

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM LANCASTER COUNTY  
Court of Common Pleas

G. Thomas Cooper, Circuit Court Judge

Appellate Case No. 2016-002248

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**SC Court of Appeals**

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**S.C. SUPREME COURT**

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,

**MOTION FOR CERTIFICATION**

Appellant, above-named, pursuant to Rule 204(b) of the South Carolina Appellate Court Rules (SCACR), and S.C. Code Ann. § 14-8-210(b), and in accordance with Rule 240, SCACR, hereby moves for certification of the above-captioned appeal for review by this Honorable Court. In support thereof, Appellant would respectfully show as follows:

1. Appellants served the Notice of Appeal of the underlying Orders on November 7, 2016.
2. On November 7, 2016, Appellant filed and served a Petition for a Writ of Supersedeas with the Court of Appeals.
3. On information and belief, Appellant also requested the transcript of the lower court proceeding, pursuant to Rule 207, SCACR, on November 14, 2016

4. Absent any extensions, the transcripts are currently due to be filed on or before January 13, 2017.

5. Absent any extensions, Appellant's Initial Brief is currently due to be filed on or before February 13, 2017.

6. Under Rule 204(b), SCACR, and S.C. Code Ann. § 14-8-210(b), this Court may certify cases that it deems appropriate. Certification of this case is appropriate under the Court's standard for the following reasons:

- a. This wrongful death case involving a fatal car crash has been pending for nearly a decade. Appellant brought a lawsuit and alleged three causes of action against Respondents: (1) negligence-respondent superior, (2) negligent hiring and supervision-wrongful death, and (3) negligent hiring and supervision-respondent superior-survivorship. At the first trial, Wal-Mart moved for a directed verdict, which the trial court granted. Appellant appealed this ruling.
- b. During the first appeal, Appellant argued it was an error for the trial court to grant a directed verdict in favor of Wal-Mart. This Court agreed and granted Appellant a new trial.
- c. Appellant has now been deprived of this relief because of the trial court's interpretation of this Court's opinion—finding the opinion only granted a new trial as to one cause of action. Appellant believes this interpretation is in direct contradiction to a plain reading of the opinion.
- d. It is expected that the issues on appeal will concern the scope of relief in granting a new trial and whether any perceived ambiguity of the granted relief

should have been raised in Respondent's petition for rehearing; both of which would be based on this Court's intended relief; therefore expedience and judicial economy weigh in favor of the Court assuming immediate jurisdiction over the appeal; and

- e. Given the importance of the issues and the extensive litigation by both parties, any opinion of the court of appeals would likely be appealed to this Court regardless of the outcome, which will further delay a final resolution of this case.

7. Appellant submits the attached Memorandum in support of the within motion as required by Rule 240(c)(2), SCACR, and the attached exhibits as required by Rule 240(c)(3), SCACR.

WHEREFORE, having fully set forth his motion, Appellant requests that the above-captioned appeal be certified for review by the Court and that he be granted such other and further relief as is just and proper.

*Signature Page to Follow*

RESPECTFULLY SUBMITTED,

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Attorneys for Appellant

January 3, 2017  
Columbia, SC

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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM LANCASTER COUNTY  
Court of Common Pleas

G. Thomas Cooper, Circuit Court Judge      S.C. SUPREME COURT

Appellate Case No. 2016-002248

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,

**MEMORANDUM IN SUPPORT OF  
MOTION FOR CERTIFICATION**

Appellant, above-named, pursuant to Rule 204(b) of the South Carolina Appellate Court Rules (SCACR), and S.C. Code Ann. § 14-8-210(b), and in accordance with Rule 240, SCACR, hereby submits the within memorandum in support of his motion for certification of the above-captioned appeal for review by this Court.

**FACTUAL/PROCEDURAL HISTORY**

This case arises from a wrongful death action in which a fatal car crash occurred after a security guard, Derrick Jones, who was hired and supervised by U.S. Security, was told by Wal-Mart Customer Service Managers to interact with two Wal-Mart 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. Jones continued to

pursue Alice Hancock's car at a high speed and in a reckless manner in complete violation of U.S. Security's and Wal-Mart's policies and procedures. 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.

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.

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 this Court, which found that the trial court erred in granting a directed verdict.

(**Exhibit 1**, *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 as to all defendants. 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 was denied. (**Exhibit 2**, Respondents' Petition for Rehearing; Order Denying Petition; and Remittitur Letter).

Accordingly, the Lancaster County Clerk's office returned this matter to the roster for a new trial 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 argued the Supreme Court granted him 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 3**, Defendants' Motion and Memorandum in Support<sup>1</sup>). In response Appellant filed a Memorandum in Opposition of the Motion. (**Exhibit 4**, Plaintiff's Memorandum in Opposition). The trial court heard arguments on October 25, 2016, and granted the motion on November 2, 2016. (**Exhibit 5**, Signed Order). Appellant timely filed a 59(e) motion, which the trial court denied. (**Exhibit 6**, 59(e) Motion, **Exhibit 7**, Order Denying 59(e) Motion). Appellant then filed a motion to stay, which the trial court denied. (**Exhibit 8**, Motion to Stay an Order Denying Motion.) A timely Notice of Appeal followed and a Petition for a Writ to stay the remaining causes of action until the resolution of the appeal, which the court of appeals granted. (**Exhibit 9**, Order Granting Stay).

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<sup>1</sup> Appellant has excluded the exhibits attached to all motions due to the volume. If the Court would like copies of the exhibits Appellant can supply them.

## STANDARD OF REVIEW

This Court may, in its discretion, certify for its review any case pending before the court of appeals prior to its determination. Rule 204(b), SCACR; S.C. Code Ann. §14-8-210(b). Certification of an appeal for review by the Court is appropriate where a case involves an issue of significant public interest or a legal principle of major importance. *Id.* The Court may also certify a case where it otherwise considers certification to be appropriate. *Id.*

## ARGUMENT

Appellant respectfully submits that this appeal presents appropriate circumstances for the Court to exercise its discretion to certify the case for review.

This case has been pending since August 15, 2007. It began with lengthy discovery and motions that resulted in a trial some two and half years after the action was filed. Following trial, this matter was appealed and six years accrued during the course of appellate review by both courts. The result was a determination by this Court on March 30, 2016, to grant Appellant a new trial. In reaction to this awarded relief, Respondents argued to the trial court that the Supreme Court limited the new trial to only one cause of action, to which Appellant adamantly disagreed based on a plain reading of the opinion. The trial court ruled in favor of Respondent's interpretation of the opinion, thereby curtailing Appellant's right to a new trial on all causes of action.

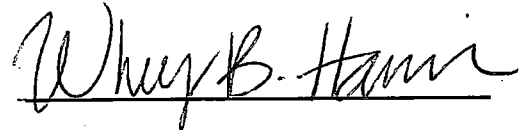
This second appeal only concerns this Court's intended scope of relief in granting a new trial and whether any perceived ambiguity of the granted relief should have been raised in Respondent's petition for rehearing. Appellant respectfully contends this Court, as the authoring entity and final arbitrator, is in the best position to address both inquires. Further, it is all but certain that any opinion of the court of appeals would be appealed to this Court.

Moreover, certification should be granted as a matter of judicial economy and practicality. The parties have been engaged in litigation for nearly a decade. The denial of this motion will likely delay for years the review of this Court's grant of a new trial. The longer this review is delayed, the more likely that Appellant will be deprived of the opportunity to have a meaningful and just new trial given the practical limitations of available witnesses and the recall of those available witnesses.

### CONCLUSION

For the reasons discussed above and set forth in his accompanying motion, Appellant respectfully requests that this Court exercise its discretion under Rule 204(b), SCACR and S.C. Code Ann. § 14-8-210(b) and certify this appeal.

RESPECTFULLY SUBMITTED,



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Attorneys for Appellant

January 3, 2017  
Columbia, SC

# **Exhibit 1**

**THE STATE OF SOUTH CAROLINA  
In The Supreme Court**

Travis A. Roddey, as the Personal Representative of the  
Estate of Alice Monique Beckham Hancock, deceased,  
Petitioner,

v.

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

Appellate Case No. 2012-213375

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**ON WRIT OF CERTIORARI TO THE COURT OF APPEALS**

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Appeal From Lancaster County  
Brooks P. Goldsmith, Circuit Court Judge

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Opinion No. 27615  
Heard October 8, 2015 – Filed March 30, 2016

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**REVERSED AND REMANDED**

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John S. Nichols and Blake Alexander Hewitt, both of  
Bluestein Nichols Thompson & Delgado, LLC, of  
Columbia; S. Randall Hood and William Angus  
McKinnon, both of McGowan Hood & Felder, LLC, of  
Rock Hill; and Brent Paul Stewart, of Stewart Law  
Offices, LLC, of Rock Hill, for Petitioner.

W. Howard Boyd, Jr., and Stephanie G. Flynn, both of  
Gallivan, White & Boyd, PA, of Greenville, for  
Respondents.

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**ACTING JUSTICE TOAL:** Petitioner appeals the court of appeals' decision affirming the trial court's grant of Wal-Mart's motion for a directed verdict on Petitioner's negligence claim. We reverse and remand for a new trial.

#### **FACTUAL/PROCEDURAL BACKGROUND**

The following facts are undisputed. On June 20, 2006, Alice Hancock waited in her vehicle in the parking lot of Wal-Mart while her sister, Donna Beckham, attempted to shoplift several articles of clothing.<sup>1</sup> Hope Rollings, a Wal-Mart customer service manager, noticed Beckham attempting to shoplift and alerted several other employees, including fellow manager Shawn Cox and the on-duty security guard Derrick Jones of U.S. Security Associates, Inc. (USSA), which provided security in the Wal-Mart parking lot pursuant to a contract with Wal-Mart.

Ultimately, Beckham exited Wal-Mart without the clothing. However, Jones approached her in the parking lot. Beckham ran towards Hancock's vehicle, and Jones followed her in his truck and blocked Hancock's vehicle with his truck. After Beckham entered Hancock's vehicle, Hancock turned the vehicle around and drove towards the parking lot's exit, with Jones following. Hancock exited the parking lot onto a highway, and Jones followed. Approximately two miles from Wal-Mart, Hancock's vehicle left the highway and crashed. Hancock died at the scene of the accident.

Travis Roddey, the personal representative of Hancock's estate (Petitioner), brought an action alleging negligence on the part of Wal-Mart, USSA, and Jones. At trial, there was varying witness testimony, especially with regard to the course of events that occurred between Jones and the two Wal-Mart customer service managers—Rollings and Cox—and between Jones and Beckham.

Beckham testified that when she exited Wal-Mart, she heard Jones yelling from his vehicle, "Hey, I need to talk to you." According to Beckham, Jones "zoomed in on [them]" and blocked Hancock's vehicle as she entered Hancock's

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<sup>1</sup> Beckham testified that Hancock was unaware of her intention to shoplift from Wal-Mart.

backseat. Beckham testified that she remained crouched in the backseat as they drove, but looked up periodically to see Jones following behind them at a close distance with his emergency lights on and frequently flashing his high beam headlights. Beckham testified that about two miles from Wal-Mart, Hancock remarked that "he's still on our ass," Beckham observed Jones "on [their] bumper," and then Hancock's vehicle "shot off to the left" and crashed.

Rollings testified that when she saw Beckham attempting to shoplift, she radioed Cox,<sup>2</sup> and instructed the door greeters to stop Beckham and ask for a receipt if she exited the store. Rollings explained that she then walked to the parking lot and notified Jones of the suspected shoplifting. Rollings testified that she did not have authority or responsibility over Jones, and that she did not intend for Jones to approach, delay, or stop Beckham. Rollings acknowledged that Wal-Mart policy prohibited employees from pursuing shoplifters beyond the parking lot,<sup>3</sup> but testified that she could not radio Jones to tell him to stop pursuing

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<sup>2</sup> Cox testified that the night of the incident, the following employees had radios: Cox, Rollings, Jones, and assistant manager Chuck Campbell.

<sup>3</sup> Specifically, Wal-Mart's policy for investigating and detaining suspected shoplifters provides:

NEVER pursue a fleeing Suspect more than approximately 10 feet beyond the point you are located when the Suspect begins to run to avoid detention. Ten feet is about three long steps. This limitation applies both inside and outside the facility.

NEVER pursue a Suspect who is in a moving vehicle.

NEVER pursue a Suspect off the Facility's property.

NEVER use a moving vehicle to pursue a Suspect.

TERMINATE the pursuit of a Suspect, if the Suspect begins to enter a vehicle.

LET THE SUSPECT GO, rather than continue a pursuit that is likely to injure or cause harm to someone.

Further, the Guidelines for Private Security Contractors provide that security

Hancock's vehicle because only one person could speak into the radio at a time, and other employees were using the radio during the incident. Further, she remembered Cox telling Jones to "[j]ust get the tag number [from Hancock's vehicle,]" but was unsure whether Cox knew that Jones was pursuing Hancock's vehicle when Cox gave the instruction to Jones.

Cox testified that the night of the incident, Rollings notified her of Beckham's shoplifting. After Beckham abandoned the clothing and exited Wal-Mart, Cox walked outside and saw Jones driving down the aisle of the parking lot where Hancock's vehicle was parked. Cox testified that Hancock's vehicle struck a median in the parking lot and headed toward the exit, at which point Cox instructed: "Get her tag number." Cox testified that she did not intend for Jones to follow Hancock out of the parking lot and acknowledged that it was Wal-Mart policy not to pursue shoplifters, but stated that Jones was not a Wal-Mart employee. According to Cox, she observed Jones's truck two car lengths behind Hancock's vehicle as they exited the parking lot, but that Jones was less than two car lengths behind as she saw them driving away.

Jones testified that the night of the incident, he received a call on his radio informing him that Beckham shoplifted and that she was exiting Wal-Mart. According to Jones, he asked: "[W]hat do you want me to do because I'm a security officer; I'm not a police officer. I cannot detain, so what do you want me to do?" Jones testified that he was instructed to delay Beckham by talking to her. When he saw her exit the store, he attempted to engage her in conversation, at which point she ran to Hancock's vehicle. Jones testified that he then blocked Hancock's vehicle with his truck "because the whole time all [he was] hearing from [Wal-Mart] was, 'You've got to get that license plate tag. We need that license plate tag number.'" Jones testified that at the time, he was under the impression that if he did not get the license plate tag number, he could be fired for not doing his job. According to Jones, both Rollings and Cox repeatedly instructed him to get the license plate tag number. After telling them that he could not see the tag number and that Hancock's vehicle was "about to leave the parking lot," Jones testified that through the radio, someone said, "Man, well, you got to do what you got to do. You need to get that license plate tag number."

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contractors are prohibited from using their vehicles in an attempt to apprehend any suspects, and only allow their vehicles to leave Wal-Mart property for gas or maintenance of the vehicle. These guidelines also note that it is the responsibility of Wal-Mart management to enforce Wal-Mart policies and procedures.

Jones knew that he was not supposed to leave the parking lot, but stated that he felt pressure due to the instruction to "do what you got to do," which Jones interpreted to mean pursuing Hancock's vehicle beyond the parking lot. Jones testified that even after he told Wal-Mart employees over the radio that Hancock's vehicle was leaving the parking lot, Wal-Mart employees continued to instruct him to obtain the license plate tag number. Jones stated that he was in radio communication with Wal-Mart employees until a highway on-ramp, where he witnessed Hancock's vehicle almost cause an accident. He then lost sight of Hancock's vehicle until he later saw lights flashing on the side of the road, where he found Beckham screaming for help and Hancock severely injured.

Jeff Gross, Petitioner's expert witness in parking lot security, guard force, and loss prevention, testified that several of Wal-Mart's policies were violated "through tacit approval of [Wal-Mart]." Gross further testified that Wal-Mart "didn't do anything to stop [Jones] . . . [T]hey told him to go out and get [the] license plate number, with that they didn't give any other instruction or guidance." Gross stated that "the very headwaters of this problem starts with [Wal-Mart employees] not following their own policies [and] asking [Jones] to do something that [Wal-Mart] specifically says they won't do themselves and they don't want their contractors to do." Finally, Gross testified that Cox witnessed the pursuit and had enough time to process the information, yet chose not to use the radio to instruct Jones to end the pursuit. Based on the testimony of the parties involved in the incident, Gross opined that there was sufficient range on the radios to communicate beyond the Wal-Mart parking lot.

Chip Tipton, a representative for Wal-Mart, testified that he saw no evidence that any Wal-Mart employee violated Wal-Mart policies, and found no fault in the employees' failure to instruct Jones to end the pursuit. Regardless, Tipton stated that he did not believe the radio's range would have enabled Wal-Mart employees to call Jones back because there were often issues with radio transmission inside Wal-Mart itself.

At the conclusion of Petitioner's case, Wal-Mart moved for a directed verdict on three grounds: (1) Petitioner 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, finding insufficient evidence that Wal-Mart was negligent, and that even if Wal-Mart was negligent, there was a lack of proximate cause because the events were not foreseeable. The trial court stated that at that

point, it could not find Hancock more than fifty percent negligent as a matter of law. Upon the conclusion of trial, the jury found that Hancock was sixty-five percent at fault, and that USSA and Jones were collectively thirty-five percent at fault.

The court of appeals affirmed the trial court's decision to grant Wal-Mart's motion for a directed verdict in a split opinion. See *Roddey v. Wal-Mart Stores E., LP*, 400 S.C. 59, 732 S.E.2d 635 (Ct. App. 2012). Chief Judge Few found that the trial court should not have directed a verdict on the basis that there was insufficient evidence of Wal-Mart's negligence because evidence existed that Wal-Mart employees violated Wal-Mart policies. Chief Judge Few further found that the actions of Jones and Hancock were foreseeable. Nevertheless, Chief Judge Few determined that the trial court should have granted Wal-Mart's directed verdict motion on the following grounds: (1) the jury's factual determination of fault apportionment between Hancock, Jones, and USSA was binding on Petitioner even though Wal-Mart's actions were not included in the jury's analysis; and (2) Hancock was more than fifty percent at fault as a matter of law. Judge Short concurred in a separate opinion, finding that Wal-Mart was entitled to a directed verdict because it was not foreseeable that Jones would leave the parking lot and continue to aggressively pursue Hancock for several miles.

