

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM SALUDA COUNTY  
The Honorable R. Lawton McIntosh, Circuit Judge

\_\_\_\_\_  
Appellate Case No. 2015-001159  
\_\_\_\_\_

**RECEIVED**

SEP 15 2015

SC Court of Appeals

Walter Smith, Respondent,

v.

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

AND

Brown Trucking Company and Brown Integrated Logistics, Third-Party Plaintiffs

v.

Corbett James Mizzell, III, Respondent.

\_\_\_\_\_  
**RETURN OF APPELLANTS BROWN TRUCKING COMPANY AND BROWN  
INTEGRATED LOGISTICS TO RESPONDENT MIZZELL'S  
MOTION TO CERTIFY APPEAL TO SUPREME COURT**  
\_\_\_\_\_

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Attorneys for Appellants

**STATEMENT OF THE CASE  
(Relevant to Current Motion)**

This case arises out of an automotive collision between Plaintiff Smith and Third-Party-Defendant Mizzell. Prior to bringing suit, Smith settled with Mizzell for the \$25,000 coverage available under his insurance policy. Smith then sued the driver of a tractor-trailer which had been parked in front of the convenience store from which Mizzell had exited, as well as the companies for which he was driving (collectively, “the Brown Defendants”). The Brown Defendants filed an Answer and Third-Party Complaint against Mizzell, asserting multiple causes for action, including Declaratory Judgment and the application of S.C. Code § 15-38-15 to this claim.

Mizzell filed a Motion to Dismiss which was denied. Mizzell then filed a Motion for Summary Judgment, asserting, as to some causes of action, the same issues of law which had been rejected in the denial of his Motion to Dismiss. A second Circuit Court Judge then granted his Motion for Summary Judgment in full, which led to this appeal.

**DISCUSSION**

Appellants agree an important issue in this suit is whether the protections granted to defendants in S.C. Code § 15-38-15 are valid or illusory. Appellants also agree that there appears to be no clear appellate decision directly addressing the application of § 15-38-15 to the circumstances of this case. However, the initial issue on appeal here will be whether the second Circuit Court Judge erred in granting summary judgment based on legal arguments which had already been rejected by the first Circuit Court Judge in denying the Motion to Dismiss. If the Appellate Court reverses the Order granting summary judgment on the procedural issue, there would be no need to reach the issues

related to joint and several liability or the application of § 15-38-15 (unless the Court, in its discretion, decides to address them anyway).

An additional issue on appeal will be the Circuit Court's denial of Defendants' request to depose Plaintiff Smith, which is not directly related to the joint and several liability issues.

### CONCLUSION

Therefore, Appellants agree an important issue in this appeal involves the application of § 15-38-15 and other issues related to joint and several liability; however, Appellants are obligated to disclose that their initial issue on appeal will involve a procedural issue (one circuit court judge overruling another circuit court judge) that could fully resolve the current appeal without reaching the joint and several liability issues.

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September 14, 2015

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**PROOF OF SERVICE**  
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I certify that I have served a copy of the **Return of Appellants Brown Trucking Company and Brown Integrated Logistics to Respondent Mizzell's Motion to Certify Appeal to Supreme Court** by depositing a copy it in the United States Mail, postage prepaid, on September 14, 2015, addressed to their respective attorneys of record:

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Corbett James Mizzell, III*

*[Signature on next page]*

September 14, 2015



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September 14, 2015

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SEP 15 2015

SC Court of Appeals

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
1220 Senate Street  
Post Office Box 11629  
Columbia, South Carolina 29201

RE: Walter Smith v. Norman K. Tiffany, Brown Trucking Company and Brown Integrated Logistics, Inc., v. Corbett James Mizzell, III  
C/A Number: 2013-CP-41-078 (Saluda County)  
RTT File Number: 019223.00002

Dear Ms. Kitchings:

Enclosed please find the original and seven copies of the **Return of Appellants Brown Trucking Company and Brown Integrated Logistics to Respondent Mizzell's Motion to Certify Appeal to Supreme Court** and a Proof of Service in the above referenced matter.

Please file the original and return a clocked-in copy to me in the enclosed self-addressed stamped envelope.

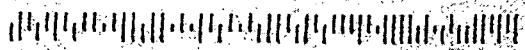
By copy of this letter, I am serving a copy on all counsel of record.

Sincerely,

T. McRoy Shelley, III

cc: (w/enclosure)  
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