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**Jun 23 2025**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Jocelyn Newman, Circuit Court Judge

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Appellate Case Number: 2025-000221

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Franklin J. Boyles,

Appellant,

vs.

C and C Masonry, Inc.,  
Juneau Construction Company, LLC., and  
University of South Carolina,

Respondents.

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REPLY BRIEF OF APPELLANT

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## INTRODUCTION

Appellant (“Appellant” or “Mr. Boyles”) files this Reply Brief in response to the Initial Brief of Respondent University of South Carolina (“USC”). The USC request to sustain the trial court’s dismissal of Appellant’s claims for Negligence and Intentional Infliction of Emotional Distress (“IIED”) filed against USC. Appellant hereby submits that the trial court erred in dismissing these claims and the USC’s arguments fail to rebut the legal and factual errors in the trial court’s decision.

## ARGUMENT

### **I. The Trial Court Erred in Dismissing Appellant’s Negligence Claim as Time-Barred**

In its Initial Brief, USC argues that the statute of limitations bars Appellant’s negligence claim. However, Appellant has consistently maintained that he did not become aware, and could not have become aware through the exercise of reasonable diligence USC’s negligent conduct until well after the incident, triggering the discovery rule. Appellant became aware of the soil condition of the land due to which the accident took place only towards the end of the limitation period. USC, as the property owner, had the responsibility to ensure a safe environment, including compliance with safety standards by subcontractors and employees. USC failed to ensure it and this became apparent to the Appellant only later. The statute began to run only upon Appellant’s discovery.

USC’s contention that Appellant failed to plead specific facts regarding discovery rule and other claims is misplaced. Whether a plaintiff should have discovered the cause of action is a factual question not appropriate to be resolved at the pleading stage. USC’s brief improperly seeks to combine Appellant’s allegations with his awareness of the dangerous sand condition. Appellant became aware of the sand condition only through the investigation that

occurred after the incident and USC's own records, which Appellant got access towards the end of the limitation period.

Additionally, USC argues that "Boyles did not assert before the trial court that USC had somehow prevented him from asserting his rights" and therefore "he may not raise this issue for the first time in his appeal to this Court." (USC's Initial Brief, p.9). USC raises this contention after quoting the following content from Appellant's Brief.

[Boyles] pursued a workers' compensation claim after the September 13, 2022 forklift accident. This required obtaining documentation from USC. On August 12, 2024, [Boyles'] counsel subpoenaed USC for relevant materials. USC provided responsive materials on August 23, 2024, leaving Appellant with only 22 days to assess, analyze, and act upon the newly obtained information. The compressed timeline resulting from USC's delayed disclosure created an extraordinary circumstance that prevented [Boyles] from filing his claims in a timely manner. The situations involving delays in obtaining necessary information may justify equitable tolling, particularly when such information is within the Respondents' control. [*italicized and bold emphasis supplied*]. (Appellant's Brief, p.11)

However, Appellant had stated before the trial court that "USC Campus Project's faulty grounds and soil were discovered during the discovery produced by USC Campus Project on or about August 22, 2024, from the Deputy General Counsel of the University of South Carolina and emails from Juneau Construction's attorney on or about September 12, 2024." (See Boyles' Res. To USC's MTD., p.7). There was delay in producing documents in response to discovery requests. Additionally, certain defendants including Appellant's employer "failed to produce any discovery evidence or employment records as to his forklift accident despite numerous emails and request for such evidence." *Id.* The delay in getting these documents or information had affected Appellant's ability to timely pursue his rights. Therefore, the argument that Appellant had not raised this matter before the trial court is not correct.

Further, Appellant reiterates that the trial court incorrectly concluded that Appellant must establish misconduct by USC to warrant equitable tolling. USC further focuses its discussion on that direction. However, Appellant's failure to allege USC's misconduct is not a

necessary condition for equitable tolling. Appellant faced extraordinary circumstances that prevented him from asserting his rights, which was sufficient to apply equitable tolling.

USC also ignores the well-established rule that motions to dismiss must be evaluated in the light most favorable to the non-moving party. Accepting all well-pled allegations as true, the Complaint adequately pled discovery of USC's negligence and filing the claim within the statutory period based on the discovery. Moreover, here, the brief delay of 12 days in filing the complaint does not prejudice USC in any meaningful way. The trial court should have disregarded the minimal delay as it caused no harm or prejudice to USC, especially given the severity of Appellant's injuries. The trial court should have given the Appellant an opportunity to have his claims decided on merits.

Therefore, trial court's dismissal on the ground of statute of limitations was premature and improper and should be fully reversed.

## **II. The Trial Court Erred in Dismissing Appellant's IIED Claim Based on *Gore v. Dorchester County Sheriff's Office***

In South Carolina, "[o]ne who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress, and if bodily harm to the other results from it, for such bodily harm." *Ford v. Hutson*, 276 S.C. 157, 162, 276 S.E.2d 776, 778 (1981) (quoting § 46 of the Restatement (Second) of Torts).

