

# THE STATE OF SOUTH CAROLINA In The Court of Appeals

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## APPEAL FROM PICKENS COUNTY

Court of Common Pleas  
Jessica A. Salvini, Circuit Court Judge

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Case No. 2021-CP-39-00329

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Court of Appeals Case No. 2025-001327

**RECEIVED**

**Oct 01 2026**

**SC Court of Appeals**

Michael and Mary Smith,

Appellants,

v.

King Asphalt, Inc.

Respondent.

## RECORD ON APPEAL

### VOLUME 1 OF 5, Pages 1 to 84

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## INDEX

*Smith v. King Asphalt, Inc.*, Court of Appeals Case No. 2025-001327

Entries are numbered continuously. Each entry is in the wording of the Designation that lists it. App. is the Appellants' Designation of July 6, 2026; Resp. is the Respondent's Designation of August 5, 2026; Supp. is the Appellants' Supplemental Designation of August 17, 2026. Where two Designations list the same document, both entries sit on one line. Documents filed as exhibits to another filing are listed under that filing. [Click underlined page number to view page. Hold <ALT> key and press <left arrow> to return.]

**Page**

### **ORDERS, JUDGMENTS, DECREES, AND DECISIONS**

|    |                                                                                                                                                                                                                                       |    |
|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| 1. | Form 4 Order of Judgment, entered February 18, 2025. (App. 10)                                                                                                                                                                        | 6  |
| 2. | Order Granting Summary Judgment, filed March 10, 2025. (App. 12) / Order Granting Defendant King Asphalt, Inc.'s Motion for Summary Judgment and Denying Plaintiffs' Motion for Summary Judgment, filed on March 10, 2025. (Resp. 13) | 10 |
| 3. | Initial Order Regarding Motion for Reconsideration, filed April 4, 2025. (App. 15)                                                                                                                                                    | 23 |
| 4. | Order (Electronic Form 4), entered May 1, 2025. (App. 20)                                                                                                                                                                             | 26 |
| 5. | Final Order Regarding Motion to Reconsider, filed May 27, 2025. (App. 22) / Final Order Regarding Motion to Reconsider, filed on May 27, 2025. (Resp. 16)                                                                             | 30 |
| 6. | Order (Electronic Form 4), entered June 24, 2025. (App. 25)                                                                                                                                                                           | 33 |

### **PLEADINGS**

|     |                                                                                                                                    |    |
|-----|------------------------------------------------------------------------------------------------------------------------------------|----|
| 7.  | Summons and Complaint, filed on March 23, 2021. (Resp. 1) / The Complaint. (App. 1)                                                | 37 |
| 8.  | Affidavit of Service on King Asphalt, Inc., filed on July 16, 2021. (Resp. 2)                                                      | 49 |
| 9.  | Defendant South Carolina Department of Transportation (SCDOT'S) Motion to Dismiss, filed on July 21, 2021. (Resp. 6)               | 52 |
| 10. | Stipulation of Dismissal, filed on July 27, 2021. (Resp. 7)                                                                        | 54 |
| 11. | Answer of King Asphalt, filed on August 2, 2021. (Resp. 4) / The Answer of King Asphalt, Inc. (App. 2)                             | 56 |
| 12. | Affidavit of Service on Themistoklis Economou, filed on September 2, 2021. (Resp. 3)                                               | 64 |
| 13. | Answer of Defendant Themistoklis Economou, filed on September 13, 2020. (Resp. 5)                                                  | 67 |
| 14. | Stipulation on Dismissal with Prejudice Pursuant to Rule 41 as to Themistoklis Economou Only, filed on January 17, 2024. (Resp. 8) | 77 |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | <b>Page</b> |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|
| 15. King Asphalt, Inc.'s Motion for Summary Judgment, filed on January 19, 2024. (Resp. 9) / Respondent's Motion for Summary Judgment. (App. 4)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 80          |
| 16. Handwritten filing of Appellants dated March 25, 2024. (App. 3)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | 83          |
| 17. Appellants' Opposition to Motion for Summary Judgment and Cross Motion for Summary Judgment, served December 13, 2024, with Certificate of Service and all exhibits filed December 13, 2024, as one continuous document, Bates 000001 through 000459, and the digital exhibits (video and audio) on USB drive submitted therewith, retained in the trial court under Rule 210(f), SCACR. Exhibit J to that filing, Bates 000169 through 000178, contains the deposition of Themistoklis Georgios Economou including pages 42 and 43, designated at Resp. 24, page 43 being the reporter's certification. (App. 5) / Plaintiffs' Opposition to Defendant King Asphalt, Inc.'s Motion for Summary Judgment, Cross-Motion for Summary Judgment, and Prayer for Alternative Relief, filed on December 13, 2024. (Resp. 10) | 85          |
| Themistoklis Georgios Economou (Exhibit J, excerpts)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | 256         |
| 18. Appellants' Request to Clarify Rulings and Preserve Issues for Appeal, dated January 22, 2025, and Amended Request to Clarify Rulings, filed January 24, 2025, with the Certificates of Service and Exhibits filed January 23 and January 24, 2025. (App. 6)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | 545         |
| 19. Memorandum in Support of King Asphalt's Motion for Summary Judgment and in Opposition to Plaintiff's Cross-Motion for Summary Judgment, filed January 27, 2025, with the attachments filed therewith. (Resp. 11) / Memorandum in support. (App. 4) The attachments are:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | 569         |
| a. SCDOT's Primary Route Daytime Lane Closure Drawing. (Resp. 18)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | 585         |
| b. Transcript of Deposition of Douglas Eugene Limbaugh, Jr., title page and pages 15, 22 through 25, 28 through 30, 32 through 34, and 42 through 44, as filed. (Resp. 20; Supp. 26) Page 45, designated at Supp. 26, does not appear in the record below.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | 587         |
| c. Transcript of Deposition of Zachary Shane Michael, title page and pages 19 through 21, 23, 29, 36 through 38, 46, 54, and 55, as filed. (Resp. 22)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 603         |
| d. Transcript of Deposition of Michael Smith, pages 103, 104, 116 to 121. (Resp. 23)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | 617         |
| e. Transcript of Deposition of Themistoklis Georgios Economou, title page and pages 19 through 26, 40, and 41, as filed. (Resp. 24)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | 627         |
| f. Transcript of Deposition of Frank Pressly, pages 7 to 10. (Resp. 25)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | 640         |
| 20. SCDOT Proposal and Contract No. 3948130, as filed by Respondent on January 27, 2025, in its entirety. (App. 7) / SCDOT Proposal, Contract and                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | 646         |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Page |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|
| Bond for Highway Construction: Resurfacing/Reconstruction, FDR; Bid Received: June 12, 2028; Award Date: July 3, 2018, with attachments. (Resp. 17)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |      |
| 21. Appellants' Response to Defendant's Memorandum, filed January 30, 2025, with Exhibits A-R and Certificate of Service filed January 30, 2025. (App. 9) Exhibit I, as filed, is the Transcript of Deposition of Michael Laginestra (Resp., second item numbered 18), and Exhibit H, as filed, is page 62 of the Transcript of Deposition of Zachary Shane Michael (Resp. 22).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | 774  |
| Zachary Shane Michael (Exhibit H, excerpts)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | 811  |
| Michael Laginestra (Exhibit I, excerpts)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 812  |
| 22. Appellants' Motion to Reconsider Pursuant to Rule 59(e), SCRCP, filed February 28, 2025, with the Exhibits filed February 28, 2025. (App. 11)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | 825  |
| 22b. Exhibits filed February 28, 2025, to Appellants' Motion to Reconsider Pursuant to Rule 59(e), SCRCP. (App. 11)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | 867  |
| 23. Appellants' Supplement to Motion to Reconsider, filed March 20, 2025, with the Exhibits and Certificates of Service filed March 20, 2025. (App. 13) / Supplement, Plaintiffs' Motion to Reconsider Pursuant to Rule 59(e), filed on March 20, 2025. (Resp. 14)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | 991  |
| 24. Appellants' letter to the Court, filed March 26, 2025. (App. 14)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 1202 |
| 25. Appellants' Second Supplemental Submission, filed April 11, 2025. (App. 16)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | 1208 |
| 26. Appellants' Exhibits, filed by Michael Smith and docketed April 11, 2025. (App. 17)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | 1224 |
| 27. King Asphalt, Inc.'s Return to Plaintiffs' Motion for Reconsideration, filed April 18, 2025. (App. 18) / King Asphalt, Inc.'s Return to Plaintiffs' Motion for Reconsideration, filed on April 18, 2025. (Resp. 15)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | 1298 |
| 28. Appellants' Motion for Leave to File Surreply to Defendant's Return, filed April 21, 2025. (App. 19)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 1303 |
| 29. Appellants' Surreply to Defendant's Return to Plaintiffs' Motion to Reconsider, filed May 8, 2025, with all exhibits thereto, including the full deposition transcripts of Joe Daniel Laws, III, and Joshua Frazier Makison (Exhibit D) and the deposition excerpts of eyewitness Olivia Paige Bryan (Exhibit E). (App. 21) The full transcripts at Exhibit D are also designated as Transcript of Deposition of Joshua Frazier Makison (Resp. 19) and Transcript of Deposition of Joe Daniel Laws (Resp. 21). Exhibit C, as filed, contains the title page and pages 6 and 7 of the deposition of Zachary Shane Michael (Resp. 22), the title page and pages 6, 8, and 9 of the deposition of Douglas Eugene Limbaugh, Jr. (Resp. 20), the title page and page 9 of the deposition of Joshua Frazier Makison (Resp. 19), and the title page and pages 9 and 16 of the deposition of Joe Daniel Laws, III (Resp. 21). | 1404 |

|                                                                                                                 | <b>Page</b> |
|-----------------------------------------------------------------------------------------------------------------|-------------|
| Zachary Shane Michael (Exhibit C, excerpts)                                                                     | 1418        |
| Douglas Eugene Limbaugh, Jr. (Exhibit C, excerpts)                                                              | 1421        |
| Joshua Frazier Makison (Exhibit C, excerpts)                                                                    | 1425        |
| Joe Daniel Laws, III (Exhibit C, excerpts)                                                                      | 1427        |
| Joe Daniel Laws, III (Exhibit D, full deposition)                                                               | 1430        |
| Joshua Frazier Makison (Exhibit D, full deposition)                                                             | 1463        |
| Olivia Paige Bryan (Exhibit E, excerpts)                                                                        | 1484        |
| 30. Notice of Appeal, filed June 23, 2025. (App. 23)                                                            | 1503        |
| 31. Motion and Affidavit to Proceed In Forma Pauperis (Appeal), filed by Michael Smith June 23, 2025. (App. 24) | 1507        |

## **TRANSCRIPT**

|                                                                                                                                                                                                                                                                                                                                |      |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|
| 32. Transcript of the hearing held January 27, 2025, before the Honorable Jessica A. Salvini, filed in the circuit court July 11, 2025. (App. 8) / Transcript of Record: January 27, 2025 Hearing on Motions for Summary Judgment before The Honorable Jessica Ann Salvini, Circuit Judge, dated February 20, 2025. (Resp. 12) | 1510 |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|

## **EXHIBITS AND OTHER MATERIALS**

|                                                                                                                                                                                                                                                               |      |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|
| 33. SCDOT 2007 Standard Specifications for Highway Construction, incorporated by reference into SCDOT Proposal and Contract No. 3948130, Subsection 107.9, Public Convenience and Safety. (Supp. 27) Incorporated by reference into the contract. See ROA-20. | 1532 |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|

Smith v. King Asphalt, Inc.

