q. So the \$25 a day was for the service of 3 picking up the papers from Beaufort and bringing them 4 to Beaufort? I'm sorry. Bluffton rather than 5 Beaufort. 6 A. It wasn't \$25 a day, and it was for picking 7 up the Savannah Morning Newspaper and bringing them to 8 Beaufort with me. 9 Q. All right. Yeah, I apologize. I didn't 10 mean to say per day. But I guess that would have been 11 per pay period? Right? 12 A. Per week. 13 Q. Okay. Per week. So let's talk about the 14 day of the accident for a moment. The accident 15 happened on September 20, 2017. Is that consistent 16 with your memory? 17 A. Yes. 18 Q. Okay. Presumably you woke up at your house 19 that morning to start the day? 20 A. Yes. 21 Q. And then you were -- where were you going 22 to and from? 23 A. From my home to Beaufort. 24 Q. Okay. Had you picked up the Savannah 25 Morning News at the time the accident took place?	1 A. Close to the turnoff of A1A by Club Karma. 2 Q. Okay. And those are those strip joints. I 3 guess are those in -- I don't know if they're in South 4 Carolina or Georgia, but they're on the way to 5 Savannah, right? 6 A. Yeah. They're right over the Talmadge 7 Bridge which means it's South Carolina. 8 Q. Where would you pick up the Savannah 9 Morning Newspapers each morning? 10 A. In Bluffton up on Island Parkway. 11 Q. Okay. 12 A. Or Buck Island Road. I don't remember what 13 it's called. 14 Q. So you would have been on the way to pick 15 those papers up at the time the collision took place? 16 MR. RANALDO: Object to the form. 17 MS. TILLMAN: Object to the form. 18 THE WITNESS: I don't recall whether I was 19 picking them up or not. 20 BY MR. TWOMBLEY: 21 Q. Didn't you have to get them every morning? 22 A. Sometimes no. 23 Q. And tell me about the accident and what 24 happened. 25 A. I was heading to -- I don't know if it was

Page 66	1 Bluffton or Beaufort that night. I had gotten up. I 2 was still tired, but I knew I had to do my paper 3 route. I came off the Talmadge Bridge, and it went 4 around a curve, and I dozed real briefly. When I woke 5 up I saw that the vehicles were stopped, and then -- I 6 don't remember Mr. Murphy, and there was a 7 construction vehicle like in front of him. When I saw 8 it, I slammed my brakes -- (audio distortion) -- but I 9 was not going to have time to stop, so I tried to 10 swerve off the road to the right to avoid him, and I 11 made contact -- 12 Q. Can you slow down a little bit, because 13 we've got a bad connection, and I can tell it's hard 14 for the court reporter to take down what you're 15 saying. So if you could just start back over that you 16 were on Highway 17, and what happened next? 17 A. And I dozed for a brief second. When I 18 woke right back up I saw the vehicles stopped. I 19 slammed my brakes instantly but realized I was still 20 not going to be able to avoid the vehicles, so I tried 21 swerving off to the side of the road to avoid him. 22 Q. But you were unable to avoid him? 23 A. Yes. I hit the passenger rear bumper. 24 Q. And did you say you dozed for a moment? 25 A. Correct.	Page 68	1 MR. RANALDO: Object to the form. 2 THE WITNESS: It's possible, but I can't 3 answer for sure. I'm not a doctor. 4 BY MR. TWOMBLEY: 5 Q. Did your doctor know that you were driving 6 a paper route every day that required you to be at the 7 Starr Distributing warehouse at 3 a.m. every morning? 8 MS. TILLMAN: Object to the form. 9 MR. RANALDO: Object to the form. 10 THE WITNESS: Yes. 11 BY MR. TWOMBLEY: 12 Q. Were you required to be at the warehouse 13 every day by 3 a.m.? 14 MS. TILLMAN: Object to the form. 15 MR. RANALDO: Object to the form. 16 THE WITNESS: I think at one point they 17 made an assigned time to be there by. I don't 18 remember for sure because I was always on time anyway. 19 BY MR. TWOMBLEY: 20 Q. I'm just reading from this agreement that 21 your husband signed. The first sentence says each 22 carrier must be at the warehouse by 3 a.m. every day. 23 Were all of the carriers required to be at the 24 warehouse by 3 a.m. every day? 25 MS. TILLMAN: Object to the form.
Page 67	1 Q. Okay. So you fell asleep at the wheel? 2 MR. RANALDO: Object to the form. 3 THE WITNESS: Yes. 4 BY MR. TWOMBLEY: 5 Q. Okay. And do you know how long you had 6 been asleep? 7 MR. RANALDO: Object to the form. 8 THE WITNESS: It was instant. 9 BY MR. TWOMBLEY: 10 Q. Do you know why you fell asleep at the 11 wheel? 12 MR. RANALDO: Object to the form. 13 THE WITNESS: I was tired still. 14 BY MR. TWOMBLEY: 15 Q. Do you know why you were tired? 16 A. No. 17 Q. Had you done anything unusual the day 18 before? 19 A. No. 20 Q. Had you ever fallen asleep at the wheel 21 prior to this? 22 A. No. 23 Q. Do you think that the fact that you fell 24 asleep had anything to do with the sleep apnea that 25 you were suffering from?	Page 69	1 MR. RANALDO: Object to the form. 2 THE WITNESS: If that's what the contract 3 says, I guess so. 4 BY MR. TWOMBLEY: 5 Q. It says on the same contract that it's a 6 one year contract that can be canceled by Starr 7 Distributing at any time for any reasonable reason 8 noted above or otherwise. Was that consistent with 9 your understanding of what Starr Distributing's 10 authority was? 11 MR. RANALDO: Object to the form. 12 MS. TILLMAN: Object to the form. 13 THE WITNESS: Yes. 14 BY MR. TWOMBLEY: 15 Q. Did you continue driving this paper route 16 after this accident? 17 A. Yes. 18 Q. Did you ever seek any medical treatment or 19 medical opinion from a doctor as to whether or not you 20 should continue to be driving with your sleep apnea in 21 light of the fact that you had fallen asleep at the 22 wheel? 23 MR. RANALDO: Object to the form. 24 THE WITNESS: I told my doctors what 25 happened, and they prescribed me medicine.

Page 70	1 BY MR. TWOMBLEY: 2 Q. What medicine did they prescribe you? 3 A. Armodafinil. 4 Q. What is Armodafinil? 5 A. It's like to keep you alert. 6 Q. And you had never been prescribed that 7 before the accident? 8 A. No. 9 Q. Who would have prescribed that to you? 10 A. If I recall, it was Dr. Hucks. 11 Q. And would you have gotten that through 12 Express Scripts? 13 A. I don't remember because we were allowed to 14 refill three times at a normal pharmacy, but after 15 that we couldn't do it no more at a normal pharmacy. 16 Q. If you had had to use a normal pharmacy and 17 not Express Scripts what pharmacy would you have used? 18 A. I'm thinking Walgreens -- not Walgreens -- 19 Walmart, but I'm not a hundred percent sure. 20 Q. What other options do you think it might 21 be? Walmart. What else? 22 A. CVS or Walgreens. 23 Q. Where is the Walmart pharmacy that you 24 would have filled a prescription at? 25 A. Robert Smalls Parkway in Beaufort.
Page 71	1 Q. How about the CVS? 2 A. Where was CVS? If I recall, it was on 3 Ribaut Road. 4 Q. How about the Walgreens? 5 A. The only one I remember being is Ladys 6 Island. 7 Okay. This was filled at Walgreens. I have the 8 bottle. That's what I was looking for. And being 9 that the accident happened while I was here, it would 10 have been Walgreens here. It was filled at my 11 Walgreens. 12 Q. Okay. 13 A. See? This is the bottle. 14 Q. Can you hold that up one more time so I can 15 get the correct spelling? Okay. Ms. Niverson, I 16 think that's all I've got. I don't know if any of 17 these other lawyers have got any questions or not. I 18 appreciate your time. 19 MS. TILLMAN: I have a couple questions for 20 you. 21 CROSS-EXAMINATION 22 MS. TILLMAN: 23 Q. Ms. Niverson, how are you doing today? 24 A. Fine. Thank you. And you? 25 Q. I'm doing well. I'm Ainsley Tillman. I
Page 72	1 represent Starr Distributing, and I wanted to go back 2 a little bit and clarify about a couple of the 3 questions that Mr. Twombley asked you. 4 Mr. Twombley referred to a contract frequently in 5 his questions of you. Was that contract with Arthur 6 Niverson and Starr Distributing that Mr. Twombley was 7 referring to? 8 A. Correct. 9 Q. So it was Arthur Niverson who was an 10 independent contractor for Starr Distributing; is that 11 correct? 12 MR. TWOMBLEY: Object to the form. 13 THE WITNESS: As far as I believe, that's 14 what it's called is an independent contract. 15 BY MS. TILLMAN: 16 Q. Okay. Tell me about your relationship with 17 Arthur Niverson. Is he -- is it Niverson or Niverson 18 before I pronounce it incorrectly? 19 A. Niverson. 20 Q. Niverson. Sorry about that. And tell me 21 about your relationship with Arthur Niverson. Is he 22 your husband? 23 A. He's my husband. We've been married 24 31 years. 25 Q. That's a good long time. It is. So did
Page 73	1 Arthur ask you to deliver newspapers for him? 2 A. He had a regular job, and when I was going 3 to give up the paper he wanted to take it over to not 4 lose the money, so I told him I would agree to keep 5 doing it, but I didn't want it in my name because I 6 didn't want to keep doing it. 7 Q. So he asked you to do it while he was 8 working for Bimbo Bakeries; is that correct? 9 MR. TWOMBLEY: Object to the form. 10 THE WITNESS: I don't remember how it all 11 came about. That was -- I don't know how many years 12 ago. 13 BY MS. TILLMAN: 14 Q. At the time of this accident we've been 15 talking about today that is the subject of this 16 lawsuit were you delivering papers for Arthur 17 Niverson? 18 MR. TWOMBLEY: Object to the form. 19 THE WITNESS: Yes. 20 BY MS. TILLMAN: 21 Q. And were you delivering -- did he tell you 22 what route you would be delivering the papers? 23 MR. TWOMBLEY: Object to the form, leading, 24 mischaracterizes the testimony. 25 BY MS. TILLMAN:

