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.

BRIEF OF *AMICUS CURIAE* OF THE SOUTH CAROLINA ASSOCIATION FOR JUSTICE

Bert G. Utsey, III
SC Bar No. 10093
P.O. Box 1164
Walterboro, SC 29488
(843) 549-9544
butsey@pmped.com

John S. Nichols
SC Bar No. 4210
P.O. Box 7965
Columbia, S.C. 29202
(803) 779-7599
jsnichols@bntdlaw.com

Attorneys for The South Carolina Association for Justice

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

RULES

CONSTITUTIONAL PROVISIONS

INTRODUCTION

Appellants' arguments focus upon possible unfavorable results against them and rely heavily on their perceptions of "fairness" and "equity" in support of their claim that this Court should change existing law. (*See, e.g.,* Appellants' Brief, pp. 11, 17, 21 n. 43, 32, 33, 35).

While they go so far as to couch their arguments in terms of "due process" (*id.* at p. 31), Appellants advance no constitutional analysis or true constitutional arguments in support of their position; instead, their arguments rely simply on characterizations of possible outcomes as "unfair" and "inequitable." Even if true, this alone does not create a due process issue. *See, e.g., Foster v. California*, 394 U.S. 440, 448, 89 S. Ct. 1127, 1131, 22 L.Ed.2d 402, 410 (1969) ("But unfairness in result is no sure measure of unconstitutionality.").

Indeed, Appellants' arguments do create a potential constitutional problem – just not a due process one. Rather, the question before the Court raises a separation of powers issue. As discussed further below, the relief requested by Appellants would require this Court to infringe upon the powers of the South Carolina General Assembly, which has addressed the topics raised by Appellants' arguments, considered the competing policies and interests relevant thereto, and legislated definitively on those topics.

The Court should decline to stray from the limits of its constitutional authority. Instead, it should defer to the policy decisions made by the Legislature and should apply the law as written and as clearly intended by the Legislature.

ARGUMENT

1. Multiple Tortfeasor Situations – Generally.

Before addressing the separation of powers issue, it is important to take a closer look at Appellants' claims of unfairness and inequity.[1] This scrutiny reveals that potential unfair results are not limited to parties situated similarly to Appellants, nor are the inequitable results caused by the Uniform Contribution Among Tortfeasors Act, S.C. Code Ann. §§ 15-38-10, *et seq.* (1976, as amended), the statutory scheme at issue in this appeal (the "Contribution Act").

When a person ("P") is injured by the wrongful conduct of another ("D"), the alleged wrongful conduct of a third person ("T") allegedly contributed to P's damages,[2] and P's claims are litigated under current South Carolina law, several factors can affect the resolution of P's tort claims. These factors may generate unfair or inequitable outcomes to one or more of the parties, not just to D.

Significantly, though, none of these factors are *created* by the Contribution Act. Instead, they are the products of real-world variables such as the extent of P's injuries and damages, the fact that there is more than one tortfeasor, impediments to P's ability to sue D or T, P's access to information to meet his burden of proof against D or T, and D's and T's abilities to satisfy a judgment. The Contribution Act provides legislatively dictated

---

[1] In this Brief, Amicus discusses concepts of "fairness" and "equity" in the sense Appellants use those terms: that is, one's perception of a result where he either pays or absorbs an amount unequal to his allocated share of the total liability. In doing so, Amicus does not intend to suggest it agrees such results are *de facto* unfair or inequitable given all applicable policy considerations.

[2] As applied to the facts of the present case, P would represent the Plaintiff in the Circuit Court proceedings below, D would represent the Defendants below, and T would represent the Third-Party Defendant below.

mechanisms for how the law spreads or otherwise allocates the risks of unfairness these factors can create.

Most cases will fall into one of six scenarios illustrated by P's claims:

1. P sues D and T.
2. P sues D and T but his claims against T are limited by the Tort Claims Act.
3. P sues D but chooses not to sue T.
4. P sues D but cannot sue T due to Workers' Compensation Act exclusivity.
5. P sues D but cannot sue T because of another legal impediment.
6. P sues D but does not sue T because of a prior settlement with T.

As the following discussion illustrates, each scenario represents a situation where the Legislature has made policy decisions on how to address the risks of purported unfair outcomes. In each case, the Contribution Act did not create the unfair outcome but is a mechanism for implementing legislative determinations on how to address that outcome.