Court of Appeals Case No. 2025-001327

# ROA - 1

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Form 4 Order of Judgment, entered February 18, 2025. (App. 10)

## FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF Pickens  
IN THE COURT OF COMMON PLEAS

## JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP3900329

Michael Smith et al  
PLAINTIFF(S)

King Asphalt Inc  
DEFENDANT(S)

## DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);  
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;  
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):  
☐ Affirmed; ☐ Reversed; ☐ Remanded;  
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:** ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Statement of Judgment on the following page.

## ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☒ See Page 2 for additional information.

## For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 02/18/2025 .

Mary Ann Smith for Mary Ann Smith  
Mary Ann Smith for Mary Ann Smith  
Michael Smith for Michael Smith  
Michael Smith for Michael Smith

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

**Court Reporter:**

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

---

Defendant's Motion for Summary Judgment and Plaintiffs' Opposition and Cross Motion for Summary Judgment were before the Court on January 27, 2025. Michael Smith appeared pro se and Catharine Griffin appeared on behalf of Defendant. No one appeared on behalf of Plaintiff MaryAnn Smith. Defendant's oral motion for the Court to grant its Motion for Summary Judgment and deny Plaintiff's Cross Motion as to Ms. Smith for failure to appear is denied. The Court finds Ms. Smith waived her appearance and chose to rely on her brief. Defendant's Motion for Summary Judgment is granted and Plaintiffs' Opposition and Cross Motion for Summary Judgment is denied. The Court finds that absent expert testimony Plaintiff cannot establish the essential elements of their claims.

Defendant's counsel shall draft a more formal order within twenty (20) days.

IT IS SO ORDERED.



Pickens Common Pleas

**Case Caption:** Michael Smith , plaintiff, et al VS Themistoklis Economo , defendant,  
et al

**Case Number:** 2021CP3900329

**Type:** Order/Electronic Form 4

So Ordered

Jessica A. Salvini

Electronically signed on 2025-02-18 11:13:13 page 3 of 3

Smith v. King Asphalt, Inc.

Court of Appeals Case No. 2025-001327

## **ROA - 2**

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Order Granting Summary Judgment, filed March 10, 2025. (App. 12) / Order  
Granting Defendant King Asphalt, Inc.'s Motion for Summary Judgment and  
Denying Plaintiffs' Motion for Summary Judgment, filed on March 10, 2025.  
(Resp. 13)

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

Michael and Mary Smith,

Plaintiffs,

v.

King Asphalt Inc.,

Defendant.

IN THE COURT OF COMMON PLEAS

FOR THE THIRTEENTH JUDICIAL  
CIRCUIT

C/A No. 2021-CP-39-00329

**ORDER**  
**GRANTING DEFENDANT**  
**KING ASPHALT, INC.'S**  
**MOTION FOR SUMMARY JUDGMENT**  
**AND DENYING**  
**PLAINTIFFS'**  
**MOTION FOR SUMMARY JUDGMENT**

This matter came before the court on the defendant King Asphalt, Inc.'s motion for summary judgment and the plaintiffs Michael and Mary Smith's cross-motion for summary judgment. Present and representing the parties at the hearing held on January 27, 2025, were Catharine Garbee Griffin of Baker, Ravenel & Bender, LLP, for the defendant, and the plaintiff Michael Smith, *pro se*. The plaintiff Mary Smith did not appear at the hearing despite proper notice.

Having considered the record, the applicable law, and arguments made both in the parties' memoranda and at the hearing, this court grants King Asphalt's motion for summary judgment and denies the plaintiffs' cross-motion.

**BACKGROUND**

The plaintiffs, Michael and Mary Smith ("Plaintiffs" or "the Smiths"), initiated this action to recover damages for injuries they sustained in an accident that occurred on March 22, 2019, on Highway 8, Gentry Memorial Highway, near Pickens, South Carolina, when a moped on which they traveled collided with a car driven by Themistoklis Economou. The collision occurred in the area of the highway that was being repaved. For this reason, in addition to Economou, the Smiths

sued the South Carolina Department of Transportation (“SCDOT”) and its milling and paving contractor, King Asphalt, Inc. The Smiths have since voluntarily dismissed SCDOT and, having reached a settlement, dismissed their claims against Economou with prejudice, thus leaving King Asphalt as the only defendant.

In their complaint, the Smiths asserted causes of action of negligence and recklessness, alleging that King Asphalt failed, among other things, to have proper signage alerting motorists to the upcoming road conditions; to utilize only one lane until the crew completed the scheduled work for the day; and to comply with the guidelines set by SCDOT for Work Zone Traffic Control. (Comp. ¶ 22). They further alleged that King Asphalt removed the orange cones separating the two lanes and a worker who picked up the cones caused and contributed “to confusion in the flow of traffic, when a better/safer methodology was available.” (Compl. ¶ 11.) According to the complaint, King Asphalt was negligent because it had a duty “to use due care with the use of proper signage to alert drivers to the upcoming road construction, for drivers to reduce their speed, and for drivers to be prepared to stop to avoid injuries to both motorists and road crew.” (Compl. ¶ 19.)

King Asphalt moved for summary judgment because the Smiths have not retained an expert who could testify as to standards of care applicable to King Asphalt and to King Asphalt’s alleged failure to adhere to them when performing its scope of work under contract with SCDOT. The Smiths, on the other hand, cross-moved for summary judgment, presenting in their brief a highly technical argument whereby, through calculations and analysis of data contained in the documents produced in discovery, they attempt to prove King Asphalt’s failure to adhere to SCDOT-mandated requirements and establish its negligence *per se*.

### APPLICABLE LEGAL STANDARD

Under Rule 56 of the South Carolina Rules of Civil Procedure, the judgment sought by the moving party “shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show 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.” Rule 56(c), SCRCF. “The plain language of Rule 56(c), SCRCF, mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to the party’s case, and on which that party will bear the burden of proof at trial.” *Etheredge v. Richland School Dist. I*, 330 S.C. 447, 453, 499 S.E.2d 238 (Ct. App. 1998).

“In ruling on a motion for summary judgment, the evidence and the inferences which can be drawn therefrom should be viewed in the light most favorable to the nonmoving party.” *Gilmer v. Martin*, 323 S.C. 154, 156, 473 S.E.2d 812, 813 (Ct. App. 1996). It is not sufficient, however, that a nonmoving party creates an inference that is not reasonable or raises an issue of fact that is not genuine. *Evans v. Stewart*, 370 S.C. 522, 636 S.E.2d 632, 635 (Ct. App. 2006). A “party opposing summary judgment ‘cannot create a genuine issue of material fact through mere speculation or the building of one inference upon another.’” *Gibson v. Epting*, 426 S.C. 346, 353, 827 S.E.2d 178, 182 (Ct. App. 2019) (quoting *Beale v. Hardy*, 769 F.2d 213, 214 (4th Cir. 1985)).

“The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. In that way, a motion for summary judgment is akin to a motion for a directed verdict because in each instance, one party must lose as a matter of law.” *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868 (2001) (internal citations and quotation marks omitted).

## FACTS

Based on the testimonial and documentary evidence in the record, the court finds the following material facts to be established beyond genuine issue:

In late March 2019, King Asphalt performed road construction work on Highway 8, Gentry Memorial Highway, a four-lane road in Pickens County, South Carolina, under a contract with SCDOT. The contract called for full depth patching of certain areas, the removal of two inches of existing asphalt, and its replacement with a new asphalt surface. Before the work began on the project, King Asphalt installed permanent signs for the work site, which signs were approved by SCDOT and were installed in accordance with SCDOT's Primary Route Daytime Lane Closure Drawing. These permanent construction signs stayed in place until SCDOT conducted its final inspection of the project. In addition to the permanent signs, SCDOT required installation of temporary traffic control devices when a lane closure was necessary.

The Highway 8 project had been ongoing for some time before March 22, 2019, when the Smiths' accident occurred. By then, King Asphalt had already milled both eastbound lanes and began to repave them. The work progressed in sections, lane by lane—only after a section of one lane was completed, which would usually take more than a day, depending on the length of the section being paved, the work on the adjacent lane would begin: the asphalt mix was put into a paving machine, which laid the asphalt down at a specified controlled rate. The lane's surface was then compacted with a roller, in accordance with SCDOT guidelines, to achieve thickness of two inches. The work in the area where the collision took place had been finished, inspected, and accepted by SCDOT, which had documented daily both the quality of the asphalt, its level of compaction, and the ultimate thickness. The grade elevation difference between the paved lane and the unpaved lane was either two inches or less, as required by SCDOT and verified by its inspector.

On March 22, 2019, King Asphalt's crew installed new asphalt on the outside lane of Highway 8, eastbound, in the vicinity of Old Easley Pickens Highway. The inside lane had been milled and was in that condition at the time. To lay the new asphalt in the designated outside lane and to allow the traffic to flow unimpeded in the inside lane, King Asphalt closed the outside lane, in accordance with SCDOT standards and specifications, by placing cones at the beginning of the closed section, tapering the closing of the outside lane to direct the live traffic to the inside one. Beyond the taper closing the outside lane, King Asphalt placed cones every 50 feet throughout the work zone. When the work was finished for the day, the temporary signs and the cones delineating the lanes were removed. King Asphalt would open the closed lane by picking up the cones in reverse order, starting from the end of the closed section and proceeding toward the taper marking the beginning of the closure. The section of the highway that was subject to the temporary lane closure was thus becoming shorter with removal of each cone. Once a cone was removed, the outside lane beyond that point would become immediately available to the motorists.

Michael Smith had been aware of the repaving project and the temporary lane closures on Highway 8 for several months preceding the accident: they were "peeling up the asphalt and putting new fresh asphalt down." (Smith Dep. 104:6–7.) On March 22, 2019, he and his wife, riding a moped, attempted to cross Highway 8 from its northern side and then join the eastbound traffic and proceed onto Old Easley Pickens Highway. Beforehand, Michael Smith had observed a King Asphalt's truck picking up the cones. After traversing the westbound lanes and the paved median, they entered the eastbound inside lane. Fully aware of the grade differential between the milled inside lane and the newly paved outside lane, Smith brought his moped to a complete stop before entering the outside lane at a right angle. At that moment, Economou was travelling in the

outside lane. His vehicle and the Smiths' moped collided when the Smiths entered the outside lane in front of Economou.

## DISCUSSION

Under South Carolina law, to prove negligence and recover damages, one must establish (1) a duty of care owed by the defendant; (2) a breach of that duty; and (3) damage proximately resulting from the breach. *Charleston Dry Cleaners & Laundry, Inc. v. Zurich Am. Ins. Co.*, 355 S.C. 614, 618, 586 S.E.2d 586, 588 (2013). While the existence of a duty of care is an issue of law, the existence of the remaining elements of the negligence cause of action is a factual matter—each one of them needs to be proven by preponderance of admissible evidence. *See Nelson v. Piggly Wiggly Cent., Inc.*, 390 S.C. 382, 391, 701 S.E.2d 776, 780–781 (S.C. App. 2010). This court finds, as a matter of law, that the Smiths cannot carry this burden absent assistance of an expert witness.

