THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

G. Thomas Cooper, Circuit Court Judge

Case No. 2007-CP-29-593

Travis Roddey, individually and as the Personal Representative of the Estate of Alice Monique Beckham Hancock, Deceased. .....Appellant,

v.

Wal-Mart Stores East, L.P., U.S. Security Associates, Inc., and Derrick L. Jones..... .....Respondents,

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APPELLANT'S PETITION FOR WRIT OF SUPERSEDEAS

TO STAY THE TRIAL SCHEDULED FOR NOVEMBER 14, 2016

IMMEDIATE ACTION REQUIRED: 5 BUSINESS DAYS UNTIL TRIAL

Appellant Travis Roddey petitions this Court to stay the trial scheduled for ***November 14, 2016***, between him and Wal-Mart, U.S. Security, and Derrick Jones (collectively "Respondents") until the underlying appeal is resolved because the trial will be substantially affected by the issues on appeal. Significantly, Judge G. Thomas Cooper departed on an international vacation on Monday, November 7, 2016, and will not return until the weekend before trial. Due to the limited time between Judge Cooper's rulings on Appellant's motion to Alter or Amend and Reconsider and the current trial date, Appellant requests immediate review by this Court.[1]

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[1] Because of the exceptional circumstances of this matter and the limited time for review, Appellant has included the orders as provided by the Court. Appellant will provided certified

The South Carolina Supreme Court granted Appellant a new trial and the parties disagree over the scope of the new trial — specifically, the causes of action that may be tried. Respondents filed a motion to exclude Appellant's negligent hiring and supervision cause of action, and the trial court granted the motion as to all Respondents. The trial court's ruling thereby, is the equivalent of an order to strike a portion of Appellant's Complaint. Appellant filed a notice of appeal along with a motion to stay the trial, out of an abundance of caution, as a means to stay the remaining cause of action—negligent pursuit—on the grounds that the case cannot move forward with that cause of action alone. The trial court denied the motion to stay.

As explained herein, the trial court's order striking the negligent hiring and supervision cause of action as to all Respondents fundamentally affects the litigation if allowed to proceed. The two causes of action are so intertwined that Appellant cannot move forward on the negligent pursuit cause of action alone. Under Appellant's theory of the case, the negligent supervision of Derrick Jones – an employee of U.S. Security and an agent of Wal-Mart – triggered the negligent pursuit that resulted in the alleged wrongful death. The removal of the negligent hiring and supervision cause of action (and/or any evidence associated with it) directly hinders Appellant's ability to prove the requisite elements of the negligent pursuit cause of action and perhaps even to establish causation and foreseeability. Given this and the possibility that this Court will ultimately find the negligent hiring cause of action still viable, judicial economy should preclude the trial from going forward. For these reasons and as more fully developed herein, this Court should grant Appellant's stay until a ruling is reached on his appeal.

FACTUAL/PROCEDURAL HISTORY

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copies of the order when they are made available by the Lancaster Clerk's Office, pursuant to Rules 241(1) and 241(4)(C).

This case arises from a wrongful death action in which a fatal car crash occurred after a security guard, Jones, who was hired and supervised by U.S. Security, was told by Wal-Mart Customer Service Managers to interact with two customers, one of which was suspected of shoplifting. Jones, after being advised to get the tag number off their vehicle by the Wal-Mart managers, chased the women in his vehicle off Wal-Mart property.

On May 16, 2006, Jones applied for a security officer position with U.S. Security and was hired on the spot. U.S. Security requires all of their security guards to meet state requirements, pass a drug test, have a current driver's license, etc. Jones was hired despite the fact that he had a suspended driver's license and had tested positive for THC (the active chemical in marijuana) at his pre-employment drug screening. Additionally, Jones was statutorily ineligible for employment as a security guard in South Carolina at the time he applied because of a drug conviction and a pending charge of strong-arm robbery.

U.S. Security assigned Jones to work as a security guard in the parking lot of the Wal-Mart store in Lancaster. (Wal-Mart contracts with U.S. Security for its security services. (**Exhibit 1**, Master Agreement)). Wal-Mart requires U.S. Security to meet all federal and state laws, rules, and regulations; perform background checks; confirm safe driving records for their guards; and that the guards have a current license. Further, Wal-Mart has explicit roles security guards are to perform. Specifically, Wal-Mart has security guards for two reasons: (1) provide protection through deterrence (visual presence) and (2) to communicate with customers to make them feel safe. Wal-Mart's policies are based on a belief that if people know there is a security guard, they are less likely to steal or break into vehicles in Wal-Mart's parking lot. (**Exhibit 2**, Guidelines for Wal-Mart Security Guards/Contractors).