Page 74 1 Q. And you can answer. 2 A. No. It's the same route from the very 3 beginning starting with when Beaufort Gazette owned 4 it. 5 Q. Okay. And I wanted to ask you about that 6 because, like Mr. Twombly, I have never delivered 7 papers before, and you talked earlier about that 8 carriers would provide a turn by turn of the route. 9 Can you tell me about that. What does that mean? 10 A. It's directions step by step of what your 11 entire paper route is. That way, if anything ever 12 happened, and you couldn't show up for your route or 13 you had an emergency, they could provide that turn by 14 turn for someone to cover your route that has no idea 15 where your route even is. 16 Q. I see. So the carriers like Arthur 17 Niverson would provide that route; is that accurate? 18 MR. TWOMBLY: Object to the form. 19 THE WITNESS: Arthur or myself. It wasn't 20 required all the time, like maybe once a year to 21 update it. 22 BY MS. TILLMAN: 23 Q. And, so, if I'm understanding what you're 24 saying correctly, the carriers were able to decide 25 their route, the direction that they would go and how	Page 76 1 Q. I see. If Arthur asked you to drive his 2 paper route how would he get to his bakery job? 3 A. I would drive him and drop him off so I 4 could have the car. 5 Q. Sorry. I'm looking through my notes 6 because Ashley already asked a lot of the questions on 7 my list. 8 When you were -- was it Arthur who was paid by 9 Starr Distributing or was it you? 10 A. Arthur. 11 Q. Did you ever receive a check from Starr 12 Distributing? 13 A. I don't remember. 14 Q. And you said earlier that you -- and your 15 phone was breaking up so I couldn't hear you clearly. 16 You said earlier that you on the day of the 17 accident -- the accident occurred right after you came 18 over that bridge from Savannah into South Carolina; is 19 that correct? 20 A. Not right off the bridge, but I was on that 21 same street connected to the bridge. 22 Q. I see. 23 A. It was down -- it was right before like the 24 turn on that road A1A which will take you to Bluffton 25 or Beaufort.
Page 75 1 they would take the papers; is that accurate? 2 MR. TWOMBLY: Object to the form. 3 THE WITNESS: Correct. As long as you 4 delivered to every address that was on the assigned 5 route, they don't care which way you deliver it as 6 long as you deliver the whole thing to everybody. 7 BY MS. TILLMAN: 8 Q. So would the carriers come up with what 9 they felt was the best way to deliver those papers and 10 that would be their route that they would take? 11 MR. TWOMBLY: Object to the form. 12 THE WITNESS: Correct. As long as you did 13 the assigned addresses they don't care which way you 14 drive it. 15 BY MS. TILLMAN: 16 Q. And how many cars -- in 2017 how many cars 17 did you and your husband own together? Were you a one 18 car family or a two car family? 19 A. One. 20 Q. And who owned the car, was it Arthur or 21 you? Whose name was the title in? 22 A. Both. 23 Q. How did you decide who got to use the car 24 on any particular day? 25 A. Whoever needed it at the time got it.	Page 77 1 Q. I see. And you said you couldn't remember 2 if you were picking up the Savannah papers; is that 3 correct? 4 A. Correct. 5 Q. And if you didn't pick up the Savannah 6 papers then what would you do? 7 A. Just go straight to Beaufort. 8 Q. Did you have any newspapers in your car at 9 the time that the accident occurred? 10 A. No. 11 Q. I don't have any further questions. Thank 12 you for your time. 13 A. Thank you. 14 MR. TWOMBLY: Dan. Mitch. Do you have 15 anything? 16 CROSS-EXAMINATION 17 BY MR. GRIFFITH: 18 Q. Ms. Niverson, my name is Mitch Griffith. I 19 represent your husband. I have just one or two 20 questions. I'm sorry I'm a little late. Can you hear 21 me? 22 A. Yes. 23 Q. All right. As I understand, you woke up 24 that morning and you were -- did you have your papers 25 at that time?

Page 78 1 A. No. 2 Q. So you were on the way to work at that 3 time? 4 MR. TWOMBLEY: Object to the form. 5 MS. TILLMAN: Object to the form. 6 BY MR. TWOMBLEY: 7 Q. You were on the way to work, correct? 8 A. Correct. But work does not start until I 9 get there. 10 Q. Okay. That's what I want to make sure of. 11 You were not at work at the time of this accident; is 12 that correct? 13 A. That's correct. 14 Q. All right. And you were in your own car 15 and had no papers to deliver at that time; is that 16 correct? 17 A. Correct. 18 Q. All right. And when you got to the papers 19 you'd pick them up, and that's when you started work 20 is when you started delivering papers? 21 MR. TWOMBLEY: Object to the form. 22 THE WITNESS: When you're there that's when 23 you start. 24 MR. GRIFFITH: That's all the questions 25 I've got. Thank you.	Page 80 1 MR. RANALDO: Object to the form. 2 MS. TILLMAN: I also object to the form. 3 THE WITNESS: Until I reach a location I am 4 not considered at work. 5 BY MR. TWOMBLEY: 6 Q. Well, I think that's a legal question. I'm 7 just asking you. Part of your responsibilities was to 8 go get those papers from Bluffton and to drive them to 9 Beaufort, correct? 10 MR. RANALDO: Object to the form. 11 MS. TILLMAN: Object to the form. 12 THE WITNESS: That's correct. But I am not 13 at the job until I get to that location. I don't get 14 paid for traveling time, so that is not counted as 15 work time. 16 BY MR. TWOMBLEY: 17 Q. But that was part of your job was to get 18 those papers from Bluffton and take them to Beaufort, 19 right? 20 MR. RANALDO: Object to the form. 21 MS. TILLMAN: Object to the form. 22 THE WITNESS: That is correct. 23 BY MR. TWOMBLEY: 24 Q. Okay. And that's what you were in the 25 process of doing was going to get the papers from
Page 79 1 THE WITNESS: Thank you. 2 MR. TWOMBLEY: Ms. Niverson, this is 3 Mr. Twombley. 4 I don't want to jump ahead. Dan, do you have 5 anything? 6 MR. RANALDO: Not at this time. 7 REDIRECT EXAMINATION 8 BY MR. TWOMBLEY: 9 Q. Ms. Niverson, one of the things you were 10 supposed to be doing, though, was to pick those papers 11 up from the Bluffton location and to take those over 12 to Beaufort, correct? 13 MS. TILLMAN: Object to the form. 14 THE WITNESS: Correct. But that's not part 15 of my route. 16 BY MR. TWOMBLEY: 17 Q. Well, I understand that, but I think they 18 called that the relay service that you were providing, 19 correct? 20 A. Correct. But I hadn't gotten there. 21 MR. RANALDO: Object to the form. 22 BY MR. TWOMBLEY: 23 Q. I understand. But that was part of your 24 job, though, was to drive to Bluffton, get those 25 papers and to take them to Beaufort, right?	Page 81 1 Bluffton and taking them to Beaufort at the time the 2 accident occurred? 3 MS. TILLMAN: Object to the form. 4 MR. RANALDO: Object to the form. 5 THE WITNESS: I didn't agree or say that. 6 I said I don't remember. There were times I did not 7 pick them up and times I did pick them up. Sometimes 8 they would get put on the truck before I'd get there 9 if I didn't get there early. So I never told you that 10 I was for sure going there. I told you I didn't 11 remember. 12 BY MR. TWOMBLEY: 13 Q. All right. So you don't remember whether 14 or not you were going to get the papers from Bluffton 15 or not, right? 16 MS. TILLMAN: Object to the form. 17 THE WITNESS: Correct. I've told you that 18 answer each time you've asked me. 19 BY MR. TWOMBLEY: 20 Q. Okay. Ms. Niverson, do you know the 21 difference between an independent contractor and an 22 employee? 23 MR. RANALDO: Object to the form. 24 MS. TILLMAN: Object to the form. 25 THE WITNESS: No.