Judge Huff dissented, agreeing with Chief Judge Few that evidence existed from which a jury could find that Wal-Mart was negligent, and that negligence proximately caused the injuries that occurred. Judge Huff also stated that while a jury still could have found Hancock sixty-five percent negligent even after considering Wal-Mart's liability, it could also have conceivably found—after factoring in Wal-Mart's negligence—that Hancock was less than fifty percent at fault. Accordingly, Judge Huff opined that the trial court should have submitted the issues of negligence and proximate cause to the jury.

We granted Petitioner's petition for a writ of certiorari to review the court of appeals' decision pursuant to Rule 242, SCACR.

## STANDARD OF REVIEW

When ruling on a motion for a directed verdict, the trial court must view all evidence and all reasonable inferences in the light most favorable to the nonmoving party, and if the evidence is susceptible of more than one reasonable inference, the trial court should submit the case to the jury. *Unlimited Servs., Inc., v. Macklen Enters., Inc.*, 303 S.C. 384, 386, 401 S.E.2d 153, 154 (1991). In a comparative negligence case, the trial court should grant a directed verdict motion if the sole reasonable inference from the evidence is the nonmoving party's negligence exceeded fifty percent. *Bloom v. Ravoira*, 339 S.C. 417, 422, 529 S.E.2d 710, 712 (2000). Comparing the negligence of two parties is ordinarily a question of fact for the jury. *Creech v. S.C. Wildlife & Marine Res. Dep't*, 328 S.C. 24, 32, 491 S.E.2d 571, 575 (1997). This Court is "reticent to endorse directed verdicts in cases involving comparative negligence." *Thomasko v. Poole*, 349 S.C. 7, 11, 561 S.E.2d 597, 599 (2002).

## ANALYSIS

Viewing the evidence in the light most favorable to the nonmoving party—Petitioner—we find that there is evidence from which a jury could determine that Wal-Mart was negligent, and that its negligence proximately caused the injuries in this case. Accordingly, we hold that the trial court should have submitted to the jury the issues of Wal-Mart's negligence and proximate cause, and we remand for a new trial as to all of the defendants.

### *I. Evidence of Wal-Mart's Breach of its Duty of Care*

To prove a cause of action for negligence, a plaintiff must show: (1) the defendant owes a duty of care to the plaintiff; (2) the defendant breached that duty by a negligent act or omission; (3) the defendant's breach was the actual and proximate cause of the plaintiff's injury; and (4) the plaintiff suffered an injury or damages. *Madison ex rel. Bryant v. Babcock Ctr., Inc.*, 371 S.C. 123, 135, 638 S.E.2d 650, 656 (2006). In a given case, a court may establish and define the standard of care by looking to the common law, statutes, administrative regulations, industry standards, or a defendant's own policies and guidelines. *Id.* at 140, 638 S.E.2d at 659. Evidence of a company's deviation from its own internal policies is relevant to show the company deviated from the standard of care, and is properly admitted to show the element of breach. *Peterson v. Nat'l R.R. Passenger Corp.*, 365 S.C. 391, 397, 618 S.E.2d 903, 906 (2005); *see also Caldwell v. K-Mart*

*Corp.*, 306 S.C. 27, 31, 410 S.E.2d 21, 24 (Ct. App. 1991) (holding that K-Mart's loss prevention manual was relevant on the material issue of the reasonableness of K-Mart's actions, and noting that in negligence cases, internal policies or self-imposed rules are often admissible as relevant on the issue of failure to exercise due care (citations omitted)).

There is evidence that Wal-Mart breached its duty of care, and therefore, the trial court erred in finding that the directed verdict was proper on that ground. While a jury could conclude from the evidence that Wal-Mart employees merely requested Jones to delay Beckham or obtain the license plate tag number of Hancock's vehicle in a manner that did not violate Wal-Mart's policies, there is also evidence that Wal-Mart employees violated Wal-Mart's policies by instructing Jones to engage in the pursuit that occurred. Specifically, there is evidence indicating that Wal-Mart employees directed Jones to obtain Hancock's license plate tag number *while* observing Jones following Hancock's vehicle in the parking lot and even after Jones stated that Hancock's vehicle was leaving the parking lot. Accordingly, there is evidence from which a jury could find that Wal-Mart employees either instructed Jones to act in violation of Wal-Mart's policies, or acquiesced in Jones's improper pursuit of Hancock and Beckham.

## **II. Proximate Cause**

To show proximate cause, a plaintiff must show both causation in fact and legal cause. *Madison*, 371 S.C. at 146, 638 S.E.2d at 662 (citing *Oliver v. S.C. Dep't of Highways & Pub. Transp.*, 309 S.C. 313, 316, 422 S.E.2d 128, 130 (1992)). A plaintiff proves causation in fact by establishing that the injury would not have occurred "but for" the defendant's negligence, and legal cause by establishing foreseeability. *Id.* (citing *Oliver*, 309 S.C. at 316, 422 S.E.2d at 130). "Foreseeability is determined by looking at the natural and probable consequences of the complained of act, although it is not necessary to prove that a particular event or injury was foreseeable." *Id.* (citations omitted). The defendant's negligence does not have to be the sole proximate cause of the plaintiff's injury; instead, the plaintiff must prove the defendant's negligence was at least one of the proximate causes of the injury. *Id.*

An intervening force may be a superseding cause that relieves an actor from liability, but for there to be relief from liability, the intervening cause must be one that could not have been reasonably foreseen or anticipated. *Rife v. Hitachi Const. Mach. Co.*, 363 S.C. 209, 217, 609 S.E.2d 565, 569 (Ct. App. 2005). In other words, the intervening negligence of a third party will not excuse the first

wrongdoer if such intervention ought to have been foreseen in the exercise of due care. *Bishop v. S.C. Dep't of Mental Health*, 331 S.C. 79, 89, 502 S.E.2d 78, 83 (1998). "In such case, the original negligence still remains active, and a contributing cause of the injury." *Id.* Accordingly, if the intervening acts are set into motion by the original wrongful act and are the foreseeable result of the original act, the "final result, as well as every intermediate cause, is considered in law to be the proximate result of the first wrongful cause." *Wallace v. Owens-Ill., Inc.*, 300 S.C. 518, 521, 389 S.E.2d 155, 157 (Ct. App. 1989).

As an initial matter, there is evidence that "but for" Wal-Mart employees instructing Jones to obtain Hancock's license plate tag number, the accident would not have occurred. Moreover, viewing the evidence in the light most favorable to Petitioner, the trial court erred in finding the directed verdict was proper as to foreseeability, because there is more than one reasonable inference as to whether the consequences of the Wal-Mart employees' actions were foreseeable. It is a natural and probable consequence that a contracted security guard would follow instructions from Wal-Mart employees telling him to "do what you got to do," including pursuing a suspect off-premises. Furthermore, Wal-Mart's own policies demonstrate that Wal-Mart recognized the danger of pursuing a shoplifting suspect, and it was reasonably foreseeable that instructing a contracted security guard to engage in such pursuit would be dangerous.

We find that there is sufficient testimony indicating that upon the Wal-Mart employees' instruction to obtain Hancock's license plate tag number, Jones's actions were *not* independent unforeseeable intervening acts. There was evidence presented that: Wal-Mart employees' instructions led Jones to drive through Wal-Mart's parking lot in pursuit of Beckham; Wal-Mart-employees directed Jones to obtain Hancock's license plate tag number while observing Jones pursue Beckham and Hancock in his patrol vehicle, with both vehicles being operated recklessly; and Wal-Mart continued to instruct Jones to obtain the tag number even after Jones informed them that Hancock's vehicle was leaving the parking lot.

Accordingly, there is evidence that Jones's acts—which were the foreseeable results of Wal-Mart employees' actions—were set into motion by the original wrongful acts of Wal-Mart. We therefore reverse the court of appeals' decision to uphold trial court's grant of a directed verdict on the issue of proximate cause.

### ***III. Apportionment of Fault***

Unlike Chief Judge Few, we do not view Wal-Mart's liability as strictly

derivative of Jones's or USSA's liability. In addition to Petitioner's claim that Jones was Wal-Mart's agent and thus, Wal-Mart is vicariously liable for his conduct, Petitioner also alleged that Wal-Mart was liable based on its failure to properly supervise Jones and Wal-Mart's improper advice or instruction to Jones to follow Hancock to obtain her license plate tag number. Considering Wal-Mart's potential liability, it is conceivable that a jury could find that the collective fault of the defendants was over fifty percent and that Hancock was less than fifty percent at fault.<sup>4</sup> In light of the reversal of the directed verdict as to Wal-Mart's liability, the only appropriate remedy in this situation is a new trial.

### CONCLUSION

Based on the foregoing, we reverse the court of appeals' decision and remand for a new trial as to all defendants.

**REVERSED AND REMANDED.**

**BEATTY and HEARN, JJ., concur. PLEICONES, C.J., dissenting in a separate opinion in which KITTREDGE, J., concurs.**

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<sup>4</sup> The dissent, by adopting Chief Judge Few's rationale, merely assumes the outcome of the jury's deliberations when it is impossible to know what would influence the jury's comparison if the jury was permitted to consider Wal-Mart's liability. Here, we cannot say that the sole reasonable inference to be drawn from the evidence was that Hancock was more than fifty percent negligent in light of the testimony that Wal-Mart employees instructed Jones to follow Hancock. *Bloom*, 339 S.C. at 422, 529 S.E.2d at 713 ("In a comparative negligence case, the trial court should only determine judgment as a matter of law if the *sole* reasonable inference which may be drawn from the evidence is that the plaintiff's negligence exceeded fifty percent." (citation omitted) (emphasis added)). Therefore, it would be inappropriate for this Court to speculate. *See Thomasko*, 349 S.C. at 11, 561 S.E.2d at 599 ("Because the term is relative and dependant on the facts of a particular case, comparing the negligence of two parties is ordinarily a question of fact for the jury. For these reasons, this Court is reticent to endorse directed verdicts in cases involving comparative negligence." (internal citations omitted)).

**CHIEF JUSTICE PLEICONES:** I respectfully dissent and would affirm the decision of the Court of Appeals. I agree with Chief Judge Few:

Even under [Petitioner's] theory of the case, Wal-Mart's conduct merely provides some explanation of what motivated Jones' actions. Wal-Mart's negligence could affect how much of the remaining 35% of fault is attributable to Jones, for if Jones was motivated by Wal-Mart's improper actions, arguably he would bear less of the fault for Hancock's death. However, Wal-Mart's actions can have no effect on Hancock's fault. Wal-Mart obviously did not advise or instruct Hancock to flee, nor did it enable her actions by failing to adequately supervise her. There is no evidence in the record that Hancock knew anything about what Wal-Mart told Jones. Therefore, Wal-Mart's alleged conduct could not have reduced Hancock's proportion of fault in the way it could have reduced that of Jones. Even if the jury had been permitted to consider Wal-Mart in its apportionment of fault, Wal-Mart's conduct could not have affected the jury's determination that Hancock was 65% at fault.

Because Wal-Mart's conduct could not have reduced Hancock's fault, [Petitioner] is bound by the jury's finding that she was 65% at fault, and the trial court's decision to grant Wal-Mart a directed verdict could not have prejudiced [Petitioner].

Therefore, I believe we must affirm. See *O'Neal v. Carolina Farm Supply of Johnston, Inc.*, 279 S.C. 490, 497, 309 S.E.2d 776, 780 (Ct.App. 1983) (affirming directed verdict without deciding whether trial court erred because jury's verdict made error harmless).

*Roddey v. Wal-Mart Stores E., LP*, 400 S.C. 59, 68, 732 S.E.2d 635, 639-40 (Ct. App. 2012).

Moreover, I am not convinced that even if Petitioner were entitled to a new trial against Wal-Mart, it would be proper to require USSA and Jones to face the possibility of liability in a second trial having been absolved in the first. In arguing for a joint retrial, Petitioner relies on *Williams v. Slade*, 431 F.2d 605 (5th Cir. 1970). In *Williams*, the "innocent" passenger sued both the driver of the automobile in which she was riding and the driver of the other car involved in the accident. The trial court directed a verdict in favor of one of the drivers, and the jury returned a verdict in favor of the other. In *Williams*, either of the defendants,

or both, might have been liable to the plaintiff. Here, however, Wal-Mart could not be liable unless USSA and Jones were also responsible, and unlike the *Williams'* innocent plaintiff, a jury could (and did) find Hancock to be most at fault. I am unable to determine why the majority concludes, without discussion, that both USSA and Jones should again face a jury trial and the possibility of liability.

**KITTREDGE, J., concurs.**

# **Exhibit 2**

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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**RECEIVED**

APR 14 2016

Appeal from Lancaster County  
Court of Common Pleas

**S.C. SUPREME COURT**

Brooks P. Goldsmith, Circuit Court Judge

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Opinion No. 27615 (S.C. Filed Mar. 30, 2016)

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Travis A. Roddey, as the Personal  
Representative of the Estate of  
Alice Monique Beckham Hancock,.....Petitioner,

v.

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

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**RESPONDENTS' PETITION FOR REHEARING**

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This Court published its recent 3-2 decision in *Roddey v. Wal-Mart Stores East, LP*, on March 30, 2016. See Op. No. 27615 (Shearouse Adv. Sh. No. 13, p. 22). Pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, the Respondents, Wal-Mart Stores East, LP, U.S. Security Associates, Inc. ("USSA"), and Derrick L. Jones, petition this Court for rehearing of its majority decision. As set forth more fully below, the Respondents respectfully submit that the Court overlooked or misapprehended the following points in its decision:

1. The Court's majority opinion misapprehends or overlooks the fact that Jones' pursuit of Beckham and Hancock was not "set into motion" by any wrongful acts on the part of Wal-Mart, but began spontaneously when Beckham began to run from

Jones and he followed her, and that it would have continued regardless of any instruction by Wal-Mart. Jones claims that, before the pursuit began, he had been given no "distinctive instructions" when he asked Wal-Mart employees what, if anything, they wanted him to do. (App. p.219, lines 6-14). He was told nothing other than "try to kind of like delay – you know, try to delay her. Try to talk to her until we can get out there." (App. p.184, line 23-p.185, line 4). At that time, Beckham was still in the store and no one knew what she was going to do. Wal-Mart had given Jones no instructions to formally detain Beckham, a function reserved for Wal-Mart loss prevention personnel, nor had any Wal-Mart employee asked Jones to follow or obtain any information from or regarding Beckham. Petitioner's pursuit expert, Dr. Jeffrey Alpert, (App. p.267, lines 11-17), took no issue with Jones asking Beckham if he could speak with her as she walked past his security vehicle, (App. p.277, lines 12-21), nor did Petitioner's guard force management, parking lot security and loss prevention expert, Jeffrey Gross, criticize that act. (App. p.235, line 16-p.236, line 16).

After Beckham abandoned her bag of stolen merchandise at the interior doorway leading to the exit of the store, Wal-Mart considered the incident to be over, as Wal-Mart had not actually been deprived of the merchandise. (App. p.335, lines 17-19). Hence, no Wal-Mart employees followed Beckham outside or made any effort to stop her from leaving, and they were therefore not outside and in view of Jones and Beckham when they encountered each other. As soon as Jones spoke to Beckham as she walked by his security vehicle, Beckham began to run, prompting Jones to turn his vehicle around and follow. No employees of Wal-Mart saw any portion of those events until Jones had already followed Beckham to the middle of the parking lot, Beckham had already jumped

into the backseat of Hancock's vehicle, and Jones had effectively blocked Hancock's vehicle by turning his security truck into the same aisle of the parking lot.

Despite that the sequence of events unfolded as outlined above, some of the Court's reasoning appears to be predicated, in part, on the conclusion that Jones' pursuit was prompted at the very outset by instructions from Wal-Mart. For instance, in its majority opinion, the Court noted that Wal-Mart employees' instructions *led* Jones to drive through Wal-Mart's parking lot in pursuit of Beckham (p. 9) and that Jones' acts were set into motion by the original wrongful acts of Wal-Mart. However, as there is no evidence that any Wal-Mart employee instructed Jones to obtain the license tag number of Hancock's vehicle *before* Jones had already initiated the pursuit through the parking lot, no act by Wal-Mart can reasonably be said to have set into motion those events.

Just as Wal-Mart did not incite Jones to pursue Beckham by asking him to follow her and get her license tag number at any time *before* they were already engaged with each other in the middle of the parking lot, it is incorrect to say that Wal-Mart, at any point, instructed Jones to *actually* engage in a pursuit, as noted at a couple of points in the opinion.<sup>1</sup> A Wal-Mart employee (Cox) only asked Jones to get Hancock's license tag number at the moment when she saw Hancock had turned around and Jones was in a position to see it, which occurred in a matter of seconds after she walked outside and saw the vehicles. She also provided an explanation for yelling out to get the tag, to wit, that she meant for Jones to get the tag number *and stop*. (App. p.344, lines 9-16). Jones affirmed that he was asked to get the license tag number of the vehicle, and while he testified he was *not* told to follow anyone off of the property, Jones read into the request

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<sup>1</sup> The Court noted, on page 8, that there was evidence that Wal-Mart employees violated Wal-Mart's policies by instructing Jones to engage in the pursuit. The Court also noted, on page 9, it was reasonably foreseeable that instructing a contracted security guard to engage in such pursuit would be dangerous.

to get the tag number much more than was actually said to him. In any event, it is obvious that any instruction to get the tag number in the midst of the ongoing pursuit was superfluous and could not have influenced Jones to have engaged in the pursuit, which he had already initiated on his own.