When Jones was told he would be working at Wal-Mart he was informed there were explicit policies and procedures he was required to follow. These rules included the following admonitions: a security guard is not authorized to investigate shoplifting, a guard should never pursue a suspect off the property, and a guard should not pursue a suspect in a vehicle. (**Exhibit 2**, Guidelines for Wal-Mart Security Guards/Contractors).

On Jones's first day of work, he was told by Wal-Mart management to leave Wal-Mart's premises to obtain a license plate number, in direct violation of the rules and procedures. (**Exhibit 3**, Jones Deposition at p. 115 ("my very first day I had to go get a license plate tag number off the premises")). Jones sought clarification with his U.S. Security manager about whether he should violate the policies at the instruction of Wal-Mart employees and he was told "you got to do what you got to do." (**Exhibit 3**, Jones Deposition at p. 119-20.)

On June 20, 2006, the night of the fatal crash, Jones was driving a company vehicle patrolling the parking long despite the fact that his driver's license was suspended.[2] Two Customer Service Managers were working at Wal-Mart that night: Shawn Cox and Hope Rollings. Together with Chuck Campbell, they were the three ranking managers in the store. All three managers were in radio contact with each other and with Jones.

Sisters Alice Hancock, the Decedent, and Donna Beckham were shopping in the Wal-Mart that night. At approximately 10 – 10:15 p.m., Jones was told by Wal-Mart Customer Service Manager Cox to delay a possible shoplifter, who turned out to be Beckham. Beckham left the store and entered a car driven by Hancock, who was sitting in the car because she was not

[2] He was also working as a security guard in violation of S.C. Code Ann. § 40-18-80(A)(2) because Jones worked more than twenty days without a valid SLED-issued registration certificate on the night of the crash.

feeling well. At or around the same time, Cox told Jones to get the license plate number off Decedent's car.

Following Cox's instruction, Jones followed Beckham to her car and blocked her exit from the parking lot. Hancock reversed her car and left the parking lot while Jones remained in pursuit. At this time, Jones was in radio contact with Cox and fellow Wal-Mart Customer Service Manager Rollings. As Jones pursued Hancock's car, Wal-Mart employees instructed him to obtain the license plate number (testimony differs as to how many times he was told to do this). Hancock, with Jones in pursuit, disregarded several traffic signals leaving the Wal-Mart parking lot and entering the highway. According to Jones, as the vehicles exited the parking lot, Wal-Mart employees continued to direct him to obtain the license plate number. The two-way radios continued to work even after the vehicles exited the parking lot. No Wal-Mart employee ever instructed Jones to discontinue his pursuit.

Jones continued to pursue Hancock's car at a high speed and in a reckless manner. The pursuit ended several miles from Wal-Mart after Jones's pursuit, upon information and belief, caused Hancock to lose control of her vehicle, swerve off the roadway, and hit a tree. Hancock died in the crash and Beckham suffered serious bodily injury. As a result of those events, Appellant brought a lawsuit and alleged three causes of action against Defendants: (1) negligence-respondent superior, (2) negligent hiring and supervision–wrongful death, and (3) negligent hiring and supervision–respondent superior-survivorship. (**Exhibit 4**, Second Amended Complaint).

This matter was originally tried from April 6, 2010 through April 13, 2010, before Judge Brooks P. Goldsmith. At the conclusion of Appellant's case-in-chief, Wal-Mart moved for a directed verdict on three grounds arguing: (1) Appellant presented no evidence that Wal-Mart

breached its duty of care; (2) Wal-Mart's actions were not the proximate cause of Hancock's death as a matter of law; and (3) Hancock's fault in causing her own death was more than fifty percent as a matter of law. The trial court granted the motion on Wal-Mart's first two grounds, and Wal-Mart was effectively removed from the case on both the negligent pursuit cause of action and the negligent hiring and supervision cause of action. The trial court explained that in its opinion there was insufficient evidence that Wal-Mart was negligent, and even if Wal-Mart was negligent, there was a lack of proximate cause because the events were not foreseeable. The trial court noted at the time of the ruling that it could not find Hancock more than fifty percent negligent as a matter of law. Ultimately, the jury found that Hancock was sixty-five percent at fault, and U.S. Security and Jones were collectively thirty-five percent at fault.

