

STATE OF SOUTH CAROLINA

COUNTY OF JASPER

DEVON A. HASSAN, as Personal Representative of the Estate of IAN RICHARD S. NICHOLSON

\$15000 Vaux

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2016-CP-27-1105

Plaintiff(s)

vs.

THE LEVY VOLUNTEER FIRE DEPARTMENT, DOUGLAS GRAHAM, individually and in his official capacity, and JASPER COUNTY

Defendant(s)

Submitted By: ROBERTS TABOR VAUX, JR.

Address: PO BOX 769, 1251 MAY RIVER ROAD, BLUFFTON, SC 29910

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Other:

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

DOCKETING INFORMATION (Check all that apply)

\*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint. This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules. This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules. This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts: Constructions (100), Debt Collection (110), General (130), Breach of Contract (140), Fraud/Bad Faith (150), Failure to Deliver/Warranty (160), Employment Discrim (170), Employment (180), Other (199)
Torts - Professional Malpractice: Dental Malpractice (200), Legal Malpractice (210), Medical Malpractice (220), Previous Notice of Intent Case # 20 -NI- -, Notice/ File Med Mal (230), Other (299)
Torts - Personal Injury: Conversion (310), Motor Vehicle Accident (320), Premises Liability (330), Products Liability (340), Personal Injury (350), Wrongful Death (360), Assault/Battery (370), Slander/Label (380), Other (399)
Real Property: Claim & Delivery (400), Condemnation (410), Foreclosure (420), Mechanic's Lien (430), Partition (440), Possession (450), Building Code Violation (460), Other (499)
Inmate Petitions: PCR (500), Mandamus (520), Habeas Corpus (530), Other (599)
Administrative Law/Relief: Reinstatement Drv. License (800), Judicial Review (810), Relief (820), Permanent Injunction (830), Forfeiture-Petition (840), Forfeiture-Consent Order (850), Other (899)
Judgments/Settlements: Death Settlement (700), Foreign Judgment (710), Magistrate's Judgment (720), Minor Settlement (730), Transcript Judgment (740), Lis Pendens (750), Transfer of Structured Settlement Payment Rights Application (760), Confession of Judgment (770), Petition for Workers Compensation Settlement Approval (780), Other (799)
Appeals: Arbitration (900), Magistrate-Civil (910), Magistrate-Criminal (920), Municipal (930), Probate Court (940), SCDOT (950), Worker's Comp (960), Zoning Board (970), Public Service Comm. (990), Employment Security Comm (991), Other (999)
Special/Complex /Other: Environmental (600), Automobile Arb. (610), Medical (620), Other (699), Sexual Predator (510), Pharmaceuticals (630), Unfair Trade Practices (640), Out-of State Depositions (650), Motion to Quash Subpoena in an Out-of-County Action (660), Pre-Suit Discovery (670)

Submitting Party Signature: \_\_\_\_\_

Date: \_\_\_\_\_

4/22/16

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

**Effective January 1, 2016,** Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

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

**Pursuant to the ADR Rules, you are required to take the following action(s):**

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

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



STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF JASPER 2016 APR 22 )

IN THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT  
CASE NO.: 2016-CP-27-165

DEVON A. HASSAN, as Personal )  
Representative of the Estate of IAN )  
RICHARD S. NICHOLSON, )

Plaintiff, )

v. )

THE LEVY VOLUNTEER FIRE )  
DEPARTMENT, DOUGLAS )  
GRAHAM, individually and in his )  
official capacity, and JASPER )  
COUNTY, )

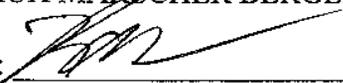
Defendants. )

**SUMMONS**  
Wrongful Death  
(Jury Trial Demanded)

TO: THE DEFENDANTS ABOVE-NAMED:

**YOU ARE HEREBY SUMMONED AND REQUIRED** to answer the Complaint in this action a copy of which is hereby served upon you, and to serve a copy of your Answer to the said complaint on the subscriber at, 1251 May River Road, P.O. Drawer 769, Bluffton, South Carolina 29910 within thirty (30) days after service thereof, exclusive of the day of such service, and if you fail to appear and defend against the said action then judgment by default will be rendered against you for the relief demanded in the Complaint.

VAUX MARSCHER BERGLIND, P.A.