In addition to the above, the majority opinion misapprehends or overlooks the fact that there is no evidence in the record establishing that Jones would have discontinued his pursuit at any point after it began. Jones had begun the pursuit without any purpose or end goal. There is no evidence he needed a reason to keep going. Jones should have been able to see Hancock's license tag when he was directly behind her vehicle in the parking lot, which was why Cox yelled out into the walkie-talkie to get the tag. As explained by Wal-Mart's General Manager, Chris Tipton, asking Jones to obtain Hancock's license tag number while in the parking lot was not a violation of Wal-Mart policy. (App. p.351, lines 3-17). Even Plaintiff's pursuit and loss prevention experts agreed that recording the license tag number in the parking lot was reasonable and explainable. (App. p. 260, lines 14-23; p. 277, lines 8-21). Yet, Jones continued in his pursuit.

According to Beckham's testimony, Jones then remained in close range of Hancock's vehicle for the next two miles away from the property while flashing his lights<sup>2</sup>, which, if true, and without guessing what Jones' motivations might have been, would seem inconsistent with an effort to just obtain Hancock's license tag number. It is obvious he must have been motivated by something else given the method in which Beckham claims he was pursuing Hancock (and assuming Beckham's testimony to be true). The totality of the circumstances establishes that the only reasonable inference to

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<sup>2</sup> No one other than Beckham has offered testimony regarding these acts, none of which were witnessed by Wal-Mart.

be drawn from the evidence is that Jones independently initiated *and* decided to continue a pursuit for more than two miles and that Wal-Mart's attempt to have Jones get the license tag number in the midst of the ongoing pursuit, while Jones and Hancock were still in the parking lot, had no bearing on either the initiation of the chase by Jones or on his actions (*i.e.*, tailgating and flashing his lights) once the vehicles were away from the property and no longer in view.

In view of the above, Wal-Mart's acts could not have served as either a but-for or legal cause of the accident.

2. The Court's majority opinion misapprehends or overlooks the fact that it should disregard Jones' testimony that he was somehow having an ongoing conversation over a walkie-talkie while in the midst of pursuing Hancock and Beckham at a high rate of speed in the parking lot. As set forth by the majority opinion, Jones testified that both Rollings and Cox repeatedly instructed him to get the license plate number, that he was telling them he could not see it, and that he told them Hancock was about to leave the parking lot. All the while, Jones contended both of the Wal-Mart employees continued to instruct him to obtain the license tag number. Testimony may be properly disregarded as inherently incredible where it is refuted by facts which are of common knowledge. See Still v. Hampton & Branchville R.R., 258 S.C. 416, 425 (1972). Here, communications between Jones and Wal-Mart were only possible and being made over walkie-talkies, the basic function of which is incontrovertible and of which this Court may take judicial notice. See id. Walkie-talkies do not operate like telephones, but are hand-held, two-way radio transceivers and, although any number of persons can listen at one time, only one radio on the channel can transmit at a time. Pushing the "push-to-talk" button turns off

the receiver and turns on the transmitter. If more than one person attempts to talk simultaneously, the channel is jammed and no one can listen.

Despite the limitations of a walkie-talkie system, and without even considering the limited range that they had even within the Wal-Mart store, it is incredible to believe that Jones could have had the ability to be hotly pursuing Hancock and Beckham, maneuvering his security truck around the islands that defined the aisles and exit of the parking lot, and maneuvering through a stop sign and stop light, past other vehicles in the intersection at a high rate of speed, all while having a back and forth conversation with more than one person. South Carolina law recognizes, and common sense dictates that self-serving statements are inherently less reliable than self-inculpatory statements. See Jones v. Catoe, 345 S.C. 389, 402, 548 S.E.2d 587, 594 (2001). See also Rule 804(b)(3), SCRE (providing exception to rule against hearsay where the statement, at the time of its making is against declarant's pecuniary or proprietary interest, the rationale being the assumption that persons do not make statements which are damaging to themselves unless satisfied that the statements are true). It is not at all unlikely Jones' testimony was motivated by trying to find some explanation for continuing a pursuit, which he initiated entirely on his own accord, well beyond his limited "jurisdiction" (*i.e.*, the Wal-Mart parking lot), despite knowing that he was not allowed to leave and never should have left the parking lot. Jones' testimony in regard to these alleged communications, which serves as support in the majority opinion for the finding that there is some evidence of Wal-Mart's negligence, is inherently incredible and should be discounted.

3. The Court's majority opinion misapprehends or overlooks the fact that, while evidence of a company's deviation from its own internal policies is relevant to

show the company deviated from the standard of care, Wal-Mart did not employ and had no authority over Jones. Wal-Mart further had no duty or responsibility to supervise him. Jones was to act independently and in accordance with USSA's guidelines. Accordingly, while Jones' violation of those rules that were applicable to him could constitute evidence of *his* negligence, Jones was not subject to Wal-Mart's policies and was not supposed to engage in any loss prevention activities. His violation of Wal-Mart's internal policies cannot therefore be probative of Wal-Mart's negligence. Wal-Mart's liability has to rise and fall on the acts of its own employees in following Wal-Mart's policies and procedures.

In examining the actions taken by Wal-Mart employees, there is no evidence any Wal-Mart employee acted inappropriately in any interaction with Hancock or Beckham, nor did any Wal-Mart employee try to circumvent their rules by procuring Jones to do something they could not. While Beckham was still in the store and it was unclear what she was going to do, Jones claims that he was only told to speak with Beckham for a moment to perhaps delay her. No one asked Jones to physically detain Beckham or to follow her as she left the Wal-Mart store. Yet, after Beckham dropped her stolen merchandise inside and left the store, and before anyone at Wal-Mart was outside or had any idea what was occurring, Jones independently began pursuing Beckham the second she ran, with no instruction or prodding. Wal-Mart had no knowledge of the chase until Hancock, Beckham and Jones were fully engaged with each other in the middle of the parking lot. Hence, Wal-Mart cannot be said to have procured Jones to pursue Beckham and Hancock in violation of Wal-Mart policy.

There is also no prohibition in Wal-Mart's policies in asking that Jones get the license tag number at the moment when Jones was positioned directly behind Hancock and could have done just that. Even Petitioner's experts conceded there was no harm in getting Hancock's license tag number in the parking lot. Gross agreed that recording a license tag number would be explainable and reasonable, (App. p.260, lines 14-23), while Alpert likewise did not take issue with Cox requesting Jones get the tag number. (App. p.277, lines 8-11). It was Jones's actions and methods that Petitioner's experts criticized.

That Wal-Mart acquiesced in Jones leaving the parking lot and proceeding with the pursuit of Beckham and Hancock away from the property is based entirely on Jones' own subjective interpretation of what someone *meant* for him to do when they yelled out to get the tag. The testimony by Wal-Mart employees regarding the intent of that request, however, was clear. They meant for him to get the tag and stop. There was no direction ever given to leave the property or to continue to pursue, nor did they expect Jones would do so given USSA's guidelines which make clear that Jones is to remain on the property. (App. p.324, lines 8-10; p.325, lines 2-9; p.338, lines 4-7; p.342, lines 7-12). Jones likewise admitted he knew he was not supposed to leave the parking lot. Accordingly, there was no evidence of violation by Wal-Mart employees of their policies and procedures.

4. The Court's majority opinion misapprehends or overlooks the fact that, even considering Petitioner's claims that there are grounds to find Wal-Mart independently liable (and not just vicariously liable through Jones), Wal-Mart's conduct could not have had any bearing on Hancock's proportion of fault. The reaction and resulting acts of both Beckham and Hancock were solely, and at all times, responsive to

Jones' acts. They had no interaction with any Wal-Mart employee that spurred them to flee. Before the chase began, Hancock was already waiting in her vehicle, and Beckham had responded to the inquiry by the Wal-Mart door greeter for a receipt by placing the bag of stolen merchandise onto the floor and walking outside, with no one following her. At that point, neither Beckham nor Hancock had any further contact with any Wal-Mart employee.

The examination then must turn to the actions taken by the two participants in the vehicular pursuit—Hancock and Jones. There is no evidence Hancock had any knowledge that Wal-Mart told Jones anything. Wal-Mart also had no interactions with Hancock that prompted her to react in the manner than she did. Hancock responded initially to her sister when she saw Beckham running toward her in the parking lot. She drove toward her sister and then reacted to Jones when she saw that his security truck was in front of her by backing up at a high rate of speed before hitting a concrete median and turning around, all of which occurred before any Wal-Mart employee yelled to Jones to get the tag. After speeding toward the exit and running through a stop sign and red light to get out of the Wal-Mart parking lot, Hancock continued to flee at a high rate of speed for over two miles, narrowly avoiding other collisions until she lost control of her vehicle and failed to negotiate a curve, driving straight off of the roadway, across a yard, and into some trees. Because Wal-Mart's conduct does nothing to explain Hancock's response, it cannot have had any effect on the jury's apportionment of fault to her. The jury considered all of Hancock's actions, as well as the testimony of Jones and all of the involved Wal-Mart employees who testified at trial, before finding that Hancock was 65% at fault in causing the accident. Petitioner should be bound by that determination.

4. The Court's majority opinion misapprehends or overlooks the fact that Petitioner failed to preserve for appellate review the argument that the Court could procedurally grant a new trial as against defendants who received a non-erroneous verdict, favorable to them, which was not otherwise challenged in any respect. While Petitioner has maintained that his arguments fairly encompassed his position that a new trial as to Plaintiff's negligence cause of action should be granted as to all defendants, the majority opinion did not consider that Petitioner failed to set forth that point in crafting the issue on appeal. Having failed to do so, Petitioner's position should not have been considered. See Rule 208(b)(1)(B), SCACR ("Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal."). See also Allen v. Pinnacle Healthcare Systems, LLC, 394 S.C. 268, 715 S.E.2d 362 (Ct. App. 2001) (assertions regarding errors in awarding damages and attorney's fees to plaintiff were not included in the sole statement of the issue on appeal and were therefore not preserved for review).

Even if Petitioner had fashioned the issue on appeal so as to clearly assert his request for remand as to all defendants, the Court did not consider Petitioner's failure to set forth case law analyzing the propriety of a retrial for all defendants when some have received a favorable jury verdict that was not found to be in error. Rather, Petitioner only made the conclusory argument that the comparative negligence framework would so require. The cases cited did not, however, address or analyze issues of remand in cases involving multiple defendants who received differing outcomes through the trial process.

As an initial matter, the fact that South Carolina has adopted a comparative negligence model is no guarantee to any litigant that a jury will have the opportunity to

assess liability on the part of every single, potentially culpable defendant, for reasons both within and beyond that litigant's control. Secondly, there are no South Carolina cases that extrapolate from the comparative negligence framework the result that has been mandated here. There is, however, case law in many other jurisdictions addressing precisely this issue in a direct way and holding that the general rule is that the granting of a new trial as to one defendant does not require the plaintiff be granted a new trial with regard to another. See Jack v. Booth, 858 N.W.2d 711 (Iowa 2015) (citing 58 Am. Jur. 2d New Trial § 29, at 102 (2012)). Ultimately, only one such case was cited by Petitioner in his Reply Brief in support of Petitioner's position, after Respondents pointed out Petitioner's failure to have directly addressed the issue. See Williams v. Slade, 431 F.2d 605 (5<sup>th</sup> Cir. 1970).

In Williams, involving an automobile accident in which an innocent passenger sued both the driver of the vehicle in which she was a passenger and the driver of the other involved vehicle, the trial judge directed a verdict in favor of one driver, while the jury, left with an all or nothing decision, returned a verdict in favor of the other driver. The Fifth Circuit reversed and ordered a new trial as to both defendants because the court reasoned that *someone* had to be liable to the innocent plaintiff passenger. There was no evidence suggesting an unavoidable accident. Accordingly, a proper trial could only be held where the jury had the choice of holding liable one or the other of the drivers, or both.

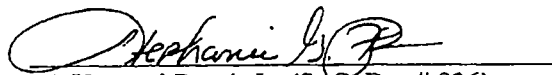
Here, there is no basis for saying that one or all of the defendants *must* inevitably be liable to Plaintiff. Rather, this case involved significant issues as to comparative fault on the part of Hancock in acting as the get-away driver, driving recklessly, and losing

control of her vehicle, resulting in her single-vehicle accident and death. If Jones is found not to be at fault in causing the accident, which occurred over two miles away from the Wal-Mart property, and with no involvement by any Wal-Mart employee, how is there any conceivable way that Wal-Mart could be liable for the same accident? In this case, following a six-day trial in which the jury had the benefit of Jones' testimony, as well as that of all involved Wal-Mart employees,<sup>3</sup> the jury determined Hancock was most at fault in the accident in which Jones and Hancock were the direct participants. That verdict should stand.

#### CONCLUSION

For all of the foregoing reasons, Respondents respectfully request this Court grant this Petition, permit rehearing, withdraw its prior decision, and enter a new opinion upholding and affirming the decisions rendered by the trial court, as affirmed by the Court of Appeals.

Respectfully submitted,



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Attorneys for Respondents

April 13, 2016  
Greenville, SC

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<sup>3</sup> Wal-Mart was only absent from one day of trial before the jury rendered its verdict.

**RECEIVED**

**THE STATE OF SOUTH CAROLINA**  
In the Supreme Court      APR 14 2016

Appeal from Lancaster County **S.C. SUPREME COURT**  
Court of Common Pleas

Brooks P. Goldsmith, Circuit Court Judge

Opinion No. 27615 (S.C. Filed Mar. 30, 2016)

Travis A. Roddey, as the Personal  
Representative of the Estate of  
Alice Monique Beckham Hancock,.....Petitioner,

v.

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

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**PROOF OF SERVICE**

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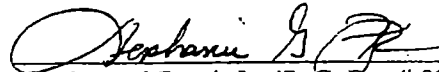
The undersigned hereby certifies that on the 13<sup>th</sup> day of April, 2016, a copy of Respondents' Petition for Rehearing was served by placing a copy of the Petition in an envelope with sufficient postage prepaid, and mailing it to counsel for Petitioner as follows:

Blake A. Hewitt, Esquire  
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April 13, 2016

  
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Attorneys for Respondents

# The Supreme Court of South Carolina

Travis A. Roddey, as the Personal Representative of the  
Estate of Alice Monique Beckham Hancock, deceased,  
Petitioner,

v.

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

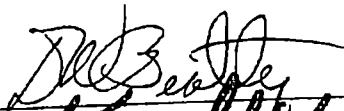
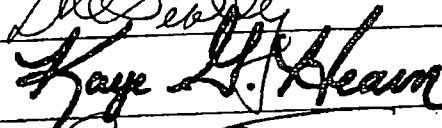

Appellate Case No. 2012-213375

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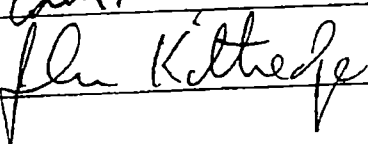
## ORDER

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The Petition for Rehearing filed in the above entitled matter is denied.

  
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J.  
  
\_\_\_\_\_  
J.  
  
\_\_\_\_\_  
A.J.

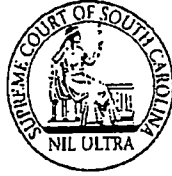
I would grant the Petition for Rehearing.

  
\_\_\_\_\_  
C.J.  
  
\_\_\_\_\_  
J.

Columbia, South Carolina  
May 5, 2016

cc:

W. Howard Boyd, Jr., Esquire  
Stephanie G. Flynn, Esquire  
Blake Alexander Hewitt, Esquire  
John S. Nichols, Esquire  
Brent Paul Stewart, Esquire  
S. Randall Hood, Esquire  
The Honorable Jeff L. Hammond



## The Supreme Court of South Carolina

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May 5, 2016

The Honorable Jeff L. Hammond  
PO Box 1809  
Lancaster SC 29721-1809

### REMITTITUR

Re: Travis Roddey v. Wal-Mart Stores  
Lower Court Case No. 2007-CP-29-00593  
Appellate Case No. 2012-213375

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court along with the earlier decision of the South Carolina Court of Appeals is enclosed.

Very truly yours,

CLERK

cc: W. Howard Boyd, Jr., Esquire  
Stephanie G. Flynn, Esquire  
Blake Alexander Hewitt, Esquire  
John S. Nichols, Esquire  
S. Randall Hood, Esquire  
Brent Paul Stewart, Esquire

# **Exhibit 3**

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

Travis A. Roddey, Individually and as the  
Personal Representative of the Estate of Alice  
Monique Beckham Hancock, deceased,

Plaintiff,

v.

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

Defendants.

)  
) IN THE COURT OF COMMON PLEAS  
) C.A. NO.: 07-CP-29-0593

)  
) **DEFENDANTS' MEMORANDUM OF**  
) **LAW IN SUPPORT OF THEIR**  
) **MOTION FOR AN ORDER**  
) **EXCLUDING PLAINTIFF'S**  
) **CAUSE OF ACTION FOR**  
) **NEGLIGENT HIRING, TRAINING,**  
) **SUPERVISION AND/OR**  
) **ENTRUSTMENT OR, IN THE**  
) **ALTERNATIVE, FOR SUMMARY**  
) **JUDGMENT AS TO SUCH CLAIMS**

### INTRODUCTION

This matter is now before the Court on Defendants' motion for an order excluding Plaintiff's cause of action for negligent hiring, training, supervision and/or entrustment (hereinafter referred to as the "negligent hiring" cause of action) from being re-litigated during the retrial of this case. This memorandum of law is submitted in support of Defendants' motion. Specifically, Plaintiff's cause of action for negligent hiring was previously and conclusively determined by a jury, was not at issue on appeal, is severable from Plaintiff's negligence cause of action, and is, therefore, *res judicata*. In the alternative, the Defendants are entitled to summary judgment as to Plaintiff's cause of action for negligent hiring, training, supervision and/or entrustment. The only inference to be drawn from the evidence is that Defendant Derrick Jones' conduct on the date of the accident was not and could have been foreseeable to Defendants U.S. Security Associates, Inc. and Wal-Mart Stores East, LP<sup>1</sup>, so as to place U.S. Security Associates, Inc. and Wal-Mart Stores East, LP, on notice of potential harm to third parties.