Appellant appealed arguing the trial court erred in granting a directed verdict in favor of Wal-Mart. In a split decision by the Court of Appeals, the directed verdict was upheld. Appellant then appealed to the Supreme Court, which found that the trial court erred in granting a directed verdict. **(Exhibit 5,** *Roddey v. Wal-Mart Stores East, LP*, Op. No. 7615 (Shearouse Adv. Sh. No. 13, p. 22)). The Supreme Court reversed and remanded for a new trial on all issues. In reaching its decision, the Court explained that the only remedy to address the circumstances of this case was to grant a new trial. Respondents filed a petition for rehearing, which the Supreme Court denied.

Accordingly, the Lancaster County Clerk's office returned this matter to the roster and after addressing scheduling conflicts set the trial to be heard before Judge Cooper on November 14, 2016. In preparation for trial, the parties met with Judge Cooper to discuss pre-trial matters including the parties' disagreement over the interpretation of the Supreme Court opinion and the relief granted. Specifically, Appellant contends the Supreme Court opinion entitles him to a new

trial on all causes of action, whereas Respondents suggest Appellant is only entitled to a new trial on the negligence action.

Respondents filed a Motion to Exclude the Negligent Hiring and Supervision Cause of Action or in the Alternative a Motion for Summary Judgment. (**Exhibit 6**, Defendants' Motion and Memorandum in Support). In response Appellant filed a Memorandum in Opposition of the Motion. (**Exhibit 7**, Plaintiff's Memorandum in Opposition). The trial court heard arguments on October 25, 2016, and granted the motion on November 2, 2016. (**Exhibit 8,** Signed Order). That day Appellant's counsel informed Judge Cooper and Respondents' counsel of Appellant's intent to file a notice appeal following post-judgment motions in an effort to provide ample notice that the trial would not be proceeding on November 14, 2016. (**Exhibit 9**, November 2, 2016 email from Plaintiff's counsel). The next day, Respondents' counsel notified the trial court of their positon that Appellant's appeal was interlocutory and to the extent it was properly appealable the trial could proceed on the remaining cause of action: negligent pursuit. (**Exhibit 10**, email correspondence between counsel and the trial court from November 2-4, 2016).

On November 5, 2016, Appellant provided the trial court and Respondents' counsel with his Motion to Alter or Amend and for Reconsideration, which the trial court denied. (**Exhibit 11**, Plaintiff's Motion to Alter or Amend and for Reconsideration; **Exhibit 12**; Order on Motion to Alter or Amend and for Reconsideration). Specifically, the trial court ruled "this reconsideration applies not only to Plaintiff's Negligent Hiring, Training, Supervision, and/or Entrustment cause of action, but also to any evidence offered to support that cause of action as set forth in this Court's Order dated November 2, 2016." *Id.*

Appellant immediately filed a motion to stay, which the trial court denied. (**Exhibit 13**, Motion to Stay with corresponding email; **Exhibit 14**, email concerning Motion to Stay; **Exhibit**

15, Order denying Motion to Stay; **Exhibit 16**, email notifying counsel of denial of Motion to Stay and Trial would be proceeding on November 14, 2016). The Notice of Appeal followed and Appellant now petitions this Court and seeks a Writ to stay the remaining cause of action until the resolution of the appeal.

STANDARD OF REVIEW

A supersedeas is an extraordinary writ, which appellate courts use only when necessary to preserve the fruits of a meritorious appeal, to avoid irreparable harm, or to prevent a miscarriage of justice. *See Graham v. Graham*, 301 S.C. 128, 130, 390 S.E.2d 469, 470 (Ct. App. 1990) ("[T]he purpose . . . of a supersedeas . . . is to . . . preserve to appellant the fruits of a meritorious appeal where they might otherwise be lost to him." (quoting 4A C.J. S. APPEAL & ERROR § 662 at 494–95 (1957)); *Andrews v. Sumter Commercial & Real Estate Co.*, 69 S.E. 604, 606 (S.C. 1910) (explaining that a supersedeas should be issued "only to the extent clearly made to appear to be necessary to prevent irreparable injury or a miscarriage of justice").

ARGUMENTS

Appellant's November 14, 2016 trial should be suspended because the trial court erred in (1) failing to apply the general rule that the notice of appeal automatically stays the trial and (2) failing to recognize that the absence of the negligent hiring and supervision cause of action would negatively affect a trial on the negligent pursuit cause of action.

