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S.C. SUPREME COURT

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

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,

RECORD ON APPEAL

Volume II of II

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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. *Nauful v. Milligan*, 258 S.C. 139, 187 S.E.2d 511 (1972); *Cf Jefferson by Johnson v Gene’s Used Cars, Inc*, 295 S.C. 317, 368 S.E.2d 456 (1988) (an order “involves the merits” when it

finally determines "some substantial matter forming the whole or a part of some cause of action or defense . . ."). Instinctively, this type of ruling limits the evidence that may be introduced, the strategy used by counsel, the witnesses that may be called, the calculation of damages, etc. Practically, the 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's 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.*

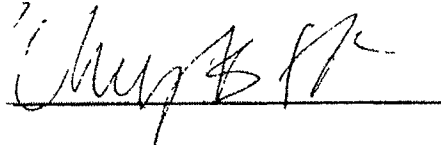
While the elements of the two causes of action are different, the negligent hiring and supervision cause of action fits within the negligent pursuit cause of action. Plaintiff's ability to put forth the negligent hiring and supervision cause of action directly affects the ability to try the remaining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

Excerpts of Derick Jones' Deposition
(p. 115, 119, 120)

See R. 199-200

Exhibit B:

Excerpts of Jeff Gross' Testimony at Trial
(p. 119-131)

See R. 530-542

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

G. Thomas Cooper, Circuit Court Judge

Case No. 2007-CP-29-593

RECEIVED

NOV 07 2016

SC Court of Appeals

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,

APPELLANT'S PETITION FOR WRIT OF SUPERSEDEAS

TO STAY THE TRIAL SCHEDULED FOR NOVEMBER 14, 2016

IMMEDIATE ACTION REQUIRED: 5 BUSINESS DAYS UNTIL TRIAL

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

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

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

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

FACTUAL/PROCEDURAL HISTORY

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

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

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

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

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

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

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

Sisters Alice Hancock, the Decedent, and Donna Beckham were shopping in the Wal-Mart that night. At approximately 10 - 10.15 p.m., Jones was told by Wal-Mart Customer Service Manager Cox to delay a possible shoplifter, who turned out to be Beckham. Beckham left the store and entered a car driven by Hancock, who was sitting in the car because she was not

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

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

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

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

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

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

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

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

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

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

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

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

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

STANDARD OF REVIEW

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

ARGUMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

directed by a member of Wal-Mart management or loss prevention or when you see the Wal-Mart associate in trouble or danger.” Id. at 125 Gross testified one of Jones’s managers told him to get the license plate, saw him leave the parking lot, and did nothing to call off the chase.

Id. This violation mirrored the events that took place when Jones first started working for U.S. Security. Additionally, Appellant’s counsel read the following rule: “Always remember to protect yourself and if possible assist others before attempting to protect property. Remember, security contractors are precluded from searching or pursuing suspects.” *Id.* at 126 (emphasis added) Gross testified that the rule was violated by Jones, an employee of U.S. Security, and Wal-Mart *Id.*

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

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

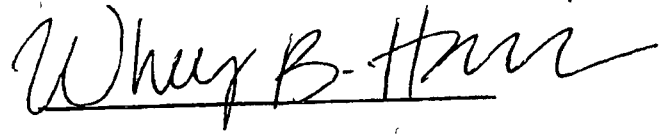
Third, the stay should be granted as a matter of judicial economy. As this Court is well aware, this case has already been tried once and subsequently appealed to, and ruled on, by both appellate courts. Staying the remaining cause of action and thereby allowing a determination on the viability of the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

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

CONCLUSION

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

RESPECTFULLY SUBMITTED,



S Randall Hood
McGowan, Hood & Felder, LLC
1539 Health Care Drive
Rock Hill, SC 29732
(803) 327-7800
rhood@mcgowanhood.com

Shawn Deery
Whitney B. Harrison
McGowan, Hood & Felder, LLC
1517 Hampton Street
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(803) 779-0100
sdeery@mcgowanhood.com
wharrison@mcgowanhood.com

