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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE COURT OF COMMON PLEAS
Patrick C. Fant, III, Circuit Court Judge
Perry H. Gravely, Circuit Court Judge

Case No. 2024-CP-23-04370

Kathryn Corbett Hallman and Mark Kevin Hart,
as Co-Personal Representatives of the Estate of
Emanuel Addison Hart, .................................... Appellants,

v.

7-Eleven, Inc. and Greer Bowling Corporation d/b/a
Peach Bowl Lanes, ........................................ Respondents.

# BRIEF OF APPELLANT

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## STATEMENT OF THE ISSUES ON APPEAL

I. Did the circuit court err in denying Plaintiffs' motion to compel a response to interrogatory No. 5 on the ground that the information sought was protected by the work-product doctrine?

II. Did the circuit court err in granting summary judgment to Defendant 7-Eleven on the ground that a first party dram shop cause of action by a person under the age of 21 years does not exist in South Carolina?

III. Did the circuit court err in applying comparative negligence to the facts of this case where the doctrine would not apply as a matter of law under S.C. Code Ann. § 15-38-15 (Supp. 2024)?

IV. Did the circuit court err in ruling that Decedent's comparative fault exceeded fifty percent as a matter of law?

## Statement of the Case

On July 18, 2024, Kathryn Corbett Hallman and Mark Kevin Hart (Plaintiffs), as Co-Personal Representatives of the Estate of Emanuel Addison Hart (Decedent), filed suit against 7-Eleven, Inc. and Greer Bowling Corporation d/b/a Peach Bowl Lanes (Defendants) under a "Dram Shop" theory of recovery. (R. pp. 26-39). The claim arose out of the death of Decedent, a person under the age of 21 years who purchased alcohol from Defendants, drank the alcohol, drove his car, and died in a traffic collision. Plaintiffs asserted causes of action for (1) negligence, negligence *per se*, gross negligence, gross negligence *per se*, recklessness, and recklessness *per se*; (2) violation of various provisions of Title 61 of the South Carolina Code; and (3) strict liability for abnormally dangerous activities.

On August 16, 2024, Defendant Greer Bowling Company d/b/a Peach Bowl Lanes (Peach Bowl) filed an answer and motion to dismiss. (R. pp. 40-44). Peach Bowl generally denied the allegations and moved to dismiss the ultra-hazardous activity claim. Peach Bowl also asserted defenses of (1) Decedent's damages were the sole and proximate result of another person or entity; (2) Decedent failed to mitigate damages; (3) Decedent's damages were caused by an intervening or superseding cause; (4) sudden emergency and unavoidable accident; (5) Decedent's claims were barred by spoliation; (6) Decedent's negligence exceeded 50% and his claims were barred by comparative negligence as a matter of law; (7) Peach Bowl did not depart or deviate from any applicable standard of care; and (8) punitive damages are unconstitutional. On August 23, 2026, Peach Bowl filed an amended Answer and Motion to Dismiss raising the same defenses as in the prior pleading. (R. pp. 121-125).

On August 20, 2024, 7-Eleven filed a motion to dismiss pursuant to Rule 12(b)(6), SCRCP. (R. pp. 119-120). 7-Eleven asserted that this is a first-party dram shop claim which South Carolina law does not recognize. 7-Eleven also asserted South Carolina has not extended the law of abnormally dangerous/ultra-hazardous activities to cover the sale of alcohol. Finally, 7-Eleven claimed it owed no duty arising out of its acquisition, implementation or use of retail scanning software.

That same date 7-Eleven filed an Answer with a general denial (R. pp. 45-51). 7-Eleven also asserted defenses of (1) failure to state a claim; (2) comparative negligence due to Decedent's sole negligence, gross negligence, willfulness, wantonness, carelessness and recklessness; (3) sudden emergency; (4) unavoidable accident; (5) intervening and superseding acts by a third party; (6) spoliation; (7) punitive damages are unconstitutional; (8) statutory caps on punitive damages pursuant to S.C. Code Ann. §§ 15-32-530, *et. seq.*; and (9) bifurcation of actual and punitive damages.

On September 9, 2024 the circuit court entered a case management order. The order consolidated this matter with four other matters (other injured parties) arising out of the same incident for purposes of discovery only.

On October 8, 2024, Plaintiffs served interrogatories upon Defendant 7-Eleven. 7-Eleven did not timely file any responses.

On November 11, 2024, Plaintiffs filed an amended Complaint. The amended pleading removed the cause of action for strict liability for abnormally dangerous or ultra-hazardous activities. 7-Eleven filed an Answer on November 22, 2024, repeating its prior defenses. (R. pp. 64-70). On November 26, 2024, Peach Bowl filed an Answer repeating its prior defenses. (R. pp. 71-75).

On December 30, 2024, Plaintiffs' counsel wrote to 7-Eleven's counsel seeking responses to discovery. When Plaintiffs received no response they filed a motion to compel on January 21, 2025. 7-Eleven served responses on January 24, 2025. On January 27, 2025, Plaintiffs sought supplementation of six (6) of the responses.

7-Eleven served supplemental responses with objections to three on the interrogatories. 7-Eleven also filed a response to the motion to compel on February 13, 2025.

On February 17, 2025, the circuit court (Judge Gravely) issued an order denying Plaintiffs' motion to compel.

On May 28, 2025, 7-Eleven filed a motion for Summary Judgment. (R. pp. 157-158). 7-Eleven maintained that South Carolina does not recognize the first-party dram shop case Plaintiffs asserted because Decedent was an adult over 18-years of age. (R. p. 159-188). 7-Eleven also asserted a first-party dram shop cause of action for minors does not exist in South Carolina. Finally, 7-Eleven claimed Decedent's sole action caused his damages so that his negligence exceeded 50% as a matter of law.

On August 19, 2025, the circuit court (Judge Fant) entered an order granting 7-Eleven's motion. (R. pp. 4-19). The court held South Carolina does not recognize any first-party dram shop actions. Alternatively, the court held the "sole reasonable inference from the facts" demonstrates Decedent's negligence exceeded 50% as a matter of law.

On August 20, 2025, Plaintiffs moved pursuant to Rule 59, SCRCP, for reconsideration of the rulings.