Rule 205, SCACR, provides an appellate court with exclusive jurisdiction over matters on appeal. The lower court may only proceed with matters not affected by the appeal. Rule 241(a), SCACR, in governing matters which are stayed while on appeal, provides:

> As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order,

> judgment, or decree or decision. This automatic stay continues in effect for the duration of the appeal unless lifted by order of the lower court, the administrative tribunal, appellate court, or judge or justice of the appellate court. The lower court or administrative tribunal retains jurisdiction over matters not affected by the appeal including the authority to enforce any matters not stayed by the appeal.

Thus, a lower court may not act or issue orders that affect an issue on appeal, which would include, but not be limited to, proceeding to trial.

In *Tillman v. Oakes*, then Chief Judge Few acknowledged that the question of determining whether a lower court may proceed with a case once an order has been appealed is "a difficult one to answer." 398 S.C. 245, 254, 728 S.E.2d 45, 50 (2012). The inquiry for this Court is whether the negligence cause of action is affected by the appeal of the negligent hiring and supervision cause of action. The answer must be yes.

First, the ability to immediately appeal this ruling demonstrates the impact of the appeal on the remaining cause of action. Section 14–3–330 entitles immediate review for orders that involve the merits and orders that affect a substantial right and (1) in effect determines the action and prevents a judgment from which an appeal may be taken or discontinues the action or (2) strikes a pleading. *Ex parte Johnson*, 63 S.C. 205, 41 S.E. 308 (1901). Both apply here. The trial court's order excluding the negligent hiring and supervision cause of action against all Respondents is the equivalent of an order to strike and deprives Appellant a judgment on this issue (the issue is the very subject of the appeal). It is well settled that a motion to strike or motion dismiss is immediately appealable because it affects a substantial right and the merits of the Complaint. *See* Section 14–3–330(2)(b) (1976) (explaining an order striking a pleading is directly appealable if it involves a substantial right); *Link v. Sch. Dist. of Pickens Cty.*, 302 S.C. 1, 6, 393 S.E.2d 176, 179 (1990). Courts have explained when such an order is made the very merits of the cause of action and the complaint as a whole has been challenged to the point that it

substantially affects the litigation. *Nauful v. Milligan,* 258 S.C. 139, 187 S.E.2d 511 (1972); *Cf. Jefferson by Johnson v. Gene's Used Cars, Inc.,* 295 S.C. 317, 368 S.E.2d 456 (1988) (an order "involves the merits" when it finally determines "some substantial matter forming the whole or a part of some cause of action or defense . . . "). Instinctively, this type of ruling limits the evidence that may be introduced, the strategy used by counsel, the witnesses that may be called, the calculation of damages, etc. Practically, the trial court's order deprives Appellant of the right to put forth the case in the manner he chooses.

Specifically, Judge Cooper's November 7, 2016 order denying the Motion to Alter or Amend and Reconsideration, not only strikes U.S. Security, it also strikes one of the causes of action alleged against Wal-Mart. The Supreme Court held it was reversible error to grant a directed verdict as to Wal-Mart in the first trial, which under Appellant's theory encompassed all causes of action against Wal-Mart. *See* **Exhibit 5,** *Roddey v. Wal-Mart Stores East, LP*, Op. No. 7615 (Shearouse Adv. Sh. No. 13, p. 22); *see also* **Exhibit 11**, Plaintiff's Motion to Alter or Amend and for Reconsideration. While the merit of this argument is reserved for the appeal, the fact remains that Judge Cooper's order affectively strikes half of the new trial granted by the Supreme Court by eliminating the ability to try a cause of action and any evidence of that cause of action, even though such evidence affects the negligent pursuit cause of action.

Second, the causes of action are intertwined to the point that one affects the other. Appellant's negligent hiring and supervision cause of action alleges Wal-Mart and U.S. Security were negligent in their hiring, training, supervision and entrustment of Jones. Specifically, as to U. S. Security, Appellant will argue at trial that Jones never should have been hired because he did not have a valid license, had pending criminal charges, tested positive for marijuana, and failed to comply with the statutory requirements for being a security guard in South Carolina.

