THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. Supreme Court

APPEAL FROM YORK COUNTY
COURT OF COMMON PLEAS
THE HONORABLE JOHN C. HAYES, III
CIRCUIT COURT JUDGE

CIVIL ACTION NO. 2007-CP-46-1889

Opinion No. 4995 (S.C. Ct. App. filed June 27, 2012)

Lawrence Keeter, Ronald Travis Keeter, and
Rebecca Keeter,

RESPONDENTS,

versus

Alpine Towers International, Inc. and Ashley Sexton,

Of Whom

Alpine Towers International, Inc. is the

PETITIONER.

PETITION FOR A WRIT OF CERTIORARI

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CERTIFICATION BY COUNSEL

The Court of Appeals issued its decision on June 27, 2012. Alpine Towers filed a Petition for Rehearing on July 12, 2012, which the Court denied on July 31, 2012.

QUESTIONS PRESENTED FOR REVIEW

I. **Did the Court of Appeals err in holding that the proximate cause of Larry's fall was Alpine Towers' failure to design for and train against human error in belaying and the supervision of students belaying where the Plaintiffs' experts conceded that the proximate cause of Larry's fall was either or both:**

(1) the intervening and superseding negligent acts of Fort Mill High School and Ashley Sexton in failing to follow the warnings, directions, and instructions for proper use of the Tower; and

(2) the intervening and superseding negligent acts of Fort Mill High School in failing to undertake its independent duty to properly supervise its students?

II. **Did the Court of Appeals err in affirming the jury's award of punitive damages where there was no clear and convincing evidence of willful, wanton, or reckless conduct by Alpine Towers in designing the Tower or in training the school's staff?**

III. **Did the Trial Court err in refusing to allow the jury to consider and assess the fault of Fort Mill High School, a tortfeasor which settled with the Plaintiffs prior to the lawsuit, under either the Plaintiffs' stipulation or under South Carolina's apportionment statute?**

IV. **Did the Court of Appeals err in overturning the Trial Court's order requiring Larry to elect his remedy where Larry suffered a single injury based upon the same set of facts and is therefore entitled to only one recovery?**

STATEMENT OF THE CASE

This case arises out of a tragic incident that could have been prevented by Fort Mill High School had it not violated an entire series of safety protocols, any one of which would have prevented the accident. The school requested that Alpine Towers install a fifty foot climbing tower to use in its educational curriculum. Alpine Towers trained ten staff members to serve as program facilitators for students. The training included instructions that under all circumstances any belaying activity on the tower must be conducted with (1) a primary belayer, (2) a back-up belayer and (3) a staff supervisor.

The proximate cause of Larry Keeter's fall from the tower was a combined chain of negligent acts by the principal and assistant principal, the ROTC instructor, and the 18 year old

senior student belayer. Had any one of these persons acted with a reasonable degree of care, there would have been no injury. On May 5, 2006, the principal and assistant principal decided to ignore the limitation of using the tower only for educational purposes and to use the tower for the entire school for fun during "Spring Fling." The scene was chaotic and the school's actions would leave the tower without proper adult supervision. Larry, a student, came to the tower when Ashley was by herself with no supervisor and no backup belayer. The supervisor had gone to open the swing-by-choice activity of the tower and he was not at the belay positions. Larry was allowed to climb without the supervisor, without a backup belayer, and with the single belayer deciding to take her brake hand off the rope.

The school settled with Larry and his parents for $600,000.00. [R.pp. 835-40.] That is two tort limit caps of $300,000.00 under the Tort Claims Act § 15-78-120 – one for Larry and one for his parents. After settling with the school for the maximum limits, Larry and his parents filed a complaint on June 4, 2007 against Alpine Towers and Ashley. They asserted negligence and gross negligence against both defendants and alleged the fall was the result of "inadequate supervision and a lack of proper equipment." [R.pp. 117-23.] Alpine Towers answered including as affirmative defenses (1) intervening negligence of third persons; (2) dangerous conditions created by product misuse; and (3) the failure of the school and others to follow warnings, directions, and instructions as to the proper use of the tower. [R.pp. 124-31.] The Plaintiffs amended their complaint to add strict liability and negligence products liability claims. [R.pp. 142-51.] Alpine Towers raised the same defenses in responding. [R.pp. 152-63.]

The trial was from June 15 - 19, 2009. Prior to the trial, Ashley was dismissed pursuant to the Plaintiffs' motion with the stipulation that the apportionment of fault of absent defendants would still be done. [R.pp. 165-67.] The Court denied Alpine Towers' motions for directed verdict. The Court submitted to the jury: (1) strict liability; (2) products liability – negligence; and (3) general negligence. Larry's counsel informed the court that Larry would perhaps elect among the three causes of action prior to the case going to the jury, but later decided to let the

jury decide the three claims. [R.pp. 4-8, 336-40, 497-507.] The verdict form contained a separate section for each cause of action, and each separate section contained a blank for the amount of damages, if any, under that particular claim. [R.pp. 4-8.] Keeter did not object to the verdict form. [R.p. 508.] On June 19, 2009, the jury returned its verdict:

1) Larry on the strict liability claim but awarding zero dollars;

2) Larry in the amount of $900,000.00 actual damages and $160,000.00 punitive damages on products liability – negligence;

3) Larry in the amount of $2,500,000.00 actual damages and $950,000.00 punitive damages on general negligence; and

4) Larry's parents in the amount of $240,000.00 actual damages on loss of service claims. [R.pp. 524-25; 4-8.]

Larry's counsel argued the jury could not find for Larry on strict liability and award no damages and asked the court to send the jury back. Larry had no other objections to any part of the verdict. The jury returned finding $500.00 actual damages. [R.pp. 526-29, 534; 4-8.]

The court allowed the parties brief statements to the jury regarding the apportionment of fault between Alpine Towers and Ashley . The Court did not allow the jury to consider the fault of the school despite the language of S.C. CODE ANN. § 15-38-15 and despite the Plaintiff's stipulation entered upon Ashley's dismissal and the Court's previous representations that it would. [R.pp. 523, 529-42.] With only Alpine Towers and Ashley, the jury apportioned fault:

Alpine Towers: 40% Ashley Sexton: 60%. [R.pp. 8; 546.]