Attorneys for Plaintiff

November 7, 2016
Columbia, SC

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

G. Thomas Cooper, Circuit Court Judge

Case No. 2007-CP-29-593

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

v

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

PROOF OF SERVICE

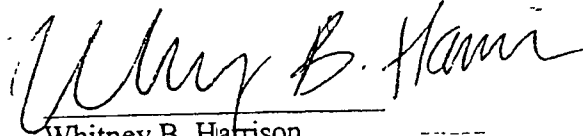
The undersigned hereby certifies that on November 7, 2016, she served counsel for
Respondent with the *Petition for Writ of Supersedeas* in this matter by mailing a copy of the
same by United States Mail with first class postage prepaid to the following addresses:

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

Signature Page to Follow

November 7, 2016
Columbia, SC

Respectfully submitted,

A handwritten signature in cursive script, reading "Whitney B. Harrison". The signature is written in dark ink and is positioned above the printed name and contact information.

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

Exhibit 1:

Security Services Master Agreement

See R. 147

Exhibit 2:

Guidelines for Private Security Contractors

See R. 164

Exhibit 3:

Excerpts of Derrick Jones' Deposition
(p. 119-120)

See R. 169

Exhibit 4:

Second Amended Complaint

See R. 119

Exhibit 5:

Opinion

Roddey v Wal-Mart Stores East., LP, 415 S.C. 580, 784 S.E.2d 670 (2016)

See R. 17

Exhibit 6:

Defendants' Motion and Memorandum to Exclude the Negligent Hiring and Supervision Cause of Action and In the Alternative, Motion for Summary Judgment

See R. 130

Exhibit 7:

Plaintiff's Memorandum in Opposition to Defendants' Motion and
Memorandum to Exclude the Negligent Hiring and Supervision Cause of
Action and In the Alternative, Motion for Summary Judgment

See R. 319

Exhibit 8:

Order Barring Evidence of Plaintiff's Negligent Hiring Cause of Action
on Grounds of Res Judicata, filed November 2, 2016

See R. 1

Exhibit 9

Whitney Harrison

From: Whitney Harrison
Sent: Wednesday, November 02, 2016 5:55 PM
To: 'Cooper, G. Thomas Law Clerk (George C. James, III)', Stephanie Flynn, Cooper, G. Thomas
Cc: Randy Hood, Shawn B. Deery, Howard Boyd; Jessica Cooksey
Subject: RE: Roddey v. Wal-Mart, C.A. No. 2007-CP-29-593

Judge Cooper and George,

Thank you for letting us know your ruling. After much discussion today, our firm has decided to appeal this issue. As you can imagine, this is an important case to our firm. To ensure all of our arguments are preserved for appellate review, we will be filing a 59(e) motion. To prevent any further inconvenience to you, Howard, and Stephanie, and to free up the Court's roster for the week of November 14th, we wanted to let you all know as soon as possible. If you have any questions or concerns, please let us know.

Whitney

From: Cooper, G. Thomas Law Clerk (George C. James, III) [<mailto:GCooperLC@sccourts.org>]
Sent: Wednesday, November 02, 2016 11:59 AM
To: Stephanie Flynn; Cooper, G. Thomas
Cc: Randy Hood; Whitney Harrison; Shawn B. Deery; Howard Boyd; Jessica Cooksey
Subject: Roddey v. Wal-Mart, C.A. No. 2007-CP-29-593

Counsel,

Attached, please find a scanned copy of the signed Order Barring the Evidence of Plaintiff's Negligent Hiring Cause of Action on Grounds of Res Judicata that will be sent to Lancaster County for filing today.

Thank you,

George James
Law Clerk to the Honorable G. Thomas Cooper, Jr.
Circuit Court of South Carolina, Fifth Circuit
1701 Main St., Room 320
P.O. Box 192
Columbia, SC 29201
Phone: (803) 576-1783
Fax: (803) 576-1741

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# **Exhibit 10**

## Whitney Harrison

---

**From:** Shawn B. Deery  
**Sent:** Friday, November 04, 2016 3:35 PM  
**To:** Cooper, G. Thomas, Randy Hood  
**Cc:** Stephanie Flynn, Whitney Harrison, Cooper, G. Thomas Law Clerk (George C. James, III), Mitch Norrell, Norrell, Ilc Norrell & powers, Brent Stewart, Howard Boyd, Jessica Cooksey  
**Subject:** RE: Roddey v. Wal-Mart, C.A. No. 2007-CP-29-593

Judge Cooper: We would agree that the rule reads the way Mrs. Flynn points out. However, we do not believe that under these facts, the remaining half of the case could proceed to trial following our appeal of the recent Order. In all the cases we found that discuss the "not affected by the appeal" language of Rules 205 and 241(a), SCACR, the issues remaining in the circuit court were totally unrelated to the issue that was being appealed.