On September 8, 2025, Peach Bowl moved for summary judgment on the grounds that "a first-party dram shop action is not permitted by South Carolina law," and "no reasonable jury could find that [Decedent] was not more than fifty-percent comparatively negligent...." (R. pp. 126-127). That motion remains pending.

On September 25, 2025, the circuit court entered an order denying Plaintiffs' motion for reconsideration.

This appeal follows.

## STANDARD OF REVIEW

This Court's standard of review of an order granting summary judgment is the same standard employed by the circuit court. "Rule 56(c)[, SCRCP] ... provides that the moving party is entitled to summary judgment 'if the [evidence before the court] show[s] 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.'" *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 459, 892 S.E.2d 297, 299 (2023) (quoting Rule 56(c), SCRCP); *Charles Blanchard Construction Corp v. 480 King Street, LLC*, 447 S.C. 295, 300, 926 S.E.2d 235, 237 (2026).

As the Supreme Court recently explained:

> "In determining whether any triable issue of fact exists, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the non-moving party." *Summer v. Carpenter*, 328 S.C. 36, 42, 492 S.E.2d 55, 58 (1997). To survive summary judgment, "it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine." *Kitchen Planners*, 440 S.C. at 462, 892 S.E.2d at 301 (quoting *Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013)). "The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). "In that way, '[a] motion for summary judgment is akin to a motion for a directed verdict' because '[i]n each instance, one party must lose as a matter of law.' " Id. (alterations in original) (quoting *Main v. Corley*, 281 S.C. 525, 526, 316 S.E.2d 406, 407 (1984)).

*Isaac v. Onions*, 445 S.C. 525, 915 S.E.2d 492, 496 (2025).

"Questions of statutory interpretation are questions of law, which [this Court is] free to decide without any deference to the court below." *Charles Blanchard Constr. Corp.* (quoting *Grier v. AMISUB of S.C., Inc.*, 397 S.C. 532, 535, 725 S.E.2d 693, 695 (2012) and *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011)). "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will.

Therefore, the courts are bound to give effect to the expressed intent of the legislature." *Id.* (quoting *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)). *See, also, Isaac v. Onions* at 13-14, 915 S.E.2d at 496 ("Additionally, the interpretation of a statute is a question of law for the Court to review *de novo*.") (quoting *South Carolina Pub. Int. Found. v. Calhoun Cnty. Council*, 432 S.C. 492, 495, 854 S.E.2d 836, 837 (2021)).

With regard to whether the material Plaintiffs sought through discovery, "[w]hether a communication is privileged is for the trial judge to decide in light of a preliminary inquiry into all of the facts and circumstances; and this determination by the trial judge is conclusive in the absence of an abuse of discretion." *Tobaccoville, USA, Inc. v. McMaster*, 387 S.C. 287, 692 S.E.2d 526 (2010); *State v. Love*, 275 S.C. 55, 59, 271 S.E.2d 110, 112 (1980). A circuit court abuses its discretion when its ruling "is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." *State v. Dennis*, 447 S.C. 323, 334, 926 S.E.2d 250, 256 (2026).

## FACTS

In the early morning hours of August 14, 2021, Decedent, who was 19 years old, and a friend, who was a minor, drove to a 7-Eleven store where Decedent presented fake identification and bought alcohol while the minor friend remained in the car. Decedent and his friend returned to Decedent's home where other friends were waiting. Decedent provided the alcohol to his friends, none of whom were 21 years of age. Decedent consumed alcohol with his friends, and then invited them to go for a drive. Decedent was driving fast and ultimately collided with another car and then left the roadway. Four passengers in the car were injured but survived. Decedent, however, was killed.

Other pertinent facts are set forth in each argument below.

## Arguments

### Summary of Arguments

It is undisputed that Decedent was less than 21 years of age. It is also undisputed that he purchased the alcohol from Defendants using an obviously fake I.D. The narrow issues are:

1. Whether the circuit court erroneously applied the attorney work-product doctrine in denying Plaintiffs' motion to compel a response to Interrogatory No. 5;
2. Whether a vendor of alcohol is liable in a first-party dram shop action where the person to whom the vendor sold alcohol was between the ages of 18 to 20 years old;
3. Whether the doctrine of comparative negligence was abrogated in cases in which the defendant's actions involved sale of alcohol; and
4. Even if comparative negligence applies, whether it is a jury question so that it may not be decided as a matter of law.

Plaintiffs assert that the answer to each of these questions is "yes," and respectfully request that this Court reverse the circuit court's order denying the motion to compel and the orders granting summary judgment for 7-Eleven.

### I. The Circuit Court Erred in Denying Plaintiffs' Motion to Compel Responses to Interrogatory No. 5 on the Ground That the Information Sought Was Protected by the Work-product Doctrine

Plaintiffs served interrogatories upon 7-Eleven that included the following question, followed by the trial court's ruling denying the motion to compel:

#### A. Interrogatory No. 5

On April 5, 2019, the FDA requested a written response that include[s] a detailed [plan], including timeframes, to address and mitigate illegal sales to minors at any establishment doing business under the 7-Eleven, Inc. name. Identify every person (by name and job title, whether an employee, officer or independent contractor) involved in formulating, preparing or making the response.[1]

**Response**

7-Eleven provided the following response was:

7-Eleven's Senior Vice President and General Counsel, Rankin Gasaway, signed the response, which is attached hereto as SWB 552-553. Defendant objects to production of the names of those with whom Mr. Gasaway spoke as that information is protected by the work product doctrine.

**Ruling**

The circuit court found "the referenced response was prepared by General Counsel for this Defendant *and thus* any additional information would be protected by the work product doctrine as set forth in the Defendant's supplemental answer." (Order of 2-15-25, p. 2, ¶ 1) (emphasis added). The circuit court's ruling is controlled by an error of law, and is therefore an abuse of discretion.

First, just because General Counsel reviewed and prepared a document in response to an FDA query does not make the document, or the identities of those who assisted in preparing it, attorney work product. In *Tobaccoville, USA, Inc. v. McMaster*, the Supreme Court observed:

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[1] The scanning technology referenced in 7-Eleven's response to the FDA was ID verification technology which 7-Eleven contracted with the FDA to procure. However, 7-Eleven breached that contract and purchased a lesser quality system that did not check the ID to see if it was real when 7-Eleven realized how much it would cost 7-Eleven in the loss of illegal sales to minors and the loss of sales of collaterfal products sold during those illegal sales of alcohol (gum, chips, ice, etc.). (R. p. 99, l. 3 - p. 100, l. 23). 7-Eleven purchased scanning technology that simply did the math on the birth date and may have checked the license's expiration date. (R. pp. 56-57, ¶ 17; p. 60, ¶ 31(q); p. 88, ll. 6-20). This is how 7-Eleven is circumventing the system so as to be able to claim they are "tricked" when an illegal sale to an underage person results in someone's death. This interrogatory was intended to obtain the names of those individuals who recognized this hazard and how to fix it.