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<sup>1</sup> Defendants do not concede the cause of action for negligent hiring, training, supervision and/or entrustment is even applicable to Wal-Mart.

## FACTUAL BACKGROUND AND PROCEDURAL HISTORY

The plaintiff, Travis L. Roddey, Individually and as the Personal Representative of the Estate of Alice Monique Beckham Hancock (sometimes referred to hereinafter as "Hancock" or "Decedent"), initiated this wrongful death and survival action against Defendants arising out of a single-car accident that occurred on June 20, 2006, in Lancaster County, South Carolina. The accident occurred after the decedent's sister, Donna Beckham, shoplifted items in the Lancaster Wal-Mart store, located on Highway 9, and the women fled from the store in Hancock's vehicle. Approximately two miles from the store, Hancock lost control of her vehicle, left the roadway to her left, drove through a grassy area and collided head-on into a tree.

On the evening of the incident, Defendant Derrick Jones was working for USSA as a security guard, having only been hired approximately 30 days earlier. While Wal-Mart handled all of its own loss prevention activities, it contracted with USSA, a private security contractor, to provide a uniformed security officer and USSA truck to patrol the parking lot of the Wal-Mart store. (See Security Services Master Agreement, Ex. A). The presence of the security officer and vehicle were designed to serve as a deterrent to unlawful activity and to provide a sense of security for customers. (See Guidelines for Private Security Contractors, Ex. B). As expressly set forth in both the Security Master Services Agreement between Wal-Mart and USSA and the Guidelines for Private Security Contractors, security officers were not agents or employees of Wal-Mart, but were independent contractors. Wal-Mart had no role in the hiring, training and/or supervision of Jones and had no ownership interest in the USSA security truck used by USSA security officers. At most, security contractors were to be a source of information for Wal-Mart with regard to activity in the parking lot, record useful information, and assist if requested by Wal-Mart. (Guidelines for Private Security Contractors, Ex. B).

Jones became aware that Wal-Mart employees had witnessed Beckham placing merchandise into Wal-Mart bags at an unmanned register after a Wal-Mart employee, Hope Rollings, saw Jones outside of one of the entrances and walked outside briefly to let him know. (Transcript p. 496, line 1-p. 498, line 25, Ex. C). She gave him no other instructions. (See id.) Jones, who had possession of a walkie-talkie, could hear the walkie-talkie traffic pertaining to Beckham, including that she was walking toward the General Merchandise exit, and he therefore drove the USSA security vehicle toward that exit. (See id.) He claims to have asked what to do and being told to “kind of like delay” Beckham. (Jones Depo., p. 35, line 23-p. 36, line 4, Ex. D).

As Beckham walked to the exit, she was asked by a Wal-Mart door greeter to produce a receipt. Beckham responded that her sister had it and put the bag of merchandise down before walking outside. (Transcript p. 233, lines 5-11, Ex. C). During this time, the Decedent was waiting in her vehicle for Beckham. After Beckham exited the store, she encountered Jones, with whom she had a very brief exchange as she passed his truck,<sup>2</sup> and immediately began running through the parking lot toward the Decedent’s vehicle. (Transcript p. 132, lines 2-7; p. 134, lines 11-17; p. 206, lines 10-15, Ex. C). The Decedent, who evidently saw Beckham running toward her, began driving the wrong way down an aisle of the parking lot to meet Beckham and, as Beckham reached the Decedent’s car, she jumped into the back seat on the driver’s side of the vehicle. (Transcript p. 134, lines 20-25; p. 145, lines 11-15; p. 206, lines 16-25, Ex. C).

As soon as Beckham began running, Jones unilaterally made a three-point turn in his USSA security truck to follow her. He met Hancock’s vehicle in the middle of the parking lot, just after Beckham had jumped into the back seat, prompting Hancock to put her car in reverse and back at a high rate of speed, striking a median before turning around to leave the Wal-Mart parking lot. Jones continued to follow Hancock as she drove toward the exit. He claims that, as

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<sup>2</sup> Jones claims he asked to speak with Beckham for a moment, while Beckham claims Jones yelled at her.

he was following Hancock toward the exit, one or more Wal-Mart employees who had only just walked outside and saw what was occurring, yelled to get the tag number. (Transcript p. 527, line 9-p. 528, line 3; p. 507, line 19, Ex. C). Both Hancock and Jones turned onto Highway 9 By-Pass and continued to drive as quickly as possible from the scene. While the testimony pertaining to the routes taken by the parties following the encounter in the parking lot differs, Hancock's vehicle left the roadway around two miles from the store, driving through a grassy area before colliding head-on with a tree on the left-hand side of the road. Jones was not involved in the accident, and there was no evidence of any contact between the vehicles at any point.

In Plaintiff's Second Amended Complaint, Plaintiff alleged the accident was caused by the negligent acts of Defendant Jones, the security guard employed by USSA, in pursuing Hancock out of the Wal-Mart parking lot. Plaintiff further alleged that Defendants U.S. Security Associates, Inc., and Wal-Mart Stores East, LP, were vicariously liable for the negligent acts of Jones and for the negligent hiring, training, supervision and entrustment of a vehicle to Jones. Defendants denied any liability to Plaintiff in connection with the wrongful death and survival actions.

The first trial of this case commenced in the Lancaster County Court of Common Pleas on April 6, 2010, before the Honorable Brooks P. Goldsmith. At the conclusion of Plaintiff's case on April 9, 2010, Wal-Mart moved for a directed verdict on the grounds that (1) there was no negligence on the part of Wal-Mart, (2) no evidence that any negligent acts or omissions on the part of Wal-Mart were a proximate cause of the accident, and (3) even if any negligence on the part of Wal-Mart was a proximate cause of the accident, the only reasonable inference to be drawn from the evidence was that Hancock's own negligence and recklessness was a greater than 50% cause of the accident. (Trial Transcript, p.594, lines 5-10; p. 599, lines 1-12, Ex. C). The

only acts of alleged negligence on the part of Wal-Mart that were addressed at the directed verdict stage were the actions of Wal-Mart's own employees in allegedly asking Jones to stop and/or speak to Donna Beckham as she left the store, asking Jones to obtain Hancock's license tag number and failing to instruct Jones to stop his pursuit of Hancock before the vehicles were out of sight. (See generally, Trial Transcript, p. 593, line 2-p. 594, line 5; p. 594, line 23-p. 598, line 25; p. 599, lines 12-20; p. 601, line 11-p. 603, line 14, Ex. C). In opposition, the fact that Wal-Mart did not employ Jones, which was mentioned by Defendants' counsel during the directed verdict stage (Trial Transcript p. 593, lines 23-24, Ex. C), was never contested. Plaintiff also never contended there were any grounds establishing that Wal-Mart was liable for the negligent hiring, training, supervision and/or entrustment of Jones, or that the alleged wrongful acts by Wal-Mart supported any cause of action other than negligence.

After considering arguments of counsel, the trial court granted Wal-Mart's motion for directed verdict, holding there was no evidence of negligence on the part of Wal-Mart and alternatively, even if Wal-Mart was negligent, there was no evidence such negligence was a proximate cause of the accident, given that the series of events culminating in the single-car accident and death of Hancock, specifically including a two-mile high-speed pursuit by Jones off of Wal-Mart property, were not reasonably foreseeable. (Trial Transcript p. 603, lines 15-22, Ex. C). As with Plaintiff's oral argument at the directed verdict stage, Plaintiff's motion for reconsideration of the directed verdict in favor of Wal-Mart also addressed only the alleged actions of Wal-Mart employees in asking Jones to delay Beckham, asking him to get the license tag number, and failing to tell Jones to stop. (See generally, Plaintiff's Notice of Motion and Memorandum in Support of Motion to Reconsider, Alter, and Amend Order Granting Directed Verdict to Wal-Mart, Ex. E). Plaintiff's counsel never contended there were any acts on the part

of Wal-Mart supporting a cause of action for negligent hiring, training, supervision and/or entrustment. The reason for that is clear, as the evidence and testimony elicited at trial did not support any such claim, nor could it seriously be contended that the cause of action for negligent hiring, training, supervision and entrustment applied to any party other than USSA. The only other motion presented at the directed verdict stage was a motion seeking a directed verdict in favor of USSA as to the negligent hiring cause of action. (Trial Transcript p. 604, line 15-p. 605, line 25, Ex. C). That motion was denied, and the trial continued against both USSA and Jones.

At the conclusion of the six-day trial on April 13, 2010, the case was submitted to the jury. The jury returned a verdict, finding as to Petitioner's negligence claim, Hancock was 65% negligent and Jones and USSA were 35% negligent in causing the accident. (See Verdict Form, Ex. F). On Plaintiff's cause of action for negligent hiring, training, supervision and entrustment against USSA, the jury found that, while USSA was negligent in hiring Jones, such negligence was not a proximate cause of the accident. (See *id.*) Even had the jury not so decided, the jury was not asked to apportion fault between Plaintiff and USSA as to the negligent hiring cause of action.

Plaintiff subsequently filed a Motion to Alter or Amend the Judgment and for a New Trial. One of the alleged errors supporting Plaintiff's motion was Plaintiff's contention that the trial court erred in directing a verdict in favor of Wal-Mart. (See Plt's Mot. to Alter or Amend the Judgment and for a New Trial, pp. 4-6, Ex. G). Plaintiff's argument on that point was entirely directed to alleged acts of negligence on the part of Wal-Mart in its interactions with Jones on the night of the incident. Plaintiff, referencing the jury's allocation of fault among the parties in the negligence cause of action, contended that the error required a new trial as to all defendants so that the jury could compare the Decedent's negligence with Defendants' combined negligence

in causing the accident. Plaintiff did not address any allegations of negligent hiring, training, supervision and/or entrustment on the part of Wal-Mart. Moreover, none of the other alleged points of error were directed to the jury's verdict in favor of the defense on Plaintiff's negligent hiring-cause of action.

Plaintiff's post-trial motions were denied, and Plaintiff subsequently filed a Notice of Appeal. In Appellant's Initial Brief to the South Carolina Court of Appeals, Appellant framed the only issue on appeal as "[w]hether the trial court erred when it granted a directed verdict *in this negligence action* in favor of Wal-Mart." (App. Initial Br. p. 1, Ex. H) (emphasis added). The entirety of Plaintiff's arguments pertaining to the issue on appeal were directed to the circumstances surrounding the pursuit, specifically the alleged negligent acts or omissions on the part of Wal-Mart in enlisting Jones' involvement in the situation, in allegedly encouraging him to pursue the Decedent, and in failing to tell Jones to stop. None of the evidence or testimony submitted by Appellant to the Court related to the negligent hiring cause of action. In addition, while Appellant contended that the error of the trial court in directing a verdict in favor of Wal-Mart would require a new trial as to *all Defendants*, Appellant did not expand his request for relief to apply to all *causes of action*. Rather, Appellant argued he was entitled to have a jury compare Decedent's negligence with the combined negligence of all Defendants as it related to the accident, adding that it was Appellant's position that the evidence showed the Decedent was driving the speed limit at the time of the accident and that the accident was not caused by reckless driving on her part. The jury had *not* been asked to compare Decedent's negligence with the negligence of any Defendant in connection with the negligent hiring cause of action. Hence, the sole rationale supporting a reversal and remand of the case as to the negligence cause of action could not have even applied to the negligent hiring cause of action.

Just as the negligent hiring claims were not addressed in post-trial motions or before the Court of Appeals, such claims were also not addressed before the South Carolina Supreme Court. At the very outset of the Supreme Court's opinion, Acting Justice Toal framed the issue before the Court as directed to the propriety of the "trial court's grant of Wal-Mart's motion for a directed verdict on Petitioner's *negligence claim*." Roddey v. Wal-Mart, 784 S.E.2d 670, 672 (S.C. 2016) (emphasis added) (Ex. I). The entire opinion addresses the acts and omissions of the various parties as they pertained to the actual pursuit and then analyzes Wal-Mart's alleged acts and omissions under the elements required to prove a cause of action for negligence (*i.e.*, duty, breach, causation and damages). The Supreme Court opinion never even makes mention of or references that there was ever any cause of action at issue in the case other than negligence.

**I. Because Plaintiff's cause of action for negligent hiring was previously and conclusively determined by a jury, was not at issue on appeal, and is severable from Plaintiff's negligence cause of action, the issue has become of the law of the case, is *res judicata*, and is not entitled to be re-litigated during the trial of this case on remand.**

Causes of action for negligence and for negligent hiring, training, supervision and entrustment are "*separate and distinct* requiring different kinds and quantities of proof." See Longshore v. Saber Sec. Servs., 365 S.C. 554, 563 (Ct. App. 2005) (emphasis added). While negligence cases turn on proof of duty, breach, causation and damages, negligent hiring cases turn on knowledge of the employer and foreseeability of harm to third parties, which is analyzed by examination of the number and nature of prior acts of wrongdoing by the employee, and the nexus or similarity between the prior acts and the ultimate harm caused. See Doe v. ATC, Inc., 367 S.C. 199, 206, 624 S.E.2d 447, 450 (Ct. App. 2005). Indeed, the causes of action were pleaded separately in Plaintiff's initial and amended pleadings. They were also addressed separately on the verdict form ultimately submitted to the jury. There was no evidence presented of negligent hiring by Wal-Mart during Plaintiff's case at trial and, accordingly, at the directed

verdict stage, the arguments of *both* sides on the motion for a directed verdict in favor of Wal-Mart addressed *only* the alleged negligence on the part of Wal-Mart as those acts pertained to the pursuit by Jones of the Decedent. Specifically, Plaintiff solely criticized Wal-Mart's acts in involving Jones in any interaction with Beckham, instructing Jones to obtain the Decedent's license tag number, and the failure of any Wal-Mart employee to tell Jones to stop chasing the Decedent. Plaintiff did not contest the characterization that the only cause of action pertinent to Wal-Mart was for negligence or defense counsel's statement that Wal-Mart had not employed Jones. Plaintiff also put forth no theory against Wal-Mart premised on the negligent hiring of Jones. A motion to reconsider that issue, as well as post-trial motions, also made no reference to a negligent hiring claim against Wal-Mart. All of the evidence and testimony that was addressed was directed to Wal-Mart's alleged negligence in connection with the pursuit.

Just as Plaintiff did not raise the negligent hiring issue in trying to persuade the trial court to reverse its directed verdict in favor of Wal-Mart, Plaintiff also did not frame his issues on appeal before either the South Carolina Court of Appeals or Supreme Court as encompassing any cause of action other than negligence in connection with the pursuit. That the case should be remanded as to *all Defendants* was based solely on the contention that the jury should be required to compare Decedent's negligence with the combined negligence of all Defendants as it related to the accident. This rationale could not apply to the negligent hiring cause of action as the jury had not been asked to compare the negligence of the Decedent with that of USSA on that cause of action.

What is most telling is that the Supreme Court's opinion makes clear that it only addressed the negligence cause of action pertaining to the pursuit. At no time did the Court even reference that Plaintiff had ever made a claim for negligent hiring, training, supervision and/or

entrustment. Because Plaintiff did not preserve for appeal any issues relating to the negligent hiring cause of action, and it is abundantly clear that cause of action was never before the appellate courts, the appellate courts could not grant a new trial on the negligent hiring claim, and Plaintiff is now barred from re-litigating that cause of action on remand. The uncontested decision of the jury on the negligent hiring issue is now the law of the case. See Town of Mt. Pleasant v. Jones, 335 S.C. 295, 298-299, 516 S.E.2d 468, 470 (Ct. App. 1999) (an unappealed ruling becomes the law of the case, and will be presumed by any appellate court to be the correct decision).

Not only is the uncontested jury verdict, holding that the negligent hiring of Jones by USSA was not a proximate cause of the accident, now the law of the case, but the doctrine of *res judicata* also bars Plaintiff from re-litigating the issue at trial. All of the elements for *res judicata* to apply in this instance are met. The identity of the parties is the same; the identity of the subject matter is the same; and the negligent hiring cause of action was fully adjudicated in the first trial. See Plum Creek Dev. Co. v. City of Conway, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1998). Plaintiff never contested at the directed verdict stage that the negligent hiring cause of action applied to Wal-Mart, nor did Plaintiff in any motion for reconsideration address alleged acts of negligence on the part of Wal-Mart other than those directed to negligence in initiating, encouraging and/or failing to stop the pursuit. Rather, Plaintiff allowed the trial to continue to completion as to USSA and Jones and, even in post-trial motions, did not contend Wal-Mart had any liability for the negligent hiring of Jones.

Simply put, Plaintiff had his day in Court on his negligent hiring cause of action, which really had nothing to do with Wal-Mart from the outset, and which was definitively determined by a jury not to have been a proximate cause of Plaintiff's alleged injuries and damages. Plaintiff

cannot now bootstrap a retrial of the negligent hiring cause of action into the retrial of this case on remand after failing to appeal it to either the South Carolina Court of Appeals or Supreme Court. Accordingly, Defendants request that this Court exclude Plaintiff's negligent hiring cause of action and limit the retrial of this case to Defendants' negligence in the pursuit of Decedent, which was the sole basis for Plaintiff's appeal.

**II. Even if Plaintiff's negligent hiring claim is back before this Court, the only reasonable inference to be drawn from the evidence is that there is no proximal nexus between Jones' prior "bad acts" and his actions in following Hancock from Wal-Mart premises. Because it was not foreseeable that Jones would misconduct himself in the manner alleged herein, Plaintiff's cause of action for negligent hiring, training, supervision and entrustment must fail.**

There is no sufficient proximal nexus between Jones' prior "bad acts" and his actions of June 20<sup>th</sup>, 2006, in pursuing Decedent out of the Wal-Mart parking lot. In other words, assuming USSA was fully aware of all of Jones' prior bad acts when Jones was hired by USSA, those bad acts would not have been predictive of Jones' behavior on June 20<sup>th</sup>, 2006. Based on those acts, it would not have been foreseeable to USSA that Jones would pursue and aggressively follow a shoplifter off of Wal-Mart property in violation of his training and post-orders, drive recklessly, and ultimately cause a motor vehicle accident resulting in the death of the shoplifter's accomplice.