Alpine Towers filed for JNOV on all causes of action on several grounds, including the intervening and superseding negligence of the school and Ashley. It asserted the evidence did not warrant punitive damages. Alternatively, it moved for a new trial on multiple grounds, including the court's refusal to charge that the school's fault should be considered and apportioned. [R.pp. 543-44, 617-39.] Alpine Towers further moved to require Larry to elect among his theories and to reduce damages based upon the jury's apportionment of fault . [R.pp. 617, 637.] The Court heard post-trial motions on July 8, 2009. It issued an order denying the motion for JNOV or a new trial. The court required Larry to elect his recovery. It found Alpine

Towers was not entitled to apportionment pursuant to § 15-38-15. [R.pp. 551-614; 10-29.] Alpine Towers filed a motion to reconsider pursuant to Rule 59(e), SCRCP which was denied. [R.pp. 640-47, 31-39.] Larry elected to recover on general negligence for $2,500,000.00 actual damages and $950,000.00 punitive damages. [R.p. 36.] Larry filed a Notice of Appeal on August 25, 2009. Alpine Towers filed its Notice on August 28, 2009. The Court of Appeals issued its Opinion on June 27, 2012, affirming the jury verdict and the Trial Court's denial of the post-trial motions. It reversed the order requiring Larry to elect among his remedies.

STATEMENT OF FACTS

Fort Mill High School Acquires the Alpine Tower II

Carowinds amusement park owned the Alpine Tower II, a fifty foot tall climbing tower designed by Alpine Towers. In 2004, the principal for Fort Mill High School learned that the tower was available for donation. The school was constructing a ropes course and acquiring a climbing tower would expand its programs. [R.pp. 418-19, 706-08; 666, 847.] Carowinds donated the tower for one dollar, and the school contracted with Alpine Towers to relocate and install the Tower for $29,000.00. Tower installation included all "hardware, materials, shipping, labor, labor team, design work, heavy equipment fees, and staff training." Alpine Towers also furnished a new set of equipment, including ropes, harnesses, helmets, and belay devices. [R.pp. 768-75; 251, 268, 826.]

In belaying one person controls the rope with friction to protect the climber from falling. Belaying can be done adding friction to the rope by wrapping it around the belayer's body. The advent of belay devices was an improvement. A belay device is a piece of equipment used to control the rope. [R.pp. 727, 759.] There are many companies that make belay devices and most of these companies make different types and styles of belay devices. Some of the more widely known companies are Metolius, Mammut, Trango, Petzl, and Black Diamond. The belay device Alpine Towers chose to provide as part of its equipment was made by Trango. The specific Trango belaying device chosen is named Jaws. [R.pp. 264, 456.]

Alpine Towers' Training of Fort Mill High School Staff

Alpine Towers provided a three-day training course conducted by John Mordhurst to ten staff members designated by the school. This course provided the skills necessary for safe programs on the Tower. The training included instruction on Tower set-up, tying knots, fitting participants into harnesses, learning proper climbing and belay techniques, and safety awareness. [R.pp. 800-02; 444-55.] Among those trained were Assistant Principal Brian Turner; ROTC coordinator Sergeant Sprague; and wrestling coach Chris Brock. [R.pp. 800-02; 184, 185-87, 197-98, 379, 381-82, 417-18, 420-21, 428-29, 430-33.] Alpine Towers gave each trainee two different manuals to keep – the Alpine Tower Instructor's Manual and the Challenge Course Instructor's Manual. [R.pp. 648-67; 187, 194, 382-83, 423, 436.]

The Requirement to Always Have a Back-Up Belayer

Mordhurst unequivocally instructed that all belaying activity must utilize two trained belayers –a primary belayer and a back-up belayer. The primary belayer secures the rope for a climber by keeping it taut during the climb. The rope is run through an anchor at the top of the Tower - one end attaches to the climber and the other to the belayer. The belay setup is shown in the illustration on p. 732 of the Record. When a climber begins climbing, the belayer begins to take up the rope, ensuring a consistent, taut rope. The belayer's guide hand pulls down the rope, feeding it into the belay device. At the same time and at the same speed, the belayer's brake hand pulls the rope out the other side of the belay device. The brake hand must never leave the rope. The rope is braked by placing the brake hand in a locked position by pulling the rope downward with the brake hand. [R.pp. 727-28, 731-32; 275-80.] When a climber descends, the belayer lets the rope pass through the belay device in the opposite manner. [R.p. 284.]

Mordhurst verbally instructed, and the manuals state, that "[a]ll belayers, whether they are staff belayers or participant belayers, will be backed up by a second individual, referred to as a *belay monitor* or *back-up belayer.*" [R.pp. 727; 440-42.] The back-up belayer is required to have both hands on the rope at all times standing in a position behind the primary belayer.

[R.pp. 727, 732; 441, 451-52.] The requirement of a back-up belayer with both hands on the rope is emphasized several times in the manual. [R.pp. 711, 727-28, 732.] The back-up belayer is to (1) assist the primary belayer while lowering; (2) take over lowering if something happens to the belayer; (3) manage the rope for tangles and knots when feeding the rope to the primary belayer; and (4) keep proper tension in the rope. [R.pp. 728; 216, 388, 441.] If for any reason the primary belayer loses control of the rope or turns loose of the rope, the back-up belayer is already positioned so that the rope is in a brake position and a fall will not occur. [R.pp. 200, 452.] Brian Turner, Sergeant Sprague, and Chris Brock confirmed they understood that a back-up belayer with both hands on the rope was required at all times and that under no circumstances would anyone climb without both a primary and back-up belayer. [R.pp. 191, 195, 199, 201, 387-89, 407, 425-26.]

The Requirement of Supervision

Mordhurst instructed that adult supervision was always required and that students should never be left unattended at the Tower. Close supervision is necessary to ensure primary belayers and back-up belayers are focused and doing their jobs, and supervisors need to be ready to intervene should any problems arise. Supervisors need to be in close proximity to the rope so that they can grab and brake the rope if needed. [R.pp. 448, 453-54, 465, 471-72, 477-78.]

The Alpine Tower manual states the "Staff to participant ratio on the Alpine Tower will be 1:6." [R.p. 655.] This ratio was never to be exceeded: "Organizations will not exceed the recommended staff-to-participant ratio as indicated for each specific structure and/or activity." [R.pp. 711; 437.] That meant with respect to climbing, one adult facilitator could supervise two side by side climbing stations at once – 2 climbers, 2 primary belayers, and 2 back-up belayers. Each separate activity with the tower requires a supervisor. In addition to climbing stations, this tower had another activity called swing-by-choice. If both activities are going on simultaneously there must be a supervisor for climbing and another supervisor for the swing-by-choice. [R.pp. 438-39.] The Manual mandated "[w]hen participants are on the structure, staff will wear

harnesses and will have appropriate hardware available so rescues can be rapidly executed." [R.p. 711.] This written instruction mirrors Mordhurst's verbal instruction that staff remain in close proximity to the belayers so they can grab the rope in an emergency. The manual stated:

> The first line of defense against having to deal with a participant in a compromised situation on the Tower is to be vigilant with policies and procedures. One moment of lax attention can be all a participant needs to get into a pendulum situation, have a slack belay rope, or create an unsafe situation. Since most participants on Alpine Towers are beginners, ***constantly monitor climbers*** to ensure they do not innocently get themselves into trouble. [R.p. 689 (emphasis added).]

