

# The Supreme Court of South Carolina

Perrin Babb; Debbie Babb; Wayne Elstrom; Sarah Elstrom; Alan Jackson; and Kathy Jackson, Plaintiffs,

v.

Lee County Landfill SC, LLC, Defendant.

Appellate Case No. 2012-212741

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## ORDER

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Pursuant to Rule 244 of the South Carolina Appellate Court Rules (SCACR), the Court will answer the following questions certified to this Court by order of the Honorable Joseph F. Anderson, Jr., United States District Court Judge for the District of South Carolina:

1. Under South Carolina law, when a plaintiff seeks recovery for a temporary trespass or nuisance (asserting claims for annoyance, discomfort, inconvenience, interference with their enjoyment of their property, loss of enjoyment of life, and interference with mental tranquility and abandoning all claims for loss of use, diminution of value, and personal injury), are the damages limited to the lost rental value of the property?
2. Does South Carolina law recognize a cause of action for trespass solely from invisible odors rather than a physical invasion such as dust or water?
3. Is the maximum amount of compensatory damages a plaintiff can receive in any trespass or nuisance action (temporary or permanent) the full market value of the plaintiffs' property where no claim for restoration or cleanup costs has been alleged?
4. When a plaintiff contends that offensive odors have migrated from a neighbor's property onto the plaintiff's property, may the plaintiff maintain an independent cause of action for negligence or is the plaintiff limited to

remedies under trespass and nuisance?

5. If an independent cause of action for negligence exists under South Carolina law when a plaintiff contends that offensive odors have migrated from a neighbor's property onto the plaintiffs' property, does the standard of care for a landfill operator and breach thereof need to be established through expert testimony?

The parties shall proceed to serve and file briefs as provided by Rule 244(d), SCACR. Rule 244 does not provide for the filing of initial briefs; therefore, only final briefs should be filed in this matter.

  
C.J.  
FOR THE COURT

Columbia, South Carolina

October 17, 2012

cc:

Raymond Paul Mullman, Jr.

William E. Hopkins, Jr.

Richard H. Middleton, Jr.

Gary W. Poliakoff

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Steven Daniel Weber

Joseph F. Anderson, Jr.

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