Plaintiff's claims for negligent hiring, training, supervision and entrustment are premised on the fact that, at the time that Jones was hired by USSA, he had pending criminal charges,<sup>3</sup> a conviction for marijuana possession, multiple violations on his drivers' license,<sup>4</sup> and an initial

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<sup>3</sup> Jones had been arrested and charged with common law/strong arm robbery, which charges were later dismissed. He had also been arrested and charged for misdemeanor first offense of possession of less than one gram of methamphetamine or cocaine base, misdemeanor possession of drug paraphernalia, and misdemeanor first offense of possession of 28G or less of marijuana or 10G or less of Hash. Jones received a fine in connection with the charged offense of misdemeanor first offense possession of 28G or less of marijuana only, while the remaining charges were also dismissed.

<sup>4</sup> Specifically, Jones' driving records from North Carolina and South Carolina included a single accident and citation for driving without a license in 2002; citations for speeding (10-mph or less) and operating with improper lights in

drug screening that was positive for THC, or marijuana. Nonetheless, Jones' criminal charges (most of which were dismissed), traffic violations, and positive drug screening would not have made it foreseeable to USSA and Wal-Mart that Jones was in the habit of misconducting himself in the manner alleged herein, such that he would be a danger to Decedent. Negligent hiring cases turn upon (1) knowledge of the employer and (2) foreseeability of harm to third parties. See Doe v. ATC, Inc., 367 S.C. 199, 206, 624 S.E.2d 447, 450 (Ct. App. 2005) *citing* Di Cosala v. Kay, 91 N.J. 159, 450 A.2d 508; 516 (1982). The court has analyzed these elements in terms of the "number and nature of prior acts of wrongdoing by the employee, and the nexus or similarity between the prior acts and the ultimate harm caused." *Id.* *citing* Polk v. May Dep't Stores Co., 133 OR. App. 410, 891 P. 2d 686, 691 (1995); Gaines v. Monsanto Co., 655 S.W. 2d 568, 571 (MO. Ct. App. 1983). Whether the employer knew that the offending employee was in the habit of misconducting himself in a manner dangerous to others is the appropriate inquiry under this analysis. See ATC, Inc., 367 S.C. at 306, 624 S.E.2d at 450-451 (citing SECOND RESTATEMENT OF TORTS § 317, comment C). "Accordingly, many courts have recognized that a plaintiff must demonstrate some propensity, proclivity, or course of conduct sufficient to put the employer on notice of the possible danger to third parties." ATC, 367 S.C. at 206, 624 S.E.2d at 451. The Court of Appeals in ATC further noted that, due to this standard, many courts have dismissed negligent hiring and negligent retention cases when the party relies on a single incident of misconduct to establish a propensity for the conduct complained of. See Sullivan v. St. Louis Station Assocs., 770 S.W.2d 352 (Mo.Ct.App.1989); Moore v. Hoosier, 43 F.Supp.2d 978 (N.D.Ind.1998).

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2005; and citations for failure to give or giving an improper signal, operating with improper lights, and a controlled substance violation in February 2006.

South Carolina's analysis of the necessary causal nexus between an employee's prior conduct and the ultimate harm sustained by a third party is also in line with other jurisdictions as well as The Restatement (Second) of Torts §317. ("The mere fact that the servants are using the master's chattels dangerously or misconducting themselves upon the master's premises is not enough to make the master liable. It is necessary to show that the master knew of the practices, and that he did not take the appropriate steps to stop them; or at least that he reasonably should have discovered them." RESTATEMENT (SECOND) OF TORTS §317, Reporter's Notes, *citing* Walker v. Hannibal & St. Joseph R. Co., 121 Mo. 575, 26 S.W. 360, 24, L.R.A. 363, 42 Am. St. Rep. 547 (1894); Walton v. New York Cent. Car Co., 139 Mass. 556, 2 N.E. 101 (1885); DeRyss v. New York Central R. Co., 275 N.Y. 85, 9 N.E. 2d 788 (1937); Dincher v. Great A. & P. Tea Co., 356 Pa. 151, 51 A. 2d 710 (1947)).

It is axiomatic that Jones' prior arrests, conviction for marijuana possession, traffic offenses, and positive drug screening are not indicative of a proclivity to operate a vehicle in a dangerous manner and to aggressively pursue a shoplifter in the context of Jones' job as a security officer. The record is entirely devoid of any evidence that Jones ever previously acted in an aggressive manner toward any Wal-Mart customer, that he had previously pursued any Wal-Mart customers on foot or in his vehicle in a reckless or menacing manner, and/or that he had ever even spoken to a Wal-Mart customer. No witness has ever described having any problems with Jones as a security guard at Wal-Mart prior to the date of the accident. According to Wal-Mart's Assistant Manager, Charles Campbell, had a security guard employed by USSA done something wrong, Campbell would have either talked to the guard directly or called the guard's supervisor. At no time, however, did Campbell ever become aware that Jones had

engaged in any inappropriate behavior on the job, nor did he ever have to go to Jones' supervisor for any reason. (Campbell Dep. 60:17-61:9, Ex. J).

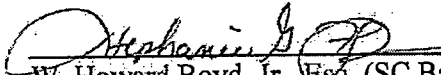
Accordingly, this situation is far removed from the type of scenario in which South Carolina courts have held employers to be liable for negligent hiring, training, supervision, and entrustment. See, e.g., Doe v. Greenville Hospital System, 323 S.C. 33, 448 S.E.2d 564 (Ct. App. 1994) (finding that defendant hospital was liable for negligent hiring and supervision after an employee, a security guard, committed a sexual assault, where the hospital was aware of previous complaints that the guard had engaged in inappropriate sexual behavior while previously working in another position in the hospital). Compare Doe v. ATC, Inc., 367 S.C. 199, 624 S.E.2d 447 (Ct.App. 2005) (holding that a reasonable jury could *not* conclude, based on employee's attempt to kiss a co-worker, that the employer knew or should have known that the employee was likely to commit a sexual assault in the future); Comer v. Tandy Corp., 295 S.C. 133, 367 S.E.2d 436 (Ct.App. 1988) (finding that the store owner owed no duty to plaintiff and was not liable for negligent hiring where the offending employee, who had a prior criminal record, staged a robbery and identified plaintiff, who was innocent, as the responsible party). Without some evidence that Jones had previously engaged in the kinds of acts at issue in this case, *i.e.*, using his vehicle to try to block someone or engaging in a vehicular pursuit, Plaintiff has failed to establish a causal nexus between Jones' prior acts and the ultimate harm suffered by the Decedent. Accordingly, Plaintiff's claims of negligent hiring, training, supervision and entrustment should be dismissed as a matter of law.<sup>5</sup>

*(signatures appear on following page)*

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<sup>5</sup> A prior jury already recognized that, while USSA was negligent in hiring Derrick Jones, such negligence was not a proximate cause of the accident at issue in this case.

October 17, 2016

  
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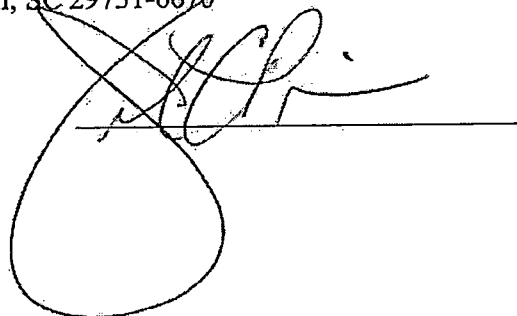
Attorneys for Defendants

**CERTIFICATE OF SERVICE**

This is to certify that on this 17th day of October 2016, a copy of the foregoing, Defendants' Motion and supporting Memorandum of Law for an Order Excluding Plaintiff's Cause of Action for Negligent Hiring, Training, Supervision and/or Entrustment or, in the Alternative, for Summary Judgment, has been served upon the following counsel of record, via first class mail, addressed as follows:

S. Randall Hood, Esq.  
Shawn B. Deery, Esq.  
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A handwritten signature in black ink, appearing to be "B.P. Stewart", is written over a horizontal line. The signature is stylized and includes a large, circular flourish at the bottom.

# **Exhibit 4**

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LANCASTER )

IN THE COURT OF COMMON PLEAS  
  
SIXTH JUDICIAL CIRCUIT

Travis Roddey, Individually and as the )  
Personal Representative of the Estate of )  
Alice Monique Beckham Hancock, )  
Deceased, )

C.A. No.: 2007-CP-29-593

Plaintiff, )

vs. )

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

Defendants. )  
 )  
 )

**PLAINTIFF'S MEMORANDUM OF LAW  
IN OPPOSITION TO  
DEFENDANTS' MOTION TO EXCLUDE  
PLAINTIFF'S NEGLIGENT HIRING,  
TRAINING, SUPERVISION, AND  
ENTRUSTMENT CAUSE OF ACTION  
AND/OR IN THE ALTERNATIVE  
MOTION FOR SUMMARY JUDGMENT**

**INTRODUCTION**

Plaintiff Travis Roddey, individually and as the appointed personal representative of the Estate of Alice Monique Beckham Hancock, through his attorneys, respectfully submits Plaintiff's Memorandum of Law in Opposition to Defendants Wal-Mart Stores East, L.P., U.S Security Associates, Inc., and Derrick L. Jones's Motion to Exclude the Negligent Hiring, Training, Supervision and/or Entrustment Cause of Action (hereinafter "negligent hiring and supervision") and in the Alternative Motion for Summary Judgment. As explained herein, the South Carolina Supreme Court reversed and remanded this case to the circuit court for a new trial. In reaction to this awarded relief, Defendants now suggest that the negligent hiring and supervision cause of action is not rightfully before this Court. They attempt to base this assertion on issue preservation grounds, appealability, and res judicata. Defendants' motion, however, confuses the procedural bar of issue preservation with determining the scope of relief granted by the Supreme Court. This reasoning is misplaced. Any issue Defendants have with the Supreme Court's ruling or the parameters of its ruling should have been addressed through a petition for

rehearing. In fact, Defendants made such a filing asserting preservation grounds, amongst other arguments, and their petition for rehearing was denied. Therefore, upon the issuance of the remittitur, this argument became moot and the Supreme Court's granting of a new trial is now the law of the case.

In the alternative, Defendants contend summary judgment should be granted on the basis that Jones's actions were not foreseeable. As more fully explained herein, sufficient evidence exists to support Plaintiff's claim that Defendants were negligent in hiring and supervising and that Jones's actions were foreseeable. Because of this, this Court should deny Defendants' motion and rule that a new trial be held on all causes of actions included in Plaintiff's Amended Complaint.

#### **FACTUAL/PROCEDURAL HISTORY**

On June 20, 2006, Derrick Jones was working as a security guard in the parking lot of the Wal-Mart store in Lancaster. **Exhibit A**, November 28, 2008 Deposition of Derrick Jones, *passim*. Jones was employed by U.S. Security Associates, Inc. ("U.S. Security"), a company hired by Wal-Mart to patrol the store's parking lot. *Id.* On June 20, 2006, the night of the incident in question Jones was driving a company vehicle despite the fact that his driver's license was suspended. **Exhibit A**, Deposition of Derrick Jones at 10. Jones also tested positive for THC (the active chemical in marijuana) at his pre-employment drug screening. Furthermore, Jones was statutorily ineligible for employment as a security guard in South Carolina because of a drug conviction and a pending charge of strong-arm robbery. **Exhibit A**, Deposition of Derrick Jones at 14-15 and 71. Jones, who was hired on May 22, 2006, 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.

**Exhibit B**, Deposition Archie Bryant p. 45.

Two Customer Service Managers were working at Wal-Mart that night: Shawn Cox and Hope Rollings. **Exhibit C**, September 16, 2008, Deposition of Hope Rollings at p. 7. Together with Chuck Campbell, they were the three ranking managers in the store. *Id.* All three managers were in radio contact with each other and with Jones. **Exhibit C**, Deposition of Hope Rollings at p. 13. Sisters Alice Hancock and Donna Beckham were shopping in the Wal-Mart that night. At approximately 10 – 10:15 p.m., Jones was contacted via two-way radio by Wal-Mart Customer Service Manager Shawn Cox, and was instructed to “delay” a possible shoplifter, who turned out to be Beckham, decedent’s sister. Beckham left the store and entered a car driven by her sister, decedent who had gone to sit in the car because she was not feeling well. At or around the same time, Jones was instructed by Cox to get the license plate number of decedent’s car. **Exhibit A**, Jones Deposition p. 35-37.

Doing as Cox commanded, Jones followed Beckham to her car and blocked her exit from the parking lot. **Exhibit A**, Jones Deposition p. 36. Hancock reversed her car and left the parking lot while Jones remained in hot pursuit. **Exhibit A**, Jones Deposition p. 37-38. At this time, Jones was in contact with Cox and fellow Wal-Mart Customer Service Manager Hope Rollings via two-way radio. **Exhibit A**, Jones Deposition p. 37-38. As Jones pursued Hancock’s car, Wal-Mart employees emphatically and urgently instructed Jones to obtain the license plate number of Ms. Hancock’s vehicle. **Exhibit A**, Jones Deposition p. 231. Hancock, with Jones in pursuit, disregarded several traffic signals leaving the Wal-Mart parking lot and entering the highway. **Exhibit A**, Jones Deposition p. 40. As the vehicles exited the parking lot, Wal-Mart employees continued to direct Jones to obtain the license plate number of Hancock’s

vehicle. **Exhibit A**, Jones Deposition p. 291. The two-way radios continued to work even after the vehicles exited the parking lot. **Exhibit D**, July 23, 2008, Deposition of Shawn Cox, p. 28-29. Wal-Mart employees continued to encourage Jones to obtain the license plate number and never instructed Jones to discontinue his pursuit. **Exhibit A**, Jones Deposition p. 64. Jones' testimony regarding his instructions by Cox and Rollings was corroborated by both, though they differ in exactly what was said. **Exhibit C**, Rollings Deposition at p. 13-14; **Exhibit D**, Cox Deposition at p. 16-21.

Jones continued to pursue Hancock's car at a high speed and in a reckless manner. **Exhibit A**, Jones Deposition p. 249. The pursuit ended several miles from Wal-Mart after Jones's reckless pursuit caused Hancock to lose control of her vehicle, swerve off the roadway, and hit a tree. Hancock was killed in the accident and Beckham suffered serious bodily injury. As a result of those events, Plaintiff 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 E**, Amended Complaint.

This matter was originally tried from April 6, 2010 through April 13, 2010, before the Honorable Brooks P. Goldsmith. At the conclusion of Plaintiff's case-in-chief, Wal-Mart moved for a directed verdict on three grounds arguing: (1) Plaintiff 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. 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 USSA and Jones were collectively thirty-five percent at fault.

Plaintiff 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. Plaintiff then appealed to the Supreme Court, which found that the trial court erred in granting a directed verdict. **Exhibit F**, *Roddey v. Wal-Mart Stores East, LP*, Op. No. 7615 (Shearouse Adv. Sb. No. 13, p. 22). Accordingly, 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. Defendants filed a petition for rehearing, which the Supreme Court denied. **Exhibit G**, Defendants' Petition for Rehearing—April 14, 2016; **Exhibit H**, Order Denying Defendant's Petition for Rehearing; **Exhibit I**, May 5, 2016 Remittitur.

## ARGUMENTS

### **I. Supreme Court Granted a New Trial on All Causes of Action**

Defendants' Motion to Exclude Plaintiff's Negligent Hiring and Supervision Cause of Action should be denied. The Supreme Court clearly intended for this matter to be given a new trial with no limitations. Restricting the scope of the new trial would ignore the plain reading of the Supreme Court's opinion.

A review of the opinion demonstrates the Supreme Court's explicit decision to grant a new trial on all causes of action. Writing for the majority, Acting Justice Toal explained:

In addition to [Plaintiff's] claim that Jones was Wal-Mart's agent and thus, Walmart is vicariously liable for his conduct, [Plaintiff] also alleged that Wal-

*Mart was liable based on its failure to properly supervise Jones and Wal-Mart's improper advice or instruction to Jones to follow Hancock to obtain her license plate tag number. Considering Wal-Mart's potential liability, it is conceivable that a jury could find that the collective fault of the defendants was over fifty percent and that Hancock was less than fifty percent at fault. In light of the reversal of the directed verdict as to Wal-Mart's liability, the only appropriate remedy in this situation is a new trial.*

(emphasis added). **Exhibit F**, Opinion at p. 10. Notably, the majority not only acknowledges the negligent hiring cause of action, it also cements the fact that the Supreme Court believed the only proper remedy was a new trial outright.<sup>1</sup> **Exhibit F**, Opinion at p. 10. This reading of the opinion is further supported by Chief Justice Pleicones's dissent in which he states:

*Moreover, I am not convinced that even if [Plaintiff] were entitled to a new trial against Wal-Mart, it would be proper to require USSA and Jones to face the possibility of liability in a second trial having been absolved in the first. . . . Here, however, Wal-Mart could not be liable unless USSA and Jones were also responsible, and unlike Williams' innocent plaintiff, a jury could (and did) find Hancock to be most at fault. I am unable to determine why the majority concludes, without discussion, that both USSA and Jones should again face a jury and the possibility of liability.*

(emphasis added). **Exhibit F**, Opinion at p. 11-12.