The Requirement for Staff to Conduct Checks of Equipment Prior to Climbs

Alpine Towers also instructed that staff members had to ensure the belayers' and climber's systems were secure prior to each climb with a five-point check of the helmets, harnesses, knots, carabiners, and rope. [R.p. 711.] Sergeant Sprague and Chris Brock testified they understood this requirement. [R.pp. 195, 386, 399-400.]

The Requirement for Facilitators to Advise Student Participants of Risks

Alpine Towers also required risk management procedures. Participants were to complete an *Assumption of Risk Form* and a *Health Disclosure Form* prior to any involvement in the program. The school was to assess a student's *Health Disclosure Form* and decide whether that student should use the Tower. If the student was under the age of 18, parents were required to complete the *Assumption of Risk Form.* This form advised of risks including "physical or emotional injury, paralysis, [or] death." [R.pp. 710, 712, 713-14, 748-49; 442-43.]

Fort Mill High School Uses the Alpine Tower II for Its ROTC Program

The school used the Tower in its ROTC program. The supervisor was Sergeant Sprague. He had extensive military experience including as a Marine assault climber. He was the only staff member that ran programs on the Tower. [R.pp. 379-83, 421-22, 427.] He began training cadets on the Tower around January 2005. The curriculum included classroom instruction on skills such as tying knots as well as time spent on the Tower demonstrating belaying techniques. As Alpine Towers' instructed, students were not allowed to belay until they demonstrated their

proficiency to Sergeant Sprague. He taught that back-up belayers were always required with no exceptions and that no climb could occur until he conducted the five-point inspection and gave the order to proceed. [R.pp. 239-40, 342-46, 383-89, 400-01, 405-06, 407, 408, 410-11.]

In the school year 2005/2006, Ashley Sexton, a high school senior and ROTC cadet, began her Tower training with the Sergeant. [R.pp. 341-42, 371.] She testified that prior to the accident, she spent three to four months of training in preparation of using the Tower, or around 50 hours of instructional time. [R.pp. 233-34, 313-14, 342.] She was required to demonstrate her competency in belaying in a hands on demonstration before the Sergeant. [R.p. 343.] In her deposition, she stated that she had belayed 60-70 students prior to the accident, although at trial she said it was around 10-20 students. She felt confident in her belaying skills. [R.pp. 346-48.] Ashley affirmed that the Sergeant taught her that a back-up belayer must always be used and to "never proceed without one." [R.pp. 346-47.] She agreed that he instructed a supervisor was always required: "There was always be to be belayer, a back-up belayer or belay monitor and a supervisor." She knew the Sergeant had to supervise the five-point check. [R.pp. 347, 349.]

Fort Mill High School Allows Students to Climb the Tower for Fun at Spring Fling

The school planned to hold a Spring Fling – or a recreational field day – on May 5, 2006. [R.pp. 389, 422-23.] The principal, David Damm, and Assistant Principal Brian Turner decided to make climbing the Tower available for all students for fun that day. [R.p. 390.] No ROTC educational programs were planned for that day. The administration wanted the students to climb for fun. There was no evidence that any notice of the school's intent to use the Tower at Spring Fling was given to Alpine Towers.

The plan was to have the Sergeant and the cadets operate the Tower. The ROTC cadets would serve as the primary and back-up belayers for the student climbers. [R.p. 350.] The school did not collect any *Assumption of Risk Forms or Health Disclosure Forms* from students prior to Spring Fling. [R.pp. 272, 422-23.]

The Day of the Accident – A Chaotic Scene

Ashley, an eighteen years old senior, testified she arrived at the Tower around 10:00-11:00 a.m. She described the scene as chaotic, scattered, and loud with a crowd of students waiting to climb. [R.pp. 349-50, 355, 372.] Originally Sergeant Sprague opened two climbing stations on one side of the Tower. Ashley was a back-up belayer at one of the stations. The Sergeant had not opened the swing-by-choice because he thought students would be more interested in climbing. [R.pp. 350, 390-91.] Principal Damm arrived and wanted to know why the swing was not opened. Given these instructions, the Sergeant closed those two climbing points and opened the swing. Those two climbing points were too close to the swing to safely operate both at the same time. He decided to open a climbing point farther away from the swing. [R.pp. 355, 390-92.] The Sergeant switched Ashley from one of the original climbing points to the new one and hooked her in as the primary belayer. The Sergeant checked her knots, reminded her that he needed to check all knots before anyone climbed, and left that climbing station to set up the swing. [R.pp. 351-52, 392-93, 395-99, 402.] He had not yet assigned Ashley a back-up belayer. He left the climbing point unsupervised, a violation of Alpine Towers' requirement for an adult facilitator. [R.pp. 711; 655.] While setting up the swing, he was facing away from the Tower. [R.pp. 352, 395-99, 402-03.]

Larry's Climb Without a Back-up Belayer and Without Supervision

After Sergeant Sprague left Ashley at the new climbing point, Larry walked up and asked if he could climb the Tower. [R.pp. 172, 352.] He was seventeen and had never climbed the Tower. [R.pp. 170, 171, 335.] The school never obtained an *Assumption of Risk Form* from his parents or a *Health Disclosure Form* from Larry. [R.p. 335.] The school never provided any training to Larry. [R.p. 172.] Ashley told Larry to put on the harness. She tightened the harness and made sure everything was tied off. [R.pp. 173-74, 181, 352-53.] The Sergeant never inspected Larry to ensure he was secured properly. [R.pp. 181, 245-46.] According to Ashley,

she called out to Sergeant Sprague for a back-up belayer. When she didn't hear a response, she asked again. Her testimony reveals the chaos and confusion that day during Spring Fling:

> Before Larry began climbing I asked again [about a back-up]. At this time there was a lot going on again. Students were asking about the swing by choice. An upper classman had said well, an administrator said to go ahead and open it. We weren't sure what was going on. He [Sergeant Sprague] was trying to calm everybody down. There was a lot of people around and we had to be careful - -
> . . .
>
> There was a lot of people kind of getting loud and chaotic and it's hard to hear commands back and forth in the situation, so he was trying to figure out what going on, First Sergeant was. [R.p. 355.]

Ashley testified that at some point she thought she was given the instruction by the Sergeant to allow Larry's climb to proceed even though she had no back-up belayer and even though she knew that allowing Larry to climb without a back-up belayer, without being checked by the Sergeant, and without the direct supervision of the Sergeant violated every protocol and procedure she was taught by the Sergeant. [R.pp. 349, 354-59.] Sergeant Sprague testified that he never heard Ashley call to him and never knew Larry was climbing. The Sergeant assumed she would not begin without a back-up belayer. [R.pp. 394, 397-98, 401, 404.]