For instance, in *Mets v. Mims*, 384 S.C. 491, 682 S.E.2d 813 (2009) (discussing Rule 205), the issue appealed was an order regarding punitive damages and the half that remained in the circuit court dealt with the merits of a libel claim.

We do not believe such a separation exists here. In our view we are appealing the whole case because the recent Order essentially strikes a cause of action from Plaintiff's Complaint that we believe is still viable.

We look forward to speaking with everyone shortly.

Shawn

Shawn B. Deery  
803-779-0100 (Phone)  
sdeery@mcgowanhood.com (Email)

-----Original Message-----

**From:** Cooper, G. Thomas [mailto:GCooperJ@sccourts.org]  
**Sent:** Friday, November 04, 2016 11:46 AM  
**To:** Randy Hood  
**Cc:** Stephanie Flynn; Whitney Harrison, Cooper, G. Thomas Law Clerk (George C. James, III), Mitch Norrell, Norrell, Ilc Norrell & powers, Brent Stewart, Howard Boyd, Shawn B. Deery; Jessica Cooksey  
**Subject:** Re: Roddey v. Wal-Mart, C.A. No. 2007-CP-29-593

In my opinion, a reading of Rule 241(a) as suggested by Ms. Flynn, would allow the trial to go forward on "matters not affected by the appeal." I am available by phone after 4:00 at this cell 803-243-0063.

Sent from my iPhone

> On Nov 4, 2016, at 10:56-AM, Randy Hood <rhood@mcgowanhood.com> wrote:

>

> Judge Cooper

>

> Obviously we disagree with the position of Defendants. We can brief this entire matter pursuant to 59e and submit to your honor. We agree with Ms. Flynn that it would be due by November 14, 2016. We are cognizant, however, of your honor's travel out of country and necessity to try and resolve this issue. We can discuss today whether your honor wants to take this matter up on Sunday with a full briefing by us (we expect our brief to 15-20 pages without

attachments) or to simply fully brief by November 14, 2016, let the Defendants have time to respond (if they wish). Given our position that it is immediately appealable, we do not want the court to be left without cases to try the week of November 14, 2016.