Significantly, if the Supreme Court intended to limit the causes of action to be tried in this matter the Supreme Court would have specifically stated such restriction and provided instructions to this Court. For example, in the same term of court this matter was heard, the Supreme Court on multiple occasions remanded cases for new trials or proceedings with limiting instructions to the lower tribunal. *See Allegro, Inc. v. Scully*, No. 2014-002055, 2016 WL 4474336, at \*6 (S.C. Aug. 24, 2016) (limiting the causes of action to be addressed by the circuit court following a remand); *Hilton v. Flakeboard Am. Ltd.*, No. 2015-000493, 2016 WL 5930126, at \*1 (S.C. Oct. 12, 2016) (instructing the Workers' Compensation Commission that their

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<sup>1</sup> Practically, this outcome is not surprising as such rulings are common place even when one issue is in dispute on appeal. *See e.g., Riley v. Ford Motor Co.*, 414 S.C. 185, 198, 777 S.E.2d 824, 831 (2015) (ordering a new trial as the result of an error in the calculation of damages).

consideration of the issue will be limited). Therefore all indications are if the Supreme Court intended to limit the parameters of its relief, it would have instructed both this Court and the parties accordingly. The Supreme Court's silence as to limiting instructions demonstrates its intent to grant Plaintiff a new trial on all causes of action.

Moreover, the issues and concerns now raised by Defendants to this Court should have been addressed to the Supreme Court in their petition for rehearing. *See* Rule 221, SCACR. While Defendants filed a petition for rehearing raising issues of preservation and appellate review, Defendants did not seek clarification or suggest error in the grant of a new trial. **Exhibit G**, Petition for Rehearing. The proper forum to address concerns with the relief, and/or the scope of relief, was with the Supreme Court prior to the remitting of this case. *Stogsdill v. S.C. Dept of Health & Human Servs.*, 415 S.C. 568, 569, 784 S.E.2d 669, 670 (2016) (noting the sending of the remitter ends appellate jurisdiction); *see also* **Exhibit I**, May 5, 2016 Remittitur. Thus, the ruling by the Supreme Court that a new trial be granted is the law of the case. *See Judy v. Martin*, 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009) ("Under the law-of-the-case doctrine, a party is precluded from relitigating, after an appeal, matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court."); *see also* *Ross v. Med. Univ. of S.C.*, 328 S.C. 51, 62, 492 S.E.2d 62, 68 (1997) ("The doctrine of the law of the case prohibits issues [that] have been decided in a prior appeal from being relitigated in the trial court in the same case."). To allow Defendants to revisit their appellate arguments and re-litigate matters ruled on by the Supreme Court would be inequitable. Accordingly, Defendants' motion should be denied.

## **II. Summary Judgment Should Be Denied**

Defendants' Motion for Summary Judgment on the negligent hiring and supervision cause of action should also be denied. Specifically, Defendants contend that Jones's actions were not foreseeable. This argument must fail because there is far beyond a mere scintilla of evidence to demonstrate that Defendants were negligent in their hiring and supervision of Jones. Moreover, the question of foreseeability belongs to the jury.

To grant a motion for summary judgment, the circuit court must find that "there is no genuine issue as to any material fact." Rule 56(c), SCRCP. The judge is not to weigh the evidence but rather to determine if there is a genuine issue for trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). For claims where the preponderance of evidence burden applies, "the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). In determining whether any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the party opposing summary judgment. *Summer v. Carpenter*, 328 S.C. 36, 492 S.E.2d 55 (1997); *Pye v. Aycock*, 325 S.C. 426, 480 S.E.2d 455 (Ct. App. 1997). Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. *Brockbank v. Best Capital Corp.*, 341 S.C. 372, 534 S.E.2d 688 (2000).

"In circumstances where an employer knew of or should have known that its employment of a specific person created an undue risk of harm to the public, a plaintiff may claim that the employer was itself negligent in hiring . . . the employee . . ." *James v. Kelly Trucking Co.*, 377 S.C. 628, 631, 661 S.E.2d 329, 330 (2008). Negligent hiring cases turn on the knowledge of the employer and the foreseeability of harm to third parties. *Doe v. ATC*, 367 S.C. 199, 207, 624 S.E.2d 447, 451 (Ct. App. 2005). Ordinarily, foreseeability is a question of fact to be decided by

the jury.” *Steel v. Rogers*, 306 S.C. 546, 551, 413 S.E.2d 329, 332 (Ct. App. 1992). “Only when the evidence is susceptible to only one inference does it become a matter of law for the court.” *Oliver v. South Carolina Dept. of Highways & Public Transp.*, 309 S.C. 313, 317, 422 S.E.2d 128, 131 (1992).

Evidence in the record supports Plaintiff’s assertions that Defendants were negligent in hiring, training, supervising, and entrusting Jones. First and foremost, U.S. Security failed to take the necessary steps in hiring Jones by failing to meet the minimal standards statutorily required for a person to be a security officer in South Carolina. *See* S.C. Code Ann. 40-18-80. The statute requires any person performing the duties of a security officer to obtain a valid security officer registration certificate. Neither U.S. Security nor Jones acquired this certificate. This is significant because in order to obtain a security officer certificate the person must meet the following qualifications:

...

(d) has not been convicted of a felony or crime involving moral turpitude;

(e) is of good moral character;

(f) does not unlawfully use drugs;

....

(h) has passed a SLED-approved pre-employment drug test;

S.C. Code Ann. § 40-18-80(A)(4).

Jones was not eligible to be a security officer because he used marijuana and he failed a drug screening. The Legislature was clear that a person should not be employed as a security guard if he uses drugs or fails drug screenings. Jones did both. He never should have been hired, period. Defendants could and should have been aware of Jones’s shortcomings and lack

of qualifications for the tasks he was hired to perform. They failed to meet their statutory requirement along with Jones, and it is their very negligence that allowed him to be hired. If Jones had not been employed on that night none of the horrible events of that evening would have transpired. To argue that it is not foreseeable that a security guard hired and retained in violation of state law would commit dangerous acts is misplaced. Our Legislature mandates statutory safeguards for this very reason and to prevent what happened here.

Moreover, Jones's driver's license was suspended when he was hired. Jones's duties as a security guard required him to use a vehicle. Confirming he possessed a valid license was a necessary inquiry. A reasonable jury could conclude that Jones's driving with a suspended driver's license was dangerous and that because of that it was foreseeable that he might engage in other dangerous activities.

Additionally, Defendants violated their own policies and failed to supervise Jones when he was instructed on multiple occasions, including but not limited to, June 20, 2006, to get a license tag number from a customer. Jones testified that the incident involving Hancock was not the first time he had pursued a customer off of Wal-Mart property in violation of his written instructions. He explained:

Well, actually, that's a -- that's a real good question, because my very first day that I worked at Wal-Mart, I was told to go obtain a license plate tag number, and they told me, 'You got to get that license plate.' The same way they told me that night. *The same way my very first day I had to go get a license plate tag number off the premises.*

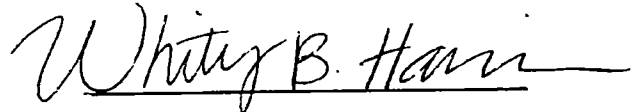
**Exhibit A**, Jones Deposition at p. 115 (emphasis added). One month prior to this incident, Jones pursued another vehicle off Wal-Mart property in his truck—the very same activity that led to Hancock's death. However, Defendants retained him on the payroll. In fact, when Jones sought clarification with his manager about whether he should violate the policies at the instruction of

Wal-Mart he was told "you got to do what you got to do." **Exhibit A**, Jones Deposition at p. 119-20. It was well understood that Jones should follow the instructions he was given by Wal-Mart employees, which included violating Wal-Mart's policies that were written for the safety of all individuals involved. A reasonable jury could find that it was foreseeable that Jones would continue to take the same action despite the harmful ramifications that were likely to result.

### CONCLUSION

Based on the foregoing reasons, Defendants' Motion to Exclude the Negligent Hiring, Training, Supervision, and Entrustment Cause of Action and/or in the Alternative Motion for Summary Judgment should be denied.

RESPECTFULLY SUBMITTED,



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Attorneys for Plaintiff

October 20, 2016  
Columbia, SC

**CERTIFICATE OF SERVICE**

This is to certify that on this 20<sup>th</sup> day of October 2016, a copy of the foregoing Plaintiff's Memorandum in Opposition to Defendants' Motion to Exclude the Negligent Hiring, Training, Supervision, and Entrustment Cause of Action and/or in the Alternative Motion for Summary Judgment, has been served upon the following counsel of record, via first class mail, addressed as follows:

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

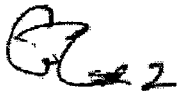
# **Exhibit 5**



Hancock's vehicle. Approximately two miles from the store, Hancock lost control of her vehicle, left the roadway, and collided into a tree, resulting in her death.

Defendant Derrick Jones, a security officer employed by U.S. Security Associates ("USSA"), followed the women for some distance off of the Wal-Mart property in his USSA truck. Plaintiff has admitted Jones was not an employee of Wal-Mart. USSA officers were independent contractors, and Wal-Mart had no role in the hiring, training, and supervision of Jones, nor ownership interest in the USSA truck. USSA security officers were tasked only with serving as a source of information to Wal-Mart regarding activity in the parking lot, recording useful information, and assisting if requested by Wal-Mart.

The trial of this case commenced in the Lancaster County Court of Common Pleas on April 6, 2010, before the Honorable Brooks P. Goldsmith. At the conclusion of Plaintiff's case, Wal-Mart moved for a directed verdict on the grounds that (1) there was no negligence on the part of Wal-Mart, (2) no evidence that any negligent acts or omissions on the part of Wal-Mart were a proximate cause of the accident, and (3) even if any negligence on the part of Wal-Mart was a proximate cause of the accident, the only reasonable inference to be drawn from the evidence was that Hancock's own negligence and recklessness was a greater than 50% cause of the accident. The only acts of alleged negligence on the part of Wal-Mart addressed at the directed verdict stage were those of Wal-Mart's employees in requesting Jones's assistance (by allegedly asking Jones to delay and/or speak to Beckham as she left the store and obtain Hancock's license tag number) and failing to tell Jones to stop pursuing Hancock when they saw what was occurring. Plaintiff made no claim Wal-Mart had liability for negligent hiring, training, supervision and/or entrustment, did not contest that Jones was not an employee of Wal-Mart, and set forth no other grounds in opposition to Wal-Mart's dismissal from the case. The trial court

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granted Wal-Mart's motion for directed verdict, holding (1) there was no evidence of negligence on the part of Wal-Mart and (2) alternatively, even if Wal-Mart was negligent, there was no evidence such negligence was a proximate cause of the accident. Oral requests and a written motion for reconsideration were restricted to evidence establishing the elements of breach of duty and proximate causation against Wal-Mart and no elements of Plaintiff's other cause of action for negligent hiring, supervision, training and/or entrustment. The only other motion presented at the directed verdict stage was USSA's motion for a directed verdict on the negligent hiring cause of action, which was denied. The trial continued against USSA and Jones.

At the conclusion of trial on April 13, 2010, the case was submitted to the jury. On Plaintiff's negligence claim, the jury found Hancock was 65% negligent and Jones/USSA were 35% negligent in causing the accident. On Plaintiff's negligent hiring cause of action against USSA, the jury found USSA was negligent in hiring Jones, but such negligence was not a proximate cause of the accident.

Following the verdict, Plaintiff filed a Motion to Alter or Amend the Judgment and for a New Trial based, in part, on the trial court's alleged error in directing a verdict in favor of Wal-Mart. Plaintiff alleged no error with regard to the jury's verdict in favor of USSA on negligent hiring. As to Wal-Mart, Plaintiff's argument was restricted to breach of duty and proximate causation, elements establishing negligence. Plaintiff contended the error required a new trial "as to all of the defendants" because "[a] comparative negligence charge asks the jury to compare the negligence of the plaintiff against the negligence of all of the parties on the other side of the lawsuit." Comparative fault, however, is only an issue with respect to the negligence action since there was no apportionment of fault on the negligent hiring claim.

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Plaintiff's post-trial motions were denied, and Plaintiff subsequently filed a Notice of Appeal. In Appellant's Initial Brief to the South Carolina Court of Appeals, Appellant framed the only issue on appeal as "[w]hether the trial court erred when it granted a directed verdict in this negligence action in favor of Wal-Mart." Plaintiff did not appeal the jury's verdict in favor of USSA on the negligent/supervision hiring claim. Plaintiff's arguments were limited to Wal-Mart's alleged acts establishing the elements of his negligence cause of action—breach of duty and proximate causation. Plaintiff reasoned a new trial was required as to "all Defendants" because the law of comparative negligence, a defense raised to Plaintiff's negligence cause of action, requires the jury to compare the negligence of Plaintiff against the combined negligence of all Defendants.

The Court of Appeals affirmed the directed verdict for Wal-Mart in a split decision (1-1-1). The Court, in three separate opinions, only addressed evidence of Wal-Mart's negligence, foreseeability and Hancock's comparative negligence. Justice Few found there was evidence of negligence and the events were foreseeable to Wal-Mart, but voted to affirm because he believed Hancock was more than 50% at fault. Justice Short voted to affirm because he believed there was a lack of proximate causation. Justice Huff dissented and would have reversed the directed verdict in favor of Wal-Mart and remanded for a new trial against Wal-Mart alone. While Justice Huff acknowledged Plaintiff requested a new trial as to all Defendants, he found Plaintiff waived that argument by not including it in the statement of issues on appeal, stating that "[t]hough [Plaintiff] cites law concerning the effect of a jury finding of comparative negligence on a plaintiff's ultimate ability to collect damages, he provides no supporting authority for his assertion that a court may require a new trial against defendants against whom a verdict has

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already been found and who are not then held responsible for damages based upon the jury's finding as to the relative percentages of negligence assigned to the various parties."

Plaintiff's Petition for Rehearing was denied, and Plaintiff filed a Petition for a Writ of Certiorari to the Supreme Court. In the opinion issued by the Supreme Court, Acting Justice Toal stated at the outset, "[Plaintiff] appeals the court of appeals' decision affirming the trial court's grant of Wal-Mart's motion for a directed verdict on [Plaintiff's] negligence claim." The Supreme Court analyzed Wal-Mart's breach of its duty of care, proximate cause, and apportionment of fault under the comparative negligence framework. The Court ultimately ruled the trial court should have submitted to the jury the issues of Wal-Mart's negligence and proximate cause, and remanded the negligence cause of action for a new trial as to all defendants. The Court rationalized that the jury could find the collective fault of the defendants was over fifty percent and that Hancock was less than fifty percent. The Supreme Court did not order that the retrial revived any cause of action not before it on appeal and did not address or mention the negligent hiring action.

This matter is now before this Court for a retrial of the case. In connection with the retrial, Plaintiff has notified Defendants of his intent to seek the introduction of evidence supporting Plaintiff's former cause of action for negligent hiring, training, supervision and entrustment against USSA. Defendants oppose the admission of any evidence regarding Plaintiff's former negligent hiring cause of action on the grounds that the cause of action was previously determined by a jury, was not appealed and is barred by operation of law under principles of res judicata. This Court makes the following findings and conclusions.

#### FINDINGS AND CONCLUSIONS

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Causes of action for negligence and for "negligent hiring, training and supervision" are "separate and distinct requiring different kinds and quantities of proof." See Longshore v. Saber Sec. Servs., 365 S.C. 554, 563 (Ct. App. 2005) (emphasis added). Negligence cases turn on proof of duty, breach, causation and damages, while negligent hiring cases turn on knowledge of the employer and foreseeability of harm to third parties, which is analyzed by examination of the number and nature of prior acts of wrongdoing by the employee, and the nexus or similarity between the prior acts and the ultimate harm caused. See Doe v. ATC, Inc., 367 S.C. 199, 206, 624 S.E.2d 447, 450 (Ct. App. 2005). Negligent supervision cases impose a duty on an employer, under certain circumstances, to exercise reasonable care to control an employee acting outside the scope of his employment and likewise require knowledge of the employer and foreseeability of harm to third parties in establishing the employer knows or should know of the necessity and opportunity for exercising control. See Lemon v. Sheriff of Sumter County, F.Supp.2d, 2012 U.S. Dist. LEXIS 22196 (D.S.C. Feb. 22, 2012); see also Degenhart v. Knights of Columbus, 309 S.C. 114, 420 S.E.2d 495 (1992) (an employer may be liable for negligent supervision if the employee intentionally harms another when: (1) the employee is present on the premises of the employer or is using a chattel of the employer and (2) the employer knows or has reason to know he has the ability to control his employee and knows or should know of the necessity and opportunity for exercising control). Accordingly, in the Longshore case, it was error for the trial court to have applied a jury's apportionment of fault in the negligence action to an award of actual damages in the negligent hiring, training and supervision action. See Longshore, 365 S.C. at 562-63.

Plaintiff's two causes of action in this case were not only subject to separate proofs, but were also treated separately on the verdict form submitted to the jury at trial. On appeal,

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however, Plaintiff only challenged the directed verdict in favor of Wal-Mart, which was limited to issues of Wal-Mart's breach of duty and proximate causation, elements establishing negligence. While Plaintiff contended a reversal of the directed verdict would require a new trial as to all defendants so that the jury had the opportunity to apportion fault between Plaintiff and all Defendants in the negligence action, Plaintiff did not appeal the jury's verdict rendered separately on Plaintiff's negligent hiring, training, supervision and entrustment cause of action against USSA. Nor does the rationale offered for remand of the negligence action as to all Defendants—so that the jury could apportion fault under the comparative negligence framework as between Plaintiff and all Defendants—apply to the cause of action for negligent hiring/supervision, where the jury was not asked to apportion fault between the Plaintiff and any party as to that cause of action.

An appellate court can only speak to the issue(s) before it on appeal. See Austin v. Specialty Transp. Servs., 358 S.C. 298, 320, 594 S.E.2d 867, 878 (Cl. App. 2004) (a portion of a judgment that is not appealed presents no issue for determination by the reviewing court and constitutes, rightly or wrongly, the law of the case); State v. Bray, 342 S.C.23, 535 S.E.2d 636 (2000) (it is error for an appellate court to consider issues not raised to it); Hendrix v Eastern Distribution, Inc., 320 S.C. 218, 464 S.E.2d 112 (1995) (an issue not preserved for review should not be addressed by an appellate court). Accordingly, if Plaintiff believed the directed verdict in favor of Wal-Mart on Plaintiff's negligence cause of action infected the entire jury's verdict not only on Plaintiff's negligence cause of action, but also on the separately plead negligent hiring/supervision cause of action, Plaintiff should have appealed the jury's verdict rendered on the negligent hiring/supervision claim in addition to Wal-Mart's directed verdict for negligence. However, because Plaintiff did not appeal the jury verdict on Plaintiff's cause of action for

negligent hiring, training, supervision and/or entrustment, it was never before the appellate courts and is res judicata. Holding otherwise would require this Court to unduly conflate the two separate causes of action in order to revive the negligent hiring/supervision cause of action.

