

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM SALUDA COUNTY  
Court of Common Pleas

SEP 09 2015

SC Court of Appeals

The Hon. R. Lawton McIntosh, Circuit Court Judge

Case No. 13-CP-41-078

Appellate Case No. 2015-001159

Walter Smith,.....Respondent

v.

Norman K. Tiffany, Individually; Brown Trucking  
Company; and Brown Integrated Logistics, Inc.,.....Appellants.

v.

Corbett James Mizzell, III,.....Respondent

**RESPONDENT CORBETT JAMES MIZZELL, III'S  
MOTION TO CERTIFY APPEAL TO SUPREME COURT**

The Respondent, Corbett James Mizzell, III ("Mizzell"), by and with the consent of the co-Respondent, Walter Smith ("Smith"), respectfully moves that this action be certified for review by the Supreme Court pursuant to Rule 204(b) of the South Carolina Appellate Court Rules.

## FACTUAL BACKGROUND

This arises out of a motor vehicle accident occurring in Saluda County, South Carolina, on December 7, 2012. On that date a tractor trailer being operated by Appellant Norman K. Tiffany ("Tiffany"), an employee of the Appellants Brown Trucking Company and Brown Integrated Logistics (collectively "Brown Trucking"), was parked along the right-hand side of the east-bound lane of U.S. 178 adjacent to the entrance/exit of a gas station parking lot. Mizzell stopped at that gas station on the morning of the collision, and as he was exiting the gas station parking lot, Tiffany's truck blocked his vision of traffic approaching in the east-bound lane. As Mizzell pulled forward, Mizzell's vehicle collided with Smith's on-coming vehicle.

Prior to suit being filed, Mizzell's liability carrier tendered the limits of Mizzell's liability policy to Smith. In return, Smith executed a covenant not to execute in favor of Mizzell.

Smith subsequently brought suit against Appellants. Appellants answered Smith's lawsuit, and asserted third-party claims against Mizzell for declaratory judgment, for relief under the *Uniform Contribution Among Tortfeasors Act*, S.C. Code Ann. §§ 15-38-10 *et seq.* (the "Act"), and for negligence. Appellants named Mizzell as a third-party defendant for the sole purpose of attempting to have him included on the verdict form, at least in name only, so as to enable the jury to apportion fault between the Appellants and Mizzell pursuant to section 15-38-15 of the Act: the Appellants do not seek contribution from Mizzell under the Act, and the negligence claim was pled for the simple purpose of providing a basis for their request allocation of fault under section 15-38-15.

A motion to dismiss filed by Mizzell was denied initially. After discovery was completed, by Order filed May 15, 2015, the circuit court granted Mizzell's motion for summary judgment on all third-party claims. Appellants' notice of appeal was filed May 28, 2015.

## DISCUSSION

In the interests of justice and judicial economy, Mizzell moves that this appeal be certified for review by the Supreme Court before determination by the Court of Appeals. Rule 204(b) of the South Carolina Appellate Court Rules provides:

In any case which is pending before the Court of Appeals, the Supreme Court may, in its discretion, on motion of any party to the case, on request by the Court of Appeals, or on its own motion, certify the case for review by the Supreme Court before it has been determined by the Court of Appeals. Certification is normally appropriate where the case involves an issue of significant public interest or a legal principle of major importance. The effect of such certification shall be to transfer jurisdiction over the case to the Supreme Court for all purposes.

This appeal presents issues surrounding “legal principle[s] of major importance” which have, heretofore, received little attention from this State’s appellate courts. Specifically, the primary issues in this appeal are whether section 15-38-15 abrogates the well-settled rule that a “a plaintiff has the sole right to determine which co-tortfeasor(s) she will sue,” Chester v. S.C. Dep’t of Public Safety, 388 S.C. 343, 698 S.E.2d 559, 560 (2010), and whether it allows a defendant to forcibly implead a third-party, with whom a plaintiff has already settled and whom the plaintiff has not elected to sue, for the purpose of including that third-party on the verdict form for an allocation of fault. These issues are ones that have not, to Mizzell’s knowledge, been addressed by our appellate courts to date, but which are frequently encountered by the trial courts without any direct appellate guidance. Certification and review by the Supreme Court would, therefore, be appropriate under Rule 204(b), SCACR.

## CONCLUSION

For the foregoing reasons, Corbett James Mizzell, III, by and with the consent of the co-Respondent, Walter Smith, respectfully prays that this action be certified for review by the Supreme Court pursuant to Rule 204(b) of the South Carolina Appellate Court Rules.

**THE UNDERSIGNED CERTIFIES THAT PRIOR TO THE FILING OF THIS MOTION, COUNSEL FOR THE APPELLANTS WAS CONSULTED ABOUT THE MATTERS RAISED IN THIS MOTION.**



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SC Court of Appeals

Robert T. King (#066237)

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ATTORNEY FOR CORBETT JAMES

MIZZELL, III

September 3, 2015

**CERTIFICATE OF SERVICE**

I, the undersigned, of the law office of King, Love & Hupfer, LLC, as attorneys for Government Employees Insurance Company, do hereby certify that I have served the RESPONDENT CORBETT JAMES MIZZELL, III'S MOTION TO CERTIFY APPEAL TO SUPREME COURT this September 3, 2015, by depositing the same in a U.S. Postal Box in envelopes, sufficient postage prepaid, properly addressed to the following:

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Robert T. King

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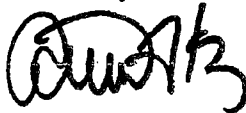
RE: Smith v. Tiffany  
Appellate Case No. 2015-001159  
C/A No. 13-CP-41-078  
Our File 00041.01379

Dear Mr. Shearhouse:

Enclosed are the original and seven copies of the *Respondent Corbett James Mizzell, III's Motion to Certify Appeal to Supreme Court*, along with a \$25.00 filing fee check, in the above-referenced matter. Please file the original and six copies in your records, and return a file-stamped copy to us in the enclosed envelope. By copy of this letter, I am hereby serving opposing counsel with the same and providing a copy to the Court of Appeals.

Thank you for your assistance with this matter.

Sincerely,



Robert T. King  
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RTK/

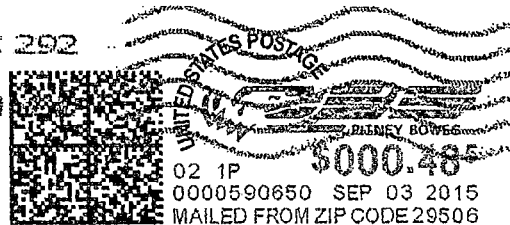
cc: THE HON JENNY ABBOTT KITCHINGS  
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