The Smiths' case is predicated on King Asphalt's alleged failure to adhere to the South Carolina Department of Transportation's work zone traffic control guidelines. In their brief, the Smiths specifically state that King Asphalt failed "to comply with . . . Division 600 Regulations, SCDOT Standard Specifications for Highway Construction and contract-specific provisions." The evidence in the record shows, however, that King Asphalt followed SCDOT's guidelines and complied with the applicable standards and regulations.

According to the testimony of Douglas Limbaugh, the designated representative of King Asphalt, the two mile section of Highway 8 in question was repaved in accordance with the SCDOT standards and accepted by SCDOT: the entire section was first milled to the depth of two inches and then, on March 22, 2019, the paving machine laid a layer of asphalt that was ultimately two inches thick. (Limbaugh Dep. 15:2–9, 22:22–24:14.) Limbaugh further testified that the grade elevation between the unpaved lane and the paved lane did not exceed two inches, as required by

SCDOT, and confirmed by SCDOT's inspector who was present on site at all times. (Limbaugh Dep. 44:5–24.) According to Limbaugh, the lane was reopened by “picking up cones and removing the apparatus that delineates the closed lane and the open lane from the end of the project and back towards the beginning,” (Limbaugh Dep. 34:1–8) which is an SCDOT-prescribed manner of reopening a lane closure as attested to by Joshua Makinson, SCDOT's district construction engineer. (Makinson Dep. 18:1–10.)

According to the Smiths, King Asphalt's liability hinges on the allegedly premature removal of traffic control cones, which removal in turn can be judged as premature only by reference to the grade differential between the lanes. In opposing King Asphalt's motion and supporting theirs, the Smiths claim that the differential was equal to 2.16 inches. They have arrived at that figure not by a measurement in the area where the accident occurred, which Michael Smith admitted at the hearing neither he nor his wife took, but through an elaborate calculation based on the figures found in the Daily Report of Asphalt Roadway Inspection (SCDOT Form 400.04) for March 22, 2019, and the SCDOT paving standard.

Note here that “evidence of industry safety standards is relevant to establishing the standard of care in a negligence case.” *Elledge v. Richland/Lexington Sch. Dist. Five*, 352 S.C. 179, 186, 573 S.E.2d 789, 793 (2002) (citations omitted). And the evidence of such standards is generally offered “in connection with expert testimony which identifies it as illustrative evidence of safety practices or rules generally prevailing in the industry, and as such it provides support for the opinion of the expert concerning the proper standard of care.” *Id.* at 188, 573 S.E.2d at 794 (citing *McComish v. DeSoi*, 42 N.J. 274, 200 A.2d 116, 121 (N.J. 1964)).

Under South Carolina Rules of Evidence, “[i]f scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a

witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.” Rule 702, SCRE. Expert testimony becomes absolutely necessary, however, “in cases in which the subject matter falls outside the realm of ordinary lay knowledge. Stated differently, expert evidence is required where a factual issue must be resolved with scientific, technical, or any other specialized knowledge.” *Watson v. Ford Motor Co.*, 389 S.C. 434, 445, 699 S.E.2d 169, 175 (2010). Unlike a lay witness, who may testify only as to matters within his or her personal knowledge and may not offer opinion that requires special knowledge, skill, experience, or training, an expert witness is permitted to state an opinion based on facts not within his or her firsthand knowledge. *Id.* at 446, 699 S.E.2d at 175.

This court finds that paving industry standards, the manner in which a work zone is to be marked and secured by a road-paving contractor, and the applicable rules, regulations and specifications are not matters familiar to an average juror. The testimony of King Asphalt and SCDOT witnesses and the complexity of Plaintiffs’ proof, which their submission to the court in and of itself clearly demonstrates, indicate necessity of expert testimony. The Smiths need an expert because, in the words of the United States Court of Appeals for the Fourth Circuit in *Kale v. Douthitt*, 274 F.2d 476, 481 (4th Cir. 1960), the finding of King Asphalt’s liability depends “on the existence of facts which are not common knowledge, and which are peculiarly within the knowledge of men whose experience or study enables them to speak with authority upon the subjects in question.” *Id.* The jury’s “conclusions to be drawn from the facts stated, as well as knowledge of the facts themselves, depend on professional or scientific knowledge not within the range of ordinary training or intelligence.” *Id.*

King Asphalt’s and SCDOT’s witnesses who attested to King Asphalt’s compliance with applicable SCDOT guidelines, are industry professionals, with pertinent credentials and

experience. The Smiths, on the other hand, have no evidence that contradicts their testimony. Plaintiffs cannot prove negligence, let alone recklessness, on King Asphalt's part, without competent evidence that establishes the scope of the duty or standard of care incumbent upon King Asphalt as a paving contractor, and that shows that such duty had been breached, leading to their injuries. The analysis of King Asphalt's performance of its scope of work requires more than the common knowledge and experience of a layperson. Expert testimony is required in this case because "juries must be informed of the criteria upon which a defendant's conduct is to be judged." *Kemmerlin v. Wingate*, 274 S.C. 62, 65, 261 S.E.2d 50, 51 (1979). Plaintiffs have no witness, who by virtue of his or her education, training and experience, could be competent to inform the jury on what signage was required for a construction zone, the process of the removal of safety devices, the requirements for the road construction, or which SCDOT guidelines King Asphalt failed to follow.

This court must reject the Smiths' contention that the Daily Report of Asphalt Roadway Inspection (SCDOT Form 400.04), establishes a breach of a duty of care on King Asphalt's part. The Smiths argue that a layperson can look at the report, look at a manual and then divide the amount of asphalt used in a specific area of the project without any consideration of the daily use of the asphalt, road topography, the depth of the milling, the depth of the asphalt, and then determine that the difference between the milled lane and the newly paved lane exceeded two inches and thus violated the SCDOT standards. This court finds that in order to reliably interpret the Daily Report and present it to the jury the Smiths will need an expert who will have examined and determined the precise depth of the milling under the new asphalt and the depth of the new asphalt. No lay witness can do that, nor can the Smiths themselves, who by their own admission are not adequately literate.

This court likewise rejects the Smiths' argument that these are matters of common knowledge and experience akin to those found in the caselaw the Smiths cite, in which the courts found no need for expert testimony. This court notes that one of the opinions the Smiths cite is nonexistent—*Ingram v. Norfolk Southern Railway Co.*, 365 S.C. 545, 618 S.E.2d. 418 (2005) (a Lexis search of the S.E.2d citation reveals a West Virginia case of *Wood v. Acordia of W.Va. Inc.*)—and only two may be relevant. Contrary to the Smiths' short summary, *Wise v. Broadway*, 315 S.C. 273, 433 S.E.2d 587 (1993), did not involve “absence of traffic control signage.” It involved a rear-end collision in which the at-fault driver was found to have violated the statute regulating the proper distance between vehicles and whether such negligence per se was the evidence of recklessness necessary for the punitive-damages award. Similarly, *Austin v. Specialty Transportation Services, Inc.*, 258 S.C. 298, 594 S.E.2d 867 (Ct. App. 2004), involved a collision caused by a driver who disobeyed a stop sign. Contrary to the Smiths' summary, the opinion does not mention the word “expert.” The cases of *Brouwer v. Sisters of Charity Providence Hospitals*, 763 S.E.2d 200, 205 (S.C. 2014) and *Hickam v. Sexton Dental Clinic*, 295 S.C. 164, 367 S.E.2d 453 (Ct. App. 1988), while somewhat relevant are distinguishable. Both involve medical malpractice and the common knowledge exception to the statutory requirement for expert testimony. Unlike here, the facts in those cases were simple and easy to understand: in *Hickman* a dental assistant jammed an object into a patient's mouth when taking a dental impression and caused an injury; in *Brouwer* the court held that a “Notice of Intent to Sue” did not require an affidavit of an expert where the alleged malpractice consisted in the hospital staff failing to make sure that the patient who was allergic to latex was not exposed to it—the information that the patient was allergic was included in the surgery consent form and the pre-anesthesia evaluation and was displayed on the wristband. The *Brouwer* court held that the negligent act, that is the

surgery performed with latex gloves despite the warnings that resulted in severe allergic reaction, fell within the common knowledge exception.

The facts at issue in this case, however, and in particular the milling depth and the thickness of the new layer of asphalt, location of the accident, standards of care, industry standards, and regulatory requirements for lane closures and re-openings, are far from simple and easy to understand. Indeed, a jury will need assistance of an expert to fully comprehend and weigh the evidence.

### CONCLUSION

Because they have no testifying expert,<sup>1</sup> Plaintiffs cannot establish the standard of care for the road construction practices of King Asphalt, including the signage on the construction site, the temporary lane closure criteria, and the alleged deviation from such standard of care that could constitute the breach element of their negligence and recklessness claims. Furthermore, they will not be able to challenge King Asphalt's witnesses who have testified that King Asphalt complied with the applicable standards and SCDOT requirements. For this reason, King Asphalt is entitled to judgment as a matter of law.

**THEREFORE**, the defendant King Asphalt, Inc.'s motion for summary judgment is hereby **GRANTED** and the plaintiffs Michael and Mary Smith's cross-motion for summary judgment is **DENIED**.

**AND IT IS SO ORDERED.**

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The Honorable Jessica Salvini

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<sup>1</sup> At the hearing on January 27, 2025, the plaintiff Michael Smith informed this court that Plaintiffs did not intend to retain an expert.



## Pickens Common Pleas

**Case Caption:** Michael Smith , plaintiff, et al VS Themistoklis Economo , defendant,  
et al  
**Case Number:** 2021CP3900329  
**Type:** Order/Summary Judgment

So Ordered

Jessica A. Salvini

Electronically signed on 2025-03-10 16:00:33 page 12 of 12

Smith v. King Asphalt, Inc.

Court of Appeals Case No. 2025-001327

## **ROA - 3**

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Initial Order Regarding Motion for Reconsideration, filed April 4, 2025. (App.

15)

|                         |   |                              |
|-------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF PICKENS       | ) | THIRTEENTH JUDICIAL CIRCUIT  |
|                         | ) |                              |
| Michael and Mary Smith, | ) |                              |
|                         | ) |                              |
| Plaintiff,              | ) | INITIAL ORDER REGARDING      |
|                         | ) | MOTION TO RECONSIDER         |
| vs.                     | ) |                              |
|                         | ) |                              |
| King Asphalt, Inc.,     | ) |                              |
|                         | ) |                              |
| Defendants.             | ) | Case No.: 2021-CP-39-00329   |

A Rule 59 (e) SCRPC motion to reconsider and to alter or amend has been filed with the Court on February 28, 2025, and was served on the Court on February 28, 2025. The Plaintiff then filed a Supplement – Plaintiffs’ Motion to Reconsider Pursuant to Rule 59(e) on March 20, 2025 and served it upon the Court on March 21, 2025. Pursuant to Rule 59(f), SCRPC, the Court, in its discretion, may decide this motion based on briefs without oral argument. The Court will decide this motion on written submissions. Written submissions are not required by the non-moving party, but will be considered. The moving party may rely upon what has been filed or may supplement.

No additional briefs are required and Counsel may rely the current record, however the deadline to file written submissions **from the movant regarding this motion is 4:00 PM on Friday, April 11, 2025.** Any submissions in **reply must be filed by 4:00 p.m. on Friday, April 18, 2025.** A copy of any documents filed must be forwarded immediately to the undersigned judge and to opposing counsel. The copies to the judge shall be sent via US Postal Service to 305 E. North Street, Greenville, SC 29601, and/or by electronic mail to [jsalvinisc@sccourts.org](mailto:jsalvinisc@sccourts.org) and [jsalvinilc@sccourts.org](mailto:jsalvinilc@sccourts.org).