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1 BY MR. TWOMBLEY: 2 Q. I mean, did you consider yourself an 3 employee of Starr Distributing? 4 MS. TILLMAN: Object to the form. 5 THE WITNESS: Why would I? The contract is 6 not in my name. 7 BY MR. TWOMBLEY: 8 Q. Well, other than the fact that the contract 9 might not be in your name, I mean, I think we 10 established you did sign some paperwork. You weren't 11 sure what you signed, but putting that issue aside, 12 other than the fact that the contract may not have 13 been in your name, is there any other reason? 14 MR. RANALDO: Object to the form. 15 MS. TILLMAN: Object to the form. 16 THE WITNESS: There was a paycheck issued 17 from Starr, but that's not considered an employee. 18 BY MR. TWOMBLEY: 19 Q. Okay. This contract talks about return 20 sheets being -- it says return sheets must be provided 21 to Starr Distributing daily. Do you know what a 22 return sheet is? 23 A. No. Because I didn't have to return 24 nothing. That sounds like people who use paper boxes. 25 Like you put your quarter in the box to get a paper.	1 be made and the number of products to be delivered at 2 each location. 3 I mean, is that what Starr Distributing would do? 4 MR. RANALDO: Object to the form. 5 MS. TILLMAN: Object to the form. 6 THE WITNESS: You do not get a list of 7 everybody's addresses every day. You're given that in 8 the beginning, and it's not in any particular order. 9 The only thing you get daily is the stops and starts. 10 BY MR. TWOMBLEY: 11 Q. Okay. But, I mean, they provide you with 12 the list, whether it's at the beginning of the 13 relationship or changes to it during the middle, they 14 give you the list of everywhere you have to go -- 15 MS. TILLMAN: Object to the form. 16 THE WITNESS: Correct. 17 BY MR. TWOMBLEY: 18 Q. -- right? And the turn by turn 19 instructions that you provide or that the paper 20 carrier would provide, that would just be your 21 personal preference whether or not you turned left and 22 went this way or turned right and went that way, but 23 that wouldn't change where you had to go each day; is 24 that right? 25 MS. TILLMAN: Object to the form.
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1 That may be what that is, but I'm not sure. I did not 2 have to return anything daily. 3 Q. Now, I want to ask you just a question 4 about these turn by turn directions, and I just want 5 to make sure I understand that correctly. It's my 6 understanding that either Starr Distributing or 7 Beaufort Gazette, they provided you with the route 8 that you were required to -- well, let me use a 9 different word other than route, but they provided you 10 with the list of their customers that they wanted 11 papers delivered to each morning, correct? 12 MS. TILLMAN: Object to the form. 13 THE WITNESS: Correct. 14 BY MR. TWOMBLEY: 15 Q. Okay. And that would change daily? Could 16 change daily? Maybe not every day, but it was subject 17 to change daily? 18 A. The only thing you got daily was the 19 changes. 20 Q. I gotcha, but I'm just -- it says delivery 21 area may be revised on a weekly basis as necessary to 22 fulfill Starr Distributing's overall delivery 23 obligations. Starr Distributing will provide 24 contractor with delivery manifest daily. The manifest 25 will designate each location where deliveries are to	1 COURT REPORTER: Mr. Twombley, I couldn't 2 hear the witness's answer over the objection. 3 MR. TWOMBLEY: Oh. I think she said yes. 4 THE WITNESS: Correct. 5 BY MR. TWOMBLEY: 6 Q. Have you ever worked for any anybody in 7 your life or have you ever known anyone that worked 8 for anybody in your life that would provide their 9 employer with a specific route and road that they were 10 required to drive when getting in between point A and 11 point B? 12 MR. RANALDO: Object to the form. 13 BY MR. TWOMBLEY: 14 Q. Have you ever experienced anything like 15 that? 16 A. No. 17 Q. Okay. Did you get injured in this 18 accident? 19 A. I did not seek medical treatment. I was 20 fine. 21 Q. Okay. Did you file a Workers' Comp claim? 22 A. No. 23 Q. Why didn't you file a Workers' Comp -- 24 A. It wouldn't have been work-related. I was 25 not at work. It wouldn't have been work-related.

Page 86 1 There would be no reason to file that. And I was not 2 injured. I hurt my finger, but it wasn't medically 3 necessary for it to be looked at. 4 Q. Okay. So the reasons you didn't file a 5 Workers' comp claim were two in your mind. Number 6 one, you didn't think you were at work, and, number 7 two, you didn't get injured? 8 A. No. I knew for a fact I was not at work, 9 and I was not injured other than my finger. 10 Q. Well, let me ask you this. If you had been 11 hurt while you were rolling up the papers and putting 12 them in the bags, would you have thought you had the 13 ability to file a Workers' Compensation claim then? 14 MR. RANALDO: Object to the form. 15 MS. TILLMAN: Object to the form. 16 THE WITNESS: No. Because you're not going 17 to get hurt sitting in your car rolling papers. 18 That's not a legitimate question. 19 BY MR. TWOMBLEY: 20 Q. Well, can you assume that you might have 21 gotten hurt in some way? 22 A. I'm not going to pretend to answer your 23 question by pretending I got hurt when I didn't. Ask 24 me a question that's fact, and I'll answer you, but 25 I'm not going to pretend a situation to give you an	Page 88 1 Facebook that you had a broke finger? 2 A. Yeah. I told you I hurt my finger. I just 3 told you a minute ago. I said, yeah, I hurt my finger 4 in the accident. I didn't seek medical treatment. 5 Q. Okay. I'm just asking if you remember 6 posting on Facebook about it. 7 A. Do I remember posting on Facebook? No. 8 That was three years ago. And if you know I have a 9 Facebook page why did you ask me about it? 10 Q. I wanted to see if you were going to tell 11 the truth about it. That's one of the reasons we're 12 here today. 13 A. I don't remember if I posted. That was 14 three years ago. I post on Facebook every day. 15 Q. Do you remember posting that you blacked 16 out from your diabetes? 17 A. I never told you I blacked out from 18 diabetes. I never said that. I don't know where you 19 got that from. You're making up stuff. 20 Q. Do you have any social media accounts other 21 than Facebook? 22 A. I think I opened an Instagram and a 23 Twitter, but I don't know how to use them so I've 24 never used them. 25 Q. Ms. Niverson, that's all I've got.
Page 87 1 answer. 2 Q. All right. Well, if you had been hurt 3 while you were working delivering these papers -- 4 A. I was not hurt. There's no answer for you. 5 I'm not going to pretend in a hypo -- hypo whatever. 6 I'm not going to pretend if I did get hurt. There's 7 no answer to that. I answered you. No. 8 Q. Okay. It's not that important. 9 Ms. Niverson, do you have a Facebook page? 10 A. This is real, so why do I want to pretend 11 when in a real life situation I'm not going to do that 12 to give you an answer you may want to hear? This is 13 real not pretend. I'm not going to pretend to give 14 you an answer. 15 Q. It's fine. It's not that important, and I 16 don't have time to explain why we would do that, so 17 we'll just move on with the next question. Okay? 18 A. Okay. 19 Q. Do you have a Facebook page? 20 A. Yes, I do. 21 Q. And did you make any posts on your Facebook 22 page about this accident? 23 A. I don't know. That was three years ago. 24 Q. I saw one post where you were -- you said 25 you had a broke finger. Do you remember posting on	Page 89 1 A. Thank you. 2 MR. RANALDO: I don't have any questions. 3 Mitch? Ainsley? 4 MS. TILLMAN: No further questions. 5 MR. TWOMBLEY: Mitch, have you got anything 6 else before we turn Ms. Niverson loose? 7 COURT REPORTER: Mr. Griffith, are you with 8 us? 9 MS. TILLMAN: I think he might not be 10 because he doesn't have -- we may have lost him. 11 MR. TWOMBLEY: Well, I hate to say it, but 12 we probably ought to wait just to make sure if he 13 doesn't have anything more, otherwise you might be 14 subject to coming back, Ms. Niverson, and we don't 15 want to make you do that. 16 MS. TILLMAN: Ashley, do you want to maybe 17 take a break and we can see if can we contact him off 18 of this platform? 19 MR. TWOMBLEY: Yeah, that's fine with me. 20 (A short recess was taken.) 21 BY MR. TWOMBLEY: 22 Q. Ms. Niverson, I thought of just a couple 23 other quick questions I wanted to ask you while we 24 were waiting on Mr. Griffith. 25 How would you find out each morning whether or not

Page 90 1 you had to stop by Bluffton and pick up the papers and 2 take them to Beaufort or not? 3 MS. TILLMAN: Object to the form. 4 THE WITNESS: For the most part, I would go 5 there. If I was running late I would not. If the 6 papers showed up early and they were put on the truck 7 they would let me know. 8 BY MR. TWOMBLEY: 9 Q. Did you get -- I'm sorry. So how would you 10 find out each morning whether or not that you needed 11 to -- that you were going to be -- that you needed to 12 stop by Bluffton or not stop by Bluffton? 13 A. Because I was doing it on the average 14 steadily. I don't remember if I was doing it steadily 15 or not during the accident. I would do it every day 16 unless I got a call saying that the papers were 17 already put on the truck to head to Beaufort, or if I 18 was running late I would call them and tell them to 19 put them on the truck if it's not too late. 20 Q. Okay. So each day you were expected as 21 part of the normal course to get up early enough so 22 you could stop at Bluffton, get the papers and take 23 them to Beaufort? 24 MR. RANALDO: Object to the form. 25 MS. TILLMAN: Object to the form.	Page 92 1 my route by a certain time. 2 Q. Okay. And those would have been the 3 instructions given to you by Starr Distributing? 4 MS. TILLMAN: Object to the form. 5 THE WITNESS: If you read the contract, we 6 had to have our route done by 6 a.m. I had to start 7 by a certain time to be done by that time. 8 BY MR. TWOMBLEY: 9 Q. Well, the contract just says you have to be 10 there by 3 a.m. every day. It doesn't say you have to 11 finish by a certain time. 12 A. Well, it was stated to everybody that we 13 had to be done with our route by 6 a.m. -- (audio 14 distortion.) 15 (Court reporter request for clarification.) 16 BY MR. TWOMBLEY: 17 Q. If you can slow down, Ms. Niverson, and 18 talk slower, because there's two problems. Number 19 one, there's a bad connection. Number two, you're 20 talking really really fast so it makes it even more 21 difficult. 22 A. Everybody knew that we had to be done by a 23 certain time. It was supposed to be six o'clock. It 24 was either six or 6:30, I don't remember exactly, but 25 after that time is when customers could call into the
Page 91 1 THE WITNESS: At one point, yes. 2 BY MR. TWOMBLEY: 3 Q. Well, how about in September of 2017? 4 A. That was three years ago. I told you I 5 don't remember if I was doing it steadily or not then. 6 Q. Okay. But if you were not going to be 7 required to stop by Bluffton you would have received a 8 phone call to say they were already on the truck or 9 you would have called somebody and said I'm running 10 late and I don't have time to pick those up for you 11 this morning? 12 MS. TILLMAN: Object to the form. 13 THE WITNESS: Correct. 14 BY MR. TWOMBLEY: 15 Q. Okay. And what time were you supposed to 16 pick them up by? 17 MS. TILLMAN: Object to the form. 18 THE WITNESS: When I got there. There was 19 not an exact time to be there. 20 BY MR. TWOMBLEY: 21 Q. Well, you said if you were running late 22 you'd have to call them and tell them. I mean, what 23 was considered running late? 24 A. I needed to be at the Beaufort Gazette in 25 time to get my papers and roll them and be done with	Page 93 1 customer service number and complain that their paper 2 was missing or whatever. 3 Q. Okay. Before Starr Distributing took over 4 were you required to get the papers in Bluffton and 5 take them to Beaufort? 6 MS. TILLMAN: Object to the form. 7 THE WITNESS: No. 8 BY MR. TWOMBLEY: 9 Q. So that was something new that was added to 10 your responsibilities when Starr Distributing took 11 over? 12 MR. RANALDO: Object to the form. 13 MS. TILLMAN: Object to the form. 14 THE WITNESS: Correct. With Beaufort 15 Gazette we didn't have other papers. It was just 16 Beaufort Gazette and Island Packet. That was it. 17 BY MR. TWOMBLEY: 18 Q. Okay. All right. About how long would it 19 take you to get from your house to Beaufort each day? 20 A. An hour. 21 Q. And if you had to stop by Bluffton, about 22 how long would that take? 23 A. From where, my home to Beaufort or from my 24 home to Bluffton? From where? 25 Q. Well, I'm just saying if you had to stop by