> The attorney work product doctrine protects from discovery documents prepared in anticipation of litigation, unless a substantial need can be shown by the requesting party. *See* Rule 26(b)(3), SCRCP; *Hickman v. Taylor*, 329 U.S. 495, 67 S.Ct. 385, 91 L.Ed. 451 (1947). Generally, in determining whether a document has been prepared "in anticipation of litigation," most courts look to whether or not the document was prepared because of the prospect of litigation. *See Nat'l Union Fire Ins. Co. of Pittsburgh, Pa. v. Murray Sheet Metal Co., Inc.*, 967 F.2d 980, 984 (4th Cir.1992) (document "must be prepared because of the prospect of litigation when the preparer faces an actual claim or a potential claim," *as contrasted to "materials prepared* in the ordinary course of business *or pursuant to regulatory requirements* or for other non-litigation purposes."); *In re Grand Jury Subpoena*, 357 F.3d 900, 907 (9th Cir. 2004) (document "should be deemed 'in anticipation of litigation' ... if ... [it] can be fairly said to have been prepared or obtained because of the prospect of litigation." (citation omitted)); *In re Kaiser Aluminum & Chemical Co.*, 214 F.3d 586, 593 (5th Cir. 2000) (primary motivation behind creating the document must be to aid in possible future litigation).

387 S.C. 287, 294, 692 S.E.2d 526, 530 (2010) (emphasis added). The Court added "a party must show more than that the statute governing the party's actions considers the possibility of future litigation." *Id. See, also, Stokes-Craven Holding Corp. v. Robinson*, 416 S.C. 517, 787 S.E.2d 485 (2016) (Supreme Court concluded circuit court abused its discretion in ruling on plaintiff's motion to compel production of communications between defendant lawyers and their malpractice carrier without holding an evidentiary hearing to include an *in camera* review of the requested materials; the trial court lacked sufficient information to determine whether the requested information was prepared in anticipation of litigation and that plaintiff had a substantial need for the materials in preparation of plaintiff's case).

The sale of alcohol and the wreck in this case happened on August 14, 2021. The FDA query was on April 5, 2019, or over two (2) years earlier. The response to the FDA could not have been in anticipation of litigation, nor is there any evidence there was a prospect of litigation at the time (*i.e.*, 7-Eleven was not facing an actual claim or a potential claim related to the response).

Second, the interrogatory did not ask anything about the substance of communications between General Counsel and anyone. Rather, it sought the identity of "every person (by name and job title, whether an employee, officer or independent contractor) involved in formulating, preparing or making the response." The identity of witnesses who have factual information relevant to the case is not something that falls within the ambit of the work-product doctrine. *Compare State v. Jones*, 383 S.C. 535, 681 S.E.2d 580 (2009) (noting the work-product doctrine would not prevent the State from obtaining the identity of a non-testifying, consultative expert or calling that expert at trial; rather, the Sixth Amendment was implicated but the Court held there was no violation in that case).

The work-product doctrine may apply narrowly to the identity of persons interviewed by General Counsel only where such disclosure would reveal counsel's mental impressions, trial strategy, or preparation in anticipation of litigation. Individuals' identities constitute work product only in a limited set of cases, such as when the act of disclosing the identities would distinguish who the party "ha[s] and ha[s] not interviewed" and the "questions they asked each interviewee." *Cf., e.g., Mayer v. ADCS Clinics, LLC*, C.A. No. 21-cv-5303 (E.D. Penn. 2025) at *4 (citing *United States v. All Assets Held at Bank Julius Baer & Co.*, 270 F. Supp. 3d 220, 224–26 (D.D.C. 2017) (discussing cases); *Appeal of Hughes*, 633 F.2d 282, 289 (3d Cir. 1980) (where party requested a list of the individuals that another party had interviewed, work product doctrine applied); *but see Savignac v. Jones Day*, 586 F. Supp. 3d 16, 17–19 (D.D.C. 2022) (granting motion to compel response to interrogatory that asked plaintiffs "to identify each person with whom [they] conferred or consulted" about the defendants' leave policies)). The

*Mayer* court added:

> Where courts have prevented the discovery of individuals' identities, it has frequently been because a specific statutory protection or privilege applied. *See, e.g., Deleon v. Putnam Valley Bd. of Educ.*, 228 F.R.D. 213, 216 (S.D.N.Y. 2005) (applying state-law privilege, codified by statute, that protected the identity of someone reporting suspected child abuse); *Iglesias v. U.S. Agency for Int'l Dev.*, 824 F. App'x 1, 2 (D.C. Cir. 2020) (involving a grievance board that denied a motion to compel a source's identity because disclosure of the identity was prohibited by statute).

*Mayer*, at *6. There is no evidence, argument or ruling that a statute or privilege precludes identifying the persons sought in Interrogatory No. 5.

Again, the April 2019 query from the FDA was over two (2) years prior to the crash in this case, and there is no evidence (or even argument) that 7-Eleven's response (or the identities of the persons who assisted with the response) was in anticipation of litigation or involved trial strategy. The circuit court erred as a matter of law in ruling "the referenced response was prepared by General Counsel for this Defendant *and thus* any additional information would be protected by the work product doctrine...." (R. p. 2) (emphasis added).

Furthermore, the circuit court should have examined the information *in camera* and required 7-Eleven to create a privilege log. Rule 26(c), SCRCP; *Stokes-Craven Holding Corp v. Robinson* (finding the trial court erred in failing to conduct an in camera hearing to review the requested information and that the court lacked sufficient information to determine whether requested documents were prepared in anticipation of litigation).

The trial court's ruling is controlled by an error of law and, therefore, amounts to an abuse of discretion. This Court should reverse the decision and remand the matter for further proceedings.