Ashley and Larry ran through climbing commands, and Larry began his climb without a back-up belayer. [R.pp. 174-75.] Ashley said that during his climb, she called out for a back-up belayer but did not receive one. [R.pp. 359-61, 364-65, 368-69.] Larry reached the top of the Tower. Ashley gave him the go ahead to get in position to come down. [R.pp. 175, 362-63.] When descending the Tower, the climber does not repel down himself but is actually lowered down by the belayer. [R.pp. 176-77, 278.]

Larry's Fall

Ashley experienced no problems in lowering Larry until he was about halfway down. At that point, Ashley thought the rope had gotten tight in the belaying device. She said the rope was not moving so she could not lower him. Despite the fact that a belayer should never let go of the rope with the brake hand, she did just that to see if the rope would move at which point "the rope jumped out of [her][brake hand." She lost control of the rope and tried to grab it to stop it,

getting rope burns in the process, but it was too late. Larry fell approximately twenty feet, landing on his feet, then falling back onto the ground. [R.pp. 177, 180, 292, 303, 366-69, 375-78, 458.] Another cadet ran over to Sergeant Sprague and informed him of Larry's fall. The Sergeant testified this was the first he became aware that Larry was climbing. [R.p. 398.] Larry was taken by ambulance to the hospital. He sustained a fracture of the T-12 vertebra with serious permanent injuries. [R.pp. 177-78, 183, 331.]

The school's investigation concluded there was no defect or failure in the Tower, ropes, harnesses or other equipment. The investigation also concluded that proper processes and safety protocols were in place to have prevented the accident but that these protocols were inexplicably ignored and not followed. [R.pp. 235-38.] Sergeant Sprague, Ashley, and Larry all testified , none of the equipment broke or failed. [R.pp. 182, 370, 409.]

ARGUMENT

The accident should have never happened and it was entirely preventable. The liability, however, has been placed upon the wrong entity for the wrong reasons. There is no evidence the accident would have happened if Fort Mill High School had followed the protocols or just used reasonable judgment as school administrators. Alpine Towers, who has done nothing wrong, finds itself in the legally erroneous position of being sued as the sole named defendant. There were two culpable parties whose multiple acts and omissions caused Larry's injuries. The main reason Alpine Towers finds itself as the defendant is the legislative decision to immunize the school from damages it causes that exceed $300,000.00 per claim. The other is that the second culpable party was Ashley, an eighteen year old student unable to respond to a judgment, and, whom the plaintiff wanted to dismiss.

When severe injuries are caused by one partially immunized party and another judgment proof party who had been dismissed so that a full recovery cannot be had, it is a compelling temptation to look for a deeper pocket whether at fault or not. When a corporate defendant is alone facing a very nice and sympathetic plaintiff, there is a danger that a jury will go beyond the

evidence and award a verdict unless the court does its duty to prevent this unfair verdict on a fault free defendant who is the only defendant the jury can see. It is the province of the court to follow the rule of law and not let emotion, sympathy, or anything else beyond the evidence impose a judgment on a defendant who is not at fault.

The evidence establishes that Alpine Towers was not responsible for Larry's accident and that only the actions of the school and Ashley caused Larry's fall. The case should have never been submitted to the jury. Yet the case was given to the jury and to compound the effect of this error, the jury was not even given the option to consider the fault of the school. Only the Court is allowed to know the full intent and application of set offs, the statutory cap on damages caused by governments, the comparative negligence statute, the joint tortfeasor contribution statute and the legal principles behind the facts that are withheld from juries but used by the Court. It can be tempting to a trial court to let a case go to the jury because the jury may reach a result that relieves the trial court of the need to make a correct but hard decision. However, a jury has neither the facts that are known to the court nor the professional legal knowledge of the court. It is a fundamental error of law for the court not to protect the rights of a fault free defendant.

This Court should grant review of the Court of Appeals' decision to:

1. Correct the unjust imposition of a judgment on a defendant who is not at fault and properly apply the law regarding proximate cause;

2. Address whether under the South Carolina Contribution Among Tortfeasors Act, § 15-38-15, the fault of an absent tortfeasor can be considered and apportioned by the jury in assessing fault, an issue which has never been addressed in the South Carolina appellate courts; and

3. Overturn the Court of Appeals' erroneous application of the election of remedies doctrine which it did in conflict with the longstanding principles of the doctrine in this State.

I. Did the Court of Appeals err in holding that the proximate cause of Larry's fall was Alpine Towers' failure to design for and train against human error in belaying and the supervision of students belaying where the Plaintiffs' experts conceded that the proximate cause of Larry's fall was either or both:

(1) the intervening and superseding negligent acts of Fort Mill High School and Ashley Sexton in failing to follow the warnings, directions, and instructions for proper use of the Tower; and

(2) the intervening and superseding negligent acts of Fort Mill High School in failing to undertake its independent duty to properly supervise its students?

Alpine Towers is not liable for Larry's fall under strict products liability, negligence products liability, or general negligence because Larry's fall was caused by the school's and Ashley's failure to follow the proper procedures. If the principal, David Damm, and the assistant principal Brian Turner had not ordered the use of the tower for Spring Fling, if the principal had not told Sergeant Sprague to stop supervising the climbing stations to open the swing-by-choice, if Sergeant Sprague had not left Ashley and Larry unsupervised and without a backup belayer or himself, if Ashley had not allowed Larry to climb without being checked first by Sergeant Sprague, if Ashley had not allowed Larry to climb without the presence of a backup belayer, if Ashley had not allowed Larry to climb without a supervisor present -- this accident would not have happened. The exercise of reasonable care at any one of these steps would have avoided the injury to Larry. The almost unbelievable failure to exercise due care at any of these links in the chain of causation is what caused Larry's injury. The climbing tower was not defective. The belay device was not defective. They did not cause the accident.

A. A back-up belayer and proper supervision by Fort Mill High School would have prevented Larry's accident.

Larry presented two expert witnesses and they agreed Larry's accident would not have occurred if (1) a back-up belayer had been used and (2) the school had provided adequate supervision over Larry's climb. [R.pp. 209-13, 225-27, 231, 309, 315-21, 324-28.] Expert Gerald George agreed that the operation of the Tower with the Trango Jaws belay device was reasonably safe under proper conditions but that those conditions were not present in Larry's fall because there was no direct supervision by a staff member and there was no back-up belayer:

Q: Okay. So ***the only thing that made this unreasonably safe, in your opinion, is the departure from the instructions, departure from the rules that were established by Alpine Towers to always use a back-up belayer and to always have the supervision of the belayer at that activity station?***

A: ***That's correct.*** [R.pp. 225-27; (emphasis added).]