In its brief, USC greatly relies on *Gore v. Dorchester County Sheriff's Office*, 900 S.E.2d 428 (S.C. 2024), but *Gore* does not outright bar IIED claims. Appellant's argument, as set forth in his principal brief, is that his IIED claim is viable under exceptions to the SCTCA provided in S.C. Code Ann. § 15-78-70(b), which excludes immunity for conduct involving actual malice, intent to harm, or conduct outside the scope of employment.

USC's reliance on the absence of key words such as "actual malice" or "intent to harm" is overly technical. This Court should focus on substance over form. The factual allegations

are sufficient to support the inference of recklessness or constructive intent to harm. USC's conduct, as alleged, was not just negligent but grossly indifferent to human safety and warrants further factual development.

Further, USC incorrectly claims that Appellant misquoted *Skydive Myrtle Beach v. Horry County*, 826 S.E.2d 585 (S.C. 2019). However, the *Skydive* court's holding supports Appellant's position that a governmental employee may be personally liable for conduct involving malice or intent to harm. The fact that Appellant has not named individual employees does not preclude the Court from permitting an amended pleading, instead of outright dismissal of the claim. The court is also not precluded from attributing liability to the governmental entity for its agents' actions.

Furthermore, the USC's effort to distinguish *Gary v. S.C. Dep't of Corr.*, 2011 WL 2746307, and *Smith v. Ozmint*, 394 F.Supp.2d 787 (D.S.C. 2005), on the basis that individual employees were not named in this case is misplaced. The above cases stand for the broader principle that IIED claims are not automatically barred by the SCTCA and can proceed under appropriate exceptions. Therefore, USC's conduct, as alleged, meets that required standard.

Moreover, notably, Appellant's allegations taken as a whole include USC's reckless and extreme conduct in failing to address known safety hazards. The Complaint specifically alleges that USC had knowledge of sand instability at the site and still allowed heavy machinery to be operated in the area, resulting in the accident and disastrous consequences. These facts go beyond mere negligence, and it fall within the parameters of reckless actions causing physical harm, a basis for IIED under South Carolina law as laid down in *Ford*, supra.

Appellant prays this Court to allow the claim to proceed because dismissal would preclude fair adjudication of the claim. It is to be noted that USC does not dispute that the accident occurred on its property or that it had a duty to provide a safe environment. The

significant public interest in workplace safety should be upheld by not dismissing the claim on a technicality rather than on its merits.

Therefore, Appellant requests that this Court reverse the trial court's decision to dismiss this claim.

### **III. The Doctrine of Joint and Several Liability Supports the Inclusion of USC in this Action**

USC contests Appellant's joint and several liability arguments by claiming that it was not raised before the trial court thereby it cannot be raised on appeal before this Court. However, the trial court's dismissal of USC necessitated an appellate challenge that includes all available grounds for reversal. South Carolina law does not require Appellant to anticipate dismissal and assert all possible doctrines in advance.

Moreover, USC's assertion that joint and several liabilities cannot preserve the claim against USC overlooks the fact Appellant have alleged that USC and its co-defendants jointly contributed to the same harm. The fact that Appellant asserted a negligence claim specifically against USC does not foreclose a finding of joint responsibility. Appellant has raised negligence claim against other Defendants also based on the same facts, though under a separate count. Joint tortfeasors are jointly and severally liable for indivisible injuries, and dismissal of one defendant would defeat the plaintiff's ability to recover full damages.

Here, USC fails to identify any authority precluding application of joint and several liability doctrines where procedural or immunity-based grounds lead to the dismissal of one Defendant. The trial court should have considered the implications of the dismissal of claims against USC in the context of joint and several liability doctrines.

The trial court's erroneous order dismissing Appellant's claims against USC should be reversed.

## CONCLUSION

For the foregoing reasons, and the reasons stated in Appellant's Brief, Appellant Franklin J. Boyles respectfully requests that this Court reverse the trial court's dismissal of his claims for Negligence and Intentional Infliction of Emotional Distress against Respondent University of South Carolina and remand the matter for further proceedings.

Respectfully submitted,

Dated: Saturday, June 21, 2025  
Greenville, South Carolina.

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PROOF OF SERVICE

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I certify that I served the REPLY BRIEF OF APPELLANT on the counsel of record via email at the following address:

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Re: *Franklin J. Boyles v. C and C Masonry, Inc., Juneau  
Construction Company, LLC, and University of South  
Carolina*

Appellate Case Number: 2025-000221

Civil Action Number: 2024-CP-40-05809

Date of Accident: September 13, 2022

Location of Accident: Richland County

Dear Ms. Kitchings:

Enclosed for filing is the filing documents on behalf of the  
Appellant:

1. Reply Brief; and
2. Proof of Service.

If you should have any questions, please do not hesitate to  
contact our office.

With best wishes and warmest regards, I am

Truly yours,

*Lola S. Richey*

Lola S. Richey  
Attorney at Law

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