

ADDENDUM

SCRIVENER: “It’s a Fact.”

DRAFTING A STATEMENT OF FACTS

Before writing your statement of facts, make a chronologically-ordered bullet list of the facts. The following is a list of facts from a simple car accident in which the plaintiff Rob was struck by another driver, Boo, who did not see him coming. Rob says he was traveling safely at the speed limit. Boo says when she pulled out into the intersection, he flew into the intersection at a high rate of speed and collision was unavoidable. Rob says he is permanently disabled from the accident. Boo says it was only a minor collision, causing minor physical injuries.

- Rob Kerr is an attorney at Wupa, Wupa, Whizbang, & Dingbat, LLC in Charleston. He grew up in this city and lives on the Battery.
- On March 24, 2012, Rob approached the intersection of Ashley Avenue and Bennett Streets in his red 2011 Porsche, traveling 15 miles per hour, the speed limit.
- Rob had just finished winning a hearing at the bankruptcy court and was feeling good. He was traveling to the Joe Riley Stadium to see the Hamilton College Polar bears play The Citadel in baseball. His car radio was blasting.
- Rob was traveling west on Ashley Avenue, approaching the intersection with Bennett Street, which had no stop sign on Ashley.
- Boo was sitting in her 2012 Lexus LX SUV at the stop sign on Bennett Street, facing north, at the intersection with Ashley Avenue.
- Boo pulled into the intersection, striking Rob’s vehicle at the rear quarter panel on the driver’s side.
- Rob immediately jumped out of his car and began screaming at Boo for damaging his car and had to be restrained by a runner in the park who approached after the accident. Rob did not mention any physical injuries.
- The next day, Rob consulted you (his lawyer) and later visited a chiropractor, who diagnosed back and neck injuries.

- Rob wore a neck brace for two months. During that time, he was photographed playing basketball at the MUSC Wellness Center.
- One year later, Rob still has neck and back pains, and his family doctor, Dr. Joshua S. Whitley, has opined that he will suffer these pains for the rest of his life.
Based on this, below is a statement of facts in a brief supporting your client's motion for summary judgment on the affirmative defense of comparative negligence, based on the failure of any evidence to support it.

Based on the facts from the wreck case stated above, decide what to keep and how to state the facts so that the judge will be disposed to rule for your client as long as the law supports your position. What details are good and bad for Rob? His late-model Porsche makes him look like a rich big shot, and who is going to believe that he was driving this fine mean machine at the speed limit? The car is cherry-apple red, though, so the other driver should have seen him coming. He is a respected lawyer, but we know for sure that the judge already knows that.

On the other hand, he is not going to seem sympathetic by yelling at the defendant, and even though he did try to play basketball right after the accident, he tells you that that the pain was too great to play. Where he lives is not relevant to the accident, and furthermore, he lives as far South of Broad as a person can get, another sign of wealth, so that detail will not help him in his quest to get more.

Below is an example of how the Statement of facts could be drafted.

STATEMENT OF UNDISPUTED MATERIAL FACTS

The following undisputed material facts are stated in the light most favorable to the Defendant. Plaintiff Rob Kerr has a clean driving record, with no prior accidents in his adult life. (Ex. 1, certified copy of Plaintiff's driving record.) On the afternoon of March 24, 2012, a clear, dry afternoon, Mr. Kerr left work and was on his way to a college baseball game to see his alma mater play. (Ex. 2, Dep. Tr. of Pl. Robert Kerr (10/3/12) at 5:18-24.) He was driving on Ashley Avenue, a two-way street in downtown Charleston that he has traveled his whole life. (*Id.* at 34:12-35:2.)

Mr. Kerr knew that Ashley Avenue was a favorite of college students who live in the neighborhood and knew that he was about to approach a park, where he had often

taken his children to play when they were small. (*Id.* at 35:8-15.) Realizing the potential danger of harm on the busy street, he traveled slowly and strictly followed the speed limit. (*Id.* at 36:18-24.) As he approached the intersection of Ashley Avenue and Bennett Street—at the corner of the park—he entered the intersection carefully and saw Defendant Boo Scott’s car stopped at the stop sign. (*Id.* at 38:1-17.) Although his car was already in the intersection (and was highly visible because of its red color), Defendant Scott suddenly accelerated her car into the intersection, slamming into the rear panel of Mr. Kerr’s car, which had almost cleared the intersection. (*Id.* at 44:8-22.) Upset and stunned, Mr. Kerr exited his car in an attempt to ensure that no one else was hurt and to learn why she had struck him. (Ex. 3, Aff. of Pl. Robert Kerr ¶ 5.)

At first, Mr. Kerr hoped that he was only shaken by the collision, and he tried to manage the pain with over-the-counter medication. (*Id.* ¶ 7.) By the following day, however, he realized that the pain was greater than he could manage on his own, and he visited a doctor, who put him on prescription medication, a brace, and physical therapy. (*Id.* ¶ 9.) Despite trying to exercise and resume a normal life, Mr. Kerr was unable to do so (*id.* ¶ 10), and his doctor has diagnosed him as permanently disabled. (Ex. 3, Aff. of Dr. J.S. Whitley ¶ 4.)