George also acknowledged that Larry would have "probably not" fallen "[i]f there had been a back-up holding onto the rope and doing what a back-up is supposed to do." [R.p. 231.] He pinpointed the lack of a back-up belayer as the cause of Larry's fall:

> First of all the problem right there is that you don't have a back-up belayer. There's testimony that there wasn't enough people there to belay, to have a back-up belayer. A back-up belayer is a fail-safe to the - - - to the potential of the error on the belayer doing something wrong, not being able to handle it, you have a back-up. ***It's a fail-safe***. [R.p. 210.]

B. The clear instructions by Alpine Towers to Fort Mill High School to always use a back-up belayer.

There was no dispute that Alpine Towers taught and emphasized in the manuals that a back-up belayer was required under all circumstances. [R.pp. 711, 727-28, 732.] Sergeant Sprague, Brian Turner, and Chris Brock testified that they undoubtedly all understood the requirement of a back-up belayer. [R.pp. 191, 195, 199, 201, 387, 404-05, 425-26.] Ashley testified she learned from Sergeant Sprague that back-up belayers were always required with no exceptions. [R.pp. 346, 347, 357.] Plaintiffs' counsel agreed that Alpine Towers taught the necessity of having a back-up belayer in his opening statement: "[Ashley] did not have a back-up belayer and she should've had one, no question about it, that's what they [Alpine Towers] - - - they teach." [R.p. 169.]

C. The clear instructions by Alpine Towers to properly supervise all activities on the Tower.

Alpine Towers emphasized supervision. Trainer Mordhurst taught that proper adult supervision was always required and that students should never be left unattended. He explained that supervisors needed to be in close proximity to the rope so they could grab and brake it if needed and that supervisors should ensure belayers are doing their jobs. [R.pp. 448, 453-54, 465, 471-72, 477-78.] The manuals also stressed the need for staff to remain in close

proximity to the students: "When participants are on the structure, staff will wear harnesses and will have appropriate hardware available so rescues can be rapidly executed." The manuals mandated a strict staff to participant ratio of 1:6 that was never to be exceeded for each specific structure and activity. This would require two separate supervisors if climbing and the swing by choice were being conducted at the same time – one supervising the climbing and one supervising the swing by choice. [R.pp. 655; 711; 437-39.] The manuals reminded facilitators to "***constantly monitor climbers*** to ensure they do not innocently get themselves into trouble." [R.p. 689 (emphasis added).]

D. If Alpine Towers' instructions on supervision were less than adequate, which they were not, there is no duty to warn a school, which has an independent duty to properly supervise students on school grounds, of the necessity to supervise students on school grounds.

The school's failure to supervise the students on the Tower is not the fault of Alpine Towers. A provider of a product is not required "to warn of dangers or potential dangers that are generally known and recognized." Anderson v. Green Bull, Inc., 322 S.C. 268, 270, 471 S.E.2d 708, 710 (Ct. App. 1996). In addition to Alpine Tower's teachings and manuals, the law imposes a duty on school administrators to supervise students on school grounds:

> "With respect to liability for injuries due to negligence, ***it is the duty of school authorities ... to supervise the conduct of children on school grounds*** ...; and a school district whose ... employees fail to use ordinary care in the matter of such supervision is liable for injuries resulting from such lack of care, where the district is liable for the negligence of its ... employees generally."

Grooms v. Marlboro County Sch. Dist., 307 S.C. 310, 313, 414 S.E.2d 802, 804 (Ct. App. 1992) (quoting 78 C.J.S. *Schools and School Districts* § 321 at 1333); S.C. CODE ANN. § 15-78-60(25) (imposing liability on school districts for supervising in a grossly negligent manner).

E. The school's departure from the procedures prescribed by Alpine Towers and its failure to adequately supervise Ashley and her resulting failure to use a back-up belayer during Larry's climb were unforeseeable, intervening, superseding acts which bar recovery from Alpine Towers.

The Plaintiffs must establish that the product was defective and unreasonably dangerous and that it was the proximate cause of Larry's injury. Proximate cause requires causation in fact

and legal cause. Causation in fact is proved by establishing that the injury would not have occurred "but for" the defendant's negligence. Legal cause is proved by establishing foreseeability – that is whether some injury is the natural and probable consequence of the offending act. For an act to be a proximate cause of the injury, the injury must be a foreseeable consequence. An intervening force may be a superseding cause that relieves an actor from liability if it is a cause that could not have been reasonably foreseen or anticipated. Rife v. Hitachi Constr. Mach. Co., 363 S.C. 209, 215-17, 609 S.E.2d 565, 569 (Ct. App. 2005).

In this case, an ultimate unpredictable and unforeseeable chain of events occurred that were not actions by Alpine Towers and were not foreseeable by Alpine Towers as a proximate consequence of any of its actions:

1) But for the school deciding to open up the Tower to all students for Spring Fling, a purely recreational event, this incident would not have happened. Alpine Towers marketed these towers to schools for use in educational curriculums and expected the towers would be used in controlled environments with staff members leading students through a series of problem-solving activities on the Tower. Alpine Towers was given no notice by the school that it intended to open up the Tower to all students for recreational fun climbing in an uncontrolled, chaotic environment. Joe Lackey, CEO of Alpine Towers, testified the Tower was not intended to be used for recreational climbing at the schools. [R.pp. 249, 272, 449.]

2) But for the school's failure to collect a completed *Assumption of Risk Form* from his parents , this incident may not have occurred if Larry's parents declined permission for him to climb the Tower.

3) But for the school's principal deciding that the swing-by-choice needed to be open, causing Sergeant Sprague to supervise both a climbing station and the swing by choice, this incident would not have happened. When Sergeant Sprague was required by his superior to open up the swing by choice, the Sergeant became the only supervisor over both the climbing element and swing by choice element of the Tower. This violated Alpine Tower's mandate that there be 1 staff person for up to 6 participants on each separate activity.

4) But for Sergeant Sprague tying Ashley in as the primary belayer for a new climbing station and then walking away, leaving her unsupervised, this incident would not have happened.

5) But for Ashley hooking Larry in to climb with no staff supervisor around, this incident would not have happened.

6) But for Ashley allowing Larry to proceed to climb without Sergeant Sprague conducting the five-point inspection, this incident would not have happened.

7) But for Ashley allowing Larry to proceed to climb without Sergeant Sprague supervising the climb, this incident would not have happened.

8) But for Ashley allowing Larry to proceed to climb without a back-up belayer, this incident would not have happened.

9) But for Ashley taking her brake hand off the rope when she thought the rope was stuck, this incident would not have happened. Even if the rope were truly stuck, if she had left her brake hand on the rope, Larry would have stayed in place. [R.p. 457.]