## II. South Carolina Law Recognizes a First Party Claim Against Both a Social Host and Commercial Vendor by an Underage Drinker Between the Ages of 18 and 20 Years

The circuit court held that South Carolina law does not recognize a first-party dram shop claim against a commercial vendor for underage persons, including persons between the ages of 18 and 20 years old. This Court should reverse that ruling.

Under South Carolina law underage drinkers between the ages of 18 and 20 are treated differently than drinkers 21 years of age and older. In *Marcum v. Bowden*, 372 S.C. 452, 643 S.E.2d 85 (2007), the Bowdens hosted a cookout at their home where alcoholic beverages were available to all guests. As such, the Bowdens were social hosts. The decedent, a 19-year-old guest of the Bowdens, consumed alcohol at the cookout, became intoxicated, and was killed in a one-car wreck after driving a vehicle later that night.

The decedent's mother brought a wrongful death action against the Bowdens. The issue before the court was whether "an adult social host who serves alcoholic beverages to an underage guest, that is, a person between the ages of 18 and 20 who is not a minor but who cannot, in most instances, legally consume alcohol, *owes a duty to the [underage] guest* or to third parties injured or killed by the guest in an alcohol related accident." *Id.* (emphasis added).

In *Marcum*, the Supreme Court took the opportunity to conduct a thorough review of alcohol liability involving underage drinkers. The Court's analysis highlights the trichotomy of considerations involved in formulating the law surrounding duties arising out of the provision of alcohol: (1) the age of the purchaser/consumer, *i.e.*, adult vs. underage purchaser; (2) the status of the injured party, *i.e.*, first party vs. third party; and (3) the status of the provider, *i.e.*, commercial vendor vs. social host. *Marcum* involved a 19-year-old drinker (*i.e.* underage purchaser), a social host, and a first-party claim.

The Court began its analysis by noting that "a South Carolina social host incurs no liability to either first or third parties injured by an intoxicated *adult* guest." *Id.* (emphasis added). Turning to the commercial setting, the Court reflected back to its holding in *Tobias* that when a commercial vendor knowingly sells to an intoxicated adult, the commercial vendor is liable only to third parties. *Tobias v. Sports Club, Inc.*, 332 S.C. 90, 504 S.E.2d 318 (1998). The Court then turned to the statutes addressing penalties for sales of alcohol to persons under the age of 21years and noted that "[a] vendor who violates this duty and sells to a person under 21 may be liable *to the unlawful purchaser*, and to third parties harmed by the purchaser's consumption of the alcohol." *Id.* (citing *Whitlaw v. Kroger Co.*, 306 S.C. 51, 410 S.E.2d 251 (1991)) (emphasis added).

In *Whitlaw*, Kroger sold alcohol to an underage purchaser who was accompanied by his underage friend. The underage purchaser then gave some of the alcohol to his underage friend who became intoxicated, drove a vehicle, crashed into a tree, and died. The parents of the underage friend brought an action against Kroger. In determining whether South Carolina recognized a duty owed by the commercial vendor under these facts, the Supreme Court turned to the alcohol statutes and found that the applicable statutes were "designed to prevent harm to the minor who purchased the alcohol *and* to the members of the public harmed by the minor's consumption of that alcohol." *Whitlaw*, at 54-55, 410 S.E.2d at 253 (emphasis added). In other words, the Court recognized a duty owed by the commercial vendor to at least two classes of persons: (1) the underage purchaser himself, *i.e.*, the first party; and (2) members of the public harmed by the underage person's consumption of that alcohol, *i.e.*, the third party. The Court declined to extend the protected class to include third persons to whom an underage purchaser provides the unlawfully sold alcohol as opposed to third persons harmed by the minor's consumption of the alcohol. However, the Court left open the door for "second-party" or "multi-party" sales:

> This is not to say that the seller owes no duty under the statutes when he sells alcohol to several minors. The record before us is insufficient to make such a determination.

*Whitlaw v. Kroger Co.*, at 55, 410 S.E.2d at 253. The significance of *Whitlaw* for the purposes of this case is that in 1991, the Supreme Court recognized a cognizable claim for a first party underage purchaser (*i.e.*, someone under the age of 21) against a commercial vendor.

Relying on these precedents, the Court in *Marcum* then turned to the issue before it and the social hosts' argument that the Court should treat underage drinkers, that is drinkers between the ages of 18 and 20, as it treats other adults, *i.e.* those over the age of 21. The Court first examined the alcohol beverage control statutes which impose criminal penalties, under certain circumstances, upon persons who transfer or give alcohol to those under the age of 21, citing S.C. Code Ann. § 61-4-90 and § 61-4-4070 (Supp. 2005). The Court concluded that those statutes are intended "to protect only the person under 21 who consumes the alcohol, not the general public" such that any duty created by these statutes would not extend to third parties. *Marcum*, at 461, 643 S.E.2d at 89. The Court recognized the absurdity of the result if liability were to rest solely on duties created by these statutes:

> A holding that an adult social host is liable only to the underage drinker herself and not to any injured third party would contravene the public policy of this state, *see*, *Tobias*, *supra*, yet a duty explicitly predicated on these statutes would logically permit us only that rule.

*Id.*, at 461, 643 S.E.2d at 89. Accordingly, the Court rejected the invitation to impose social host liability based only on the statutes. Rather, the Court created a common law duty of care owed by a social host to both the underage drinker and a third party who might be injured by the underage drinker.

The Court set forth the rationale underlying its decision to create a common law duty owed to the underage drinker, that is drinkers between the ages of 18 and 20 who are otherwise considered adults under the law:

> [W]e are urged to treat underage drinkers as we do other adults, placing no liability upon the social host for torts committed by their intoxicated guests. [citation omitted] We decline to accept this invitation.
>
> In determining whether, as a matter of public policy, underage drinkers should be viewed differently from adult drinkers aged 21 and over, we are guided by the policy expressions found in our state constitution and statutes. The constitution provides that persons aged 18 to 20 "shall be deemed *sui juris* and endowed with full legal rights and responsibilities, *provided*, that the General Assembly may restrict the sale of alcoholic beverages to persons until age twenty-one." S.C. Const. art. XVII, section 14 (1976); *see also* S.C. Code Ann. § 15-1-320(a)(2005)(references to minors in state law deemed to mean persons under the age of 18 except when laws relate to alcohol sales). While underage persons have full social and civil rights, we find the public policy of this State treats these individuals as lacking full adult capacity to make informed decisions concerning the ingestion of alcoholic beverages.