AND IT IS SO ORDERED.

**Presiding Judge’s Signature Page to Follow.**



Pickens Common Pleas

**Case Caption:** Michael Smith , plaintiff, et al VS Themistoklis Economo , defendant,  
et al  
**Case Number:** 2021CP3900329  
**Type:** Order/Other

So Ordered

Jessica A. Salvini

Electronically signed on 2025-04-04 11:18:46 page 2 of 2

Smith v. King Asphalt, Inc.

Court of Appeals Case No. 2025-001327

# ROA - 4

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Order (Electronic Form 4), entered May 1, 2025. (App. 20)

## FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF Pickens  
IN THE COURT OF COMMON PLEAS

## JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP3900329

Michael Smith et al  
PLAINTIFF(S)

King Asphalt Inc  
DEFENDANT(S)

## DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);  
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;  
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):  
☐ Affirmed; ☐ Reversed; ☐ Remanded;  
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:** ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Plaintiffs filed a Motion for Leave to File Surreply to Defendant's Return to Plaintiffs' Motion to Reconsider. This motion is hereby granted and Plaintiffs shall file their Surreply within ten (10) days.

IT IS SO ORDERED.

## ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

## For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 05/01/2025 .

Mary Ann Smith for Mary Ann Smith  
Mary Ann Smith for Mary Ann Smith  
Michael Smith for Michael Smith  
Michael Smith for Michael Smith

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

## Court Reporter:

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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## Pickens Common Pleas

**Case Caption:** Michael Smith , plaintiff, et al VS Themistoklis Economo , defendant,  
et al  
**Case Number:** 2021CP3900329  
**Type:** Order/Electronic Form 4

So Ordered

Jessica A. Salvini

Electronically signed on 2025-05-01 16:09:08 page 3 of 3

Smith v. King Asphalt, Inc.

Court of Appeals Case No. 2025-001327

## **ROA - 5**

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Final Order Regarding Motion to Reconsider, filed May 27, 2025. (App. 22) /

Final Order Regarding Motion to Reconsider, filed on May 27, 2025. (Resp. 16)

|                         |   |                              |
|-------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF PICKENS       | ) | THIRTEENTH JUDICIAL CIRCUIT  |
|                         | ) |                              |
| Michael and Mary Smith, | ) |                              |
|                         | ) | FINAL ORDER REGARDING        |
| Plaintiff,              | ) | MOTION TO RECONSIDER         |
| vs.                     | ) |                              |
|                         | ) |                              |
| King Asphalt, Inc.,     | ) |                              |
|                         | ) | Case No.: 2021-CP-39-00329   |
| Defendants.             | ) |                              |

A Rule 59(e), SCRCP motion to reconsider and to alter or amend has been received, filed with the Court on February 28, 2025, and served on the Court on February 28, 2025. Plaintiffs' then filed a Supplement – Plaintiffs' Motion to Reconsider Pursuant to Rule 59(e) on March 20, 2025 and served it upon the Court on March 21, 2025. As previously explained, pursuant to Rule 59(f), SCRCP, the Court, in its discretion, may decide the motion based on briefs without oral argument. The Court indicated to the parties by prior order in the Initial Order Regarding Motion for Reconsideration that it would decide the issues on written submissions. Further, the Court informed the parties that written submissions were not required by the non-moving party, and that the moving party could rely upon its filings or supplement. Plaintiffs then filed a Motion for Leave to File a Surreply to Defendant's Return to Plaintiffs' Motion to Reconsider, which this Court granted. The deadlines to file written submissions regarding this motion has now passed.

After careful consideration of the able arguments and filings of Counsel and review of the record, the Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or fact not appropriately considered.

Accordingly, the Motion for Reconsideration made pursuant to Rule 59, SCRCP,<sup>1</sup> is respectfully DENIED.

IT IS SO ORDERED.

**Presiding Judge's Signature Page to Follow.**

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<sup>1</sup> The Court, in its discretion, has determined this Motion on the filings, without oral argument, pursuant to Rule 59(f), SCRCP.



Pickens Common Pleas

**Case Caption:** Michael Smith , plaintiff, et al VS Themistoklis Economo , defendant,  
et al  
**Case Number:** 2021CP3900329  
**Type:** Order/Other

So Ordered

Jessica A. Salvini

Electronically signed on 2025-05-27 12:21:53 page 2 of 2

Smith v. King Asphalt, Inc.

Court of Appeals Case No. 2025-001327

# ROA - 6

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Order (Electronic Form 4), entered June 24, 2025. (App. 25)

## FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF Pickens  
IN THE COURT OF COMMON PLEAS

## JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP3900329

Michael Smith et al  
PLAINTIFF(S)

King Asphalt Inc  
DEFENDANT(S)

## DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);  
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;  
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):  
☐ Affirmed; ☐ Reversed; ☐ Remanded;  
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:** ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

The Plaintiffs have filed a Motion to Proceed In Forma Pauperis regarding the appeal of the Order granting Summary Judgment and Order denying the Motion to Reconsider which was filed on May 27, 2025. First, the Notice of Appeal should comply with Rule 203, S.C. Appellate Court Rules ("SCACR"). Upon compliance with Rule 203, this appellate court has exclusive jurisdiction over the appeal. See Rule 205, SCACR. Any Motions regarding the Appeal shall comply with Rule 240, SCACR. The basis for Plaintiffs' Motion does not appear to fall within the general outline provided by Ex Parte Martin v. State, 321 S.C. 533 (Sup 1995). Further, this Court is not aware of any authority allowing a Circuit Court to waive the fees payable to the South Carolina Court of Appeals. Therefore, the Plaintiffs' Motion is denied.

## ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

## For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 06/24/2025 .

Mary Ann Smith for Mary Ann Smith  
Mary Ann Smith for Mary Ann Smith  
Michael Smith for Michael Smith  
Michael Smith for Michael Smith

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

**Court Reporter:**

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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## Pickens Common Pleas

**Case Caption:** Michael Smith , plaintiff, et al VS Themistoklis Economo , defendant,  
et al  
**Case Number:** 2021CP3900329  
**Type:** Order/Electronic Form 4

So Ordered

Hon Perry H. Gravely, Chief Administrative  
Judge-Civil

Electronically signed on 2025-06-24 13:49:40 page 3 of 3

Smith v. King Asphalt, Inc.

Court of Appeals Case No. 2025-001327

# **ROA - 7**

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Summons and Complaint, filed on March 23, 2021. (Resp. 1) / The Complaint.

(App. 1)

|                                 |   |                              |
|---------------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA         | ) | IN THE COURT OF COMMON PLEAS |
|                                 | ) | THIRTEENTH JUDICIAL CIRCUIT  |
| COUNTY OF PICKENS               | ) |                              |
|                                 | ) |                              |
| Michael and Mary Smith,         | ) | Case No.: 2021-CP-39-_____   |
| Plaintiffs,                     | ) |                              |
|                                 | ) |                              |
| vs.                             | ) | <b>SUMMONS</b>               |
|                                 | ) | <b>(JURY TRIAL DEMANDED)</b> |
|                                 | ) |                              |
| Themistoklis Economou, King     | ) |                              |
| Asphalt Inc. and South Carolina | ) |                              |
| Department of Transportation    | ) |                              |
| (SCDOT),                        | ) |                              |
| Defendants.                     | ) |                              |
| _____                           | ) |                              |

**TO: THE DEFENDANTS ABOVE-NAMED: THEMISTOKLIS ECONOMOU, KING ASPHALT INC., STATE OF SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION (SCDOT):**

**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 Plaintiff's attorney at 122 N. Main Street, Anderson South Carolina, 29621 within thirty (30) days after the service hereof, exclusive of the day of service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint and judgment by default will be rendered against you for the relief demanded in the Complaint.

Anderson, South Carolina  
March 22, 2021.

**s/Donald L. Smith**  
Donald L. Smith (Bar No. 6699)  
Attorney for Plaintiffs  
122 N. Main Street  
Anderson SC 29621  
Telephone: (864) 642-9284  
Facsimile: (864) 642-9285  
[attorneydonaldsmith@gmail.com](mailto:attorneydonaldsmith@gmail.com)

|                                 |   |                              |
|---------------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA         | ) | IN THE COURT OF COMMON PLEAS |
|                                 | ) | THIRTEENTH JUDICIAL CIRCUIT  |
| COUNTY OF PICKENS               | ) |                              |
|                                 | ) |                              |
| Michael and Mary Smith,         | ) | Case No.: 2021-CP-39-_____   |
| Plaintiffs,                     | ) |                              |
|                                 | ) |                              |
| vs.                             | ) | <b>COMPLAINT</b>             |
|                                 | ) | <b>(JURY TRIAL DEMANDED)</b> |
|                                 | ) |                              |
| Themistoklis Economou, King     | ) |                              |
| Asphalt Inc. and South Carolina | ) |                              |
| Department of Transportation    | ) |                              |
| (SCDOT),                        | ) |                              |
| Defendants.                     | ) |                              |
| _____                           | ) |                              |

Plaintiffs, by and through their undersigned attorney, complaining of all Defendants, allege:

### **THE PARTIES**

1. That Plaintiffs, Michael and Mary Smith were, at all times pertinent to this action, citizens and residents of the County of Pickens, State of South Carolina.
2. That Themistoklis Economou, (hereinafter, "Economou") was, at all times pertinent to this action, a citizen and resident of the County of Pickens, State of South Carolina.
3. That King Asphalt Inc., (hereinafter, "Defendant King Asphalt Inc.") was, at all times to this action, a business operating in Pickens County and incorporated in the State of South Carolina.
4. That South Carolina Department of Transportation, (hereinafter, "Defendant SCDOT") is an agency of the State of South Carolina which at all times relevant hereto had the duty, among other things, to properly design, construct and maintain roads and traffic safety devices, including the subject intersection which is the basis of this action.

### **FACTUAL ALLEGATIONS**

5. That the substantial acts and omissions alleged herein occurred in the County of Pickens, State of South Carolina
6. That on or about March 22, 2019, Plaintiffs were traveling southeast on Hwy 8 (Gentry Memorial Highway) in the County of Pickens, State of South Carolina on their moped.
7. That on or about March 22, 2019, Defendant Economou was traveling southeast on Hwy 8 (Gentry Memorial Highway) in the County of Pickens, State of South Carolina.
8. That Plaintiffs and Defendant Economou were driving through an SCDOT work zone being operated by Defendant King Asphalt, Inc.
9. That Plaintiffs and Defendant were in a single file line of vehicles traveling in the left of two lanes, due to the blockage of the right lane by Defendant King Asphalt, Inc. to lay new asphalt. Plaintiffs being the lead vehicle in the pack and Defendant Economou being several places back in the single-file line.
10. That Plaintiff Michael Smith, desiring to make a right turn onto Old Easley Pickens Highway, came to a complete stop to navigate the 3" berm caused by the new pavement laid by King Asphalt, Inc., with all vehicles behind coming to a stop in a single file.
11. That Defendant King Asphalt Inc., at that moment, began removing the orange cones separating the two lanes, opening the right lane to traffic, by means of a truck and worker traveling down the closed lane into the direction of traffic. The worker was picking up the cones. His actions, causing and contributing to confusion in the flow of traffic, when a better/safer methodology was available.