10) But for the lack of a back-up belayer standing behind Ashley holding the rope with both hands, this incident would not have happened.

None of these causes were done by or under the control of or even done with the knowledge of Alpine Towers. The school and Ashley clearly violated the procedures established by Alpine Towers in multiple ways. Sergeant Sprague, Ashley, Chris Brock, and the Plaintiffs' expert witnesses all agreed that the school and Ashley violated the required protocols and procedures. [R.pp. 202, 223, 226-27, 240-41, 309, 324, 357, 409.]

Where a user of a product has ignored or disregarded the manufacturer's instructions and the product is reasonably safe if such instructions are followed, the user cannot recover damages. Anderson v. Green Bull, Inc., 322 S.C. 268, 270, 471 S.E.2d 708, 710 (Ct. App. 1996). It was the school that allowed climbing at an uncontrolled event without enough adult supervisors. It was the school that failed to provide adequate supervision over the Tower at Spring Fling. It was the school's lack of supervision that led to Ashley belaying without a back-up belayer and allowing a climber to proceed without the presence of a staff supervisor and without the staff supervisor conducting the five-point inspection. Ashley herself, a trained eighteen year old, knowingly violated protocols by allowing Larry to climb under such circumstances. The jury found her negligence of 60% to be much greater than Alpine Towers' alleged negligence.

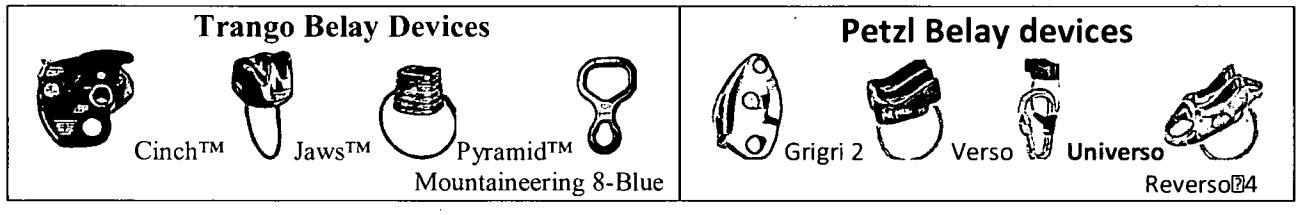
The actions of the school and Ashley bar the imposition of liability on Alpine Towers. That the school, and subsequently Ashley, would act as they did and violate critical protocols

mandated by Alpine Towers was unforeseeable as a matter of law. Under any view of the evidence, the school, and Ashley as a result of the school's inactions, departed from Alpine Towers' protocols, which if followed would have prevented Larry's accident. Alpine Towers was entitled to judgment as a matter of law on all causes of action.

II. Did the Court of Appeals err in affirming the jury's award of punitive damages where there was no clear and convincing evidence of willful, wanton, or reckless conduct by Alpine Towers in designing the Tower or in training the school's staff?

The Court of Appeals upheld the punitive damages award against Alpine Towers for two reasons: (1) for Alpine Towers' decision to use a Trango Jaws belaying device instead of a Petzl GriGri belaying device, and (2) for reckless behavior in allegedly failing to properly train the Fort Mill High School faculty. Punitive damages can only be imposed if there is willful, wanton or reckless conduct. This must be established by more than a preponderance of the evidence – there must be clear and convincing evidence. S.C. CODE ANN. § 15-33-135. Punitive damages are awarded to redress egregious wrongs and punish reprehensible conduct. South Carolina Farm Bureau Mut. Ins. Co. v. Love Chevrolet, Inc., 324 S.C. 149, 151, 478 S.E.2d 57, 58 (1996). "Punitive damages are designed to punish only behavior that was obviously reckless at the time of commission." Jimenez v. DaimlerChrysler Corp., 269 F.3d 439, 450 (4th Cir. 2001).

Belay Devices: Many companies make belay devices of many different types. Some more widely known companies are Metolius, Mammut, Trango, Petzl, and Black Diamond. While the total market is too large to demonstrate, the current offerings of Trango and Petzl illustrate some of the variety.



The device Alpine Towers chose to use was made by Trango, a Colorado company that makes several types. The specific Trango device chosen by Alpine Towers is named Jaws.

Petzl is a competitor of Trango. It is a French company that also makes several types. The specific device the plaintiff asserts Alpine Towers must use, in order to avoid being reckless, is named GriGri. It was the version made at the time of the accident but has since been replaced with the Grigri 2. www.petzl/us.

That Alpine Towers chose to use the Trango Jaws belaying device instead of the Petzl GriGri is not evidence of recklessness. The Trango Jaws is a product available on the market and in fact, the Plaintiffs' experts both testified that there was nothing wrong with it. It was not inherently dangerous or substandard. It was an industry standard device that works. [R.pp. 217, 220, 221-22, 311, 315.] Alpine Towers did nothing more than choose among market standard competing devices just like car manufacturers choose the tires to include with their cars.

The GriGri is subject to misuse that can cause falls. It can be threaded the wrong way providing no brake at all, it can be oriented wrong by the user meaning the user may accidentally press a release button causing a fall, and the rope can be too thin for the GriGri [R.pp. 244, 255, 263, 269-71, 285-90, 308, 460-62, 483-84, 485, 487-92, 493-94.] The GriGri manufacturer recommends only expert climbers and belayers use it. [R.pp. 243, 273-74, 290-91, 486.] The Plaintiffs' experts acknowledged the GriGri could fail if misused and not operated in accordance with the manufacturer's instructions. Their opinions that the GriGri would have arrested Larry's fall assume it would have been used under proper operating conditions. [R.pp. 232, 242-44, 299, 308.]

The Trango Jaws if used correctly with a back-up belayer would have arrested Larry's fall. It is not negligent, much less reckless, for a manufacturer to decide not to accompany a product with different safety features so long as the chosen design is reasonably safe for its intended use, taking into account the instructions for its use. Marchant v. Mitchell Distr. Co., 270 S.C. 29, 35-36, 240 S.E.2d 511, 513-14 (1977); Moore v. Barony House Rest., LLC, 382 S.C. 35, 674 S.E.2d 500 (Ct. App. 2009). Alpine Towers' use of the Trango Jaws instead of the GriGri should not subject it to punitive damages.

The Court of Appeals then held that Alpine Towers was reckless in training the school's staff, finding Alpine Towers "(1) chose not to train Fort Mill's faculty to teach others, particularly students; (2) did not include in the training materials given to Fort Mill the syllabus Alpine Towers uses to teach belaying; (3) removed from its training manual the specific instructions for faculty supervisors to 'stand directly behind the climber;'" (4) did not teach Fort Mill to follow the industry practice of testing belayers on the basic skills of belaying before allowing them to belay climbers; and (5) did not inform Fort Mill it had the option of an automatically locking belay device such as the GriGri to compensate for the greater risk posed by the use of student belayers."