2. Multiple Tortfeasors – Specific Scenarios.

Scenario 1 – P sues D and T.

In this situation, P bears the risk of certain potential unfair outcomes. In some circumstances, the Contribution Act allows D to benefit from an outcome unfair to P.

For example, P may be able to meet his burden of proof as to D but not as to T; if D is unable to satisfy the full amount of P's judgment, P has to absorb the unpaid loss.[3]

Or, P may obtain a verdict against both D and T; but, D is deemed to be less than 50% at fault and T is unable to pay its percentage of the liability. In this situation, the

[3] The unfairness of this result is enhanced if P had the opportunity to settle with T yet declined to do so. This could happen if P were concerned D could still put T on the verdict form despite the settlement, as Appellants contend in this case.

Legislature has altered the common law rule of joint and several liability to create a benefit to D (liability for less than the entire verdict amount and the amount remaining after T's limited payment) but an unfair result to P (recovery for only a portion of his damages even if D, an adjudicated tortfeasor who caused harm to P, had the means to pay the full verdict). *See* S.C. Code Ann. § 15-38-15(A) (Supp. 2015).

Of course, D could contend that it risks an unfair result if a jury finds it is greater than 50% but less than 100% at fault for P's damages and must pay the full verdict amount per Section 15-38-15(A). Here, however, the Legislature has intervened to provide D with the benefit of a contribution claim against T. S.C. Code Ann. §§ 15-38-15(D) & -20(B). In effect, this reflects a policy determination to shift from P to D the burden of collecting from T given the degree of D's fault in causing harm to P, the innocent actor.

It is noteworthy that under the latter two situations above, D has the benefit of a lower net exposure simply because of the serendipity of a second tortfeasor – a product of actual events, not the operation of law. In other words, the law treats D differently than a sole tortfeasor because of a circumstance over which D generally has no control.

Scenario 2 – P sues D and T but his claims against T are limited by the Tort Claims Act.

In this situation, the Legislature has again implemented policy considerations to affect the ultimate outcome. Under S.C. Code Ann. § 15-78-100(c), a verdict against D and T will be apportioned between the two. As a result of this risk-shifting legislation, D will benefit from any reduction reflected by T's allocation. P bears the risk of absorbing any loss reflected by the difference between D's allocated liability and his ability to pay even though T is an adjudicated tortfeasor that may have had the ability to pay the entire

verdict. P also bears the risk of absorbing a shortfall when the converse occurs and T's share of the liability is greater than its exposure given the limitation on liability set forth in S.C. Code Ann. § 15-78-120(a), although D is an adjudicated (but less than 50%) at fault) tortfeasor and may have the ability to pay the difference between T's allocated share and the Tort Claims Act cap.

Scenario 3 – P sues D but chooses not to sue T.

Admittedly, this scenario is infrequent because P will typically wish to sue both D and T to enhance his potential for recovery. Nevertheless, P may choose not to do so if, for example, T's potential liability is remote, T's ability to pay is questionable, or T cannot be located.

But if P were to pursue this course, he risks the unfair result of not being able to collect his full damages from D if D's ability to pay is limited. P also risks failing to recover at all against D based on D's "empty chair" defense, which the Legislature has expressly retained for D. *See* S.C. Code Ann. § 15-38-15(D). In this instance, the "Plaintiff chooses" rule (to use Appellants' terminology) creates risks for P, not D.

D, on the other hand, risks having to pay the full verdict amount (the same risk he has if he is a sole tortfeasor, a defendant whose fault is 50% or more per Section 15-38-15(A), or a defendant whose fault is aggravated as set forth in Section 15-38-15(F)); however, the Legislature has implemented a policy to reduce this risk by providing D with the right to seek contribution from T. S.C. Code Ann. §§ 15-38-20(B) & -40 (2015).

Scenario 4 – P sues D but cannot sue T due to Workers' Compensation Act exclusivity.

While similar to Scenario 3, this situation is different given the Legislature's public policy decisions that are the foundation of the Workers' Compensation Act. *See*

generally Mendenall v. Anderson Hardwood Floors, 401 S.C. 558, 738 S.E.2d 251 (2013). Given the Act's exclusive remedy provisions – one aspect of its underlying policies – the Legislature did not intend for employers to be subject to contribution claims by defendants because employers cannot be joint tortfeasors. *Gordon v. Phillips Utilities,* 362 S.C. 403, 608 S.E.2d 425 (2005).