*Id.*, at 460, 643 S.E.2d at 89 (emphasis added). The Court declared ultimately that adult social hosts who serve alcohol to a person they know or should know is between the ages of 18 and 20 are liable to *both* the person served (the first party) and to any other person (a third party) for damages proximately caused by the host's service of alcohol.

Further, as the *Marcum* Court pointed out, even before its decision creating a common law duty owed by social hosts to underage drinkers in the first party context, the law in South

Carolina already recognized that a commercial "vendor who violated this duty and sells to a person under 21 *may be liable to the unlawful purchaser*, and to third parties harmed by the purchaser's consumption of the alcohol." *Marcum*, at 459, 643 S.E.2d at 88 (citing *Whitlaw v. Kroger Co.*) (emphasis added). Not only did *Marcum* recognize the holding in *Whitlaw* as being good law, the Court also set forth its rationale that it would make no sense to hold a social host to a higher standard than a commercial vendor: "We are also mindful that policy concerns militate against a rule which would hold a social host to a higher standard than that to which a commercial provider is held." *Id.*

Accordingly, even without the holding in *Whitlaw*, the Supreme Court's expressions in *Marcum* establishes that a commercial vendor owes at least the same duties owed by a social host, which necessarily means that South Carolina recognizes a first party claim by an underage purchaser (*i.e.*, between the ages of 18 and 20 years) who consumes alcohol sold by a commercial vendor, drives while intoxicated, and dies as a result.

To the extent any confusion was created by the *Tobias* Court's 1998 dicta in the closing paragraph that "[w]e leave for another day the issue whether we will recognize a first party action brought by a minor," the decision nine (9) years later in *Marcum* removes that confusion. The *Marcum* Court expressly pronounced that the standard for commercial vendors is at least as great as the standard for a social host, who owes a first-party duty of care to an underage drinker who then drives and is injured or killed. *Marcum v. Bowden.*

Plaintiffs therefore asserted a cognizable claim against 7-Eleven and the circuit court's holding otherwise is contrary to South Carolina law. Accordingly, this Court should reverse the circuit court's order granting summary judgment on the basis that South Carolina does not recognize a first-party dram shop action against commercial vendors for underage drinkers (*i.e.*, persons between 18 and 20 years of age). The Court should remand the matter to the circuit court for further proceedings.

## III. The Doctrine of Comparative Negligence Does Not Apply to a First Party Claim by an Underage Purchaser of Alcohol Against a Commercial Vendor

The circuit court held, as an additional ground for summary judgment, that as a matter of law a reasonable jury could not find that Decedent's negligence was not greater than 50%. This holding is erroneous for two reasons: (a) by statute that doctrine of comparative negligence does not apply to this case; and (b) even so, whether Decedent's negligence is greater than 50% is a question for the jury. The Court should reverse these rulings. Plaintiffs discuss the first argument in this section and the next argument in Part IV, below.

The current version of South Carolina Contribution Among Joint Tortfeasors Act, S.C. Code Ann. § 15-38-15 (Supp. 2024), applies to this incident and renders comparative negligence inapplicable to this case. Subsection (A) of the section provides as follows:

> In an action to recover damages resulting from personal injury, wrongful death, or damage to property or to recover damages for economic loss or for noneconomic loss such as mental distress, loss of enjoyment, pain, suffering, loss of reputation, or loss of companionship resulting from tortious conduct, if indivisible damages are determined to be proximately caused by more than one defendant, joint and several liability does not apply to any defendant whose conduct is determined to be less than fifty percent of the total fault for the indivisible damages as compared with the total of: (i) the fault of all the defendants; *and (ii) the fault (comparative negligence), if any, of plaintiff.* A defendant whose conduct is determined to be less than fifty percent of the total fault shall only be liable for that percentage of the indivisible damages determined by the jury or trier of fact.

S.C. Code Ann. § 15-38-15(A)(emphasis added). To understand the significance of this statute and its application to this case, a brief review of the law of contributory negligence, comparative negligence, and joint and several liability is helpful.

Prior to 1991, the doctrine of contributory negligence barred a plaintiff's negligence cause of action if the defendant proved *any* negligence by the plaintiff. *See generally* Hubbard and Felix, *The South Carolina Law of Torts* 205-207 (5th ed. 2023) (discussing the history and effect of contributory negligence in South Carolina). In 1991, the Supreme Court of South Carolina abolished the doctrine of contributory negligence and adopted modified comparative negligence in *Nelson v. Concrete Supply Co.*, 303 S.C. 243, 399 S.E.2d 783 (1991), stating:

> For all causes of action arising on or after July 1, 1991, a plaintiff in a negligence action may recover damages if his or her negligence is not greater than that of the defendant. The amount of the plaintiff's recovery shall be reduced in proportion to the amount of his or her negligence. If there is more than one defendant, the plaintiff's negligence shall be compared to the combined negligence of all defendants.

*Id.* at 245, 399 S.E.2d at 784 (citing *Elder v. Orluck*, 515 A.2d 517 (Pa. 1986)).

Further, prior to 2005, the doctrine of "pure joint and several liability" applied to all defendants. *See Branham v Ford Motor Co.*, 390 S.C. 203, 236, 701 S.E.2d 5, 23 (2010) (noting that after the *Nelson* decision the Supreme Court reaffirmed the applicability of joint and several liability among joint tortfeasors). Under the doctrine of pure joint and several liability, all defendants who are found to be negligent are jointly and severally responsible for the plaintiff's damages regardless of the actual share of a particular defendant's fault. *See, e.g.*, *Collins v. Bisson Moving & Storage, Inc.*, 332 S.C. 290, 306, 504 S.E.2d 347, 356 (Ct. App. 1998) ("That a single injury, which is the proximate result of the separate and independent acts of negligence of two or more parties, subjects the tort-feasors, even in the absence of community of design or concert of action, to a liability which is both joint and several, is a proposition recognized and approved in this state and supported by the great weight of authority elsewhere.")(citing *Rourk v. Selvey*, 252 S.C. 25, 28, 164 S.E.2d 909, 910 (1968)).