- >
- > What is a good time for all to try and get on the phone today?
- >
- > Have a great day Blessings
- >
- > Randy
- >
- > S Randall Hood
- > McGowan, Hood & Felder, LLC
- > 1539 Health Care Drive
- > Rock Hill, SC 29732
- > 803-327-7800 (MHF Phone)
- > 803-327-7828 (Randy Hood Direct Dial)
- > 877-327-3800 (Toll Free)
- > rhood@mcgowanhood.com (Email)
- > www.mcgowanhood.com (Website)
- >
- > Other McGowan, Hood & Felder, LLC office locations:
- >
- > Columbia, SC . Anderson, SC . Charlotte, NC . Georgetown, SC .
- > Sumter, SC
- >
- > LET JUSTICE ROLL ON LIKE WATERS, RIGHTEOUSNESS LIKE A MIGHTY STREAM
- >
- > Amos 5:24
- > Excerpt from Dr. Martin Luther King's "I have a Dream" speech (1963)
- >
- > POSITIVE THOUGHTS AND ACTIONS ARE THE BEGINNING OF A VICTORIOUS DAY
- >
- > CONFIDENTIALITY NOTE: THIS EMAIL WAS SENT FROM A LAW FIRM. IT MAY CONTAIN PRIVILEGED OR CONFIDENTIAL INFORMATION AND IS INTENDED SOLELY FOR THE USE OF THE PERSON(S) NAMED ABOVE OR THE PERSON(S) WHO IS THE INTENDED RECIPIENT OF THE MESSAGE. IF YOU ARE NOT AN INTENDED RECIPIENT OF THIS EMAIL, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION OR DUPLICATION OF THIS E-MAIL IS PROHIBITED AND THAT THERE SHALL BE NO WAIVER OF ANY PRIVILEGE OR CONFIDENCE BY YOUR RECEIPT OF THIS TRANSMISSION. IF YOU HAVE RECEIVED THIS E-MAIL IN ERROR, PLEASE NOTIFY US BY COLLECT TELEPHONE CALL TO 803-327-7800 OR ONE OF THE NUMBERS INDICATED ABOVE
- >
- > -----Original Message-----
- > From: Stephanie Flynn [mailto:SFlynn@gwblawfirm.com]
- > Sent: Friday, November 4, 2016 10:07 AM
- > To: Randy Hood <rhood@mcgowanhood.com>; Cooper, G. Thomas <GCooperJ@sccourts.org>
- > Cc: Whitney Harrison <wharrison@mcgowanhood.com>; Cooper, G. Thomas <GCooperLC@sccourts.org>; Mitch Law Clerk (George C. James, III) <GCooperLC@sccourts.org>; Norrell <mnorrell@comporium.net>; Norrell, llc Norrell & powers <resipsa@comporium.net>; Brent Stewart <brent@stewartlawoffices.net>; Howard Boyd <Hboyd@gwblawfirm.com>; Shawn B. Deery <sdeery@mcgowanhood.com>; Jessica Cooksey <jessica@mcgowanhood.com>
- > Subject: RE: Roddey v Wal-Mart, C A No. 2007-CP-29-593

>

> Judge Cooper and George,

>

> Our position is and always has been that the negligent hiring cause of action is dead by operation of law on grounds of res judicata. As we knew Plaintiff intended to proceed as if that cause of action still existed, our motion was borne out of a need to make clear that the negligent hiring cause of action had already been determined by a jury, was never appealed, and was no longer viable and, therefore, Plaintiff should not be allowed to try to re-litigate it or offer evidence and testimony regarding that issue during re-trial.

>

> Our motion, regardless of how it was initially couched or titled, took the position we outline above and was fully briefed, contrary to what was represented to the Court by Plaintiff. Nonetheless, we further addressed and clarified the proper procedural posture of the motion in our letter reply that was submitted to the Court with the proposed Order. There was no need to strike or dismiss the negligent hiring action because it does not exist. The Order, which properly frames the issue as an evidentiary matter, acknowledges that the cause of action has been determined by a jury, was never appealed and is res judicata.

>

> Plaintiff cannot appeal from Defendants' motion or now use the motion to try to re-characterize this Court's Order. It is the Order on which the appeal will be taken, and the Order is clearly interlocutory and not immediately appealable. Any appeal from this Order would be frivolous. It does not end the case or prevent a final judgment from which Plaintiff may seek appellate review. Furthermore, in addition to being interlocutory and not immediately appealable, the appeal has no merit. This is the clearest example of res judicata there could possibly be. If the Plaintiff appeals, we will move for sanctions on the ground the appeal is frivolous and without a good basis on law or fact.

>

> Mr. Hood improperly suggests that the Court has not ruled. Obviously, the Court has signed an Order excluding any evidence of negligent hiring on the re-trial of the case. The Plaintiff just needs to file a Rule 59 motion for reconsideration of that Order. There is no procedural basis for rearguing the motion once the Court has decided. It does not matter how the Defendants couched the motion initially. After further consideration of the motion, we realized our motion was mischaracterized and should be characterized as a motion in limine to exclude evidence relating to a cause of action that had already been determined by a jury. That is what the Court ruled.

>

> Even if the Order were immediately appealable, it is our position that an appeal of the Order has no effect on and will not require a continuance of the case on the negligence cause of action. Under Rule 241(a), SCACR, generally once a notice of appeal is filed, that automatically stays the matter decided in the Order. The lower court retains jurisdiction over matters not affected by the appeal. The negligence action for the pursuit, which is subject to different kinds and quantities of proof than that for negligent hiring, can proceed independently and unaffected by the appeal. This is a wrongful death wreck case.