Therefore, when P sues D but cannot sue P's employer T, D cannot claim a set-off against P's recovery based on a contribution claim against T. For the same reasons, D cannot separately sue T for contribution.

Amicus acknowledges that the issue of whether D could request to have T on the verdict form in order to allocate fault to T is a matter presently before this Court in *Machin v. Carus Corp.,* Appellate Case no. 2015-000901. The Court's determination of legislative intent with regard to the Workers' Compensation Act and the Contribution Act will dictate the scope of P's and D's rights and risks in this scenario.

Scenario 5 – P sues D but cannot sue T because of another legal impediment.

If T has filed bankruptcy and cannot be sued, if the statute of limitations has expired with respect to P's potential claim against T, or P is unable to obtain jurisdiction over T,[4] P may be forced to sue D only, even if P may have preferred to sue T also.

In this situation, P risks being unable to collect his full damages from D if D's ability to pay is limited. P also risks failing to recover at all against D based on D's "empty chair" defense, which the Legislature has expressly retained for D. *See* S.C. Code Ann. § 15-38-15(D).

[4] This list is intended to be illustrative of legal impediments to suit but not exhaustive.

However, despite the risk of having to pay the full verdict amount (the same risk he has if he is a sole tortfeasor, a defendant whose fault is 50% or greater, or a defendant whose fault is aggravated), D may have the right to seek contribution from T.[5] S.C. Code Ann. §§ 15-38-20(B) & -40.

Scenario 6 – P sues D but does not sue T because of a prior settlement with T.

The public policy of this state strongly favors the settlement of claims. *Riley v. Ford Motor Co.*, 414 S.C. 185, 196, 777 S.E.2d 824, 830 (2015), *citing Chester v. S.C. Dept. of Pub. Safety*, 388 S.C. 343, 698 S.E.2d 559 (2010). Thus, it is no surprise that the General Assembly provided specifically for the situation where P settles with T and then sues only D.

Under these circumstances, the Legislature addresses the prospect of D becoming fully responsible for P's damages by preserving D's ability to defend based on T's negligence, S.C. Code Ann. § 15-38-15(D), and, if unsuccessful, by allowing D to reduce his liability to P based on the amount of T's settlement payment.[6] S.C. Code Ann. §§ 15-38-15(E) & -50(1).

These potential outcomes must also be compared to the unfairness to P of the risk of losing based on D's empty chair defense, as authorized by S.C. Code Ann. § 15-38-

[5] While some circumstances that would bar P's claim against T may also prevent D's claim against T, not all would. For instance, there is a separate statute of limitations that does not begin to run on D's contribution claim until final judgment is entered on P's claim against D. S.C. Code Ann. § 15-38-40(C). Or, P's inability to obtain personal jurisdiction over T in P's action against D would not preclude a contribution action by D against T in a forum where T is subject to personal jurisdiction.

[6] This could actually represent *more* than T's share of P's damages as determined by T's percentage of fault, which would *benefit* D. For example, if T paid $25,000 to settle with P and P obtained a verdict against D for $30,000, D would only have to pay $5,000 even if D was 80% at fault and T was 20% at fault.

15(D), or accepting too little in settlement from T and thereafter failing to meet his burden of proof against D. One must also consider the unfairness to T of paying more than his share of the common liability but not enough to seek contribution against D per S.C. Code Ann. § 15-38-40(C).

3. Separation of Powers and the Effect of Comprehensive Legislative Action on this Subject.

Aside from illustrating the variety of outcomes under different scenarios – and the ways in which they are affected by specific aspects of the Contribution Act and other legislation – the above exercise demonstrates that the allocation of risks among litigants in cases involving multiple potential tortfeasors is a subject on which the General Assembly has spoken frequently and comprehensively. The Legislature's enactments in this area of the law implement its public policy decisions related to the extent of tortfeasors' liability under each of the scenarios discussed.