12. That Plaintiff Michael Smith then attempted to cross over the new pavement of the right hand lane to enter Old Easley Pickens Highway.

13. That Defendant Economou simultaneously and recklessly left the line of stopped vehicles, unlawfully passing on the right of several vehicles and unlawfully passing other vehicles in a SCDOT work zone, to collide with Plaintiffs causing grievous bodily injury.

14. That Defendant Economou failed to maintain an adequate distance and violently collided with the side of Plaintiffs' moped.

15. That Defendant Economou flagrantly disregarded SC Code, SCDOT work zone signs, and the flagger for the construction area operated by Defendant King Asphalt, Inc.

16. That due to Defendant Economou's actions or inactions, Plaintiffs suffered bodily injuries and/or aggravation of pre-existing conditions, which have resulted in pain and suffering, mental anguish, the expense of medical and related care and treatment.

**FOR A FIRST CAUSE OF ACTION**  
**(NEGLIGENCE)**

17. That Plaintiffs re-allege and incorporate herein by reference to the allegations contained in paragraphs 1-16 above.

18. That it was the duty of Defendant Economou to use due care to watch where he was driving, to maintain a proper lookout, to reduce his speed to avoid an collision, to maintain a proper distance between his vehicle and that of Plaintiffs, and to control his vehicle in order to avoid a crash.

19. That it was the duty of Defendant King Asphalt Inc. to use due care with the use of proper signage to alert drivers to the upcoming road construction, for drivers to reduce their speed, and for drivers to be prepared to stop to avoid injuries to both motorists and road crew.

20. That it was the duty of Defendant SCDOT to ensure that those contracted to perform needed maintenance and construction to South Carolina roadways comply with all provisions of SCDOT Work Traffic Zone Control and that any individual in this position has the proper training and certification to control traffic.

21. That as a direct and proximate result of the negligence of Defendant Economou in:

- (a) Operating a motor vehicle at a speed that was excessive for the circumstances then and there (40 mph in a 35 mph zone); In failing to maintain a proper lookout;
- (b) In passing to the right of several vehicles in violation of SC Code 56-5-1840;
- (c) In unlawfully passing other vehicles in a SCDOT work zone in violation of SC Code SECTION 56-5-1895;
- (d) In operating said vehicle in a highly improper manner given the circumstances then and there existing;
- (e) In not being mentally and physically alert to the impending dangers;
- (f) In failing to swerve, or change the course of the vehicle, when it was apparent, or should have been apparent by the exercise of due care, that a catastrophe was inevitable; and,
- (g) For failing to exercise the reasonable degree of care which a reasonable and prudent person would exercise under the same or similar circumstances, Plaintiffs suffered;
  - (1) physical injuries and mental anguish.
  - (2) incurred expenses for medical care and treatment, medicines and other types or medical related attention.
  - (3) continue to suffer physical pain and discomfort from this crash.
- (h) All of the above damages were directly and proximately caused by the aforementioned negligence of the Defendant and were incurred without contributory negligence or assumption of the risk on the part of the Plaintiffs.

22. That as a direct and proximate result of the negligence of Defendant King Asphalt Inc. in:

- (a) Failing to properly train employees;
- (b) Failing to have proper warning signage alerting motorists of the upcoming road conditions;
- (c) Failing to maintain proper signage alerting motorists to reduce speed and utilize only one lane until the crew had completed the scheduled work for the day including but not limited to, the complete removal of cones previously blocking the lane under construction;
- (d) Failing to comply with the guidelines set by SCDOT for Work Zone Traffic Control; and,
- (e) For failing to exercise the reasonable degree of care which a reasonable and prudent person would exercise under the same or similar circumstances, Plaintiffs suffered;
  - (1) physical injuries and mental anguish.
  - (2) incurred expenses for medical care and treatment, medicines and other types or medical related attention.
  - (3) continue to suffer physical pain and discomfort from this crash.
- (f) All of the above damages were directly and proximately caused by the aforementioned negligence of the Defendant and were incurred without contributory negligence or assumption of the risk on the part of the Plaintiffs.

23. That as a direct and proximate result of the negligence of Defendant SCDOT in:

- (a) Failing to ensure its contractors adhere to the guidelines set forth in the SCDOT Work Zone Traffic Control guidelines;
- (b) For failing to exercise the reasonable degree of care which a reasonable and prudent person would exercise under the same or similar circumstances, Plaintiffs suffered;
  - (1) physical injuries and mental anguish.
  - (2) incurred expenses for medical care and treatment, medicines and other types or medical related attention.
  - (3) continue to suffer physical pain and discomfort from this crash.

- (c) All of the above damages were directly and proximately caused by the aforementioned negligence of the Defendant and were incurred without contributory negligence or assumption of the risk on the part of the Plaintiffs.

24. That Plaintiffs are entitled to recover from all Defendants for damages caused by their negligent acts.

**FOR A SECOND CAUSE OF ACTION**  
**(RECKLESSNESS)**

25. That Plaintiffs re-allege and incorporate herein by reference to the allegations contained in paragraphs 1-24 above.

26. That the acts and/or omissions of Defendant Economou, including but not limited to failing to maintain a proper lookout and control of his vehicle, constitute a willful, wanton, and reckless disregard for the health and safety of the Plaintiffs and others traveling on the roadway.

27. That Defendant Economou's recklessness factually and proximately caused Plaintiffs' damages, including but not limited to, actual damages such as hospital/medical expenses, but also pain, suffering, loss of consortium, and mental anguish.

28. That the acts and/or omissions of Defendant King Asphalt including, but not limited to, failure to adhere to the SCDOT Work Zone Traffic Control Guidelines constitute a willful, wanton and reckless disregard for the health and safety of the Plaintiffs and others traveling on the roadway

29. That Defendant King Asphalt's recklessness factually and proximately caused Plaintiffs' damages including, but not limited to, actual damages such as, hospital/medical expenses, but also pain, suffering, loss of consortium, and mental anguish.

30. That the acts and/or omissions of Defendant SCDOT including, but not limited to, failure to ensure those contracted to improve the roadways of South Carolina are adhering to the SCDOT Work Zone Traffic Control Guidelines, constitutes a willful, wanton and reckless disregard for the health and safety of the Plaintiffs and other traveling on the roadway.

31. That Defendant SCDOT's recklessness factually and proximately caused Plaintiffs' damages including, but not limited to, actual damages such as, hospital/medical expenses, but also pain, suffering, loss of consortium and mental anguish.

32. That Plaintiffs are entitled to recover from all Defendants for damages caused by their recklessness.

**FOR A THIRD CAUSE OF ACTION**  
**(LOSS OF CONSORTIUM)**

33. Plaintiffs re-allege and incorporate herein by reference to the allegations contained in paragraphs 1-32 above.

34. That Plaintiffs are husband and wife.

35. That as a direct and proximate result of the acts of recklessness, willfulness, and wantonness of all Defendants described herein, Plaintiffs have suffered the loss of each other's companionship, advice, counsel, experience, knowledge and judgment in managing the affairs of one another and their family, and all other damages, both actual and punitive, in a sum to be determined by this Court.

36. That all of which injuries and losses caused damages to Plaintiffs to be determined by this court.

**FOR A FOURTH CAUSE OF ACTION**

**(DAMAGES)**

37. Plaintiffs re-allege and incorporate herein by reference to the allegations contained in paragraphs 1-36 above.
38. That as a direct and proximate result of the negligence, gross negligence, willfulness, wantonness, and recklessness of all Defendants, Plaintiffs suffered numerous injuries.
39. That as a direct and proximate result of the negligence, gross negligence, willfulness, wantonness, and recklessness of all Defendants, Plaintiffs have suffered the following:

**Michael Smith**

- a) Displaced bicondylar fracture of right tibia;
- b) Collapsed vertebrae, lumbar region;
- c) Displaced fracture of proximal phalanx of right ring finger;
- d) Displaced fracture of proximal phalanx of left great toe;
- e) Laceration without foreign body of right elbow;
- f) Other fracture of upper and lower end of right fibula;
- g) Right knee abrasions;
- h) Closed fracture of right tibial plateau;
- i) Closed fracture of proximal end of right fibula, unspecified fracture;
- j) Closed Compression fracture of body of L1 vertebrae;
- k) Closed nondisplaced fracture of proximal phalanx of left great toe with routine healing; and,
- l) Closed bicondylar fracture of right tibial plateau;

**Mary Smith**

- a) Lower abdominal and pelvic pain due to abrasions;
  - b) Acute concussion; and,
  - c) Abrasions over dorsal hands.
40. That Plaintiffs are entitled to recover from actual and punitive damages from Defendants in an amount to be determined by this Court.

**FOR A FIFTH CAUSE OF ACTION**  
**(PUNITIVE DAMAGES)**

41. Plaintiffs re-allege and incorporate herein by reference to the allegations contained in paragraphs 1-40 above.
42. That the acts and omissions of Defendants Economou and King Asphalt, Inc., as stated above, were outrageous and taken with such reckless disregard for the safety, well-being, and life of Plaintiffs and others on the road.
43. That as a direct and proximate result of the willful, wanton, and/or omissions of Defendants Economou and King Asphalt, Inc., Plaintiffs suffered physical injuries and/or aggravation of existing conditions, mental anguish, and/or anxiety.
44. That the conduct of Defendants Economou and King Asphalt, Inc., as stated above, justifies an award of punitive damages for each and every claim of Plaintiffs' set forth herein.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs pray for a judgment against all Defendants for actual damages, punitive damages, the costs of this action, attorney fees, and for such other and further relief as the Court may deem just and proper as determined by a jury.

Anderson, South Carolina  
March 22, 2021.

**s/Donald L. Smith**  
Donald L. Smith, (SC Bar#6699)  
Attorney for Plaintiffs  
122 N. Main Street  
Anderson SC 29621  
Telephone: (864) 642-9284  
Facsimile: (864) 642-9285  
[attorneydonaldsmith@gmail.com](mailto:attorneydonaldsmith@gmail.com)

Smith v. King Asphalt, Inc.

Court of Appeals Case No. 2025-001327

# **ROA - 8**

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Affidavit of Service on King Asphalt, Inc., filed on July 16, 2021. (Resp. 2)

|                                           |   |                             |
|-------------------------------------------|---|-----------------------------|
| STATE OF SOUTH CAROLINA                   | ) | IN THE FAMILY COURT         |
|                                           | ) | THIRTEENTH JUDICIAL CIRCUIT |
| COUNTY OF PICKENS                         | ) |                             |
|                                           | ) |                             |
| Michael and Mary Smith,                   | ) | C.A. No.: 2021-CP-39-00329  |
|                                           | ) |                             |
| Plaintiffs,                               | ) |                             |
|                                           | ) |                             |
| v.                                        | ) | AFFIDAVIT OF SERVICE        |
|                                           | ) |                             |
| Themistoklis Economou, King Asphalt, Inc. | ) |                             |
| And South Carolina Department of          | ) |                             |
| Transportation (SCDOT),                   | ) |                             |
|                                           | ) |                             |
| Defendants.                               | ) |                             |

The undersigned, **Kirsten Smith**, being duly sworn, says that she served Defendant King Asphalt, Inc., by and through, Registered Agent of Service, Michael E. Van Daele. a Summons and Complaint by US Postal Service, Certified/Return Receipt on July 13, 2021 at the following address:

*2127 Greenville Hwy, Liberty SC 29657*

Kirsten Smith

SWORN before me this 16th day  
Of July 2021.