In 2005, the General Assembly enacted the Contribution Among Tortfeasors Act, which drastically changed the landscape by "abrogat[ing] pure joint and several liability for tortfeasors who are less than fifty percent at fault." *Smith v. Tiffany*, 419 S.C. 548, 552-53, 799 S.E.2d 479, 481 (2017). Even though the title of the Act speaks only to contribution among tortfeasors, the Act codifies the procedure not only for apportioning fault among multiple defendants but also among multiple defendants and the plaintiff:

> (B) Apportionment of percentages of fault among defendants is to be determined as specified in subsection (C).
>
> (C) The jury, or the court if there is no jury, shall:
>
> > (1) specify the amount of damages;
> >
> > (2) *determine the percentage of fault, if any, of plaintiff and the amount of recoverable damages under applicable rules concerning "comparative negligence"; and*
> >
> > (3) upon a motion by at least one defendant, where there is a verdict under items (1) and (2) above for damages against two or more defendants for the same indivisible injury, death, or damage to property, specify in a separate verdict under the procedures described at subitem (b) below the percentage of liability that proximately caused the indivisible injury, death, damage to property, or economic loss from tortious conduct, as determined by item (1) above, that is attributable to each defendant whose actions are a proximate cause of the indivisible injury, death, or damage to property. In determining the percentage attributable to each defendant, any fault of the plaintiff, as determined by item (2) above, will be included so that the total of the percentages of fault attributed to the plaintiff

> and to the defendants must be one hundred percent. In calculating the percentage of fault attributable to each defendant, inclusion of any percentage of fault of the plaintiff (as determined in item (2) above) shall not reduce the amount of plaintiff's recoverable damages (as determined under item (2) above).

S.C. Code Ann. § 15-38-15(B-C)(emphasis added).

The General Assembly did not abrogate the comparative fault standard that the Supreme Court adopted in *Nelson*. Rather, subsection (C)(2) contains a specific reference to the "applicable rules concerning 'comparative negligence.'" Accordingly, if under (C)(1) and (C)(2) the jury determines that the plaintiff's fault is greater than 50%, there is no need to proceed to the procedure set forth in (C)(3). The case is over, and the plaintiff has lost.

However, in subsection (F), the General Assembly abrogated the doctrine of comparative negligence with respect to certain classes of cases. Subsection (F) provides:

> *This section* does not apply to a defendant whose conduct is determined to be wilful, wanton, reckless, grossly negligent, or intentional *or conduct involving the use, sale, or possession of alcohol* or the illegal or illicit use, sale, or possession of drugs.

S.C. Code Ann. § 15-38-15(F)(emphasis added).

Perhaps the most important two words in subsection (F) are "[t]his section." These words reveal the legislature's intent that Subsection (F) applies to the entire statute, including subsection (C)(2) and its reference to a plaintiff's comparative fault. In other words, subsection (F) abrogates the doctrine of comparative fault in the context of conduct involving the sale of alcohol in two important ways: (1) the comparative fault of a plaintiff cannot be considered; and (2) a defendant whose conduct involves the sale of alcohol is responsible for the entirety of a plaintiff's damages under the pure joint and several doctrine, regardless of the percentage of fault of another defendant.

Subsection (F) does not provide merely that in cases involving alcohol, the defendant is not entitled to apportionment of fault among the defendants; rather, the alcohol defendant also is not entitled to apportionment of fault to the plaintiff under principles of comparative negligence. If the legislature had intended subsection (F) only to abrogate the apportionment procedure based on the defendant's share of fault when alcohol is involved, the legislature could have easily provided "Subsection (C)(3) does not apply when alcohol is involved, etc." Instead, subsection (F) provides that "[t]his section"—the entire statute—does not apply to cases involving alcohol, etc. This includes subsection (C)(2) and its procedure for apportioning fault to the plaintiff under principles of comparative negligence.

The statute is plainly worded and should be applied as written. "Clear and unambiguous words in a statute should be given their plain and ordinary meaning." *Brown v. County of Berkeley*, 366 S.C. 354, 360, 622 S.E.2d 533, 537 (2005)(citations omitted). "Under the plain meaning rule, it is not the Court's place to change the meaning of a clear and unambiguous statute." *In re Vincent J.*, 333 S.C. 233, 235, 509 S.E.2d 261, 263 (1998)(citations omitted).

Further, the appellate Court must presume the General Assembly is aware of the common law when it enacts legislation. *Gore v. Dorchester County Sheriff's Office*, 442 S.C. 438, 443 n. 3, 900 S.E.2d 423, 426 n. 3 (2024) (the General Assembly is presumed to be aware of the common law when it enacts legislation). The Court must interpret such legislation with the understanding that any inconsistency between the new statute and the common law was an intentional response to the common law by the General Assembly. *Williams v. GEICO*, 409 S.C. 586, 602, 762 S.E.2d 705, 714 (2014).

Accordingly, the Court must presume that when the legislature enacted the plainly worded Contribution Among Tortfeasors Act, the legislature was knowledgeable of the comparative negligence standard that the Supreme Court adopted in the 1991 *Nelson* opinion. Indeed, as noted above, that knowledge is reflected in subsection (C)(2) as well as in subsection (A). *See, e.g.*, S.C. Code Ann. § 15-38-15(A)(iii) (referring to "the fault [comparative negligence], if any, of plaintiff").

The Court must also presume that the General Assembly knew what it was doing in adopting subsection (F). The General Assembly intended to carve out an exception to comparative negligence (and to preserve pure joint and several liability) for cases involving multiple defendants whose liability is based on the sale or consumption of alcohol. That is, those defendants are not entitled to a reduction of liability based on the negligence of either any other defendant (pure joint and several liability) or the plaintiff (modified comparative negligence). Instead, the public policy expressed and adopted by the legislature is that those defendants are jointly and severally liable for all damages, regardless of any comparative fault of the plaintiff or any fault by a joint tortfeasor.