Indeed, it is the Legislature's exclusive province under our State Constitution to make the laws, which includes "the sole prerogative to make policy decisions; to exercise discretion as to what the law will be." *Hampton v. Haley,* 403 S.C. 395, 403, 743 S.E.2d 258, 262 (2013); *see also* S.C. Const. art. III, §§ 1 & 1.A.

This Court's constitutionally mandated role is to interpret the law as enacted by the General Assembly. The separation of powers doctrine provides that "[i]n the government of this State, the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of another." S.C. Const. art. I, § 8. This Court recently summarized its constitutional limits thusly:

> We may not under some thinly veiled guise of law assert judicial power to an action taken by another branch that lies within its exclusive constitutional authority.

Segars-Andrews v. Judicial Merit Selection Comm'n, 387 S.C. 109, 129-30, 691 S.E.2d 453, 464 (2010).

In discharging its proper function, the Court must be mindful that "[t]he primary rule of statutory construction is to ascertain and give effect to the intent of the Legislature." *Mid-State Auto Auction of Lexington v. Altman,* 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996). This Court has repeatedly recognized that "if the law is to be changed, such change should come from the legislature." *Copeland v. Hous. Auth. of Spartanburg*, 282 S.C. 8, 9, 316 S.E.2d 408, 408 (1984).

> It is often the function of the courts by their judgment to establish public policy *where none on the subject exists. But overthrow by the courts of existing public policy is quite another matter*. That its establishment may have resulted from decisional, rather than statutory law, is, in our opinion, immaterial. Once firmly rooted, such public policy becomes in effect a rule of conduct or of property within the state. In the exercise of proper judicial restraint, the courts should leave it to the people, through their elected representatives in the General Assembly, to say whether or not it should be revised or discarded.

Rogers v. Florence Printing Co., 233 S.C. 567, 574, 106 S.E.2d 258, 261-262 (1958) (emphasis added).

In other words, the Court may not alter or add to the language of a statute to substitute its notion of fairness for the public policy determination expressed and implemented by the Legislature. *Creech v. South Carolina Public Serv. Auth.,* 200 S.C. 127, 146, 20 S.E.2d 645, 652 (1942) ("[Courts] cannot read into a statute something that is not within the manifest intention of the Legislature as gathered from the statute itself. To depart from the meaning expressed by the words is to alter the statute, to legislate and not to interpret. The responsibility for the justice or wisdom of legislation rests with the

Legislature, and it is the province of the Courts to construe, not to make, the laws. There is a marked distinction between liberal construction of statutes, by which courts, from the language used, the subject-matter, and the purposes of those framing them, find out their true meaning, *and the act of a court in ingrafting upon a law something that has been omitted, which the court believes ought to have been embraced.*") (emphasis added). As Justice Kittredge succinctly noted in his dissent in *Abbeville County Sch. Dist. v. State*, 410 S.C. 619, 767 S.E.2d 157 (2014):

> Indeed, "it is not within the power or province of members of the Judiciary to advance their own personal wishes or to implement their own personal notions of fairness under the guise of constitutional interpretation."

Id. at 683, 767 S.E.2d at 191-92, *quoting Hornbeck v. Somerset Cnty. Bd. of Educ.*, 295 Md. 597, 458 A.2d 758, 790 (1983).

Thus, the first order of business in a case such as this is to determine what the statute says. *Wade v. Berkeley County,* 348 S.C. 224, 229, 559 S.E.2d 586, 588 (2002). If a statute's language is plain, unambiguous, and conveys a clear meaning, then "the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *Hodges v. Rainey,* 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). The words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation. *Hitachi Data Sys. Corp. v. Leatherman,* 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992). "A statute as a whole must receive practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers." *Sloan v. S.C. Board of Physical Therapy Exam'rs,* 370 S.C. 452, 468, 636 S.E.2d 598, 606-07 (2006).

The Court must also consider statutory language in light of existing law:

> The Legislature is presumed to enact legislation with reference to existing law, and there is a strong presumption that it does not intend by statute to change common law rules. *See Columbia Real Estate & Trust Co. v. Royal Exchange Assurance,* 132 S.C. 427, 128 S.E. 865 (1924). A statute is not to be construed as in derogation of common law rights if another interpretation is reasonable. *See id.* Statutes in derogation of common law are to be construed strictly to preserve vested rights. *See Crowder v. Carroll,* 251 S.C. 192, 161 S.E.2d 235 (1968).