Page 94	Page 96
1 Bluffton and pick up those papers would that add	1 CERTIFICATE OF REPORTER
2 five minutes or ten minutes to the route? How long	2
3 would that add to the route?	3 I, Mindy Vislay, Court Reporter and Notary
4 MS. TILLMAN: Object to the form.	4 Public for the State of South Carolina at Large, do
5 THE WITNESS: Twenty to 30 minutes	5 hereby certify that the foregoing transcript is a
6 depending on how long it took me to get the papers and	6 true, accurate, and complete record.
7 put them in my car waiting to get them.	7 I further certify that I am neither related to
8 Q. All right. That's all I've got.	8 nor counsel for any party to the cause pending or
9 MR. RANALDO: Is Mitch still with us?	9 interested in the events thereof.
10 MR. GRIFFITH: I am here.	10 Witness my hand, I have hereunto affixed my
11 COURT REPORTER: Does anyone else have any	11 official seal this 24th day of September, 2020, at
12 questions?	12 Indian Land, Lancaster County, South Carolina.
13 MR. GRIFFITH: I do not.	13
14 MR. TWOMBLEY: I don't have any.	14
15 MR. RANALDO: I have no questions.	15
16 MS. TILLMAN: I don't have anymore	16
17 questions.	17
18 MR. TIMMERMAN: None from me. Thank you.	18
19 COURT REPORTER: Mr. Ranaldo, will you be	19
20 ordering a copy of this transcript, sir?	20
21 MR. RANALDO: An E-tran transcript, please.	21
22 COURT REPORTER: Mr. Griffith, will you be	22
23 ordering a copy of this transcript, sir?	23
24 MR. GRIFFITH: Yes. Both, please.	24
25 COURT REPORTER: Ms. Tillman, will you be	25
Page 95	Page 97
1 ordering a copy of this transcript, ma'am?	1 I N D E X
2 MS. TILLMAN: Yes, please. E-tran is	2 Page Line
3 great.	3 LORI ANN NIVERSON 4 15
4 COURT REPORTER: Mr. Timmerman, will you be	4 DIRECT EXAMINATION
5 ordering a copy of this transcript?	5 BY MR. TWOMBLEY 4 17
6 MR. TIMMERMAN: E-tran, please.	6 CROSS-EXAMINATION
7 (The witness, after having been advised of	7 BY MS. TILLMAN 71 21
8 her right to read and sign this transcript, waives	8 CROSS-EXAMINATION
9 that right.)	9 BY MR. GRIFFITH 77 16
10 (Deposition was concluded at 1:35 p.m.)	10 REDIRECT EXAMINATION
11	11 BY MR. TWOMBLEY 79 7
12	12 CERTIFICATE OF REPORTER 96 1
13	13
14	14 REQUESTED INFORMATION INDEX
15	15
16	16 (No Information Requested)
17	17
18	18 E X H I B I T S
19	19
20	20 (No exhibits were marked)
21	21
22	22
23	23
24	24
25	25

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2018-CP-07-2069

CHARLES WAYMON MURPHY,

Plaintiff,

v.

LORI ANN NIVERSON; STARR
DISTRIBUTING, LLC,

Defendants,

**ORDER GRANTING SUMMARY
JUDGMENT**

STARR DISTRIBUTING, LLC,

Third-Party Plaintiff,

v.

ARTHUR C. NIVERSON,

Third-Party Defendant.

Before this Court are motions for summary judgment filed by each Defendant Starr Distributing, LLC ("Starr Distributing") and Arthur C. Niverson. Starr Distributing seeks summary judgment on all claims alleged by Plaintiff against Starr Distributing. Arthur Niverson seeks summary judgment as to all claims based on a theory of *respondeat superior*. This Court heard arguments from the parties on January 26, 2021. For the reasons set forth below, and in the materials on file with the court, both motions are granted.

FINDINGS OF FACT

This lawsuit arises from a motor vehicle accident that took place during the early morning hours of September 30, 2017, while Plaintiff Charles Waymon Murphy and Lori Niverson were each traveling straight on Highway 17 near Hardeeville, South Carolina. Plaintiff alleges that as he was stopped for road work on Highway 17, he was struck from behind by Lori Niverson's vehicle. Plaintiff claims personal injuries and other damages as a result of this accident.

In his Complaint, Plaintiff alleges that Lori Niverson was an agent and employee of Starr Distributing (a newspaper distributing company) and that she was on a newspaper route delivering newspapers at the time of the accident. Plaintiff, therefore, claims that Starr Distributing is responsible for his injuries under a theory of *respondeat superior*.

Lori Niverson's husband, the Third-Party Defendant Arthur Niverson, was not involved in the accident and was not present at the scene of the accident. Arthur Niverson was an independent contractor of Starr Distributing, and his wife Lori Niverson was filling in for her husband on the morning of the accident. Plaintiff has not brought a cause of action against Arthur Niverson. Instead, Arthur Niverson was brought into this suit by Starr Distributing under the independent contractor agreement between Starr Distributing and Arthur Niverson.

This Court finds that the facts show that Lori Niverson was not working, but was

on her way to work, at the time of the accident. Plaintiff admits that Lori Niverson told him and his wife that she was “on her way” to work to start delivering newspapers on the morning when the accident occurred. Plaintiff further testified that Lori Niverson did not have any newspapers with her in her vehicle at the time of the accident. Similarly, deposition testimony of Arthur and Lori Niverson also demonstrates that Lori Niverson was on her way to pick up papers at the time of the accident and did not have the papers with her at the time. She and her husband often split duties, and Arthur Niverson was not working on this particular day. Some days, Lori Niverson or Arthur Niverson would stop and pick up the Savannah Morning News in Bluffton, South Carolina, before driving to the Starr Distributing Warehouse on Laurel Bay Road in Beaufort. However, on the date of this accident, there is no evidence that Lori Niverson was going to pick up the Savannah Morning News from the Bluffton Location. Starr Distributing paid a flat \$25 per week payment for Arthur Niverson picking up the Savannah Morning Paper in Bluffton and delivering them to Beaufort.

Only Arthur Niverson had an agreement with Starr Distributing to deliver newspapers. That agreement is titled “Starr Distributing Independent Contractor Distribution Agreement” and is part of the record (the “Independent Contractor Agreement”). There is no dispute that Arthur Niverson executed and entered into that agreement. The Independent Contractor Agreement specifies, among other things, that:

As an independent contractor, Contractor [Arthur Niverson] acknowledges and agrees that in performance of this Agreement, he/she alone is responsible for any property damage, bodily injury or death caused by Contractor, his/her agents and employees. . . .

As stated above, Lori Niverson was assisting her husband with deliveries. At the time of the accident, she was driving her personal vehicle, which was not owned or controlled by Starr Distributing. Only after she arrived at the work location was she considered working, and she was not paid for her commute.

STANDARD OF REVIEW

“[A] motion for summary judgment shall be granted ‘if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.’” *Media Gen. Commc’ns, Inc. v. S.C. Dep’t of Revenue*, 388 S.C. 138, 144, 694 S.E.2d 525, 527 (2010) (quoting Rule 56(c), SCRCF). “In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party.” *Quail Hill, LLC v. County of Richland*, 387 S.C. 223, 235, 692 S.E.2d 499, 505 (2010) (citation omitted). “Whether a duty exists in a negligence action is a question of law to be determined by the court.” *Nelson v. Piggly Wiggly Cent., Inc.*, 390 S.C. 382, 386, 701 S.E. 2d 776, 779 (S.C. Ct. App. 2010).

CONCLUSIONS OF LAW

A. Even under Plaintiff’s “employee” argument, Starr Distributing cannot be found liable as a matter of law for the actions of Mrs. Niverson on her way to work.