Notary Public for South Carolina  
My Commission Expires: 11/18/2024

| SENDER: COMPLETE THIS SECTION                                                                                                                                                                                                                                                                                              |  | COMPLETE THIS SECTION ON DELIVERY                                                                                                               |                     |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|-------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|
| <ul style="list-style-type: none"> <li>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul> |  | A. Signature<br>X <i>August M...</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee                                          |                     |
| 1. Article Addressed to:<br>King Asphalt<br>By's through Reg. Agent<br>Michael E. Van Dack<br>2127 Greenville Hwy<br>Liberty SC 29657                                                                                                                                                                                      |  | B. Received by (Printed Name)                                                                                                                   | C. Date of Delivery |
| 2. Article Number<br>(Transfer from service label)<br>PS Form 3811, July 2013                                                                                                                                                                                                                                              |  | D. Is delivery address different from item 1? <input type="checkbox"/> Yes<br>If YES, enter delivery address below: <input type="checkbox"/> No |                     |
| 3. Service Type<br><input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Priority Mail Express™<br><input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise<br><input type="checkbox"/> Insured Mail <input type="checkbox"/> Collect on Delivery     |  | 4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes                                                                                |                     |
| 7014 2870 0001 7928 5120                                                                                                                                                                                                                                                                                                   |  | Domestic Return Receipt                                                                                                                         |                     |

| UNITED STATES POSTAL SERVICE                                               |                                                                    |
|----------------------------------------------------------------------------|--------------------------------------------------------------------|
| GREENVILLE SC 296<br>13 JUL 2021 PM 2 L                                    | First-Class Mail<br>Postage & Fees Paid<br>USPS<br>Permit No. G-10 |
| • Sender: Please print your name, address, and ZIP+4® in this box•         |                                                                    |
| Attorney Office of Donald Smith<br>122 N. Main Street<br>Anderson SC 29621 |                                                                    |
| <i>Michael Smith</i>                                                       |                                                                    |

Smith v. King Asphalt, Inc.

Court of Appeals Case No. 2025-001327

# ROA - 9

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Defendant South Carolina Department of Transportation (SCDOT'S) Motion to  
Dismiss, filed on July 21, 2021. (Resp. 6)

STATE OF SOUTH CAROLINA  
COUNTY OF PICKENS

Michael and Mary Smith,

Plaintiffs,

vs.

Themistoklis Economou, King Asphalt  
Inc. and South Carolina Department of  
Transportation (SCDOT),

Defendants.

IN THE COURT OF COMMON PLEAS  
THIRTEENTH JUDICIAL CIRCUIT

C/A NO. 2021-CP-39-00329

DEFENDANT

SOUTH CAROLINA DEPARTMENT  
OF TRANSPORTATION (SCDOT'S)  
MOTION TO DISMISS

TO: DONALD L. SMITH, ESQUIRE, AS ATTORNEY FOR THE PLAINTIFFS:

Defendant South Carolina Department of Transportation (SCDOT) by and through its undersigned attorneys will move before the presiding Judge for the Court of Common Pleas of Pickens County, South Carolina at the Pickens County Courthouse on the 10<sup>th</sup> day after service thereof or at such other time and place the Court may direct that the Plaintiff's action be dismissed pursuant to Rule 12(b)(6), SCRCF. The grounds for Defendant's Motion are as follows:

1. Plaintiffs' action against Defendant SCDOT should be dismissed because the Plaintiffs failed to file their action within the applicable statute of limitations.
2. Defendant SCDOT cannot be held liable for the actions of a person other than an employee pursuant to the South Carolina Tort Claims Act.

McDONALD PATRICK POSTON HEMPHILL & ROPER, LLC

By: s/Steven M. Pruitt

Steven M. Pruitt, Esquire, SC Bar #66201  
414 Main Street (29646)  
Post Office Box 1547  
Greenwood, SC 29648  
864-388-1014 [spruitt@mcdonaldpatrick.com](mailto:spruitt@mcdonaldpatrick.com)  
ATTORNEYS FOR DEFENDANT SCDOT

July 21, 2021  
Greenwood, South Carolina

Smith v. King Asphalt, Inc.

Court of Appeals Case No. 2025-001327

# **ROA - 10**

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Stipulation of Dismissal, filed on July 27, 2021. (Resp. 7)

STATE OF SOUTH CAROLINA  
COUNTY OF PICKENS

) IN THE COURT OF COMMON PLEAS  
) THIRTEENTH JUDICIAL CIRCUIT  
)

Michael and Mary Smith,

) C/A NO. 2021-CP-39-00329  
)

Plaintiffs,

vs.

) STIPULATION OF DISMISSAL  
)

Themistoklis Economou, King Asphalt  
Inc. and South Carolina Department of  
Transportation (SCDOT),

Defendants.

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The parties hereto, by and through their undersigned attorneys, hereby stipulate to the dismissal, with prejudice, of this action against the South Carolina Department of Transportation (SCDOT). The action will continue as to the remaining Defendants. The dismissal of SCDOT is not intended to have and shall not have any impact on the action against the remaining Defendants.

By: s/ Donald L. Smith  
Donald L. Smith, Esquire, SC Bar #6699  
ATTORNEY FOR THE PLAINTIFFS

By: s/ Steven M. Pruitt  
Steven M. Pruitt, Esquire, SC Bar #66201  
ATTORNEY FOR DEFENDANT SCDOT

July 27, 2021  
Pickens, South Carolina

Smith v. King Asphalt, Inc.

Court of Appeals Case No. 2025-001327

# **ROA - 11**

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Answer of King Asphalt, filed on August 2, 2021. (Resp. 4) / The Answer of King  
Asphalt, Inc. (App. 2)

|                                        |   |                                     |
|----------------------------------------|---|-------------------------------------|
| STATE OF SOUTH CAROLINA                | ) | IN THE COURT OF COMMON PLEAS        |
|                                        | ) | FOR THE THIRTEENTH JUDICIAL CIRCUIT |
| COUNTY OF PICKENS                      | ) |                                     |
|                                        | ) | C.A. No.: 2021-CP-39-00329          |
| Michael and Mary Smith,                | ) |                                     |
|                                        | ) | <b>ANSWER OF KING ASPHALT, INC.</b> |
| Plaintiffs,                            | ) |                                     |
|                                        | ) | (Jury Trial Demanded)               |
| v.                                     | ) |                                     |
|                                        | ) |                                     |
|                                        | ) |                                     |
| Themistoklis Economou, King Asphalt,   | ) |                                     |
| Inc., and South Carolina Department of | ) |                                     |
| Transportation (SCDOT),                | ) |                                     |
|                                        | ) |                                     |
| Defendants.                            | ) |                                     |

Defendant, King Asphalt, Inc., answers the Complaint of the Plaintiffs as follows:

FOR A FIRST DEFENSE

1. Denies each and every allegation of the Complaint not herein specifically admitted, qualified, or explained.
2. Does not have sufficient information to form a belief as to the truth of the allegations of paragraphs one (1) and two (2) of the Complaint, and, therefore, denies the same and demands strict proof thereof.
3. Admits the allegations of paragraph three (3) of the Complaint.
4. Does not have sufficient information to form a belief as to the truth of the allegations of paragraph four (4) of the Complaint, and, therefore, denies the same and demands strict proof thereof.
5. Does not have sufficient information to form a belief as to the truth of the allegations of paragraphs five (5), six (6), seven (7), eight (8), nine (9), and ten (10) of the Complaint, and, therefore, denies the same and demands strict proof thereof.
6. Denies the allegations of paragraph eleven (11) of the Complaint.

7. Does not have sufficient information to form a belief as to the truth of the allegations of paragraphs twelve (12), thirteen (13), fourteen (14), fifteen (15), and sixteen (16) of the Complaint, and, therefore, denies the same and demands strict proof thereof.

8. Realleges and reasserts its responses to paragraphs one (1) through sixteen (16) of the Complaint in response to paragraph seventeen (17) of the Complaint as if fully reiterated here in verbatim.

9. Does not have sufficient information to form a belief as to the truth of the allegations of paragraph eighteen (18) of the Complaint, and, therefore, denies the same and demands strict proof thereof.

10. Does not have sufficient information to form a belief as to the truth of the allegations of paragraph nineteen (19) of the Complaint, and, therefore, denies the same and demands strict proof thereof.

11. Does not have sufficient information to form a belief as to the truth of the allegations of paragraph twenty (20) of the Complaint, and, therefore, denies the same and demands strict proof thereof.

12. Does not have sufficient information to form a belief as to the truth of the allegations of paragraph twenty-one (21), subparts (a) through (h), of the Complaint, and, therefore, denies the same and demands strict proof thereof.

13. Denies the allegations of paragraph twenty-two (22), subparts (a) through (f), of the Complaint.

14. Does not have sufficient information to form a belief as to the truth of the allegations of paragraph twenty-three (23), subparts (a) through (c), of the Complaint, and, therefore, denies the same and demands strict proof thereof.

15. Denies the allegations of paragraph twenty-four (24) of the Complaint as it relates to this defendant; does not have sufficient information to form a belief as to the truth of the remaining allegations of paragraph twenty-four (24) of the Complaint, and, therefore, denies the same and demands strict proof thereof.

16. Realleges and reasserts its responses to paragraphs one (1) through twenty-four (24) of the Complaint in response to paragraph twenty-five (25) of the Complaint as if fully reiterated here in verbatim.

17. Does not have sufficient information to form a belief as to the truth of the allegations of paragraphs twenty-six (26) and twenty-seven (27) of the Complaint, and, therefore, denies the same and demands strict proof thereof.

18. Denies the allegations of paragraphs twenty-eight (28) and twenty-nine (29) of the Complaint.

19. Does not have sufficient information to form a belief as to the truth of the allegations of paragraphs thirty (30) and thirty-one (31) of the Complaint, and, therefore, denies the same and demands strict proof thereof.

20. Denies the allegations of paragraph thirty-two (32) of the Complaint as it relates to this defendant; does not have sufficient information to form a belief as to the truth of the remaining allegations of paragraph thirty-two (32) of the Complaint, and, therefore, denies the same and demands strict proof thereof.

21. Realleges and reasserts its responses to paragraphs one (1) through thirty-two (32) of the Complaint in response to paragraph thirty-three (33) of the Complaint as if fully reiterated here in verbatim.

22. Does not have sufficient information to form a belief as to the truth of the allegations of paragraphs thirty-four (34), thirty-five (35), and thirty-six (36) of the Complaint, and, therefore, denies the same and demands strict proof thereof.

23. Realleges and reasserts its responses to paragraphs one (1) through thirty-six (36) of the Complaint in response to paragraph thirty-seven (37) of the Complaint as if fully reiterated here in verbatim.

24. Denies the allegations of paragraphs thirty-eight (38) and thirty-nine (39), subparts (a) through (l), and, second subparts, (a) through (c), of the Complaint.

25. Denies the allegations of paragraph forty (40) of the Complaint.

26. Realleges and reasserts its responses to paragraphs one (1) through forty (40) of the Complaint in response to paragraph forty-one (41) of the Complaint as if fully reiterated here in verbatim.

27. Denies the allegations of paragraphs forty-two (42), forty-three (43), and forty-four (44) of the Complaint as it relates to this defendant; does not have sufficient information to form a belief as to the truth of the remaining allegations of paragraphs forty-two (42), forty-three (43), and forty-four (44) of the Complaint, and, therefore, denies the same and demands strict proof thereof.