>

> Obviously, if the Court adheres to its position that the appeal will divest the Court of jurisdiction, we cannot proceed with the trial on November 14. However, for all of the reasons outlined above, and the fact that this case is now 10 years old, we would respectfully request that the Court reconsider the jurisdictional issue and allow this case to proceed on November 14 on the only cause of action that remains.

>

> As always, we appreciate your consideration of these issues.

>

> Howard Boyd

> Stephanie Flynn

>

>

> Stephanie G. Flynn

> Partner

> sflynn@GWBlawfirm.com

>

> Gallivan, White & Boyd P.A  
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> Mailing Post Office Box 10589 | Greenville SC 29603 Bio URL  
> [https://urldefense.proofpoint.com/v2/url?u=http-3A\\_\\_www.gwblawfirm.com](https://urldefense.proofpoint.com/v2/url?u=http-3A__www.gwblawfirm.com)  
> \_attorney\_stephanie-2Dflynn\_&d=DglFAw&c=YGvVmrQQ6VQOFx3Z93C9uQ&r=8cIY6  
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> Website  
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> xyiaj9fv-nE8B0jCib46Z55woLD2qNQM&e=

>  
> This message is from the law firm Gallivan, White & Boyd, PA and may  
> be a confidential and privileged legal communication to the named  
> recipient(s). If you receive this message in error or are not the  
> named recipient(s), please notify the sender and delete this email.  
> Thank you -----Original Message-----

> From: Randy Hood [mailto:rhod@mcgowanhood.com]  
> Sent: Thursday, November 3, 2016 11:00 PM  
> To: Cooper, G Thomas  
> Cc: Whitney Harrison; Stephanie Flynn; Cooper, G Thomas Law Clerk  
> (George C James, III), Mitch Norrell; Norrell, Ilc Norrell & powers,  
> Brent Stewart, Howard Boyd; Shawn B Deery; Jessica Cooksey  
> Subject: Re: Roddey v. Wal-Mart, C.A. No. 2007-CP-29-593

>  
> Judge Cooper

>  
> We are available tomorrow at your convenience to try and determine whether the motion to dismiss/strike the  
negligent hiring, training, supervision issue will be decided in defense or plaintiffs favor. It is my belief that if the cause of  
action is stricken/dismissed, then Plaintiffs plan to appeal the issue. Thank you in advance.

>  
> Blessings.

>  
> Randy Hood

>  
> S Randall Hood  
> McGowan, Hood and Felder, LLC  
> Rock Hill, South Carolina  
> 803-327-7800 (general)  
> 803-327-7828 (direct dial)  
> rhod@mcgowanhood.com  
> www.mcgowanhood.com

>  
> Additional offices located in:  
>  
> Columbia, SC . Anderson, SC .  
> Sumter, SC . Georgetown, SC

>  
>  
>

> This email is being sent from my iPhone with auto-correct feature. If there are mis-spellings or other language anomalies, please ignore them. I apologize for any inaccuracies in spelling and/or grammar in this email.

>  
>> On Nov 3, 2016, at 7:36 PM, Cooper, G. Thomas <GCooperJ@sccourts.org> wrote:

>>  
>> Counsel: I leave for an overseas vacation at 11:00 am Monday the 7th. Anything that needs to be done by me, needs to be done by then. I am available to you this weekend by email or phone @ 803-432-5455 or my cell @ 803-243-0063. I would like to resolve the trial issue (as would the Lancaster C of C) as soon as possible.

>>  
>> Sent from my iPad

>>  
>> On Nov 3, 2016, at 3:49 PM, Randy Hood <rhood@mcgowanhood.com<mailto:rhood@mcgowanhood.com>> wrote:

>>  
>> Judge Cooper and George:  
>>  
>> First, I apologize for any additional stress our position may cause. I know the Defendants may disagree, but there are certain issues that need to be addressed which concern judicial economy and both law firms' resources - financially, time spent, etc.