Even assuming *arguendo* that Mrs. Niverson was an employee, Starr Distributing cannot be held liable for her accident on the way to work. Under the doctrine of *respondent*

superior, “a master [is] liable to a third party for injuries caused by the tort of his servant committed within the scope of the servant's employment.” *South Carolina Ins. Co. v. James C. Greene & Co.*, 290 S.C. 171, 179, 348 S.E.2d 617, 621 (Ct. App. 1986); *see also Wade v. Berkeley Cty.*, 330 S.C. 311, 318–19, 498 S.E.2d 684, 688 (Ct. App. 1998). For a plaintiff to recover from a master/employer under the doctrine, he “must establish that the relationship existed at the time of the injuries, and also that the servant was then about his master’s business and acting within the scope of his employment.” *Armstrong v. Food Lion, Inc.*, 371 S.C. 271, 276, 639 S.E. 2d 50, 52 (2006). At the center of the *respondeat superior* theory is that the employee must be acting within the scope of her employment at the time of the tortious act. “An act is within the scope of [an employee’s] employment where reasonably necessary to accomplish the purpose of his employment and in furtherance of the [employer’s] business.” *Id.* On the other hand:

The act of a servant done to effect some independent purpose of his own and not with reference to the service in which he is employed, or while he is acting as his own master for the time being, is not within the scope of his employment so as to render the master liable therefor. Under these circumstances the servant alone is liable for the injuries inflicted. If a servant steps aside from the master's business for some purpose wholly disconnected with his employment, the relation of master and servant is temporarily suspended; this is so no matter how short the time, and the master is not liable for his acts during such time.

Id. (citing *Lane v. Modern Music, Inc.*, 244 S.C. 299, 136 S.E. 2d 713 (1964)).

Generally, where an employee is going to or coming from her place of work, she is “not engaged in performing a service growing out of and incidental to [her] employment;” therefore, no liability will lie with an employer where an employee is involved in an accident while going to or coming from work. *Wofford v. City of*

Spartanburg ex rel. S.C. Mun. Ins. Tr., 415 S.C. 152, 159, 781 S.E.2d 146, 149–50 (Ct. App. 2015) (citing *Medlin v. Upstate Plaster Serv.*, 329 S.C. 92, 95, 495 S.E.2d 447, 449 (1998)); see also *Wade v. Berkeley County*, 330 S.C. 311, 320, 498 S.E. 2d 684, 688 (Ct. App. 1998) (“the general rule is that an employee driving his own vehicle to and from work is on his own business, and not engaged in work for the master”).

South Carolina has recognized five exceptions to this rule. An employer may still be liable in those instances where (1) “the means of transportation is provided by the employer, or the time that is consumed is paid for or included in the wages”; (2) “the employee, on his way to or from his work, is still charged with some duty or task in connection with his employment”; (3) the way to work is inherently dangerous and is either the exclusive way or is constructed and maintained by the employer; (4) the injury occurred in close proximity to the workplace and there is an express or implied requirement that the employee use that approach in going to and coming from work; and (5) an employee is injured “while performing a special task, service, mission, or errand for his employer, even before or after customary working hours, or on a day on which he does not ordinarily work.” *Id.*

The first exception does not apply because there is no legitimate dispute that the vehicle operated by Lori Niverson on the date of the accident was her personal vehicle and was not owned by Starr Distributing. Nor was Lori Niverson compensated for her travel on the morning of the accident. Although Arthur Niverson received a flat \$25 per week payment for, on some mornings, picking up the Savannah Morning Paper and

delivering them in Beaufort, Lori Niverson had not picked up any papers on the day of the accident.

The second exception does not apply because Lori Niverson was not charged with some duty or task in connection with her alleged employment. Under the second exception, an employee will be considered within the scope of her employment if she is “charged with some duty or task in connection with her employment” while on the way to or coming from work. *Id.* In *Whitworth v. Window World, Inc.*, for example, an employee on his way to a window cleaning job was not performing a duty or task for work because he had no work-related duties on his way, but was instead “free to conduct personal business.” 377 S.C. 637, 641, 661 S.E. 2d 333, 336 (2008). The South Carolina Supreme Court in *Whitworth* held that the purpose of the window cleaner’s trip was a personal objective where he was traveling to the place where he would perform work. *Id.* Likewise, in *Wofford*, the Court of Appeals held that the plaintiff was not performing a duty or task for work at the time of his accident where he was “merely on his way to work to engage in his typical job responsibilities.” *Wofford*, 415 S.C. at 161, 781 S.E.2d at 151.

Like the plaintiff in *Wofford*, in the present case Lori Niverson had not yet commenced any duties or tasks associated with delivery of the papers. Rather, Mrs. Niverson was “merely on [her] way to work to engage in [her] typical job responsibilities.” 415 S.C. at 161, 781 S.E.2d at 151. Therefore, the second exception does not apply here.

The third exception does not apply because there is no evidence that the route on which Lori Niverson was traveling was inherently dangerous.

The fourth exception does not apply because there is no evidence of an express or implied requirement that Lori Niverson use a particular approach going to work.

The fifth exception does not apply because Lori Niverson was not performing a special task, mission, or errand. Under this exception, an employee is within the course and scope of her employment where she is obligated to take on tasks or perform any services requested by an employer from the time of leaving home to the end of the workday. For example, the South Carolina Supreme Court in *Bickley v. South Carolina Electric and Gas* held that an electrical lineman was performing a special task during his entire workday because he was obligated to make emergency calls and perform work outside his regular work hours. 259 S.C. 463, 471, 192 S.E. 2d 866, 870 (1972). However, where an employee is coming and going from tasks that are not unusual or special, but instead are common and customary in the course of business, those instances will not be considered within the “special task” exception. See *McDaniel v. Bus Terminal Restaurant Management Corp.*, 271 S.C. 299, 301-03, 247 S.E. 2d 321, 322-23 (1978) (S.C. Supreme Court held that cook was not within scope of employment when involved in accident while leaving regularly scheduled employee meeting because it was not unusual or “special”).

Similarly, like in *McDaniel*, Mrs. Niverson was not engaging in a “special task” at the time of the accident. The record demonstrates that Arthur Niverson (or Lori Niverson, acting on his behalf) regularly picked up the Savannah Morning Paper in

Bluffton before continuing on to Beaufort, and Arthur Niverson received a \$25.00 fee for performing such service. Thus, stopping in Bluffton to pick up the papers would not be considered a “special task” because it is a routine and regular occurrence.

Regardless of this fact, Lori Niverson had not picked up the papers on the date of her accident; rather, she was on her way to work. In South Carolina, it is clearly established that one’s commute to work does not fall within the course and scope of their employment. *Wofford*, 415 S.C. at 159; *see also Wade*, 330 S.C. at 320.

Accordingly, even if Lori Niverson were considered an employee of Starr Distributing, she was on her way to work at the time of the accident, and the exceptions to the “going and coming” rule do not not apply to Lori Niverson on the morning of the accident.

CONCLUSION

For these reasons, this Court grants summary judgment in favor of Starr Distributing and against Plaintiff on all his claims against Starr Distributing. For the same reasons, the Court grants summary judgment as to the allegations against Arthur Niverson that are based on the theory of *respondeat superior*.

So ordered this ____ day of _____, 2021.

The Honorable Judge R. Ferrell Cothran, Jr.



Beaufort Common Pleas

Case Caption: Charles Waymon Murphy VS Lori Ann Niverson , defendant, et al

Case Number: 2018CP0702069

Type: Order/Summary Judgment

So Ordered

s/ R. Ferrell Cothran, Jr., 2144

Electronically signed on 2021-02-01 12:53:14 page 10 of 10

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
CIVIL CASE NO.: 2018-CP-07-2069

CHARLES WAYMON MURPHY,

Plaintiff,

v.

LORI ANN NIVERSON;
STARR DISTRIBUTING, LLC,

Defendants,

STARR DISTRIBUTING, LLC,

Third-Party Plaintiff,

v.

ARTHUR C. NIVERSON,

Third-Party Defendant.

MOTION TO RECONSIDER

On February 1, 2021, the Court entered summary judgment in favor of Defendant, Starr Distributing, LLC, ruling that there was “no evidence” to support Plaintiff’s assertion that Lori Niverson was on her way to Bluffton to pick up the Savannah Morning News at the time of the accident. This ruling is at odds with the sworn testimony of Lori Niverson, who testified that it was part of her job to pick up the Savannah Morning News “every day” on her way from her home in Savannah to where she worked in Beaufort. It is further at odds with the Court’s own finding that “stopping in Bluffton to pick up the papers [was] a routine and regular occurrence.” Order p. 8. At best, there is a question of fact on this issue that the Court is required to resolve in Plaintiff’s favor. Rather than resolve the issue in favor of Plaintiff, the Court impermissibly substituted itself

as the finder of fact, resolved this factual issue in favor of Defendant, Starr Distributing, and then relied on that fact to enter summary judgment. This is reversible error.

The Court also used this and other improper factual findings to incorrectly determine that exceptions to the Going and Coming Rule were not applicable, which is also reversible error.

Finally, the Court granted summary judgment as to “all of Plaintiff’s claims” even though Defendant Starr distributing did not present any argument or evidence regarding Plaintiff’s claim for negligent hiring and negligent supervision. This too was reversible error.

For these reasons and those stated below, the Court should take the opportunity now to reconsider and revisit its February 1, 2021 Order.

Background Facts

Lori Niverson lived in Savannah, GA and drove to Beaufort, SC each day to drive a paper route for Defendant Starr Distributing, wherein she delivered individual newspapers to Starr Distributing customers. The individual paper route began in Beaufort at the Starr Distributing warehouse. Plaintiff concedes that Lori Niverson had not yet reached the Starr Distributing warehouse in Beaufort to begin her individual paper route at the time of the accident, and therefore she was not “at work” when the accident at issue took place.

However, in addition to her individual paper route for Starr Distributing that began in Beaufort, Lori Niverson was also responsible for picking up the Savannah Morning News newspapers in bulk each morning from a location in Bluffton and relaying those papers to Starr Distributing’s warehouse in Beaufort *before* she began her individual paper route. Picking up the Savannah Morning News newspapers from Bluffton and relaying those papers to Starr Distributing in Beaufort (before she began her individual paper route) was called the “relay service.” Lori

Niverson was responsible for performing the “relay service” for Starr Distributing because she lived in Savannah and drove through Bluffton each day on her way to Beaufort.