#### FOR A SECOND DEFENSE

28. The plaintiffs are not entitled to recover for attorney's fees and the request for attorney's fees should be stricken from the Complaint.

#### FOR A THIRD DEFENSE

29. The plaintiffs' claim for punitive damages violates both the Fourteenth Amendment of the United States Constitution and Article 1, Section 3 of the South Carolina

Constitution in that the jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of a meaningful standard and is inconsistent with due process guarantees.

FOR A FOURTH DEFENSE

30. That plaintiffs' claim for punitive damages violates the Fifth, Sixth and Fourteenth Amendment of the United States Constitution and Article 1, Section 3 of the South Carolina Constitution for even if it could be argued that a standard governing the imposition of punitive damages exists, this standard is void for vagueness.

FOR A FIFTH DEFENSE

31. That the plaintiffs' claim for punitive damages violates the equal protection clause of the Fourteenth Amendment of the United States Constitution and Article 1, Section 3 of the South Carolina Constitution in that the amount of punitive damages is based upon the wealth of the defendant.

FOR A SIXTH DEFENSE

32. That the plaintiffs' claim for punitive damages violated the Federal doctrine of separation of powers and Article 1, Section 8, of the South Carolina Constitution for the reason that punitive damages are a creation of the judicial branch of government which invades the province of the legislative branch of government.

FOR A SEVENTH DEFENSE

33. To the extent punitive damages are claimed, this defendant demands a bifurcated jury trial. Defendant also pleads the limitations and statutory caps pursuant to South Carolina law and specifically, but not limited to, South Carolina Code Ann. § 15-32-530 and hereby

notifies the plaintiffs and their attorney that the defendant seeks to have the statutory limitations applied in this case.

FOR AN EIGHTH DEFENSE

34. The negligence, recklessness, willfulness and wantonness of the Plaintiff, combining and concurring with these Defendants, if any, and the same is denied, was a direct and proximate cause of the Plaintiff's injuries and damages and without which the same would not have occurred, and was greater in proportion to that of these Defendants, if any, and same is denied, and, therefore, the Plaintiff may not recover from the Defendants for any of his alleged injuries or damages complained of in the Complaint. These Defendants, therefore, expressly plead the contributory and comparative negligence, recklessness, willfulness and wantonness of the Plaintiff as a bar to any recovery against these Defendants.

FOR A NINTH DEFENSE

35. Plaintiffs' claims are barred, in whole or in part, because any injuries and damages allegedly sustained or incurred by plaintiff were caused, in whole or in part, by acts or omissions of others for whose conduct this defendant is not responsible.

WHEREFORE, having fully answered, this defendant demands a trial by jury and that the Complaint of the plaintiffs be dismissed and that this defendant be granted such other and further relief as may be appropriate in an amount to be determined by the court.

s/Catharine Garbee Griffin  
 Catharine Garbee Griffin  
 SC Bar No.: 9821  
 BAKER, RAVENEL & BENDER, LLP  
 3710 Landmark Drive, Suite 400  
 Post Office Box 8057  
 Columbia, South Carolina 29202  
 Phone (803) 799-9091; Fax: (803) 779-3423  
 E-Mail: [cgriffin@brblegal.com](mailto:cgriffin@brblegal.com)  
*Attorneys for Defendant King Asphalt, Inc.*

July 15, 2021

Smith v. King Asphalt, Inc.

Court of Appeals Case No. 2025-001327

# ROA - 12

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Affidavit of Service on Themistoklis Economou, filed on September 2, 2021.

(Resp. 3)

**AFFIDAVIT OF SERVICE**

State of South Carolina

County of Pickens

Common Pleas Court

Case Number: 2021-CP-3900329

Plaintiff:

**Michael and Mary Smith**

vs.

Defendant:

**Themistoklis Economou, King Asphalt Inc. and South Carolina  
Department of Transportation**

For:

Donald Smith

Attorney At Law Office Of Donald Smith

122 N. Main Street

Anderson, SC 29621

Received by TLG Enterprises, LLC on the 26th day of August, 2021 at 4:18 pm to be served on  
**Themistoklis Economou, 329 Mukberry Road, Easley, SC 29640.**

I, Terrence Griffin, being duly sworn, depose and say that on the **31st day of August, 2021 at 3:15 pm, I:**

**SUBSTITUTE** served by delivering a true copy of the **Summons (Jury Trial) Demanded and Complaint** with the date and hour of service endorsed thereon by me, to: **Teresa Economou as Wife** at the address of: **329 Mukberry Road, Easley, SC 29640**, the within named person's usual place of **Abode**, who resides therein, who is fifteen (15) years of age or older and informed said person of the contents therein, in compliance with state statutes.

**Additional Information pertaining to this Service:**

8/29/2021 3:24 pm Attempted Service on this day and Mr. Economou refused service and told me to leave their property while shouting he was exonerated from the case/incident. Also during that time of the service Mr. Economou dog was very close to biting me.

**AFFIDAVIT OF SERVICE For 2021-CP-3900329**

I certify that I am over the age of 18, have no interest in the above action, and am a Certified Process Server, in good standing, in the judicial circuit in which the process was served.

Subscribed and Sworn to before me on  
September 1, 2021 by the affiant who is personally  
known to me

Kristi Smith

NOTARY PUBLIC

Expiration Date 4/11/27

Terrence Griffin  
Process Server

Date

Sept. 1, 2021

TLG Enterprises, LLC  
1361 W. Wade Hampton  
Ste. F PMB 250  
Greer, SC 29650  
(864) 501-4064

Our Job Serial Number: TLG-2021000201  
Ref: Economou

Smith v. King Asphalt, Inc.

Court of Appeals Case No. 2025-001327

# ROA - 13

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Answer of Defendant Themistoklis Economou, filed on September 13, 2021.

(Resp. 5)

STATE OF SOUTH CAROLINA  
COUNTY OF PICKENS

Michael and Mary Smith,  
Plaintiff,

vs.

Themistoklis Economou, King Asphalt Inc.  
and South Carolina Department of  
Transportation (SCDOT),  
Defendant.

IN THE COURT OF COMMON PLEAS  
FOR THE THIRTEENTH JUDICIAL  
CIRCUIT

CASE NO.: 2021-CP-39-00329

**ANSWER OF DEFENDANT  
THEMISTOKLIS ECONOMOU  
(Jury Trial Demanded)**

To: Donald L. Smith, Attorney for Plaintiffs Michael and Mary Smith

The Defendant, Themistoklis G. Economou, answering the Complaint of the Plaintiffs, above named, and responding to the allegations as follows:

1. This Defendant lacks sufficient information to form a belief regarding the allegations of Paragraph 1 and, therefore, denies them.
2. This Defendant admits the allegations of Paragraph 2.
3. This Defendant lacks sufficient information to form a belief regarding the allegations of Paragraph 3 and, therefore, denies them.
4. This Defendant lacks sufficient information to form a belief regarding the allegations of Paragraph 4 and, therefore, denies them.
5. This Defendant lacks sufficient information to form a belief regarding the allegations of Paragraph 5 and, therefore, denies them.
6. In response to Paragraph 6, this Defendant admits that on or about March 22, 2019, the Plaintiff was traveling on or near Highway 8 in Pickens County, South

Carolina. This Defendant lacks sufficient information to form a belief regarding the remaining allegations of Paragraph 6 and, therefore, denies them.

7. In response to Paragraph 7, this Defendant admits that on or about March 22, 2019, he traveled on or near Highway 8 in Pickens County, South Carolina. This Defendant lacks sufficient information to form a belief regarding the remaining allegations of Paragraph 7 and, therefore, denies them.

8. This Defendant admits, upon information and belief, the allegations of Paragraph 8.

9. In response to the allegations of Paragraph 9, this Defendant admits that he and the Plaintiff traveled in the left lanes while passing through a construction zone. This Defendant lacks sufficient information to form a belief regarding the remaining allegations of Paragraph 9 and, therefore, denies them.

10. This Defendant denies the allegations of Paragraph 10.

11. This Defendant lacks sufficient information to form a belief regarding the allegations of Paragraph 11 and, therefore, denies them.

12. This Defendant lacks sufficient information to form a belief regarding the allegations of Paragraph 12 and, therefore, denies them.

13. This Defendant denies the allegations of Paragraph 13.

14. This Defendant denies the allegations of Paragraph 14.

15. This Defendant denies the allegations of Paragraph 15.

16. This Defendant denies the allegations of Paragraph 16.

17. In response to the allegations of Paragraph 17, this Defendant realleges and reincorporates the preceding allegations as if fully repeated verbatim herein.

18. In response to the allegations of Paragraph 18, this Defendant admits that he has a duty to drive his vehicle in safe and reasonable manner and believes that he has done so at all times. This Defendant denies the remaining allegations of Paragraph 18.

19. This Defendant lacks sufficient information to form a belief regarding the allegations of Paragraph 19 and, therefore, denies them.

20. This Defendant lacks sufficient information to form a belief regarding the allegations of Paragraph 20 and, therefore, denies them.

21. This Defendant denies the allegations of Paragraph 21.

22. This Defendant denies the allegations of Paragraph 22.

23. This Defendant denies the allegations of Paragraph 23.

24. This Defendant denies the allegations of Paragraph 24.

25. In response to the allegations of Paragraph 25, this Defendant realleges and reincorporates the preceding allegations as if fully repeated verbatim herein.

26. This Defendant denies the allegations of Paragraph 26.

27. This Defendant denies the allegations of Paragraph 27.

28. This Defendant denies the allegations of Paragraph 28.

29. This Defendant denies the allegations of Paragraph 29.

30. This Defendant denies the allegations of Paragraph 30.

31. This Defendant denies the allegations of Paragraph 31.

32. This Defendant denies the allegations of Paragraph 32.

33. In response to the allegations of Paragraph 33, this Defendant realleges and reincorporates the preceding allegations as if fully repeated verbatim herein.

34. This Defendant lacks sufficient information to form a belief regarding the allegations of Paragraph 34 and, therefore, denies them.

35. This Defendant denies the allegations of Paragraph 35.

36. This Defendant denies the allegations of Paragraph 36.

37. In response to the allegations of Paragraph 37, this Defendant realleges and reincorporates the preceding allegations as if fully repeated verbatim herein.

38. This Defendant denies the allegations of Paragraph 38.

39. This Defendant denies the allegations of Paragraph 39.

40. This Defendant denies the allegations of Paragraph 40.

41. In response to the allegations of Paragraph 41, this Defendant realleges and reincorporates the preceding allegations as if fully repeated verbatim herein.

42. This Defendant denies the allegations of Paragraph 42.

43. This Defendant denies the allegations of Paragraph 43.

44. This Defendant denies the allegations of Paragraph 44.

45. Each and every allegation of the Complaint which is not specifically admitted, qualified or explained is denied and strict proof is demanded thereof.

**FOR A FIRST DEFENSE**  
**(Reservation and Non-Waiver)**

46. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

47. This Defendant has not had an opportunity to conduct a thorough investigation or to engage in sufficient discovery regarding the circumstances of the Plaintiff's' allegations. Accordingly, this Defendant reserves the right to amend this Answer to assert additional defenses as may arise during the discovery process.