>> At the October 25th hearing, I spoke with Defense counsel regarding our intent to appeal if we were unsuccessful retaining the negligent hiring claim. At that time, I hope I adequately expressed that my concerns were borne out of potentially wasted resources and effort by all parties. I certainly think I can speak for us all when I say we do not want to try this case a third time under any circumstances.

>>  
>> As Whitney mentioned in her previous email, Defendants' motion was to strike the negligent hiring cause of action. Yet despite not being the issue briefed or argued, the Order prohibits the introduction of evidence for that cause of action. Under Defendants' theory if we cannot present evidence on that issue, Defense counsel will simply stand up at the end of our case and move for a DV since we were prevented from introducing evidence to support it. While at first glance a ruling on a motion in limine versus a motion to exclude presents the same outcome, they are significantly different from an appealability standpoint. Defendants' motion was one to strike not to limit evidence, as such it is appealable.

>>  
>> One of the problems for us is we are spending firm resources on experts (out-of-state) on issues relating to the negligent hiring claim. Because of that, this ruling directly affects our mode of trial and in turn affects a substantial right of the Plaintiff. We were planning on expending much more resources over the next 1 ½ weeks but it depends on the mode of trial. I am not only concerned with costs, but am concerned that everyone spends the next 1 ½ weeks preparing, having experts at trial, serving subpoenas, having witnesses at the courthouse, etc., only for us to file our anticipated appeal that would give the appellate court's jurisdiction in the eleventh hour.

>>  
>> Again, I apologize for any inconvenience, but my concern is doing what is best for our client. I know you are going on vacation next week and am loathe to send this at all.

>>  
>> Have a great day. Blessings

>>  
>> Randy  
>>  
>> S. Randall Hood  
>> McGowan, Hood & Felder, LLC  
>> 1539 Health Care Drive  
>> Rock Hill, SC 29732  
>> 803-327-7800 (MHF Phone)  
>> 803-327-7828 (Randy Hood Direct Dial)  
>> 877-327-3800 (Toll Free)

>> rhood@mcgowanhood.com<mailto:rhood@mcgowanhood.com> (Email)  
>> www.mcgowanhood.com<https://urldefense.proofpoint.com/v2/url?u=http-3  
>> A>  
>> \_\_www.mcgowanhood.com\_&d=DgMFAw&c=YGvVmrQQ6VQOFx3Z93C9uQ&r=8clY6kWgig  
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>> (Website)  
>>  
>> Other McGowan, Hood & Felder, LLC office locations.  
>>  
>> Columbia, SC . Anderson, SC . Charlotte, NC . Georgetown, SC .  
>> Sumter, SC  
>>  
>> LET JUSTICE ROLL ON LIKE WATERS, RIGHTEOUSNESS LIKE A MIGHTY STREAM.  
>>  
>> Amos 5 24  
>> Excerpt from Dr. Martin Luther King's "I have a Dream" speech (1963)  
>>  
>> POSITIVE THOUGHTS AND ACTIONS ARE THE BEGINNING OF A VICTORIOUS DAY  
>>  
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EMAIL, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION OR DUPLICATION OF THIS E-MAIL IS PROHIBITED AND  
THAT THERE SHALL BE NO WAIVER OF ANY PRIVILEGE OR CONFIDENCE BY YOUR RECEIPT OF THIS TRANSMISSION. IF  
YOU HAVE RECEIVED THIS E-MAIL IN ERROR, PLEASE NOTIFY US BY COLLECT TELEPHONE CALL TO 803-327-7800 OR ONE  
OF THE NUMBERS INDICATED ABOVE.  
>>  
>> From: Whitney Harrison  
>> Sent: Thursday, November 03, 2016 12:11 PM  
>> To: Stephanie Flynn; Cooper, G. Thomas, Cooper, G. Thomas Law Clerk  
>> (George C. James, III)  
>> Cc: Howard Boyd, Randy Hood, Shawn B. Deery; Jessica Cooksey  
>> Subject: RE: Roddey v. Wal-Mart, C.A. No. 2007-CP-29-593  
>>  
>> Judge Cooper and George,  
>>  
>> We agree with Defense counsel that the Rule 59(e) motion would be due on or before November 14. However, as  
you might imagine, we disagree with the substance of their email. While it is our intent to fully address everything in  
the coming 59(e) motion, in light of Defense counsel's email, a brief statement of our position follows:  
>>  
>> First, this issue is immediately appealable. Defendants filed a motion to exclude the negligent hiring and supervision  
cause of action (or in the alternative for summary judgment) and that matter was heard on October 25th. All arguments  
presented at the hearing addressed the exclusion of the cause of action, not evidence relating to the cause of action.  
However, Defendants' proposed order, changed what was a motion to exclude (or to strike) into a motion in limine.  
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.  
>>  
>> It has always been Plaintiff's position that the negligent hiring and supervision cause of action never went away  
because of the Supreme Court's grant of a new trial (as we argued at the hearing). So there would have been no need