This type of evidence should not support an award of punitive damages because none of these alleged actions or inactions were the proximate cause of Larry's accident. The reason Larry's accident happened is because the actions of others made the Tower unsafe that day. The school failed to supervise its students on the Tower resulting in an eighteen-year old trained student who knew that a back-up belayer was always required to allow Larry to climb without one anyway. The evidence in the record is insufficient as a matter of law to support an award of punitive damages against Alpine Towers.

III. Did the Trial Court err in refusing to allow the jury to consider and assess the fault of Fort Mill High School, a tortfeasor which settled with the Plaintiffs prior to the lawsuit, under either the Plaintiffs' stipulation or under South Carolina's apportionment statute?

The Court of Appeals did not consider whether the Trial Court should have allowed the jury to consider the school's fault when apportioning fault pursuant to S.C. CODE ANN. § 15-38-15, stating the statute does not apply to a defendant whose conduct is deemed reckless. The Court of Appeals was wrong not to address apportionment because in addition to and separate from the statute was a stipulation made by the Plaintiffs that the school's fault could be taken into account. Whether Alpine Towers was reckless or not should not affect the stipulation's application. Upon the dismissal of Ashley, the parties expressly stipulated that the jury could consider and assess the fault of the absent defendants, including the fault of the school:

Mr. Salane: . . . For purposes of the record you'll recall the discussions in chambers on this motion [to dismiss Ashley]. We'd initially objected based on the apportionment issues, apportionment of blame or fault and it was resolved in that the parties stipulated, that is, specifically the Plaintiff stipulated that the apportionment as to fault of absent defendants would still be done in this case.

The Court: Is that correct?

Mr. Harpootlian: That's correct, Your Honor.

. . .

Mr. Salane: And, Your Honor, the additional non-party would be the school district.

The Court: Oh, yes, and the school district's already out. I mean they'll - - you have a right under Section D of whatever section is to point at the empty chairs we call it and even though they're not a party, it's just that the party - - - there is a little different - - - the parties do stand in a little different posture. [R.pp. 165-67.]

If this Court vacates the punitive damages, Alpine Towers is also entitled to a new trial due to the mandatory statutory language in § 15-38-15 that the jury should have been permitted to consider the fault of the school. Section 15-38-15 of the South Carolina Contribution Among Tortfeasors Act establishes that if two or more defendants cause an indivisible injury to a plaintiff, the individual defendants are not jointly and severally liable if their fault is found to be less than 50% of the total fault of the damages. The statute does not say less that 50% of part of the fault or less than 50% of some of the fault. It says less than 50% of the total fault. If a defendant's fault is not measured against the total fault but only the named defendants, the statutory purpose and the consequence to the defendant would be subject to manipulation by the plaintiff or being lucky. That kind of arbitrariness is not discernible of any legislative intent.

The statute does not limit the term "defendant" to only those named in the action and in fact expressly provides the right for a defendant to assert that a non-party is responsible for any portion of or all of the damages sustained by the plaintiff. § 15-38-15(D). The Trial Court ultimately allowed the jury to only consider the fault of Ashley who was no longer an active

defendant. [R.pp. 167, 531.] Under the statute, the school is also a defendant in every sense of the word. It just happened to settle for the maximum amount before the Plaintiffs could sue it.

Section D of the statute, giving the right to a defendant to assert the fault of non-parties, would have no meaning if the jury could not in fact apportion fault to the non-party tortfeasor. If Section D is not given effect and the jury is not allowed to consider the fault of the school in assessing fault among the alleged responsible parties, the right of Alpine Towers to have fault placed on the truly responsible party is unprotected. It cannot seek contribution from the school because the school has paid the maximum amount for which it can be liable. This places Alpine Towers in the unfortunate position of being assigned responsibility for those damages which are the result of the school's actions but for which the school cannot legally be required to pay. On the other hand, the allocation of fault to an absent tortfeasor results in an accurate allocation and ensures that a negligent defendant's liability is proportionate to its percentage of fault. The apportionment statute should be construed to allow a jury to allocate fault to an absent tortfeasor.

IV. Did the Court of Appeals err in overturning the Trial Court's order requiring Larry to elect his remedy where Larry suffered a single injury based upon the same set of facts and is therefore entitled to only one recovery?

The Trial Court correctly required Larry to elect remedies among his claims of (1) strict liability, (2) products liability – negligence, and (3) general negligence because Larry suffered a single injury based upon the same set of facts and is therefore entitled to only one recovery. The doctrine of election of remedies has been, until now, fairly straightforward. It involves a choice between two or more different and coexisting modes of procedure and relief afforded by law for the same injury. Cowart v. Poore, 337 S.C. 359, 364, 523 S.E.2d 182, 185 (Ct. App. 1999). "When an identical set of facts entitle the plaintiff to alternative remedies, he may plead and prove his entitlement to both; however, the plaintiff may not recover both." Save Charleston Foundation v. Murray, 286 S.C. 170, 175, 333 S.E.2d 60, 64 (Ct. App. 1985). "Where a party has asserted only one primary wrong, he is entitled to only one recovery." Jones v. Winn-Dixie Greenville, 318 S.C. 171, 175, 456 S.E.2d 429, 432 (Ct. App. 1995).

Larry suffered one single injury – the personal injuries he sustained in the fall from the Tower. He had one fall and all of his injury and damages flow from that fall regardless of the number of alleged actions or inactions by Alpine Towers. Even though Larry had three different theories for why Alpine Towers was liable, he can only recover damages under one theory.

Contrary to the solid principles behind the election of remedies doctrine, the Court of Appeals reversed the order that Larry elect among his three claims, finding the Trial Court erred in interpreting the verdicts as three awards and in requiring Larry to elect which cause of action would be his remedy. The Court of Appeals held Larry only sought one remedy and the doctrine of remedies would not apply. It held this despite Larry's seeking of separate actual and punitive damages under each separate cause of action. Where a plaintiff has recovered their actual damages under one cause of action, the plaintiff cannot recover additional damages under another based upon the same facts. Inman v. Imperial Chrysler-Plymouth, Inc., 303 S.C. 10, 397 S.E.2d 774 (Ct. App. 1990) (holding plaintiff's fraud claim barred where he had been compensated for his actual damages under his unfair trade practices claim based upon the same facts); Save Charleston Foundation, 286 S.C. at 176, 333 at 64 ("[The plaintiff] could have pleaded and proved all three causes of action but would have been limited to one recovery.").