Hoogenboom v. City of Beaufort, 315 S.C. 306, 318 n. 5, 433 S.E.2d 875, 884 n. 5 (Ct. App. 1992).

In this case, if the Court were to accept Appellants' position on the Contribution Act and to sanction a result at odds with its express language, as applied to the law existing at the time of its enactment, the Court would exceed the bounds of its constitutional mandate by contradicting the policy decisions and intent of the General Assembly. The Court would fundamentally change the manner in which risks are allocated via the Legislature's policy determinations and alter the outcomes outlined in the illustrations discussed above.

Specifically, in order to accept Appellants' arguments, the Court would have to: disregard the fact the Legislature is deemed to have been aware of the "Plaintiff chooses rule," Rule 14, SCRCP, and *First Gen. Servs. v. Miller,* 314 S.C. 439, 445 S.E.2d 446 (1994) when it enacted the Contribution Act; conclude the Legislature's omission of any reference to the "Plaintiff chooses rule" nevertheless reflects an intent to impliedly abolish that common law rule; overlook the differences between the Act's distinct terms "defendant" and "potential tortfeasor"; and construe the statutory term "defendant" as including both "third-party defendants" and "non-party tortfeasors." Each of these actions would violate established principles of statutory construction and the separation of powers clause.

Rather, the Court should be guided by the following:[7]

- The "Plaintiff chooses" rule is an established common law principle. *Doctor v. Robert Lee, Inc.*, 215 S.C. 332, 335, 55 S.E.2d 68, 69 (1949) ("To allow a defendant against the will of the plaintiff to bring in other joint tort-feasors as defendants would deny the plaintiff the right to name whom he should sue."); *Chester v. South Carolina Dept. of Pub. Safety,* 389 S.C. 343, 345-46, 698 S.E.2d 559, 560-61 (2010) (holding under "firmly entrenched common law principles" a Tort Claim Act defendant may not compel plaintiff to join other alleged tortfeasors and noting the right of a plaintiff to determine which co-tortfeasor(s) she will sue is "well-settled"); *accord Rutland v. S.C. Dept. of Transp.,* 400 S.C. 209, 219, 734 S.E.2d 142, 147 (2012) (Pleicones, J., dissenting); *see also Morrow v. Fundamental Long-Term Care Holdings,* 412 S.C. 534, 773 S.E.2d 144 (2015) (this Court recently reaffirmed the long-standing rule that a plaintiff is the architect of his lawsuit). The Legislature enacted Section 15-38-15 with knowledge of this law; yet, it made no express effort to change it but instead adopted a scheme that interacts with the rule in a way that ameliorates the effects of joint and several liability as to some defendants. There is no reason to overcome the "strong presumption" that the Legislature did not intend to abolish the "Plaintiff chooses" rule or to impliedly create a modification of joint and several liability beyond what the Legislature expressed in the statute.

[7] Many of these points are amply briefed by the parties; therefore, Amicus only discusses them briefly.

- Rule 14 of the South Carolina Rules of Civil Procedure has never been interpreted as permitting a defendant to implead a third-party on the basis that that third-party should be liable to the plaintiff. In fact, in *First Gen. Servs. v. Miller, supra.*, this Court expressly ruled that "no right exists to implead a third-party defendant who is *directly* liable to the plaintiff." 314 S.C. at 441, 445 S.E.2d at 447 (emphasis in original). The Legislature had knowledge of these authorities when it enacted Section 15-38-15 but made no provisions to alter them. The Court must therefore presume that the General Assembly did not intend to change the law on this subject.
- In Section 15-38-15, the Legislature chose to use the term "defendant(s)" seventeen times. On the other hand, it used the term "potential tortfeasor" twice, in contrast to the term "defendant"; in fact, it used both terms in one sentence of Section 15-38-15(D) – a distinction it would not have needed to make if the terms were interchangeable – thereby indicating a difference between the terms. Moreover, in commonly understood terms, a "potential tortfeasor" is one who is alleged to have been at fault but whose fault has not been determined; although this could include a party named as a defendant or a non-party, when the terms are contrasted in the statute, it is clear the legislature intended the latter. On the other hand, there can be no serious argument that the term "defendant" means a non-party (see discussion below).
- The term "defendant" has clear and well-established meaning: the party sued and served by the plaintiff who responds to the plaintiff's complaint. *See, e.g.,* Rules 4(a) & 12(a), SCRCP. Similarly, "third-party defendant" is clearly