On page 3 of its Order, the Court found that “on the date of this accident, there is **no evidence** that Lori Niverson was going to pick up the Savannah Morning News newspapers from the Bluffton Location” on the day the accident took place. Order at 3. This factual finding is at odds with the evidence, and in any event, there is at least a scintilla of evidence creating a factual question on this issue, which must be resolved in Plaintiff’s favor.

Legal Standard

Summary judgment is only appropriate when there is “no genuine issue as to any material fact and [...] the moving party is entitled to judgment as a matter of law.” Rule 56, SCRCR (emphasis added). “The party moving for summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact.” *Miller v. Blumenthal Mills, Inc.*, 365 S.C. 204, 220, 616 S.E.2d 722, 729 (Ct. App. 2005). “In determining whether any triable issues of fact exist, **the evidence and all inferences which can reasonably be drawn from the evidence must be viewed in the light most favorable to the non-moving party.**” *Koester v. Carolina Rental Center, Inc.*, 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994) (emphasis added). Additionally, “[e]ven when there is no dispute as to the evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied.” *Id.* Moreover, “[s]ummary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law.” *Miller* at 200. Finally, “because it is a drastic remedy, summary judgment should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues.” *Id.*

I. There is evidence to support a reasonable inference that Lori Niverson was on her way to pick up the Savannah Morning News in Bluffton at the time of the accident.

Lori Niverson testified that she was tasked with picking up the Savannah Morning News newspapers “every day” from Bluffton as part of the “normal course” of her employment and relaying those papers to Starr Distributing in Beaufort, before she began her paper individual paper route:

Q. Did you get -- I’m sorry. So how would you find out each morning whether or not that you needed to -- that you were going to be -- that you needed to stop by Bluffton or not stop by Bluffton?

A. Because I was doing it on the average steadily. I don’t remember if I was doing it steadily or not during the accident. I would do it every day unless I got a call saying that the papers were already put on the truck to head to Beaufort, or if I was running late I would call them and tell them to put them on the truck if it’s not too late.

Q. Okay. So each day you were expected as part of the normal course to get up early enough so you could stop at Bluffton, get the papers and take them to Beaufort?

....

A. At one point, yes.

Lori Niverson Depo p. 90-91.

Lori Niverson testified that relaying the Savannah Morning News from Bluffton to Beaufort each morning was a new responsibility she was given when Starr Distributing took over:

Q. Okay. Before Starr Distributing took over were you required to get the papers in Bluffton and take them to Beaufort?

MS. TILLMAN: Object to the form.

A. No.

Q. So that was something new that was added to your responsibilities when Starr Distributing took over?

MR. RANALDO: Object to the form.

MS. TILLMAN: Object to the form.

A. Correct. With Beaufort Gazette we didn't have other papers. It was just Beaufort Gazette and Island Packet. That was it.

Depo p. 93.

Ms. Niverson admitted that picking up the Savannah Morning News in Bluffton was “part of her job,” even though she did not consider herself “at work” until she arrived in Beaufort where her individual paper route began:

Q. But that was part of your job was to get those papers from Bluffton and take them to Beaufort, right?

MR. RANALDO: Object to the form.

MS. TILLMAN: Object to the form.

A: That is correct.

Depo p. 80.

Lori Niverson testified that it would take her an additional 20-30 mins to stop by Bluffton to pick up the Savannah Morning News and perform the “relay service”:

Q. Okay. All right. About how long would it take you to get from your house to Beaufort each day?

A. An hour.

Q. And if you had to stop by Bluffton, about how long would that take?

A. From where, my home to Beaufort or from my home to Bluffton? From where?

Q. Well, I'm just saying if you had to stop by Bluffton and pick up those papers would that add five minutes or ten minutes to the route? How long would that add to the route?

MS. TILLMAN: Object to the form.

- A. Twenty to 30 minutes depending on how long it took me to get the papers and put them in my car waiting to get them.

Depo p. 93-94.

Ms. Niverson could not definitively say whether she was on her way to pick up the Savannah Morning News in Bluffton on the morning of the accident, and more importantly, she could not exclude the possibility that she was not. Specifically, Lori Niverson testified that she **could not remember** if she was on her way to pick up the Savannah Morning News from Bluffton when the accident occurred:

- Q. Okay. And that's what you were in the process of doing was going to get the papers from Bluffton and taking them to Beaufort at the time the accident occurred?

...

- A. THE WITNESS: I didn't agree or say that. I said **I don't remember**. There were times I did not pick them up and times I did pick them up. Sometimes they would get put on the truck before I'd get there if I didn't get there early. So I never told you that I was for sure going there. I told you I didn't remember.

- Q. All right. So you don't remember whether or not you were going to get the papers from Bluffton or not, right?

MS. TILLMAN: Object to the form.

- A. Correct. I've told you that answer each time you've asked me.

Depo p. 80-81.

Taken together, Lori Niverson herself could not conclude or infer one way or the other whether she was on her way to Bluffton to pick up the Savannah Morning News in Bluffton at the time of the accident. But contrary to its obligation to view all evidence in the light "most favorable" to Plaintiff and draw all conclusions and inferences in favor of Plaintiff, the Court did what Lori Niverson could not do: concluded that there was "no evidence" that Lori Niverson was

on her way to Bluffton on the morning of the accident. The Court drew this conclusion despite Lori Niverson's testimony that she was required to pick up the Savannah Morning News "every day," which was part of her "normal course," unless she received a call instructing her not to stop by Bluffton.

Plaintiff would respectfully submit that this testimony, viewed in the light most favorable to Plaintiff, creates a reasonable inference that Lori Niverson was going to pick up the Savannah Morning News on the day of the incident. In any event, the Court erred by ruling that there was **no evidence** that Lori Niverson was going to pick up the Savannah Morning News newspapers from the Bluffton Location on the day the accident took place because Lori Niverson testified that she stopped by Bluffton "every day" and "could not remember" specifically about the day in question. If there is conflicting testimony on a material issue, then the issue is one for the jury. *See McAlhany v. Carter*, 415 S.C. 54, 64, 781 S.E.2d 105, 111 (Ct. App. 2015), *aff'd*, No. 2016-000405, 2017 WL 4873655 (S.C. May 3, 2017) (finding the trial court erred in failing to view conflicting testimony in the light most favorable to the non-moving party.)

II. The Court's finding that Lori Niverson was not paid for picking up the Savannah Morning News in Bluffton is directly at odds with Lori Niverson's sworn testimony.

The Court's Order granting summary judgment also states that "Starr Distributing paid a flat \$25 per week payment for Arthur Niverson picking up the Savannah Morning Paper in Bluffton and delivering them to Beaufort," and then states that Lori Niverson "was not paid for her commute." Order p. 3-4. This finding directly contradicts Lori Niverson's testimony:

Q. On these invoices that I mentioned earlier there's a car allowance of \$25. It's not per day. I guess it's per pay period. What do you know about the car allowance?

....

A. THE WITNESS: That was for me stopping in Bluffton and picking up the Savannah Morning News to transport them with me to the Beaufort location.

....

Q. So the \$25 a day was for the service of picking up the papers from Beaufort and bringing them to Beaufort? I'm sorry. Bluffton rather than Beaufort.

A. It wasn't \$25 a day, and it was for picking up the Savannah Morning Newspaper and bringing them to Beaufort with me.

Depo p. 62-63. The Court's Order finding that Lori Niverson "was not paid for her commute" is improper. Lori Niverson was paid \$25 per pay period for traveling to Bluffton to pick up the Savannah Morning News in Bluffton and delivering them to Beaufort.

III. The Court incorrectly concluded that exceptions 1, 2, and 5 to the Going and Coming Rule are inapplicable.

The Court correctly found that employers can be liable for the acts of employees even when the employee is "on their way to work" under five exceptions to the Going and Coming Rule, but erroneously concluded that none of these exceptions were applicable. The Court's ruling is based upon the improper resolution of factual issues in favor of Defendants, and other errors.

As the Court correctly noted, an employer may be liable for acts of an employee when the employee is on their way to work where (1) "the means of transportation is provided by the employer, *or the time that is consumed is paid for or included in the wages*"; (2) "the employee, on his way to or from his work, *is still charged with some duty or task in connection with his employment*"; . . . and (5) an employee is injured "while performing a special task, service, mission, or errand for his employer, even before or after customary working hours, or on a day on which he does not ordinarily work." Order p. 6 (emphasis added). The Court incorrectly concluded that exceptions 1, 2 and 5 were not applicable.

- a. Lori Niverson was paid for time consumed in traveling to Bluffton to pick up the Savannah Morning News.*

The Court found that Lori Niverson was not “compensated for her travel on the morning of the accident.” Order p. 6. This finding flows from the Court’s erroneous finding that Lori Niverson was not paid for going to Bluffton to pick up the Savannah Morning News. However, because Lori Niverson testified she was paid \$25 per pay period for “stopping in Bluffton and picking up the Savannah Morning News to transport them with me to the Beaufort location,” this finding is also clearly improper. Depo p. 62-63.

- b. Lori Niverson was responsible for picking up the Savannah Morning News in Bluffton, and taking them to Beaufort, while on her way to work.*

As exception 2 notes, employees can be liable for actions of employees, even when the employees are “on their way to work”. For this exception to apply, the employee must be responsible for “some duty or task in connection with [their] employment” while the employee is “on the way to or from work.”