The Court of Appeals relied upon Creach v. Sara Lee Corp. for its holding that because Larry sought one remedy for one injury, the Trial Court erred in requiring him to elect. In Creach, the plaintiff was only awarded one set of damages even though she alleged three causes of action. She was awarded one single award of $60,000.00. The $60,000.00 represented the amount of actual damages had she prevailed on at least one cause of action. She prevailed on all three causes of action, but still only recovered one damage award. 331 S.C. 461, 502 S.E.2d 923 (Ct. App. 1998). In this appeal, the jury awarded a separate amount of damages for each separate cause of action. Larry is only entitled to recover one of these awards for his single injury.

The Court of Appeals observed that the dilemma in this case arose from the verdict form which used a separate blank under each cause of action for the jury to award damages. If indeed

the verdict form was the source of the problem, then the issue of whether the verdict was meant to be cumulative is not preserved for appellate review where Larry's counsel never objected to the verdict form and found it acceptable. [R.p. 508.] After the jury found for Larry on strict liability but awarded no damages, Larry had no other objection to any other part of the jury's verdict, including the amount of damages awarded on the separate claims. [R.pp. 4-8, 524-29.] If Larry was unsure at that point whether the jury intended those damages to by cumulative, he could have raised that issue to the Trial Court at that time and the jury could have cleared up any issue about damages when the Trial Court first sent the jury back with the verdict.

Instead, Larry was silent on the issue and his failure to object waives any argument that the jury intended its verdict to be cumulative. See Howard v. Kirton, 144 S.C. 89, 142 S.E. 39, 43 (1928) ("If the appellant thought there was confusion in the wording of the verdict, he should have called the attention of the court to the matter at the time the verdict was rendered; and then any seeming confusion in the language of the verdict could have been easily cleared up."); Johnson v. Hoechst Celanese Corp., 317 S.C. 415, 421, 453 S.E.2d 908. 912 (Ct. App. 1995) ("Because they did not raise the alleged error at the first opportunity, we hold the landowners failed to preserve any issue regarding the court's exhibit and verdict form.").

Even after the jury forelady answered that the verdicts were "cumulative," Larry's counsel did not ask that the verdict be sent back to the entire jury to indicate their intent and reform the verdict if necessary. See Bensch v. Davidson, 354 S.C. 173, 179, 580 S.E.2d 128, 131 (2003) ("This issue is not preserved for our review. Appellants did not object to the verdict at the time it was rendered [and] failed to request that the verdict be resubmitted for clarification . . . "). Larry's failure to object to the verdict form or to have asked the Trial Court to send the verdict form back to the jury for reformation should preclude any analysis of what the jury may have intended because such an argument is not preserved for appellate review. The Trial Court properly required Larry to elect among his remedies.

CONCLUSION

Alpine Towers respectfully requests this Court to grant its Petition and issue a writ of certiorari to the Court of Appeals to review the decision, reverse the Court of Appeals, and order one or more the following remedies:

(1) That Alpine Towers be entitled to a judgment notwithstanding the verdict on all three causes of action asserted by Larry Keeter on the ground that no action of Alpine Towers was the proximate cause of Larry's injuries. Alpine Towers is also entitled to judgment as a matter of law on the parents' claims for medical expenses and loss of services where an award on such a claim is impermissible where Alpine Towers is not liable to Larry.

(2) In the alternative to Number (1), that Alpine Towers be entitled to a judgment notwithstanding the verdict on the jury's award of punitive damages where the evidence did not establish that Alpine Towers' conduct was willful, wanton, or reckless. If the punitive damages award is vacated, Alpine Towers is also entitled to the benefit of the apportionment provisions of S.C. CODE. ANN. § 15-38-15(A) providing that a "defendant's whose conduct is determined to be less than 50% of the total fault shall only be liable for that percentage of the indivisible damages determined by the jury" where the jury only found Alpine Towers 40% at fault.

(3) In the alternative to Number (1) but in conjunction with Number (2) entitling Alpine Towers to judgment notwithstanding the verdict on punitive damages, that Alpine Towers be entitled to a new trial absolute where the Trial Court did not allow the jury to assess the fault of Fort Mill High School in apportioning fault under S.C. CODE ANN. § 15-38-15.

(4) In the alternative to Numbers (1) and (2), that Alpine Towers be entitled to a new trial absolute because of the Trial Court's refusal to allow the jury to assess the fault of Fort Mill High School in apportioning fault under S.C. CODE ANN. § 15-38-15.

(5) That if this Court does not order that Alpine Towers be entitled to a judgment notwithstanding the verdict on all three causes of action asserted by Larry, that Larry be required to elect among his remedies.

Respectfully submitted,

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ATTORNEYS FOR PETITIONER,
ALPINE TOWERS INTERNATIONAL, INC.

October 31, 2012.

CERTIFICATE OF SERVICE

I, the undersigned, an employee of Carpenter Appeals and Trial Support, LLC, attorneys for Petitioner, Alpine International Towers, Inc. do hereby certify that I have this date served the foregoing Petition for Writ of Certiorari, dated October 31, 2012, by personally depositing a copy of the same in a United States Postal Service mailbox, postage prepaid, addressed to the parties indicated below:

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Graham L. Newman
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Post Office Box 1090
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ATTORNEYS FOR APPELLANTS/RESPONDENTS, LAWRENCE KEETER, RONALD TRAVIS KEETER, AND REBECCA KEETER

Cynthia Kay Martin
Cynthia Kay Martin, Legal Assistant to
Charles E. Carpenter, Jr.

Dated: October 31, 2012.

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Via Hand Delivery

October 31, 2012

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
PO Box 11330
Columbia, SC 29211

Re: *Keeter v. Alpine Towers International, Inc. and Ashley Sexton*
Case No. 2007-CP-46-1889
Case Tracking No. 2009-137246
Our File No.: 09-0058

Dear Dan:

Enclosed for filing are the original and seven copies of our Petition for a Writ of Certiorari, with proof of service, along with our firm's check in the amount of $100.00 to cover the filing fee. Also enclosed are two copies of the Appendix, including one unbound. Please return a clocked copy of the Petition via our courier.

By copy of this letter, we are serving all counsel of record and the Clerk of the Court of Appeals with a copy of the Petition.

Sincerely,

Charles E. Carpenter, Jr.

CECjr/cvg
Enclosures
cc: The Honorable Jenny Abbott Kitchings, Clerk of Court for the SC Court of Appeals
Richard A. Harpootlian
Graham L. Newman
Thomas C. Salane

The Supreme Court of South Carolina

Carpenter Appealls & Trial

10/31/2012

RECEIPT #66079

Case No:	2012-212878
Case Short Title:	Lawrence Keeter v. Alpine Towers
Event:	
Fee Type:	Case Initiation Fee
Amount:	$100.00
Payment Type:	Check
Reference No:	003681
Check/Money Order Date:	10/31/2012
Comments:	Linked