By:   
Attorney for the Plaintiff  
Roberts "Tabor" Vaux, Jr., SC Bar No. 77421  
Post Office Box 769  
Bluffton, South Carolina 29910  
Telephone 843-757-2888  
Facsimile 843-757-2889

April  2016  
Bluffton, South Carolina

**POSTED**  
BY DATE APR 25 2016

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF JASPER )

IN THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT  
CASE NO.: 2016-CP-27-105

DEVON A. HASSAN, as Personal )  
Representative of the Estate of IAN )  
RICHARD S. NICHOLSON, )

Plaintiff, )

v. )

THE LEVY VOLUNTEER FIRE )  
DEPARTMENT, DOUGLAS )  
GRAHAM, individually and in his )  
official capacity, and JASPER )  
COUNTY, )

Defendants. )

**COMPLAINT**  
**Wrongful Death**  
**(Jury Trial Demanded)**

The Plaintiff alleges:

1. That she is the duly appointed Personal Representative of the Estate of Ian Richard S. Nicholson and brings this action on behalf of the statutory beneficiaries of the Estate; both the Plaintiff and decedent were at all times relevant herein residents of the State of Georgia.

2. That Defendant Jasper County (hereinafter "Jasper County") is a political subdivision of the State of South Carolina within the meaning of the South Carolina Tort Claims Act codified at South Carolina Code Ann. Section 15-78-30(h).

3. That at the time of the incidents complained of herein, Jasper County acted by and through its volunteers, agents, contractors and employees, who were acting within the scope and course of their agency, service, and/or employment with Jasper County and within the scope of their official duties, for the purpose of providing fire and rescue service; therefore, Jasper County is liable for the acts and omissions of its volunteers, agents, contractors and employees under the theory of *respondeat superior*.

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**POSTED**  
**BY DATE**

4. That the Defendant The Levy Volunteer Fire Department (hereinafter "Levy Fire Dept.") is a non-profit corporation organized and existing under the laws of the State of South Carolina, doing business and providing fire and rescue service by and through its volunteers, agents, contractors and employees, who were at all relevant times acting within the scope and course of their agency, service, and/or employment with Levy Fire Dept. and within the scope of their official duties; therefore, Levy Fire Dept. is liable for the acts and omissions of its volunteers, agents, contractors and employees under the theory of *respondeat superior*.

5. At all relevant times herein, Defendant Levy Fire Dept. was contracted with Jasper County to provide fire and rescue service.

6. At all relevant times herein, Defendant Douglas Graham (hereinafter "Chief Graham") was a resident of Jasper County, South Carolina.

7. That Chief Graham, at all times relevant herein, was a volunteer, agent, contractor or employee of Levy Fire Dept. and/or Jasper County and was acting within the scope of his service, agency or employment as volunteer, agent, contractor or employee of Levy Fire Dept. and/or Jasper County; therefore, Levy Fire Dept. is liable for the acts and omissions of Chief Graham and its other volunteers, agents, contractors or employees.

8. The most substantial part of the acts and/or omissions herein complained of occurred in Jasper County, South Carolina.

9. That on or about the 9<sup>th</sup> day of October 2015 Ian Richard S. Nicholson was involved in a collision in which his motorcycle collided with another vehicle. After the vehicles came to rest, Mr. Nicholson's body was trapped underneath the rear tires of a commercial vehicle, commonly referred to as a box truck.

10. That the Defendants responded to the scene of the collision.

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11. Upon his arrival at the scene of the collision, Chief Graham ordered and/or caused the box truck to be driven off of Mr. Nicholson while he was alive thereby causing catastrophic injuries to Mr. Nicholson which caused his death; at all relevant times herein, Chief Graham knew or should have known that Mr. Nicholson was alive and that he was trapped underneath the box truck; Chief Graham thereby acted in a reckless, willful, and/or grossly negligent manner.

12. That the death of Ian Richard S. Nicholson was due to and proximately caused by the negligent, carelessness, recklessness, willfulness, wantonness and grossly negligent conduct of the Defendants in some and/or all of the following particulars, to-wit:

- a. in failing to properly train its volunteers, agents, contractors and employees;
- b. in failing to properly supervise its volunteers, agents, contractors and employees;
- c. in failing to timely and properly assess Mr. Nicholson's situation;
- d. in causing a vehicle to be driven off of a person who was alive;
- e. in failing to use other means to move the vehicle off of Mr. Nicholson;
- f. in driving the vehicle off of Mr. Nicholson when the Defendants knew or should have known that Mr. Nicholson was alive;
- g. in failing to prevent further harm to Mr. Nicholson;
- h. in failing to allow Mr. Nicholson to be properly treated for his injuries;
- i. in failing to provide competent care and/or first aid to Mr. Nicholson; and
- j. in failing to use the degree of care and caution that a reasonable and prudent person would have exercised under the same or similar circumstances.

13. That as a direct and proximate result of the acts and omissions of the Defendants, Ian Richard S. Nicholson met an untimely death and his beneficiaries have endured grief, sorrow, shock, wounded feelings, mental and emotional anguish and anxiety, and loss of the decedent's support, love, companionship and consortium.

WHEREFORE, Plaintiff prays for an award against the Defendants for actual and punitive damages, costs and attorney's fees.

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By: 

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-AND-

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April 22, 2016  
Bluffton, South Carolina