The Court found this exception inapplicable because “Lori Niverson had not yet commenced any duties or tasks associated with delivery of the papers” and was “merely on [her] way to work to engage in [her] typical job responsibilities.” Order p. 7. This finding wholly ignores the “relay service” being provided by Lori Niverson, and her testimony that part of her “job was to get those papers from Bluffton and take them to Beaufort.” Depo p. 80. It further ignores Lori Niverson’s testimony that she was paid \$25 per pay period for “stopping in Bluffton and picking up the Savannah Morning News to transport them with me to the Beaufort location.” Depo p. 62-63. The task of picking up the papers in Bluffton and relaying them to Beaufort was clearly “in connection with [her] employment,” as Lori Niverson testified that this was part of her job and that she was paid \$25 per period for “stopping in Bluffton and picking up the Savannah Morning

News to transport them **with me** to the Beaufort location.” *Id.* Finally, this finding ignores that Lori Niverson was responsible for picking up the Savannah Morning News in Bluffton “every day” as part of the “normal course,” and that she simply could not remember if she was going to Bluffton on the day of the accident.

c. Lori Niverson was charged with a special duty or task on the way to work.

The Court’s errors regarding exception number 2 are highlighted when contrasted with the Court’s findings regarding exception number 5. With respect to exception number 5, the Court found that Lori Niverson “was not engaging in a ‘special task’ at the time of the accident” because the Savannah Morning News newspapers were “regularly picked up” in Bluffton, and that picking them up was a “routine and regular occurrence.” Order p. 8-9. If the occurrence of picking up the papers in Bluffton was “routine and regular,” the Court cannot consistently conclude as a matter of law that “there is no evidence that Lori Niverson was going to pick up the Savannah Morning News from the Bluffton Location” on the day of the accident. Order p 3.

If picking up the papers in Bluffton was routine and regular, the frequency in which she engaged in the activity must be a scintilla of evidence that Lori Niverson was engaged in that activity on the day of the accident. And if it’s not, then the Court cannot conclude that the activity was not a “special task.” Lori Niverson’s testimony, coupled with her inability to resolve in her own mind whether she was on the way to Bluffton on the day of the accident is evidence sufficient to infer that Lori Niverson was on her way to pick up the papers in Bluffton on the day of the accident.

IV. The Court's order fails to address Plaintiff's direct claims against Starr for negligent hiring and negligent supervision, but grants summary judgment on the claim.

In addition to its claim against Starr under respondent superior, Plaintiff's first cause of action against Starr was for "Negligent Hiring/Supervision" for Starr's own negligence. Specifically, Plaintiff alleged Starr is responsible for:

- a. negligently hiring or selecting Defendant Niverson to execute delivery routes;
- b. negligently failing to properly train and/or supervise Defendant Niverson;
- c. failing or omitting to exercise the degree of care and caution as required by the circumstances then and there existing which a reasonably prudent person would have exercised under the same or similar circumstances;
- d. failing to take the proper precautions to insure the safety of those persons using the highway; and
- e. In such other and further particulars as the evidence at trial may show.

See Complaint p. 3-4. Despite not making any arguments or submitting any evidence related to this claim, the Court's order grants summary judgment "against Plaintiff on all of his claims against Starr Distributing." Order p. 9. This finding is improper.

"The party moving for summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact." *Miller v. Blumenthal Mills, Inc.*, 365 S.C. 204, 220, 616 S.E.2d 722, 729 (Ct. App. 2005). As pointed out in Plaintiff's Memorandum in Opposition to Summary Judgment, Starr failed to provide any argument or any evidence addressing Plaintiff's direct claim against Starr. Similarly, the Court's Order does not mention, address, or otherwise explain why summary judgment on this claim is proper. In fact, the only reference to "all" of Plaintiff's claims is in the conclusion section of the Order. Because Starr did not mention - much

less “clearly establish” - the absence of a genuine issue of material fact on this claim, summary judgment was improper.¹

Conclusion

Lori Niverson’s own testimony explicitly contradicts the Court’s factual findings and the conclusions drawn, which underpin its order granting summary judgment. At best, her testimony presents a dispute about the conclusions and inferences to be made. Plaintiff respectfully requests that the Court reconsider its ruling and deny Starr Distributing’s Motion for Summary Judgment.

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Beaufort, South Carolina

February 11, 2021

¹ Summary Judgment is also not proper because the court did not conclude and should not conclude that there was “no legal relationship” between Starr and Lori Niverson.

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STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
<u>COUNTY OF BEAUFORT</u>	)	
CHARLES WAYMON MURPHY,	)	TRANSCRIPT
	)	
PLAINTIFF,	)	OF
	)	
VS.	)	RECORD
	)	
LORI ANN NIVERSON; STARR	)	
DISTRIBUTING, LLC,	)	2018-CP-07-2069
	)	
<u>DEFENDANTS.</u>	)	
STARR DISTRIBUTING, LLC,	)	
	)	
PLAINTIFF,	)	
	)	
VS.	)	
	)	
ARTHUR C. NIVERSON,	)	
	)	
<u>DEFENDANT.</u>	)	

January 26th, 2021
Beaufort, South Carolina

B E F O R E:

THE HONORABLE R. FERRELL COTHRAN, JR., Judge.

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

2

3 ASHLEY TWOMBLEY
4 ESQ.
Attorney for the Plaintiff

5

6 IAN FORD
ESQ.
Attorney for the Defendant

7

8 E. MITCHELL GRIFFITH
9 ESQ.
Attorney for the Defendant

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15 Transcribed by Pamela E. Green, from
DCRP, Digital Courtroom Recorder Project

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I N D E X

(WHEREUPON, there were no exhibits marked or testimony
taken during this hearing.)

1 P R O C E E D I N G S

2
3 THE COURT: -- Savannah, you said taking it to some
4 other location?

5 MR. FORD: Her all -- but, but not that morning.

6 THE COURT: Right.

7 MR. FORD: So you're all over it, Your Honor.

8 I've got an independent contractor agreement, Exhibit
9 4, between her husband and my client. She was filling in
10 for her husband. We have two arguments.

11 One, if she has any remedy, it's against her husband
12 and I'll leave that to, to their kitchen table to figure
13 out. But the -- she doesn't have a remedy, and if she was
14 acting in any capacity was an independent contractor.

15 Second, she was on -- if she was arguably an employee,
16 she was on her way to work.

17 THE COURT: Uh-huh. (Affirmative).

18 MR. FORD: I think what my friend Mr. Twombly's gonna
19 say, I got his response this morning, and I haven't had time
20 to study it, but I would urge Your Honor two things.

21 One is to read his citation. When he asked her
22 questions, she was -- she had previously worked for Starr.
23 So a lot of times he was asking her about that employment.
24 So, the -- it's -- I think you're gonna hear are about her
25 previous employment with Starr Distributing.

1 A second thing is what we call the pronoun argument,
2 and I respect Mr. Twombly's artistry in it, but it doesn't
3 carry the day here. He would say do you work, do you work,
4 did you get paid, and if you look at those transcripts
5 citations, she was either referring to previously when she
6 use to work or she was essentially referring to her husband,
7 and there's no dispute that he was the independent
8 contractor.

9 With that said, Your Honor, I appreciate your time.

10 THE COURT: Okay. Thank you.

11 Yes, sir, and --.

12 MR. TWOMBLY: Thank you, Your Honor.

13 This is Ashley Twombly for the Plaintiff.

14 Your Honor, with all due respect to Mr. Ford, that is
15 not what Ms. Niverson testified. When Mr. -- Ms. Niverson
16 testified that, on the morning in question, that she could
17 not remember whether or not she was required to pick up the
18 papers at -- in Bluffton and transfer them to Beaufort.

19 On Page 64 of her deposition transcript, which we
20 submitted, I asked her so, you were on the way to pick up
21 the Savannah Morning News when the accident occurred. Her
22 answer, I don't remember if I was picking them up that day
23 or not.

24 And then I asked her, I said, well, you don't remember
25 having to go back and get them after the accident occurred,

1 do you? She says no, because my car was totaled.

2 And I said well, did, did anyone else go out to pick
3 them up. She just said that, that she wasn't sure. They
4 may have been placed on the truck. They may not have been.

5 So, there is an issue of fact as to whether or not Ms.
6 Niverson was on her way to pick up these papers in Bluffton
7 to relay them to Beaufort.

8 Your Honor, it's important that the Court understand
9 that Ms. Niverson had two different jobs. Number one, she
10 had just a normal individual paper delivery route where she
11 would drive to Beaufort, she would pick up the Beaufort
12 Gazette, she would drive her route, and then deliver those
13 papers.

14 But in addition to that responsibility, Your Honor, she
15 also testified that, on most mornings, she said she would do
16 it almost every morning unless she got a call not to do it,
17 that she would also engage in what's called a relay service,
18 and that service was picking up, in bulk, copies of the
19 Savannah Morning News in Bluffton and bringing those to, to
20 Beaufort.

21 She said that was the -- a relay service. She got paid
22 \$25.00 a day to do it, and that's an issue of fact as to
23 whether or not she was doing it on this particular day or
24 not. Again, that's on Page 64 where she clearly says I do
25 not remember if I was picking them up that day or not.

1 Your Honor, as far as Ms. Niverson, we've, we've
2 deposed her. She, she said that she worked for Starr
3 Distributing. She said she got paid every two weeks. She
4 said she got a direct deposit from them into her checking
5 account. She testified that she received her instructions
6 from the owner of Starr Distributing, Tony Starr.

7 At no point in time did she ever say that she didn't
8 work for Starr Distributing and that, and that she worked
9 for her husband. She, she repeatedly testified that, that,
10 that she, that she was working for Starr Distributing.

11 I asked her if she had to apply for the job for Starr
12 Distributing. She said no, I didn't have to apply for
13 because Starr took over from the Beaufort Gazette, and I was
14 already working for the Beaufort Gazette at -- whenever
15 Starr took over.

16 I asked her about her -- how her employment with Starr
17 ended, and she said that, after she got in the wreck, that
18 she called Tony Starr, that she told Mr. Starr she could no
19 longer work for Starr Distributing because "I no longer had
20 a vehicle. I have no way to do it."

21 There is, in our opinion, clearly an issue of fact as
22 to whether or not she was an employee and her own testimony
23 supports the reasonable conclusion that she was. In
24 addition, she was also engaging in this relay service.
25 There's an issue of fact as to whether she was or not.