**FOR A SECOND DEFENSE**  
**(Lack of Proximate Cause)**

48. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

49. All or a portion of the Plaintiffs' damages claimed in this case were not proximately caused by the subject motor vehicle collision, and this defense of lack of proximate cause is pled as a complete and total defense to all claims.

**FOR A THIRD DEFENSE**  
**(Punitive Damages Unconstitutional - Procedural Due Process)**

50. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

51. To the extent that the Complaint seeks punitive or exemplary damages, it violates the right of the Defendant to procedural due process under the Fourteenth Amendment of the United States Constitution and the Constitution of the State of South Carolina, and therefore fails to state a cause of action upon which either exemplary or punitive damages can be awarded.

**FOR A FOURTH DEFENSE**  
**(Punitive Damages Unconstitutional - Substantive Due Process)**

52. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

53. To the extent that the Complaint seeks punitive or exemplary damages, it violates this Defendant's right to substantive due process as provided in the Fifth and Fourteenth Amendments of the United States Constitution and the Constitution of the State of South Carolina, and therefore fails to state a cause of action upon which either exemplary or punitive damages can be awarded.

**FOR A FIFTH DEFENSE**  
**(Failure to State a Claim)**

54. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

55. The Complaint fails to state facts sufficient to constitute a cause of action and the Complaint should be dismissed pursuant to the provisions of SCRCR Rule 12(b)(6).

**FOR A SIXTH DEFENSE**  
**(Failure to Mitigate Damages)**

56. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

57. That the Plaintiff have failed to take prompt and reasonable action under the circumstances to avoid the occurrence of additional damages and such failure to mitigate damages constitutes a complete defense as to that portion of damages which could have been otherwise avoided by reasonable and prompt action on the part of the Plaintiff.

**FOR A SEVENTH DEFENSE**  
**(Comparative Negligence)**

58. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

59. That the injuries and damages sustained by the Plaintiffs, if any, were due to and caused by and were the direct and proximate result of the negligence, carelessness, recklessness, willfulness and wantonness of the Plaintiffs, and recovery should be barred or reduced in proportion to Plaintiff's' negligence as provided by law. That the Plaintiffs were comparatively negligent in one or more of the following

particulars:

- a. In failing and omitting to use due care;
- b. In failing and omitting to maintain a proper lookout;
- c. In failing to properly observe the road and traffic conditions;
- d. In failing to take evasive action to avoid the accident;
- e. In failing to apply brakes or failing to apply them in a timely manner;
- f. In failing to keep the subject motor vehicle under proper control;
- g. In failing to take any evasive action, by any means, to keep from striking the Defendants' vehicle;
- h. In failing to properly equip the subject motor vehicle with adequate and safe steering mechanisms, and if so properly equipped, in failing to properly utilize them;
- i. In failing and omitting to take any precaution whatsoever to avoid being struck by the subject vehicle;
- j. In failing to use the degree of care and caution that a reasonably prudent person would have used under the circumstances then and there prevailing;
- k. Upon such additional grounds as shall become evident through discovery and further development of the facts and issues, reserving all rights to make such further objections or arguments as shall be warranted.

**FOR AN EIGHTH DEFENSE**  
**(Comparative Negligence Reduction)**

60. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

61. In the event the alleged negligence of this Defendant operated as a fifty (50%) percent or greater proximate cause of the accident, which is expressly denied and admitted solely for the purpose of this defense, this Defendant is entitled to a reduction of any amount awarded to the Plaintiffs in an amount equal to that percentage

of his negligence, recklessness and carelessness.

**FOR AN ELEVENTH DEFENSE**  
**(Intervening & Superseding Negligence)**

62. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

63. That if this Defendant was negligent, which is specifically denied, the injuries and damages sustained by the Plaintiffs, if any, were due to and caused by and were the direct and proximate result of the intervening and superseding negligence, carelessness, recklessness, willfulness and wantonness of others. This defense is asserted as a complete and total defense to all claims.

**FOR A NINTH DEFENSE**  
**(Bifurcated Jury Trial)**

64. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

65. To the extent punitive damages are claimed, this Defendant demands a bifurcated jury trial pursuant to S.C. Code Ann. §15-32-200 et. seq. and that said damages, if any, are limited as provided in said act.

**FOR A TENTH DEFENSE**  
**(Negligence of Third Party)**

66. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

67. The Plaintiff's alleged injuries were directly and proximately caused by a party other than this Defendant, who cannot be held liable for the negligence of others.

**WHEREFORE**, having fully answered the Complaint of the Plaintiffs, this Defendant prays for a trial by jury and that the Plaintiffs' Complaint be dismissed,

together with the costs and disbursements of this action and for such other and further relief as this Court may deem just and proper.

CLAWSON and STAUBES, LLC

s/Patrick L. "Trey" Still, III  
Patrick L. "Trey" Still, III  
Bar No.: 74875  
Shelby C. Herbkersman  
Bar No.: 104153  
1000 E North Street, Suite 200  
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[sherbkersman@clawsonandstaubes.com](mailto:sherbkersman@clawsonandstaubes.com)  
Attorneys for Defendant Themistoklis G. Economou

Greenville, South Carolina

September 13, 2021

Smith v. King Asphalt, Inc.

Court of Appeals Case No. 2025-001327

# ROA - 14

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Stipulation on Dismissal with Prejudice Pursuant to Rule 41 as to Themistoklis

Economou Only, filed on January 17, 2024. (Resp. 8)

CLERK OF COURT  
PICKENS COUNTY  
SOUTH CAROLINA  
STATE OF SOUTH CAROLINA

COUNTY OF PICKENS 2024 JAN 17 P 1:41

Michael and Mary Smith,

Plaintiffs,

vs.

Themistoklis Economou and King Asphalt  
Inc.,

Defendants.

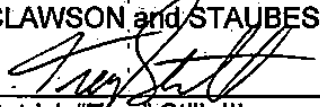
IN THE COURT OF COMMON PLEAS  
FOR THE THIRTEENTH JUDICIAL  
CIRCUIT

CASE NO.: 2021-CP-39-00329

**STIPULATION OF DISMISSAL WITH  
PREJUDICE PURSUANT TO RULE 41  
AS TO THEMISTOKLIS ECONOMOU  
ONLY**

**WHEREAS**, that the Plaintiffs, Michael and Mary Smith, and Defendant Themistoklis Economou have settled and compromised their differences pursuant to Rule 41(a). The Plaintiffs hereby dismiss and ends this action with prejudice as to all claims filed or which could have been filed against Themistoklis Economou arising out of the subject matter of the within lawsuit. **This pleading in no way affects, alters or amends Plaintiffs' claims against King Asphalt Inc.** This is with the consent of all parties who have appeared in this action, with each side to bear its own costs and attorney's fees.

CLAWSON and STAUBES, LLC

  
Patrick "Trey" Still, III  
SC Bar No. 74875  
126 Seven Farms Drive, Suite 200  
Charleston, South Carolina 29492-8144  
Phone: (843) 577-2026  
Attorney for Defendants Themistoklis G.  
Economou

\*\*\*\*ADDITIONAL SIGNATURES TO FOLLOW\*\*\*\*

Baker, Ravenel & Bender, LLP

  
Catharine H. Garbee Griffin, Esq.

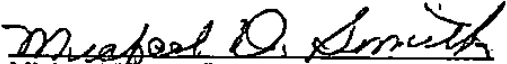
PO Box 8057

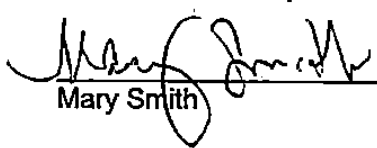
Columbia, SC 29202-8057

Phone:

Attorney for Defendants King Asphalt Inc.

PLAINTIFFS:

 01/08/2024  
Michael "Danny" Smith

 01/08/2024  
Mary Smith

Smith v. King Asphalt, Inc.

Court of Appeals Case No. 2025-001327

# ROA - 15

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King Asphalt, Inc.'s Motion for Summary Judgment, filed on January 19, 2024.

(Resp. 9) / Respondent's Motion for Summary Judgment. (App. 4)

|                                   |   |                                |
|-----------------------------------|---|--------------------------------|
| STATE OF SOUTH CAROLINA           | ) | IN THE COURT OF COMMON PLEAS   |
|                                   | ) | FOR THE THIRTEENTH JUDICIAL    |
| COUNTY OF PICKENS                 | ) | CIRCUIT                        |
|                                   | ) |                                |
| Michael and Mary Smith,           | ) | C.A. No.: 2021-CP-39-00329     |
|                                   | ) |                                |
| Plaintiffs,                       | ) |                                |
|                                   | ) | KING ASPHALT INC.'S MOTION FOR |
| v.                                | ) | SUMMARY JUDGMENT               |
|                                   | ) |                                |
|                                   | ) |                                |
| Themistoklis Economou, King       | ) |                                |
| Asphalt, Inc., and South Carolina | ) |                                |
| Department of Transportation      | ) |                                |
| (SCDOT),                          | ) |                                |
|                                   | ) |                                |
| Defendants.                       | ) |                                |

TO: MICHAEL SMITH AND MARY SMITH, PRO SE:

YOU WILL PLEASE TAKE NOTICE that the defendant, King Asphalt, Inc., will move as soon as practicable before this Honorable Court for an order pursuant to Rule 56 of the South Carolina Rules of Civil Procedure granting this defendant summary judgment on the basis that there is no competent evidence that King Asphalt, Inc. was negligent and did or failed to do something in the road construction project on Highway 8 in either the traffic management or the construction which caused the injuries of the plaintiffs. Furthermore, the plaintiffs cannot prove that King Asphalt, Inc. breached a standard of care applicable to a road construction company because the plaintiffs have presented no expert testimony to support their claim for negligence.

This motion is based upon the applicable law, the depositions which have been taken in this case of the King Asphalt, Inc. employees, the employees of the SC DOT, the witnesses to the case and of the plaintiffs. A memorandum of law and affidavits may also be filed in the future.

s/Catharine Garbee Griffin

Catharine Garbee Griffin

SC Bar No.: 9821

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E-Mail: [cgriffin@brblegal.com](mailto:cgriffin@brblegal.com)

*Attorneys for Defendant King Asphalt, Inc.*

January 19, 2024

Smith v. King Asphalt, Inc.

Court of Appeals Case No. 2025-001327

# ROA - 16

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Handwritten filing of Appellants dated March 25, 2024. (App. 3)

STATE of South Carolina  
County of PICKENS

Michael and Mary Ann Smith

PLAINTIFFS.

vs

Pharmistokis Economou &  
King Asphalt Inc.

DEFENDANTS

CLERK OF COURT  
PICKENS COUNTY  
SOUTH CAROLINA

2024 MAR 25 P 2:09

In the Court of Common Pleas  
for the thirteenth judicial  
circuit

CASE NO. 2021-CP-29-00329

REK WES 2 Relent From  
Joos mrt

RESPECT sir

My wife and I want to ask you please a point Mr Frank Pearson  
as are new friend  
we need help cuz we are old n were sir  
we cant keep track of them any days  
we doan need any rite 2 sud  
we no Mr Frank is not a lyer but  
he is the only one that peep in this suit case  
without Mr Frank help we cant find nothing 1 year  
an hat 2 drop suit case  
we no the Ms. Catherine was but the not justice 4 us

Thank you

Michael D. Smith 03/25/2024  
MICHAEL D. Smith

Mary Ann Smith  
220 S. Main St  
Easley SC 29640  
03/25/2024