defined as a party who was not sued by the plaintiff but who is served with a third-party complaint by a defendant. *See, e.g.,* Rules 7(a) & 14(a), SCRCP. Again, the Legislature is deemed to have understood these concepts when it passed the Contribution Act and, thus, its plain and unambiguous choice of terms are to be construed in this light. Simply put, "defendant" and "third-party defendant" are not the same. The statute does not even use the generic term "party," which would be arguably broad enough to encompass properly joined third-party defendants. Thus, when the Legislature used the term "defendant" in Section 15-38-15, the Court must presume it did not intend to include "third-party defendant."

- Likewise, given the established and commonly understood meaning of the term "defendant" as a party to a lawsuit, the Court would violate principles of statutory construction to consider the term as including a non-party.[8]
- The interplay between Subsections 15-38-15(B) and (D) also demonstrates the Legislature's intent. Subsection B speaks of apportionment among "defendants" and Subsection D addresses the rights a "defendant" retains when there are non-parties who are "potential tortfeasors." Under Appellants' interpretation, "defendants" in Subsection B would have to include non-parties. But the use of the term "retain" in Subsection D is significant: It demonstrates the Legislature intended to preserve *existing* rights, not to create new rights. Because there was no right of apportionment among tortfeasors (outside the context of the Tort Claims Act) when Subsection 15-38-15(D)

[8] This point is further demonstrated by the discussion at pages 12-13 of Respondent Smith's Brief regarding the legislative history of Section 15-38-15.

was enacted, apportionment was not a right to which the Legislature could have been referring. However, defendants did have the right to assert the sole negligence of a non-party and a right of contribution among tortfeasors (including non-parties) before the statute was passed into law, so these are the existing rights to which this subsection must refer. Such an interpretation harmonizes Subsection D with Subsection B, *see Porter v. S.C. Pub. Serv. Comm'n,* 327 S.C. 220, 224 n. 3, 489 S.E.2d 467, 469 n. 3 (1997) (the Court must construe different statutory provisions in harmony when it can reconcile them and not render them inoperative), and is further evidence of the legislative intent to limit apportionment "among defendants" but not "other potential tortfeasors."

In summary, the plain language of the Act, the existing case law context of the Act, the legislative history of the Act, and established principles and presumptions of statutory construction all support the conclusion that the Legislature made a policy decision to allow only defendants (and plaintiffs, if there is a defense of comparative negligence, *see* Section 15-38-15(C)(2)) to be listed on the verdict form, while providing to defendants other remedies for potential unfair results. This Court should adhere to its limited constitutional role; respect the policy choices of the General Assembly, and avoid any temptation to substitute its own general concepts of "fairness" under the guise of interpreting the Contribution Act.

CONCLUSION

For the foregoing reasons, as well as other reasons discussed in the Briefs of Respondents, the Court should affirm the decision of the Circuit Court.

Respectfully submitted,

Bert G. Utsey, III, Esquire
SC Bar No. 10093
P.O. Box 1164
Walterboro, SC 29488
(843) 549-9544
butsey@pmped.com

and

John S. Nichols, Esquire
SC Bar No. 4210
P.O. Box 7965
Columbia, S.C. 29202
(803) 779-7599
jsnichols@bntdlaw.com

Attorneys for *Amicus Curiae*
The South Carolina Association for Justice

June 1, 2016
Columbia, South Carolina

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.

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:

Thomas McRoy Shelley, III
Steven T. Moon

Rogers Townsend & Thomas, PC
PO Box 100200
Columbia, SC 29202-3200

Robert Thomas King
King, Love & Hupfer, LLC
PO Box 1764
Florence, SC 29503-1764

Allan Poe Sloan, III
Kristen Bates Fehsenfeld
Pierce, Herns, Sloan & Wilson, LLC
PO Box 22437
Charleston, SC 29413

Ralph Shealy Kennedy, Jr.
Kennedy Law Firm, LLC
PO Box 2559
Batesburg-Leesville, SC 29070

June 1, 2016

Erin Bridges
BLUESTEIN, NICHOLS, THOMPSON
& DELGADO, LLC