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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BAMBERG COUNTY
Court Of Common Pleas

The Honorable Doyet A. Early III, Circuit Court Judge

Case No: 2008-CP-05-235

Laura Riley as the Personal Representative
of the Estate of Benjamin Riley Respondent,

v.

Ford Motor Company Appellant.

RECORD ON APPEAL APPENDIX

Curtis L. Ott
Laura W. Jordan
GALLIVAN WHITE & BOYD, P.A.
P.O. Box 7368
Columbia, South Carolina 29202
Tel: 803-779-1833
Fax: 803-779-1767

Ronnie L. Crosby
Daniel E. Henderson
Matthew V. Creech
Peters, Murdaugh, Parker, Eltzroth &
Detrick, P.A.
P.O. Box 2500
Ridgeland, SC 29936

ATTORNEYS FOR RESPONDENT

J. Kenneth Carter, Jr.
David C. Marshall
Carmelo B. Sammataro
TURNER PADGET GRAHAM &
LANEY, P.A.
1901 Main Street, 17th Floor
Columbia, South Carolina 29201
Tel: 803-254-2200
Fax: 803-799-3957

ATTORNEYS FOR APPELLANT

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1 a few questions for you. My name is John Harmon. Was the
2 person who came up on the scene, sir, a guy named
3 Mr. Johnny Nobles? Does that name sound familiar?

4 A Yes.

5 Q So he was the next person on the scene after you got
6 there?

7 A Yes, sir.

8 Q And Mr. Nobles actually went up to Sheriff Riley to
9 see for any signs of life?

10 A Yes, sir.

11 Q And as I understand you didn't get within 10 feet of
12 Sheriff Riley?

13 A It was further than that.

14 Q You were further away from him than that?

15 A Yes, sir.

16 Q And you mentioned a moment ago that you heard some
17 type of gasping. You're not sure if that was from Sheriff
18 Riley? You're not sure what that was?

19 A I could tell he wasn't breathing. I think he was
20 face down.

21 Q Okay. You could tell he was not breathing?

22 A Yes, sir.

23 MR. HARMON: Your Honor, those are all the questions.
24 Those are all the questions I have.

25 THE COURT: Thank you. Anything on redirect?

1 --

2 THE COURT: That was 400,000.

3 MR. CARTER: Well, what happened in this case the
4 Plaintiffs withdrew their survival action at the halfway
5 point because it was no evidence of survival. And under
6 the circumstances, we think that it is appropriate to
7 reapportion that to the only claim that was made and
8 that's the wrongful death and request a setoff of the
9 verdict of --

10 THE COURT: 25,000.

11 MR. CARTER: -- 25,000. And then Plaintiffs I think
12 have moved also for taxable costs as being the prevailing
13 party and request the time to submit -- I haven't seen
14 anything, an affidavit of costs but that's --

15 THE COURT: I'll let them provide the affidavit. If
16 we need any additional argument on that I'll reserve
17 that. What do you say to the setoff, Mr. Crosby?

18 MR. CROSBY: Your Honor, without question they are
19 entitled to a setoff, but their entitlement ends at
20 whatever was put on the wrongful death which I believe was
21 \$5,000. You approved the settlement --

22 THE COURT: Well --

23 MR. CROSBY: -- and clearly the fact Mr. Carter adds a
24 little bit extra when, to the reasoning behind our
25 withdrawal of the survival claim. We did it

1 with the air bag, going forward. And so you've got total
2 different injuries that Carter was paying for.

3 They're trying to conflict the two and you can't do
4 that here. This is even different than your case, as I
5 stand here and, you know, analyze it about our reasoning
6 for that because Carter was not paying for any of the
7 crash worthiness damages. He was paying for that initial
8 impact.

9 THE COURT: In fact, we told the jury you were trying
10 an almost separate lawsuit on that, didn't even consider
11 the initial --

12 MR. CROSBY: That's correct. And so they're clearly
13 not entitled to any kind of setoff.

14 You approved that. That was an agreement we entered
15 into with Mr. Carter and his attorney, his counsel. The
16 settlement was approved by Your Honor and at this juncture
17 to go back and undo that, especially when we've got
18 totally distinct claims here.

19 We've got unquestionably Sheriff Riley, nobody would
20 deny that he would have been conscious up until at least
21 the point in time he came in contact with the ground.

22 So we've got this initial impact, the air bag going
23 off, whatever is going on inside of the pickup. And
24 \$20,000, you know, for that along with, you know, I don't
25 recall the -- you know, nobody's tried to sort those

1 injuries out but certainly \$20,000 for that initial wreck
2 would not be, you know, overly generous even if he didn't
3 have, you know, the subsequent ejection if the vehicles
4 just came to a stop there.

5 THE COURT: Yes.

6 MR. CROSBY: So I don't think they're entitled to
7 that.

8 They are entitled to - actually I take issue that
9 they're entitled even with, that they would be entitled to
10 the \$5,000 on the wrongful death but certainly not on the
11 survival action. And we would argue the cost. I
12 assume -- I didn't see the affidavit.

13 THE COURT: Y'all just send me an affidavit on that.
14 I'll check that out, look at that on a conference call.

15 Mr. Carter, what do you say to this? You know, we
16 tried it as a crash worthiness which is not the injuries
17 that were sustained in the initial collision but it would
18 be from allegedly failing to make your vehicle
19 crashworthy. In other words, to withstand the crash and
20 the enhancement of the exacerbation of the injuries that
21 he initially received.

22 MR. CARTER: As an initial point, Your Honor,
23 remembering back on the way this played out, there was a
24 hearing approving that settlement. We weren't given
25 notice of that hearing and we objected after the fact and

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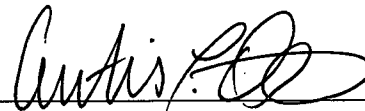
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CERTIFICATE OF COMPLIANCE

The undersigned counsel hereby certifies, pursuant to South Carolina Court of Appeals Rule 210(g), that Record on Appeal Appendix contains all material proposed to be included by any of the parties and no other material and it also complies with the August 13, 2007 Order of the South Carolina Supreme Court.



Curtis L. Ott
Laura W. Jordan
GALLIVAN WHITE & BOYD, P.A.
P.O. Box 7368
Columbia, South Carolina 29202
Tel: 803-779-1833
Fax: 803-779-1767

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Carmelo B. Sammataro
TURNER PADGET GRAHAM & LANEY,
P.A.
1901 Main Street, 17th Floor
Columbia, South Carolina 29201
Tel: 803-254-2200
Fax: 803-799-3957

ATTORNEYS FOR APPELLANT

April 12, 2013

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Doyet A. Early, II, Circuit Court Judge

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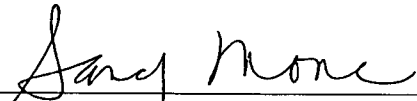
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PROOF OF SERVICE

I, Sandy Moore, the undersigned employee of Gallivan, White & Boyd, P.A.,
attorneys for the Appellant, do hereby certify that I have served a copy of the foregoing
Record on Appeal Appendix in connection with the above-referenced case by mailing a
copy of the same on April ^{12th}/_{15th}, 2013, by United States Mail, postage prepaid, to the
following address:

Ronnie L. Crosby
Daniel E. Henderson
Matthew V. Creech
Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A.
P.O. Box 2500
Ridgeland, SC 29936



Sandy Moore

Columbia, South Carolina