Even without Section 15-38-15(F), the case law, primarily the Supreme Court's pronouncement in *Marcum*, demonstrates that an underage drinker, *i.e.*, one under the age of 21, cannot as a matter of law assume the risk of dying or being injured in an alcohol related matter. *Marcum* recognized that underage drinkers, that is drinkers between the ages of 18 and 21, must be "viewed differently from adult drinkers" as "lacking full adult capacity to make informed decisions concerning the ingestion of alcoholic beverages." *Marcum*, 372 S.C. at 460, 643 S.E.2d at 89. The Court recognized that allowing an underage drinker's conduct to be compared with an adult or commercial vendor who are charged with more responsibility related to alcohol sales would lead to nonsensical results considering the public policy of this State on the sale or service of alcohol to underage people. In short, a person who lacks the adult capacity to make an informed decision cannot as a matter of law be comparatively negligent to those more sophisticated on the issues involving alcohol sales and consumption. This, too, is a policy choice by the citizens of South Carolina as well as the legislature. *See City of Rock Hill v. Harris*, 391 S.C. 149, 152, 705 S.E.2d 53, 54 (2011) (noting S.C. Const. article XVII, § 14 was adopted both by referendum submitted to the electorate as well as a vote of the General Assembly, and the provision "deems citizens over eighteen to have full legal rights and responsibilities, with the sole exception that the General Assembly may restrict the sale of alcoholic beverages to persons until the age of twenty-one"). *see also* S.C. Code Ann. § 15-1-320(a) (2005)(references to minors in state law deemed to mean persons under the age of 18 "except in laws relating to the sale of alcoholic beverages").

The circuit court erred in ruling that comparative negligence applied in this case at all, and then finding Decedent's fault exceeded 7-Eleven's fault as a matter of law (discussed below). This Court should declare that by statute, the doctrine of comparative negligence has been abrogated in cases involving alcohol sales or service. The Court should reverse the circuit court and remand the matter for further proceedings.

## IV. If the Doctrine of Comparative Negligence Applies, the Issue Is One for the Jury and Not Proper as a Ground for Summary Judgment

Assuming S.C. Code Ann. § 15-38-15 did not abrogate the doctrine of comparative negligence for cases involving alcohol sales so that the doctrine applies to Plaintiff's causes of action, summary judgment on the ground that Decedent's negligence exceeded 50 percent as a matter of law and therefore bars the Plaintiffs' claims is improper. Discovery was ongoing and this issue (if it applies) presents a question of fact that should be left for the jury. *See, Roddey v. Wal-Mart Stores, East, L.P.*, 415 S.C. 580, 784 S.E.2d 670 (2016); *Steele v. Rogers*, 306 S.C. 546, 413 S.E.2d 329 (Ct. App. 1992). This Court should reverse and remand.

In *Roddey*, Hancock's sister entered the Wal-Mart store and attempted to shoplift clothing while Hancock waited in the parking lot as the driver. When her sister exited the store and entered the vehicle, Hancock drove away. A Wal-Mart employee who observed the sister's attempt to shoplift alerted a security guard who was contracted by Wal-Mart to provide security for the parking lot. Pursuant to the instructions of Wal-Mart, the security guard pursued the sisters in his vehicle out of the parking lot where Hancock crashed her vehicle and lost her life. Hancock's estate sued Wal-Mart, the security company, and the security guard. During trial at the conclusion of Hancock's case, Wal-Mart moved for a directed verdict on three grounds: (1) there was no evidence that Wal-Mart breached its duty of care; (2) Wal-Mart's actions were not the proximate cause of Hancock's death as a matter of law; and (3) that Hancock's comparative fault in causing her own death was greater than 50 percent as a matter of law. Although the circuit court granted a directed verdict for Wal-Mart on the first two grounds, the circuit court held that it could not at that point find that Hancock was more than 50 percent at fault as a matter of law as that issue was a question of fact for the jury. Ultimately, the claims went forward against the other defendants, the jury found Hancock was 65 percent at fault, and Hancock's estate appealed.

The Court of Appeals affirmed the trial court's directed verdict in favor of Wal-Mart and remanded the case. *See Roddey v. Wal-Mart Stores E., LP,* 400 S.C. 59, 732 S.E.2d 635 (Ct. App. 2012). The Supreme Court reversed, reasoning that "[c]onsidering Wal–Mart's potential liability, it is conceivable that a jury could find that the collective fault of the defendants was over fifty percent and that Hancock was less than fifty percent at fault." *Id.* Further, the Supreme Court addressed Justice Pleicones's dissent in a footnote:

> The dissent, by adopting Chief Judge Few's rationale, merely assumes the outcome of the jury's deliberations when it is impossible to know what would influence the jury's comparison if the jury was permitted to consider Wal–Mart's liability. Here, we cannot say that the sole reasonable inference to be drawn from the evidence was that Hancock was more than fifty percent negligent in light of the testimony that Wal–Mart employees instructed Jones to follow Hancock. *Bloom* [*v. Ravoira*, 339 S.C. 417, 422, 529 S.E.2d 710, 713 (2000)] ("In a comparative negligence case, the trial court should only determine judgment as a matter of law if the *sole* reasonable inference which may be drawn from the evidence is that the plaintiff's negligence exceeded fifty percent." (citation omitted) (emphasis added)). Therefore, it would be inappropriate for this Court to speculate. *See* [*Thomasko v. Poole*, 349 S.C. 7, 11, 561 S.E.2d 597, 599 (2002)] ("Because the term is relative and dependent on the facts of a particular case, comparing the negligence of two parties is ordinarily a question of fact for the jury. For these reasons, this Court is reticent to endorse directed verdicts in cases involving comparative negligence." (internal citations omitted)).

*Roddey*, at 592 n. 4, 784 S.E.2d at 677 n. 4.

This Court's decision in *Steele v. Rogers* is also instructive. Steele and three of his friends met up at a local skating rink. All were underage. They drove away in Steele's vehicle and stopped at a convenience store where one of the minors purchased alcohol while the other three minors sat in Steele's vehicle in the parking lot, which was in view of the cashier. When the underage purchaser returned to the vehicle, he passed the beer out to the others. They left the parking lot and drove to the home of one of the minor's where they continued to drink. One of them brought out a sawed-off shotgun that accidentally discharged, thereby injuring Steele.

Steele brought suit against the convenience store for unlawfully selling alcohol to an underage purchaser and asserted causes of action for negligence *per se* and public nuisance. The convenience store moved for summary judgment. Finding that Steele failed to prove proximate causation, a necessary element of his negligence cause of action, the trial court granted summary judgment for the convenience store.