1 And so, based on that, we believe the Court should deny
2 summary judgment.

3 Thank you.

4 THE COURT: Okay. Let me ask you this.

5 Is it a disputed fact, at least from what I read, that,
6 that she supposedly was going to pick up the papers and that
7 she had not gotten there yet?

8 So, it's, it's not a situation that she's picked up the
9 papers and she's delivering them in Beaufort. She has not
10 gotten there to pick the papers up.

11 Is that correct?

12 MR. TWOMBLEY: Well, Your Honor, there's two -- what --
13 when, when she was asked about whether or not she had
14 started the route yet, what she was referring to was her
15 individual paper route, and that is the route where she, she
16 starts in Beaufort and she puts the individual papers in,
17 in -- delivers the individual papers to each, each of the
18 customers.

19 But there was a separate responsibility that she had
20 where she was tasked with driving to Bluffton, as part of
21 her job, picking up those papers -- the Savannah Morning
22 News in Bluffton, and then taking those papers to, to
23 Beaufort.

24 So, when Ms. Niverson says, and when she's asked well,
25 you hadn't started your paper route, had you, she says no,

1 and they actually said well, well, you were just on your way
2 to work. You were on your way to start your paper route.
3 You had not gotten there yet. She says yes, I was on my way
4 to work. I had not gotten there yet.

5 But she clearly testified that, separate from that job,
6 was her responsibility and task of picking up the Savannah
7 Morning News and taking it to Bluffton, and she clearly
8 testified that she was on her way to, to do that, that was
9 part of her job. Admittedly she said she couldn't remember
10 if she was doing it on that day or not, but she said she
11 got -- she had to do it every day unless she got a call
12 instructing her not to.

13 So, it is true and it is correct to say she had not
14 arrived at the Starr Distributing warehouse to start her
15 individual paper delivery route. But what she was engaged
16 in is performing a separate task for her employer, and that
17 was the task of picking up the Savannah Morning News and
18 taking it to Beaufort.

19 THE COURT: Okay. But, but she had not picked up the
20 paper. She was on her way to pick them up.

21 Is that -- y'all agree on those facts?

22 UNIDENTIFIED SPEAKER: Yes.

23 MR. TWOMBLEY: Yes. Yes, Your Honor.

24 But according to the going and coming rule, if she is
25 engaged in a task that is incidental to her employment, and,

1 and, and she was, the task was to drive to Bluffton, pick up
2 those papers and deliver them to Beaufort, that, in our
3 opinion, clearly falls within four of the five exceptions to
4 the going and to the coming rule, and all of the parties
5 have cited the going and coming rule, and the five
6 exceptions. And we believe there are issues of fact as to
7 four -- as to whether four or five of those apply.

8 I'd be happy to talk about those, Your Honor.

9 THE COURT: Okay. And I, and I have those. I just
10 wanted to be sure if y'all agree on the facts that she was,
11 in fact, going to pick up these papers, but she hadn't got,
12 got there yet, and delivering them to Beaufort. So, those
13 are the facts and issues I need to apply the law too.

14 Is that correct?

15 MR. FORD: Yes, Your Honor. And I, I don't, I don't
16 want to put words in Mr. Twombly's mouth, but my
17 understanding it is not disputed she had not picked up any
18 papers, and I think the Plaintiff said -- was asked were
19 there any papers in her car and I think he said no. We've
20 cited that.

21 And on the relay thing, on Page 79 of her deposition,
22 Mr. Twombly was clearly trying to get, you know, in this
23 exception. He said well, I understand that, but I think
24 they called that a relay service you're providing, correct.
25 and she says, at Line 20, correct, but I hadn't gotten there

1 yet.

2 so, I don't think there's any legitimate dispute. She
3 had not gotten anywhere yet that morning.

4 MR. TWOMBLEY: But, Your Honor, I would just, I would
5 just point out that there are, there are four -- there are
6 five exceptions to this going and coming rule. What the
7 Defendants are essentially arguing is look, she was simply
8 going to her work. She had not arrived there yet, and that
9 prevents the Defendants from seeking summary judgment.

10 The, the first is if she is paid for the time that she
11 is expending in performing this task. The record is clear
12 she was paid \$25.00 every two weeks for going to Bluffton,
13 picking up those papers, and taking those, those to
14 Beaufort.

15 The service -- the second is if she's charged with some
16 duty or task in connection with her employment. She clearly
17 was. Her duty and task was to go pick up those papers and
18 take them to Beaufort.

19 And four, Your Honor, the fifth, the fifth exception
20 applies because she was performing a service mission or
21 errand for her employer. That errand was pick up the
22 Savannah papers and take them to Beaufort.

23 And so, four of the five exceptions to the normal going
24 and coming rule apply in this case or at least there is a
25 scintilla of evidence for the application of those

1 exceptions.

2 THE COURT: Okay. Thank you, sir.

3 All right. I will, I will read both of these briefs
4 and the cases y'all've cited, and let y'all know something.

5 MR. GRIFFITH: Your Honor?

6 THE COURT: Yes, sir.

7 MR. GRIFFITH: Judge, my name's Mitch Griffith. I am
8 involved in this lawsuit. We also have a motion for summary
9 judgment that pops up a little further down on the roster.

10 THE COURT: Okay. Do you want to -- is it just on this
11 now -- do you want to deal with it now?

12 MR. GRIFFITH: I, I thought that might be the best
13 thing. We also filed a brief. So, I would ask that you
14 read our brief. We certainly rely on that.

15 But I, I think that you hit the nail on the head,
16 Judge, is that she had gotten no where on the morning of the
17 accident. She was going to work.

18 If it was the special errand or the relay service that
19 you were talking about, she clearly stated, on Page 79, she
20 had not gotten there yet.

21 The Plaintiffs even testified, which was cited in I
22 think Mr. Ford's brief and my brief, the Plaintiff testified
23 that there were no papers in the car of Ms. Niverson, and
24 that Ms. Niverson or that Ms. Niverson stated to the
25 Plaintiff, Mr. Murphy, that she was on the way to work.

1 Now, just briefly for your understanding, the way I
2 come into this is my client is Arthur Niverson, who is
3 married to Lori Niverson. Arthur Niverson has the
4 independent contract with Starr Distributing to deliver
5 papers -- the Packet and the Gazette.

6 And so he has the contract. On occasion he would let
7 his wife deliver them because they basically had to deliver.
8 If you go through the five exceptions, I, I think that I, I
9 agree with Mr. Ford. I think that looking at the deposition
10 of Ms., Ms. Niverson, it's pretty clear that she was simply
11 going on the way to work at the time.

12 As a result, there should be the going and coming rule
13 is simply applied in this case, and if it's applied, then,
14 of course, Starr would be entitled to summary judgment and,
15 and I, in turn, as the independent contractor, would be
16 entitled to summary judgment as to Starr.

17 So, I basically adopt Starr's arguments, and if you
18 agree with Starr, I -- I'm entitled to summary judgment.

19 THE COURT: Okay. The, the, the car that she was
20 driving, whose name was the car in?

21 MR. TWOMBLEY: It was in her and her husband's name.

22 THE COURT: So it's in both names?

23 MR. GRIFFITH: It was the Niverson's car. I couldn't
24 tell you who it's titled with.

25 THE COURT: Okay. Okay.

1 UNIDENTIFIED SPEAKER: And it's not my car.

2 THE COURT: Her husband was, was not in, in the car and
3 was not involved in the accident?

4 MR. GRIFFITH: Not that day, no, sir.

5 MR. TWOMBLEY: Correct.

6 THE COURT: Okay.

7 MR. TWOMBLEY: Your Honor, if I could just, in response
8 to Mr. Griffith's -- if I just -- both of the Defendants are
9 arguing that, if she was on her way to work, and not at work
10 yet, then they're entitled to summary judgment.

11 I would please ask the Court to read the Wofford versus
12 City of Spartanburg, which all the parties cite. So that is
13 not the law in South Carolina.

14 Exception Number 2 to the going and coming rule says
15 "the employee on his way to or from work, on his way to or
16 from work is charged with some duty or task in connection
17 with his employment."

18 If that's the case, if she was charged with some duty
19 or task while on the way to work, that is Exception Number 2
20 to the going and coming rule on the law in the State of
21 South Carolina, and that prevents the Defendants from
22 obtaining summary judgment, and clearly even if you believe
23 she was "on her way to work", she had not gone there, she
24 clearly was charged with some duty or task in connection
25 with her employment, and that was picking up the Savannah

1 papers and taking them to Beaufort.

2 so, wofford, wofford versus City of Spartanburg,
3 everyone cites it in their brief, and it's Exception Number
4 2.

5 THE COURT: okay. Thank y'all. I'll read those cases
6 and get back with you.

7 MR. TWOMBLEY: Thank you, Your Honor.

8 MR. GRIFFITH: Thank you, Your Honor.

9 MR. FORD: Thank you, Judge.

10 THE COURT: Thank you.

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13 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the
State of South Carolina, do hereby certify that the
foregoing is a true, accurate and complete Transcript of
Record of the proceedings had and evidence introduced in the
trial of the captioned case, relative to appeal, in the
Court of Common Pleas for Beaufort County, South Carolina,
on the 26th day of January, 2021.

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

April 7th, 2021

Pamela E. Green

PAMELA E. GREEN, Court Reporter

RECEIVED

Dec 31 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
The Honorable R. Ferrell Cothran, Jr.

Appellate Case No. 2021-000301

Charles Waymon Murphy,.....Appellant,

v.

Lori Ann Niverson; Starr Distributing, LLC.....Defendants,

Of which Starr Distributing, LLC, is the.....Respondent,

AND

Starr Distributing, LLC.....Third-Party Plaintiff,

v.

Arthur C. Niverson.....Respondent.

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.

December 31, 2021

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