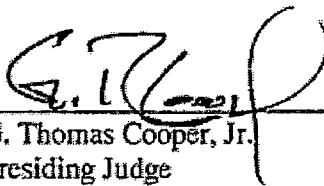
“Res judicata is the branch of the law that defines the effect a valid judgment may have on subsequent litigation between the same parties and their privies. Res judicata ends litigation, promotes judicial economy and avoids the harassment of relitigation of the same issues.” James F. Flanagan, South Carolina Civil Procedure 642 (2d ed. 1996). The doctrine of res judicata “had its origin in the principle that it is in the public interest that there should be an end of litigation and that no one should be twice sued for the same cause of action.” First Nat’l Bank v. United States Fid. & Guar. Co., 207 S.C. 15, 24, 35 S.E.2d 47, 56 (1945). Under this doctrine, a final judgment on the merits in a prior action will conclude the parties and their privies in a second action based on the same claim as to the issues actually litigated. See Sub-Zero Freezer Co. v. R.J. Clarkson Co., 308 S.C. 188, 417 S.E.2d 569 (1992); Treadaway v. Smith, 325 S.C. 367, 479 S.E.2d 849 (Cl. App. 1996); Foran v. USAA Cas. Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (Cl. App. 1993).

To establish res judicata, the defendant must prove three elements: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit. Sealy v. Dodge, 289 S.C. 543, 347 S.E.2d 504 (1986); Rogers, 336 S.C. at 537, 520 S.E.2d at 817; Owenby v. Owens Corning Fiberglas, 313 S.C. 181, 437 S.E.2d 130 (Cl. App. 1993). There is no question but that the elements of res judicata have been met. Plaintiff’s separate cause of action for negligent hiring, training, supervision and/or entrustment as to USSA was already tried to a jury verdict in this case.

For the foregoing reasons, the Court hereby grants Defendants Motion *in limine* to bar evidence pertaining to Plaintiff's cause of action for negligent hiring, training, supervision and/or entrustment on grounds of res judicata, and Orders that the trial of this case will proceed against all Defendants on Plaintiff's cause of action for negligence.

**AND IT IS SO ORDERED.**

November 2, 2016



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G. Thomas Cooper, Jr.  
Presiding Judge  
Fifth Judicial Circuit

# **Exhibit 6**

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LANCASTER )

IN THE COURT OF COMMON PLEAS  
  
SIXTH JUDICIAL CIRCUIT

Travis Roddey, Individually and as the )  
Personal Representative of the Estate of )  
Alice Monique Beckham Hancock, )  
Deceased, )

C.A. No.: 2007-CP-29-593

Plaintiff, )

**MOTION  
TO ALTER OR AMEND AND  
FOR RECONSIDERATION**

vs. )

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

Defendants. )

**TO: WAL-MART STORES EAST, L.P., U.S. SECURITY ASSOCIATES, INC., AND  
DERRICK L. JONES AND THEIR ATTORNEYS:**

This motion is made pursuant to Rules 52 and 59 of the South Carolina Rules of Civil Procedure. *See also Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 21-22, 602 S.E.2s 772, 778-79 (2004) ("it is proper to view a Rule 59(e) motion not only as a vehicle to request the trial court 'alter or amend judgment,' but also as a vehicle to seek 'reconsideration' of issues and arguments."). Plaintiff received electronic notice of the entry of the Court's judgment on November 2, 2016.

Plaintiff Travis Roddey, individually and as the personal representative of the Estate of Alice Monique Beckham Hancock, respectfully submits that the Court may have overlooked or misapprehended the following points in reaching its decision:

**I. The Order is Based on a Motion to Exclude (or to Strike) Not a Motion in Limine on Evidence**

The Court's order misapprehends the posture of the motion. Defendants' motion arose from a motion to exclude<sup>1</sup> not a motion in limine. Specifically, Defendants filed a *motion to exclude* the negligent hiring and supervision *cause of action* (or in the alternative a motion for summary judgment) and that matter was heard on October 25, 2016. (**Exhibit 1**, Defendants Motion and Memorandum of Support<sup>2</sup>). All arguments briefed and presented at the hearing addressed the *exclusion* of the *cause of action*, not evidence relating to the cause of action. (**Exhibit 2**, Plaintiff's Memorandum in Opposition to Motion to Exclude<sup>3</sup>; **Exhibit 3**, October 17, 2016 letter to clerk's office, motion cover sheet, and October 17, 2016 email serving Motion to Exclude). However, Defendants' proposed order, as signed by the Court, changed what was a motion to exclude (or to strike) into a motion in limine. (**Exhibit 4**, Defendants' proposed order and Plaintiff's proposed order for comparison): Defendants' motion was not a motion in limine. Motions in limine concerning evidence do not usually include a request for summary judgment, nor do they typically address *res judicata* arguments.

Respectfully, the only purpose of Defendants' motion was to have the Court rule whether the negligent hiring and supervision cause of action would be tried on November 14, 2016, *as to all Defendants*, as pled in the Second Amended Complaint. While Defendants had a separate motion in limine concerning matters of evidence (correlating to the negligent hiring and supervision cause of action, along with the negligence cause of action) that motion was not the subject of this ruling. (**Exhibit 5**, Defendants' Motion in Limine to Preclude Introduction of Evidence at Trial and Motion Coversheet). At the October 25, 2016 hearing, Defense counsel

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<sup>1</sup> Significantly, Defendants' motion to exclude is the equivalent of a motion to strike and/or a motion to dismiss.

<sup>2</sup> Defendants' Exhibits to their Motion and Memorandum have been excluded from this filing due to their volume, but are incorporated by reference.

<sup>3</sup> Plaintiff's Exhibits to their Motion and Memorandum have been excluded from this filing due to their volume, but are incorporated by reference.

summarily addressed the evidentiary motion in limine and admitted it should not be ruled on until the motion to exclude the cause of action was decided. Clarification was sought on the need for proposed orders for the motion in limine by counsel for both parties, and the Court informed counsel that motions in limine would be taken up at the time of trial. (**Exhibit 6**, October 28, 2016 email correspondence between counsel and law clerk).

As the Order stands, the Court has ruled on evidentiary matters on grounds of res judicata that were not raised. Plaintiff respectfully believes this ruling is in error and as such, requests the Court to reconsider the ruling on the original basis sought by Defendants.

## **II. Defendants' Motion to Exclude Should be Denied**

Despite the captioning of the Order, it effectively excludes (or strikes/ or dismisses) the negligent hiring and supervision cause of action. Plaintiff requests the Court reconsider its ruling in *excluding this cause of action as to all Defendants*, and the evidence included therein.<sup>4</sup> As explained herein, the South Carolina Supreme Court's opinion granted a new trial with no expressed limitation as to the causes of action to be tried. Defendants' motion to exclude was based on issue preservation grounds, appealability, and res judicata. Any issue Defendants had with the Supreme Court's ruling or the parameters of its ruling should have been addressed through a petition for rehearing. In fact, Defendants made such a filing asserting preservation

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<sup>4</sup> If this Court agrees the Order should be ruling on the Motion to Exclude as to all Defendants, Plaintiff's 59(e) addresses the effect of excluding the cause of action (regardless of caption—relying on substance over form) as to one or all Defendants from this second trial for preservation purposes. See *Fields v. Reg'l Med. Ctr. Orangeburg*, 363 S.C. 19, 27–28, 609 S.E.2d 506, 510 (2005) (treating a motion based on its substance and effect as opposed to how it was captioned by a party). Plaintiff has not waived or conceded any argument by addressing the merits as to all Defendants. See *Elam*, 361 S.C. at 18, 602 S.E.2d at 777 (holding a successive 59(e) motion which raises the same issues and arguments made on a previous Rule 59(e) motion is not required); see also *Pye v. Estate of Fox*, 369 S.C. 555, 565–66, 633 S.E.2d 505, 510–11 (2006) (explaining once a 59(e) motion has been properly raised and the issue preserved, a second motion is not required).

grounds, amongst other arguments, and their petition for rehearing was denied. Therefore, upon the issuance of the remittitur, this argument became moot and the Supreme Court's granting of a new trial is now the law of the case.

A review of the opinion demonstrates the Supreme Court's explicit decision to grant a new trial outright. Writing for the majority, Acting Justice Toal explained:

*In addition to [Plaintiff's] claim that Jones was Wal-Mart's agent and thus, Walmart is vicariously liable for his conduct, [Plaintiff] also alleged that Wal-Mart was liable based on its failure to properly supervise Jones and Wal-Mart's improper advice or instruction to Jones to follow Hancock to obtain her license plate tag number. Considering Wal-Mart's potential liability, it is conceivable that a jury could find that the collective fault of the defendants was over fifty percent and that Hancock was less than fifty percent at fault. In light of the reversal of the directed verdict as to Wal-Mart's liability, the only appropriate remedy in this situation is a new trial.*

*Roddey v. Wal-Mart Stores East, LP*, Op. No. 7615 (Shearouse Adv. Sh. No. 13, p. 31) (emphasis added). Notably, the majority not only acknowledges the negligent hiring and supervision cause of action, it also cements the fact that the Supreme Court believed the only proper remedy was a new trial outright.<sup>5</sup> This reading of the opinion is further supported by Chief Justice Pleicones's dissent in which he states:

*Moreover, I am not convinced that even if [Plaintiff] were entitled to a new trial against Wal-Mart, it would be proper to require USSA and Jones to face the possibility of liability in a second trial having been absolved in the first. . . . Here, however, Wal-Mart could not be liable unless USSA and Jones were also responsible, and unlike Williams' innocent plaintiff, a jury could (and did) find Hancock to be most at fault. I am unable to determine why the majority concludes, without discussion, that both USSA and Jones should again face a jury and the possibility of liability.*

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<sup>5</sup> Practically, this outcome is not surprising as such rulings are common place even when one issue is in dispute on appeal. See e.g., *Riley v. Ford Motor Co.*, 414 S.C. 185, 198, 777 S.E.2d 824, 831 (2015) (ordering a new trial as the result of an error in the calculation of damages).

*Roddey v. Wal-Mart Stores East, LP*, Op. No. 7615 (Shearouse Adv. Sh. No. 13, p. 33–34) (emphasis added). Even though the dissent disagreed with the majority’s reasoning, they did agree that the effect of this opinion was a new trial. Thus, regardless of the side one takes be it with the majority or dissent, the outcome is a new trial with no expressed limitations on the causes of action to be tried.

Significantly, if the Supreme Court intended to limit the causes of action to be tried the Supreme Court would have specifically stated such restriction and provided instructions to this Court. For example, in the same term of court this matter was heard, the Supreme Court on multiple occasions remanded cases for new trials or proceedings with limiting instructions to the lower tribunal. *See Allegro, Inc. v. Scully*, No. 2014-002055, 2016 WL 4474336, at \*6 (S.C. Aug. 24, 2016) (limiting the causes of action to be addressed by the circuit court following a remand); *Hilton v. Flakeboard Am. Ltd.*, No. 2015-000493, 2016 WL 5930126, at \*1 (S.C. Oct. 12, 2016) (instructing the Workers’ Compensation Commission that their consideration of the issue will be limited). Therefore all indications are if the Supreme Court intended to limit the parameters of its relief, it would have instructed both this Court and the parties accordingly. The Supreme Court’s silence as to limiting instructions demonstrates its intent to grant Plaintiff a new trial on all causes of action.

Moreover, the issues and concerns now raised by Defendants to this Court should have been addressed to the Supreme Court in their petition for rehearing. *See* Rule 221, SCACR. Under a fair reading of Defendants’ petition for rehearing, Defendants either (1) made this exact argument suggesting that the other defendants should not be involved in a second trial on preservation and appellate grounds or (2) they did not seek clarification or suggest error in the grant of a new trial and the scope of such relief. (**Exhibit 7**, Petition for Rehearing). On page 10

of Defendant's petition for rehearing they argued, "The Court's majority opinion misapprehends or overlooks the fact that [Plaintiff] failed to preserve for appellate review the argument that the Court could procedurally grant a new trial as against defendants who received a non-erroneous verdict, favorable to them, which was not otherwise challenged in any respect." To the extent this is the argument Defendants made, the Supreme Court has rejected this argument in a 3 to 2 denial of the petition for rehearing. As such, Defendants' motion requested this Court to override the Supreme Court's ruling. Alternatively, if they sought clarification of the relief granted the proper forum to address concerns with the relief, and/or the scope of relief, was with the Supreme Court prior to the remitting of this case. *Stogsdill v. S.C. Dept of Health & Human Servs.*, 415 S.C. 568, 569, 784 S.E.2d 669, 670 (2016) (noting the sending of the remitter ends appellate jurisdiction). Their failure to assert such an argument is waiver. Thus, the ruling by the Supreme Court that a new trial be granted is the law of the case under either reading. *See Judy v. Martin*, 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009) ("Under the law-of-the-case doctrine, a party is precluded from relitigating, after an appeal, matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court."); *see also Ross v. Med. Univ. of S.C.*, 328 S.C. 51, 62, 492 S.E.2d 62, 68 (1997) ("The doctrine of the law of the case prohibits issues [that] have been decided in a prior appeal from being relitigated in the trial court in the same case."). To allow Defendants to revisit their appellate arguments and re-litigate matters ruled on by the Supreme Court would be an error of law.

This Court's decisions are largely based on its interpretation on the directed verdict motion and its perceived framing of the appeal to reach the decision of res judicata. This Court's decisions overlook the manner in which the directed verdict was made, Judge Goldsmith's

ruling, and Plaintiff's position that based on the scope of the motion and the ruling the appeal encompassed the negligent hiring and supervision cause of action. Furthermore, the Court failed to consider that *res judicata* is not ironclad.

Turning first to the directed verdict motion before Judge Goldsmith, Wal-Mart moved for "a directed verdict in their favor on all causes of action in the complaint." (**Exhibit 8**, Tr. p. 592). Defendants stated only two allegations had been made against Wal-Mart, which were the instructions given to Jones to obtain a license tag and the failure of Wal-Mart employees to instruct/supervise Jones to cease and desist or come back to the store. (**Exhibit 8**, Tr. p. 593). Defendants argued the allegations were not wrongful and that neither was the proximate cause or foreseeable. Further, Defendants stated "Obviously Wal-Mart does not employ Jones, has no respondeat superior liability for his conduct." (**Exhibit 8**, Tr. p. 593). Following arguments from Plaintiff's counsel, Judge Goldsmith found there was insufficient evidence that Wal-Mart was negligent, or even if Wal-Mart was negligent there was a lack of proximate cause that the events were not foreseeable. As such, Judge Goldsmith dismissed "as to Wal-Mart on all of the grounds argued." (**Exhibit 8**, Tr. p. 603). Plaintiff's counsel sought clarification from Judge Goldsmith on three separate occasions. (**Exhibit 8**, Tr. p. 603-04). Each time Judge Goldsmith stopped Plaintiff's counsel and informed him that he had already ruled. *Id.*

The allegations discussed by Wal-Mart during the directed verdict motion encompassed both causes of action. Specifically, Plaintiff pled as to *all defendants*: (1) negligence and (2) negligent hiring and supervision for both wrongful death and survivorship. (**Exhibit 9**, Second Amended Complaint—filed October 3, 2007).<sup>6</sup> The facts discussed by Wal-Mart—instructing Jones to get the license plate and the failure of Wal-Mart to instruct/supervise Jones to stop—

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<sup>6</sup> Notably, these causes of action were *pled as to all Defendants* in the Complaint, signed May 9, 2007, and the Amended Complaint filed July 31, 2007.

along with legal argument of respondent superior go to both causes of action. While Defendants now take issue with ability of Plaintiff's success of those actions (as discussed during the November 4, 2016 conference call and through email correspondence with the judge<sup>7</sup>), that is not the inquiry at issue. The inquiry is the scope of the directed verdict motion made by Defendants before Judge Goldsmith. It is undisputed that Wal-Mart sought a directed verdict on all causes of action, which was granted. *Connolly v. People's Life Ins. Co. of South Carolina*, 299 S.C. 348, 384 S.E.2d 738 (1989) (explaining a party must state a specific ground for a directed verdict).

A review of the transcript, demonstrates that Wal-Mart wanted to be dismissed from all causes of action against it, which it achieved from summarily addressing both causes of action. Plaintiff sought clarification, equivalent to an objection, on the trial court's ruling three times following Judge Goldsmith's grant of a directed verdict as to Wal-Mart; therefore Plaintiff sufficiently preserved the argument for appeal. *See State v. Douglas*, 359 S.C. 187, 597 S.E.2d 1 (Ct. App. 2004) (explaining a party is not required to harass the trial court by making objections after the trial court has ruled on an issue). Significantly, Plaintiff was only entitled to appeal from the grounds of Judge Goldsmith's ruling, which was the grant of a directed verdict as to the negligent pursuit cause of action despite the fact it encompassed all the causes of action Wal-Mart was subject to. As such, the only relief, as explained by the Supreme Court, to address the error in the grant of the directed verdict was to grant a new trial outright. Said more simply, when the directed verdict erroneously knocked Wal-Mart out it changed the remainder of trial.

The Court should reconsider its finding that the appeal did not encompass the negligent hiring and supervision cause of action. The argument throughout both appeals was that Wal-

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<sup>7</sup> **Exhibit 10**, email correspondence between counsel and the Court from November 2-4, 2016.

