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SC SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM SALUDA COUNTY
Court of Common Pleas

The Honorable R. Lawton McIntosh, Circuit Judge

Appellate Case No. 2015-001159

Walter Smith, Respondent,

v.

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

AND

Brown Trucking Company and Brown
Integrated Logistics, Appellants,

v.

Corbett James Mizzell, III, Respondent.

MOTION FOR LEAVE TO FILE AN *AMICUS CURIAE* BRIEF
BY THE SOUTH CAROLINA ASSOCIATION FOR JUSTICE

Pursuant to Rule 213, SCACR, the South Carolina Association of Justice (“SCAJ”) hereby moves this Honorable Court for leave to file an *amicus curiae* brief on the issues related to allocation of fault and construction of S.C. Code Ann. § 15-38-15 (1976, as amended) – the issues addressed by Argument II in the Brief of Appellants.

SCAJ does not seek to take a position on the other issues presented by this appeal.

SCAJ is a professional organization comprised of many South Carolina lawyers who regularly represent individuals in personal injury and wrongful death claims. SCAJ member attorneys regularly represent tort victims and individuals whose constitutional or other legal rights are jeopardized; therefore, SCAJ is interested in this matter because the decision of the Court on the above-described issues could have a dramatic effect on the rights, remedies, and damages available to many of the people its members routinely and currently represent in tort litigation. Consequently, the development, scope, and refinement of the law as it relates to their personal injury and wrongful death clients are of keen interest to members of SCAJ.

The Court's determination of the subject issues will impact the ability of SCAJ members to represent their clients in personal injury and wrongful death actions because it will affect, among other things, decisions on whether to settle with potential tortfeasors, strategy considerations related to commencing litigation, trial strategy, and the ability to recover from defendants and other tortfeasors. Resolution of these issues could affect not only future litigation, but also pending litigation in which settlement and strategy decisions have already been implemented based upon the current state of the law.

In recent years, the South Carolina General Assembly has modified procedural and substantive aspects of this State's tort law system under the politically -motivated guise of "tort reform." Efforts to protect "business interests" through these changes have been heralded as creating a "business friendly environment." Many of these changes have affected (and even restricted) the rights of individuals under South Carolina common law.

In deciding to change tort laws in this fashion, the Legislature acted within its constitutional role to consider the public policies applicable to tort litigants and to pass

legislation that it felt best balanced those competing policies.

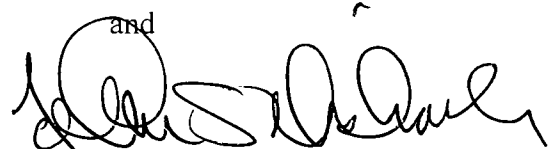
In the matter at hand, Appellants seek to have this Court go one step further and to make additional changes to this State's tort law system – changes which were not expressly adopted by the Legislature but would have substantive effects on litigants' rights. Unlike the General Assembly, though, this Court's constitutional role is not to legislate in this field; rather, its role is to interpret and to give effect to the policy determinations by the Legislature.

An *amicus curiae* brief will provide the Court with a sense of the General Assembly's public policy determinations as well as the constitutional limitations it should consider and weigh in deciding this appeal. Consequently, we respectfully ask the Court to consider SCAJ's *amicus* brief, a copy of which it has conditionally filed with this motion.

Respectfully submitted,

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June 1, 2016
Columbia, South Carolina

On behalf of the South Carolina
Association for Justice

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PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served counsel of record with a copy of the *Motion for Leave to File an Amicus Curiae Brief* and the conditionally filed *Brief of Amicus Curiae South Carolina Association for Justice* by mailing copies of the same by United States Mail with first class postage prepaid to the following addresses:

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