This Court reversed, finding summary judgment inappropriate. In discussing the element of proximate cause in the context of proving that the unlawful sale of alcohol caused the injury, the court explained:

> Ordinarily, foreseeability is a question of fact to be decided by the jury. *See Jamison v. The Pantry, Inc.*, 301 S.C. 443, 392 S.E.2d 474 (Ct. App.1990) (foreseeability is a jury question where defendant made illegal sale of beer to minor). In a case like this one, the question is whether one who sells beer to a minor can reasonably foresee that the underaged purchaser will share the beer with other minors, who will, in turn, become intoxicated and cause injury to themselves or others. *See Anderson v. Moulder*, 394 S.E.2d 61 (W.Va.1990). Except in extraordinary cases, this is a question to be decided on the facts of each case rather than as a matter of law. Among the factors the factfinder may consider are: (1) the quantity and character of the beverages purchased; (2) the time of the sale; (3) the place of sale; (4) the character of the vicinity; (5) the seller's opportunity to observe other persons on the premises or in a vehicle with the underaged purchaser; (6) statements and behavior of the underaged purchaser or any companions; and (7) any other relevant circumstances of the sale or the seller's knowledge. *Id.*

*Steele v. Rogers*, at 551, 413 S.E.2d at 332. The Court then considered the facts of the case:

> In this case, the evidence made foreseeability a genuinely disputed issue.

> Rogers came to the Tiger Mart in a car full of teenaged males on a weekend night, a time when young males commonly engage in social drinking. It is inferable that they were visible from the cashier's position in the store. Rogers entered the store while the others waited in the car. He was a youth. He purchased two six packs of beer, inferably a larger quantity than he intended to consume alone and enough to make a small group of young drinkers more or less intoxicated. From these circumstances a jury might reasonably conclude it was foreseeable that in the natural course of events the underaged purchaser would share the beer with the other minors, who could become intoxicated and cause injury to themselves or others.

*Id.*

In this case, the 19-year-old Decedent and his friend, Dalton Lewis, who was under 18 years old, went to the 7-Eleven store in the early morning hours of August 14, 2021. (R. p. 185). Decedent parked his vehicle in the parking lot in front of the 7-Eleven store and Lewis sat in the passenger front seat of the vehicle while Decedent entered the 7-Eleven store. (R. p. 172, photo; R. p. 87, l. 23 - p. 88, l. 1; p. 107, l. 19 - p. 108, l. 1; p. 112, ll. 15-18).[2]

While in the store, Decedent selected a 12-pack of Busch Light and two six-packs of Smirnoff Ice from the cooler section and took them to the counter to purchase. (R. p. 88, ll. 1-5; p. 172, Photo). Upon the cashier's request, he presented an obviously fake driver's license. (R. p. 160, n. 1). The fake driver's license presented glaring problems: The city for Decedent's address was misspelled with an apostrophe—"Taylor's"—that would never appear on a valid South Carolina driver's license; the county code (the first two numbers of the "DD" number located in the bottom left corner) is wrong (Taylors is in Greenville County with county code 23, but the

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[2] This fact highlights the issue of second-party sales where a person of legal age illegally purchases alcohol for someone who cannot legally purchase the alcohol. In addition to second-party sales being illegal, they violate industry standards related to the sale of alcohol. In fact, 7-Eleven has a policy that prohibits second-party sales, where an employee sells alcohol to an adult who is accompanied by someone who is obviously a minor. (R. p. 107, l. 21 - p. 108, l. 1). The 7-Eleven cashier who sold Decedent the alcohol ignored this fact.

fake driver's license lists the county code as 37); and the driver's license number begins with the number 9, but South Carolina does not issue any driver's license numbers beginning with the number 9. (R. p. 182; p. 99, ll. 7-10). Each of these deficiencies was easily identifiable had the cashier actually inspected the driver's license instead of only scanning it. Each of these deficiencies was easily identifiable had 7-Eleven trained its employees to inspect driver's licenses instead of just scanning them. But 7-Eleven chose to rely solely on scanning technology that merely calculated the age from the birth date,[3] knowing that the scanning technology it chose would not identify these deficiencies or false IDs. That choice allowed 7-Eleven to continue to sell alcohol to underage purchasers.

Further, the obviously young Decedent had an obviously underage passenger seated in his vehicle in front of the store in view of the cashier. (R. p. 87, ll. 22-25; p. 88, l. 1; p. 107, ll. 19-26; p. 108, l. 1). 7-Eleven's own policies address situations involving young purchasers with other young people with them or in the parking lot and prohibit the sale of alcohol in such situations, but the cashier ignored this fact. 7-Eleven was not tricked or defrauded. Rather, viewing the evidence most favorably for Plaintiffs, 7-Eleven knew, or at least should have known, that Decedent's identification was fake.

There is abundant evidence that must be weighed by a jury to determine just how negligent or grossly negligent 7-Eleven was. Just as in *Roddey* and *Steele*, the evidence in this case created genuine issues of material fact that must be submitted to a jury. Even if comparative negligence principles apply (and they should not), a jury could weigh this evidence and find that

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[3] This is why the court should have ordered 7-Eleven to provide the information sought by Interrogatory No. 5. See Part I and footnote 1, above.

the negligence of 7-Eleven (a sophisticated vendor) was greater than 50 percent when compared to any negligence of 19-year-old Decedent, who lacked the capacity due to his age to appreciate fully the dangers associated with alcohol, as recognized as a matter of law by our General Assembly and our Supreme Court. *Marcum*.

Accordingly, the circuit court's finding that Decedent was greater than 50 percent negligent as a matter of law at the summary judgment stage was improper. Discovery is ongoing and precedent from this Court and the Supreme Court dictates otherwise. This Court should reverse the circuit court's holding and remand for further proceedings.

## CONCLUSION

For the reasons stated this Court should hold that South Carolina law recognizes a first-party dram shop action against commercial vendors for underage persons (*i.e.*, between the ages of 18 and 20) to whom a defendant sold alcohol. The Court should also hold that under South Carolina statutory law, the doctrine of comparative negligence does not apply to cases involving the illegal sale of alcohol. Finally, the Court should declare that even if comparative negligence applies to this case, the circuit court erred in finding Decedent's negligence was greater than 50% as a matter of law. The Court should reverse the grant of summary judgment to 7-Eleven and remand the matter for further proceedings consistent with this Court's mandate. Finally, the Court should reverse the circuit court's determination that an interrogatory Plaintiffs propounded to Defendant 7-Eleven does not involve requests for information protected by the attorney work-product doctrine.

Respectfully submitted,

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