for Plaintiff to file a motion to revive it. Defendants' motion was to exclude or strike because we were saying it still existed. Now, it appears Defendants are arguing the exact opposite.

>>

>> In addition, we believe the filing of a notice of appeal would provide the appellate courts with jurisdiction and stay the action in this Court. The two claims (as even acknowledged by Defense counsel) are intertwined. For this reason, the Order (and its implications) affects a substantial right of Plaintiff and therefore, is immediately appealable. As such, we believe this case cannot proceed until an appellate court rules on the appeal.

>>

>>

>> Whitney

>>

>>

>> From: Stephanie Flynn [mailto:SFlynn@gwblawfirm.com]

>> Sent: Thursday, November 03, 2016 11:00 AM

>> To: Cooper, G. Thomas; Cooper, G. Thomas Law Clerk (George C. James,

>> III)

>> Cc: Howard Boyd, Randy Hood; Shawn B. Deery; Jessica Cooksey, Whitney

>> Harrison

>> Subject: Roddey v. Wal-Mart, C.A. No. 2007-CP-29-593

>>

>> Dear Judge Cooper and George

>>

>> We received the email from Whitney Harrison late yesterday, advising that Plaintiff intends to file a Rule 59 motion for reconsideration and will appeal the Court's decision granting our motion to exclude evidence of negligent hiring in the re-trial of the negligence cause of action. We disagree that this requires that the trial of this case be continued, and are writing to provide the Court with our position that this case should proceed as scheduled on Monday, November 14

>>

>> First, the Court's Order as to the exclusion of evidence as to negligent hiring is interlocutory and not immediately appealable. The order excludes evidence of negligent hiring because Plaintiff's action for negligent hiring is now barred under principles of res judicata. Plaintiff has made no motion to revive that cause of action, nor could they do so. It simply doesn't exist any longer since Plaintiff failed to appeal the jury verdict from the first trial on the negligent hiring cause of action.

>>

>> Second, even if the plaintiff took an appeal from the court's denial of its Rule 59 motion for reconsideration, that would not stay further proceedings in the trial court. The Order does not end the case or prevent a final judgment from which Plaintiff may seek appellate review. Moreover, the resolution of the negligent pursuit cause of action may render the negligent hiring cause of action moot if the defendants prevail on that cause of action. Without an underlying tort to support it, the negligent hiring of Jones could not be the proximate cause of Ms. Hancock's death.

>>

>> We would respectfully request that the Court summarily deny the Plaintiff's Rule 59 motion, which will be required to be filed on or before November 14, prior to the start of trial and that we proceed with the trial of the negligent pursuit cause of action.

>>

>> As always, we appreciate the court's consideration of our position in regard to this issue

>>

>> With kind regards,

>>

>> Howard

>> Stephanie

>>

>>

>>

>> <image001.jpg>  
>>  
>> Stephanie G Flynn  
>>  
>> Partner  
>>  
>> sflynn@GWBlawfirm.com<mailto:sflynn@GWBlawfirm.com>  
>>  
>>  
>>  
>> Gallivan, White & Boyd P A  
>>  
>> Office 55 Beattie Place | Suite 1200 | Greenville SC 29601  
>>  
>> 864 271 5426 Direct | 864 271 9580 Main | 864 271 7502 Fax  
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>> Mailing Post Office Box 10589 | Greenville SC 29603  
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>