Further, Appellant has alleged that U.S. Security was negligent in the supervision of Jones. It is undisputed that Wal-Mart and U.S. Security were in a contractual relationship in which Jones was an employee of U.S. Security and following Wal-Mart's policies and procedures as enforced (or not enforced) by Wal-Mart management. As noted above, Wal-Mart has explicit policies for the role of security guards as relates to alleged shoplifting, pursuing of suspects, etc. that were known by all U.S. Security employees and supervisors. Jones informed his U. S. Security supervisor that he was violating both U.S. Security and Wal-Mart rules and procedures. Specifically, Jones testified that on the his first day of work for U.S. Security at Wal-Mart he was told to obtain a license plate number off of the premises by a Wal-Mart employee, which he did. *See* **Exhibit 3**, Jones Deposition, at p. 115. Such act is in direct violation of the rules, yet his U.S. Security supervisor implied he needed to do so to keep his job. *Id.* at 119–20. This negligent supervision fits within the negligent pursuit cause of action because it is the negligent supervision by U.S. Security on the *exact issue and act of pursuit* that triggered the reckless and negligent pursuit that allegedly led to the fatal accident.

Additionally, Appellant will be arguing that Wal-Mart was negligent in the supervision of Jones from his first day, including the night of the fatal crash. Wal-Mart supervisors violated their own policies and procedures when they allowed the negligent pursuit to take place. (**Exhibit 2**, Guidelines for Wal-Mart Security Guards/Contractors).

The relation between these two causes of action is further supported by the testimony of Appellant's expert Jeff Gross. At the first trial, Gross testified about the rules and regulations in place the night of the accident. (**Exhibit 17**, Trial Transcript 120-126). In discussing the general rules governing shoplifting, Appellant's counsel read the following rule, "in the event of a shoplifter situation the security contractor [Jones] should act as a witness and *only assist when*

directed by a member of Wal-Mart management or loss prevention or when you see the Wal-Mart associate in trouble or danger." *Id.* at 125. Gross testified one of Jones's managers told him to get the license plate, saw him leave the parking lot, and did nothing to call off the chase. *Id.* This violation mirrored the events that took place when Jones first started working for U.S. Security. Additionally, Appellant's counsel read the following rule: "Always remember to protect yourself and if possible assist others before attempting to protect property. *Remember, security contractors are precluded from searching or pursuing suspects.*" *Id.* at 126 (emphasis added). Gross testified that the rule was violated by Jones, an employee of U.S. Security, and Wal-Mart. *Id.*

While the elements of the two causes of action are different, the negligent hiring and supervision cause of action fits within the negligent pursuit cause of action. Appellant's ability to put forth the negligent hiring and supervision cause of action directly affects the ability to try the remaining cause of action under Plaintiff's theory of the case.

The intertwined nature of the causes of action is further demonstrated by the actual issue on appeal. Appellant believes he is entitled to a new trial on both causes of action against Wal-Mart and U.S. Security based on a plain reading of the Supreme Court opinion, the denial of Respondent's prior petition for rehearing, and the manner in which Respondent's sought a directed verdict on both causes of action.

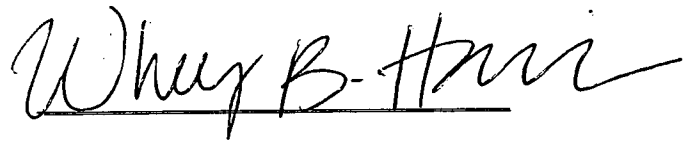
Third, the stay should be granted as a matter of judicial economy. As this Court is well aware, this case has already been tried once and subsequently appealed to, and ruled on, by both appellate courts. Staying the remaining cause of action and thereby allowing a determination on the viability of the negligent hiring and supervision cause of action promotes judicial economy

and prevents the possibility of a third trial if the appellate courts agree that the negligent hiring cause of action is still viable.

CONCLUSION

For the reasons stated herein, Appellant respectfully requests this Court to issue a stay and continue the trial of this matter until the appeal is resolved.

RESPECTFULLY SUBMITTED,



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November 7, 2016
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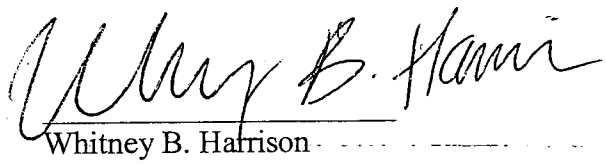
PROOF OF SERVICE

The undersigned hereby certifies that on November 7, 2016, she served counsel for Respondent with the *Petition for Writ of Supersedeas* in this matter by mailing a copy of the same by United States Mail with first class postage prepaid to the following addresses:

Stephanie Flynn & Howard Boyd
P.O. Box 10589
Greenville, SC 29603

Signature Page to Follow

Respectfully submitted,



November 7, 2016
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