Mart's removal by a directed verdict was an error that permeated the entire trial and the only recourse to address such an error was a new trial. Plaintiff properly appealed the trial court's decision to remove Wal-Mart, which affected both causes of action. Defendants were aware of this ramification and in fact raised concerns of appealability and the role of the negligent hiring and supervision cause of action to the Supreme Court. Specifically, Defendants argued that "even if this Court should determine that the trial court erred in granting a directed verdict in favor of Wal-Mart, that error should not require a new trial against all Respondents." Included within this argument, Defendants stated in a footnote:

This appeal does not, nor should it encompass a request for a new trial as to the alleged negligent hiring, training, supervision and entrustment of a vehicle to Jones. Jones was strictly an employee of USSA, an independent contractor, and not an employee or agent of Wal-Mart. Because that issue was not applicable to Wal-Mart, and a jury completely exonerated USSA, as Jones's employer, of liability on the negligent hiring claim, as it was not a proximate cause of the accident, the verdict rendered by the jury as to that issue should stand, regardless of this Court's ruling pertaining to the negligence claim.

The Supreme Court was aware of Defendants' concerns and the implication of granting a new trial without stating any limitation based on Defendants' footnote. If the Supreme Court wished to address this matter they would have. Again, this concern should have been addressed in Defendant's petition for rehearing.

Finally, res judicata does not apply in this matter. In order for res judicata to bar this cause of action, the following elements need to be proven: (1) the identity of the parties; (2) the identity of the subject matter; and the (3) adjudication of the issue in the former suit. *Judy v. Judy*, 393 S.C. 160, 167-68, 712 S.E.2d 408, 412 (2011). South Carolina appellate courts, however, have found that the doctrine of res judicata is not an "ironclad" bar to a later lawsuit. *Catawba Indian Nation v. State*, 407 S.C. 526, 538, 756 S.E.2d 900, 907 (2014). The *Restatement (Second) of Judgments* has recognized exceptions to the application of this doctrine.

*See Restatement (Second) of Judgments § 26 (1982 & Supp.2011); id.* (noting in commentary that section 26 “presents a set of exceptional cases in which, after judgment that would otherwise extinguish the claim under the rules of merger or bar . . . . the plaintiff is nevertheless free to maintain a second action on the same claim or part of it.”). As cited in part in *Judy*, Section 26 of the Restatement (Second) of Judgments provides in relevant part:

(1) When any of the following circumstances exists, the general rule of § 24 does not apply to extinguish the claim, and part or all of the claim subsists as a possible basis for a second action by the plaintiff against the defendant:

...

(b) The court in the first action has expressly reserved the plaintiff's right to maintain the second action; or

(c) *The plaintiff was unable to rely on a certain theory of the case or to seek a certain remedy or form of relief in the first action because of the limitations on the subject matter jurisdiction of the courts or restrictions on their authority to entertain multiple theories or demands for multiple remedies or forms of relief in a single action, and the plaintiff desires in the second action to rely on that theory or to seek that remedy or form of relief.*

...

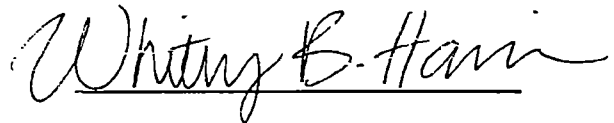
(f) It is clearly and convincingly shown that the policies favoring preclusion of a second action are overcome for an extraordinary reason, such as the apparent invalidity of a continuing restraint or condition having a vital relation to personal liberty or the failure of the prior litigation to yield a coherent disposition of the controversy.

Restatement (Second) of Judgments § 26 (1982) (emphasis added). The facts of this case rise to the level of Section 26 circumstances that allow this cause of action to be tried again. Specifically, the Supreme Court's opinion granting a new trial with no expressed limitation qualifies under subsection (b), and that the Supreme Court's reasoning as to why the only relief is a new trial given the error in granting a directed verdict satisfies subsections (c) and (f).

**Conclusion**

Based on the foregoing, Plaintiff respectfully requests the Court to reconsider its ruling and find that the negligent hiring and supervision cause of action *as to all Defendants* is included within this trial pursuant to the Supreme Court's grant of a new trial.

RESPECTFULLY SUBMITTED,

  
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Attorneys for Plaintiff

November S, 2016  
Columbia, SC

# **Exhibit 7**

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LANCASTER )

IN THE COURT OF COMMON PLEAS  
C.A. NO.: 07-CP-29-0593

Travis A. Roddey, Individually and as the )  
Personal Representative of the Estate of Alice )  
Monique Beckham Hancock, deceased, )

Plaintiff, )

**ORDER DENYING PLAINTIFF'S  
MOTION TO RECONSIDER**

v. )

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

Defendants. )

This matter comes before the Court by way of Plaintiffs' Motion to Alter and/or Amend the Judgment pursuant to Rule 59(e), SCRCF dated November 5, 2016. Specifically, Plaintiffs ask this Court to reconsider its Order Barring Evidence of Plaintiff's Negligent Hiring Cause of Action on Grounds of Res Judicata that was dated November 2, 2016, and filed November 4, 2016.


After careful consideration of the record in this case and the submissions of the parties, this Court is unable to discover any material fact or principle of law that has either been overlooked or disregarded and further finds no error of law or facts not appropriately considered. 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.



Accordingly, this Court hereby **DENIES** Plaintiffs' Motion under Rule 59(e), SCRPC, to reconsider this Court's November 2, 2016, Order. Furthermore, pursuant to Rule 59(f), SCRPC, the Court is of the opinion that oral argument is not necessary.

**IT IS SO ORDERED.**

Caudwell, South Carolina  
November 7, 2016

  
G. Thomas Cooper, Jr., Judge  
Fifth Judicial Circuit

# **Exhibit 8**

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF LANCASTER )  
 )  
 Travis Roddey, Individually and as the )  
 Personal Representative of the Estate )  
 of Alice Monique Beckham Hancock, )  
 Deceased, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 Wal-Mart Stores East, L.P., U.S. Security )  
 Associates, Inc., and Derrick L. Jones, )  
 )  
 Defendants. )  
 )

IN THE COURT OF COMMON PLEAS

SIXTH JUDICIAL CIRCUIT

C.A. No.: 2007-CP-29-593

**PLAINTIFF'S MOTION TO STAY**

Plaintiff Travis Roddey, individually and as the personal representative of the Estate of Alice Monique Beckham Hancock, respectfully requests this Court enter an Order staying the trial in this matter scheduled for November 14, 2016. This motion is made pursuant to Rules 205 and 241(a), SCACR. Plaintiff received electronic notice on November 7, 2016, of this Court's denial of Plaintiff's Motion to Alter or Amend and Reconsideration. As explained herein, Plaintiff believes the appeal of the trial court's order that will be filed on November 7, 2016, at the Court of Appeals provides appellate jurisdiction and stays the remainder of this matter, pursuant to Rules 205 and 241(a), SCACR. However, Plaintiff makes this motion out of an abundance of caution and seeks a stay to supplement the stay automatically triggered upon the filing of the appeal.

Rule 205, SCACR, provides the 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. The Court’s Order excluding the negligent hiring and supervision cause of action against Defendants is the equivalent of an order to strike or order to dismiss. 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 substantially affects the litigation. *Naufal 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 Order deprives Plaintiff of the right to put forth the case in the manner he chooses.

Second, the causes of action are intertwined to the point that one affects the other. Plaintiff’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 Derrick Jones. Specifically, as to U. S. Security, Plaintiff argued 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, Plaintiff asserted that U.S. Security and Wal-Mart were 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 Wal-Mart had explicit policies on the role of security guards, shoplifting, and pursuit. Jones informed his U. S. Security supervisor that he was violating both U.S. Security and Wal-Mart’s rules and procedures. Specifically, Jones testified that on the his first day of work for U.S. Security at Walmart he was told to obtain a license plate number off of the premises by a Wal-Mart employee, which he did. *See Exhibit A, Jones Deposition, at p. 115.* Such act is in direct violation of the rules. Afterwards he informed his supervisor at U.S. Security and sought clarification with his manager about whether he should violate the rules and policies. *Id.* at 119–20. His supervisor told him “you got to do what you got to do.” *Id.* 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 led to the fatal accident.

The relation between these two causes of action is further supported by the testimony of Plaintiff's expert Jeff Gross. At the first trial, Gross testified about the rules and regulations in place the night of the accident. (**Exhibit B**, Trial Transcript 120-126). In discussing the general rules governing shoplifting, Plaintiff'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, Plaintiff'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 search 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.*

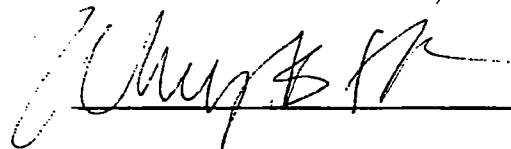
While the elements of the two causes of action are different, the negligent hiring and supervision cause of action fits within the negligent pursuit cause of action. Plaintiff's ability to put forth the negligent hiring and supervision cause of action directly affects the ability to try the remaining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

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.

For the reasons stated herein, Plaintiff respectfully request this Court issue a stay and continue the trial of this matter until such time as the appellate courts are able to rule on the issues.

RESPECTFULLY SUBMITTED,



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Attorneys for Plaintiff

November 7, 2016  
Columbia, SC

STATE OF SOUTH CAROLINA  
COUNTY OF LANCASTER  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2007CP290593

Travis A. Roddey, Individually and as the Personal  
Representative of the Estate of Alice Monique  
Beckham Hancock, deceased,  
PLAINTIFF(S)

Wal-Mart Stores East, LP, U.S. Security Associates, Inc.,  
and Derrick L. Jones,  
DEFENDANT(S)

Submitted by: \_\_\_\_\_ Attorney for :  Plaintiff  Defendant or  Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  
 Rule 43(k), SCRPC (Settled);  Other Dismissed without prejudice
- ACTION STRICKEN (CHECK REASON):  Rule 40(j), SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):  
 Affirmed;  Reversed;  Remanded;  Other \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court:

ORDER INFORMATION

PLAINTIFF TRAVIS A. RODDEY'S MOTION TO STAY IS DENIED

This order  ends  does not end the case.  
Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge  Judge Code 2126 Date 11-7-16  
9:50 AM

For Clerk of Court Office Use Only

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

Randy Hood; Whitney Harrison; Shawn B. Deery  
ATTORNEY(S) FOR THE PLAINTIFF(S)

Stephanie Flynn; Howard Boyd  
ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter \_\_\_\_\_

Clerk of Court \_\_\_\_\_

# **Exhibit 9**

# The South Carolina Court of Appeals

Travis A. 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.

Appellate Case No. 2016-002248

---

## ORDER

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Appellant has filed a notice of appeal from the circuit court's order barring evidence of Appellant's negligent hiring/training/supervision/entrustment cause of action on the grounds of res judicata. Appellant has also filed a motion to stay the trial scheduled for November 14, 2016, pursuant to Rules 205 and 241 of the South Carolina Appellate Court Rules, arguing that because Appellant has served and filed a notice of appeal, the trial court now lacks jurisdiction to proceed with the trial. Respondents filed a return opposing the motion and also argue that this court should dismiss the appeal because it is interlocutory and without merit. Appellant filed a reply.

First, after careful consideration, Respondents' request to dismiss this appeal is denied. See S.C. Code Ann. § 14-3-330(2)(c) (1976) (providing that "[a]n order affecting a substantial right made in an action when such order . . . strikes out an answer or any part thereof or any pleading in any action" is immediately appealable); *Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 304, 705 S.E.2d 475, 479 (Ct. App. 2011) ("An order affects a substantial right by striking a pleading if the order removes a material issue from the case, thereby preventing the issue from being litigated on the merits, and preventing the party from seeking to correct any errors in the order during or after trial."). Nothing, however, prevents the parties from addressing the issue of appealability in their briefs.

Second, because the resolution of this appeal will determine whether the negligent hiring cause of action can proceed below, this appeal affects the underlying trial of this case. See Rule 205, SCACR ("Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal . . . . Nothing in these Rules shall prohibit the lower court, commission or tribunal from proceeding with matters not affected by the appeal."); *Tillman v. Oakes*, 398 S.C. 245, 255, 728 S.E.2d 45, 51 (Ct. App. 2012) ("[T]he lower court's power to proceed is determined by whether the issue sought to be litigated in the lower court during the appeal is a 'matter[ ] affected by the appeal' under Rules 205 and 241(a)."). Accordingly, the trial court lacks the power to proceed with the trial while the appeal is pending, and Appellant's motion to stay the trial is granted.

  
\_\_\_\_\_  
FOR THE COURT

Columbia, South Carolina

cc: The Honorable G. Thomas Cooper  
The Honorable Jeff L. Hammond  
S. Randall Hood, Esquire  
Shawn Boyd Deery, Esquire  
Whitney Boykin Harrison, Esquire  
Stephanie G. Flynn, Esquire  
W. Howard Boyd, Jr., Esquire

**FILED**

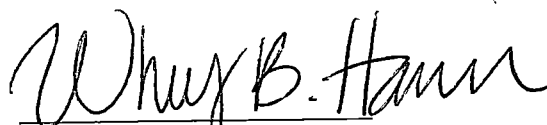
November 9, 2016

**PROOF OF SERVICE**

This is to certify that on this 3<sup>rd</sup> day of January 2017, a copy of the foregoing Appellant's Motion and Memorandum for Certification has been served upon the following counsel of record, via first class mail, addressed as follows:

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

Respectfully submitted,



Whitney B. Harrison  
McGowan, Hood & Felder, LLC  
1517 Hampton Street  
Columbia, SC 29201  
(803) 779-0100  
(803) 7878-0750 (fax)  
[wharrison@mcgowanhood.com](mailto:wharrison@mcgowanhood.com)  
ATTORNEY FOR APPELLANT

**RECEIVED**

JAN 03 2017

SC Court of Appeals **RECEIVED**

JAN -3 2017

S.C. SUPREME COURT

# McGowan, Hood & Felder, LLC

Chad A. McGowan (SC,GA,NC)  
S. Randall Hood  
John G. Felder, Jr.  
W. Jones Andrews, Jr.  
Jordan C. Calloway  
Susan F. Campbell  
Deborah Casey (NC)\*  
Ashley White Creech  
Shawn B. Deery  
Chance Farr (NC)



Whitney B. Harrison  
Lara Pettiss Harrill  
Patrick M. Killen  
William A. McKinnon (SC,DC)  
Anna S. O'Leary  
Robert V. Phillips  
James Stephen Welch\* (SC,DC)  
Joseph G. Wright, III\*  
Of Counsel\*

**RECEIVED**  
JAN 03 2017  
S.C. COURT of Appeals

writers email: wharrison@mcgowanhood.com

January 3, 2017

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

**RECEIVED**

JAN - 3 2017

S.C. SUPREME COURT

RE: *Travis Roddey, individually and as the Personal Representative of the Estate of Alice Monique Beckham Hancock, deceased v. Wal-Mart Stores East, L.P.; U.S. Security Associates, Inc., and Derrick L. Jones*  
Appellate Case No. 2016-002248

Dear Mr. Shearouse:

Pursuant to Rules 204(b) and 240, of the South Carolina Appellate Court Rules, filing please find the original and seven (7) copies of a Motion for Certification with Exhibits and Memorandum in Support on behalf of Appellant Travis Roddey in the above-captioned matter.

By copying of this letter to counsel, I am serving Respondents Wal-Mart Stores East, L.P., U.S. Security Associates, Inc., and Derrick Jones with a copy of this Motion and enclose a proof of service to that effect. Also by copy of this letter, as well as by separate letter, I have notified the Clerk of Court of the South Carolina Court of Appeals and enclose a copy of the same for your records. Finally, enclosed please find a check in the amount of \$25 for the filing fee.

I would appreciate your acknowledging receipt of the Motion and Exhibits and Memorandum by file stamping the enclosed extra copies of same and returning them to me.

If you have any questions, or require additional information, please do not hesitate to contact me.

Letter to The Honorable Daniel E. Shearouse  
January 3, 2017  
Page Two

Respectfully,



Whitney B. Harrison

cc:

The Honorable Jenny Abbott Kitchings  
Howard Boyd, Esquire  
Stephanie Flynn, Esquire  
S. Randall Hood, Esquire  
Shawn Deery, Esquire

# McGowan, Hood & Felder, LLC

Chad A. McGowan (SC,GA,NC)  
S. Randall Hood  
John G. Felder, Jr.  
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Jordan C. Calloway  
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Deborah Casey (NC)\*  
Ashley White Creech  
Shawn B. Deery  
Chance Farr (NC)



Whitney B. Harrison  
Lara Pettiss Harrill  
Patrick M. Killen  
William A. McKinney (SC,DC)  
Anna S. Magann  
Robert V. Phillips  
James Stephen Welch (SC,DC)  
Joseph G. Wright, III\*  
Of Counsel\*

RECEIVED  
JAN 03 2017  
SC Court of Appeals

writers email: [wharrison@mcgowanhood.com](mailto:wharrison@mcgowanhood.com)

January 3, 2017

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

RECEIVED

JAN - 3 2017

S.C. SUPREME COURT

RE: *Travis Roddey, individually and as the Personal Representative of the Estate of Alice Monique Beckham Hancock, deceased v. Wal-Mart Stores East, L.P.; U.S. Security Associates, Inc., and Derrick L. Jones*  
Appellate Case No. 2016-002248

Dear Ms. Kitchings,

I am writing to inform you that Appellant Travis Roddey has filed today a Motion for Certification of the above-captioned appeal to the Supreme Court, pursuant to Rule 204(b) of the South Carolina Appellate Court Rules (SCACR).

This appeal is in its initial stages, as the relevant transcript has been ordered by Appellant, but not yet received. I wanted you to be aware of the pendency of the motion.

If you have any questions, or require additional information, please do not hesitate to contact me.

Sincerely,

Whitney B. Harrison

Enclosures

Letter to The Honorable Jenny Abbott Kitchings

January 3, 2017

Page Two

cc:

Howard Boyd, Esquire

Stephanie Flynn, Esquire

S. Randall Hood, Esquire

Shawn Deery, Esquire

South Carolina Court Administration

South Carolina Court of Appeals