## Whitney Harrison

---

**From:** Stephanie Flynn <SFlynn@gwblawfirm.com>  
**Sent:** Friday, November 04, 2016 12:45 PM  
**To:** Cooper, G. Thomas, Howard Boyd  
**Cc:** Randy Hood, Whitney Harrison, Cooper, G. Thomas Law Clerk (George C. James, III), Mitch Norrell, Norrell, Ilc Norrell & powers; Brent Stewart, Shawn B. Deery, Jessica Cooksey  
**Subject:** RE: Roddey v. Wal-Mart, C.A. No. 2007-CP-29-593

For the conference call at 4:00, please use the following call-in numbers:

1-803-724-1812 passcode 13579# ext 1812

Stephanie G. Flynn  
Partner  
sflynn@GWBlawfirm.com

Gallivan, White & Boyd P.A.  
Office: 55 Beattie Place | Suite 1200 | Greenville SC 29601  
864 271 5426 Direct | 864 271 9580 Main | 864 271 7502 Fax  
Mailing Post Office Box 10589 | Greenville SC 29603 Bio URL <http://www.gwblawfirm.com/attorney/stephanie-flynn/> |  
Website <http://www.gwblawfirm.com>

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**From:** Cooper, G. Thomas [mailto:GCooperJ@sccourts.org]  
**Sent:** Friday, November 4, 2016 12:30 PM  
**To:** Howard Boyd  
**Cc:** Randy Hood, Stephanie Flynn; Whitney Harrison; Cooper, G. Thomas Law Clerk (George C. James, III); Mitch Norrell; Norrell, Ilc Norrell & powers; Brent Stewart; Shawn B. Deery, Jessica Cooksey  
**Subject:** Re: Roddey v. Wal-Mart, C.A. No. 2007-CP-29-593

Please arrange the conference call.

Sent from my iPhone

> On Nov 4, 2016, at 12:02 PM, Howard Boyd <Hboyd@gwblawfirm.com> wrote  
>  
> We will call you then. Thanks.  
>  
> Regards, Howard  
>  
> W. Howard Boyd, Jr  
> Shareholder  
> hboyd@GWBlawfirm.com  
>  
> Gallivan, White & Boyd P.A

> Office: 55 Beattie Place | Suite 1200 | Greenville SC 29601  
 > 864 271 5343 Direct | 864 271 9580 Main | 864 271 7502 Fax  
 > Mailing: Post Office Box 10589 | Greenville SC 29603 Bio URL:  
 > [https://urldefense.proofpoint.com/v2/url?u=http-3A\\_\\_www.gwblawfirm.com](https://urldefense.proofpoint.com/v2/url?u=http-3A__www.gwblawfirm.com)  
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> Thank you -----Original Message-----

> From: Cooper, G. Thomas [mailto:GCooperJ@sccourts.org]

> Sent: Friday, November 04, 2016 11:46 AM

> To: Randy Hood

> Cc: Stephanie Flynn, Whitney Harrison, Cooper, G Thomas Law Clerk

> (George C James, III), Mitch Norrell; Norrell, llc Norrell & powers;

> Brent Stewart; Howard Boyd; Shawn B. Deery, Jessica Cooksey

> Subject: Re: Roddey v. Wal-Mart, C.A No 2007-CP-29-593

>  
 > In my opinion, a reading of Rule 241(a) as suggested by Ms Flynn, would allow the trial to go forward on "matters not  
 affected by the appeal" I am available by phone after 4.00 at this cell 803-243-0063.

>  
 > Sent from my iPhone

>  
 >> On Nov 4, 2016, at 10:56 AM, Randy Hood <rhod@mcgowanhood.com> wrote:

>>

>> Judge Cooper

>>

>> Obviously we disagree with the position of Defendants. We can brief this entire matter pursuant to 59e and submit  
 to your honor. We agree with Ms. Flynn that it would be due by November 14, 2016. We are cognizant, however, of  
 your honor's travel out of country and necessity to try and resolve this issue. We can discuss today whether your honor  
 wants to take this matter up on Sunday with a full briefing by us (we expect our brief to 15-20 pages without  
 attachments) or to simply fully brief by November 14, 2016, let the Defendants have time to respond (if they wish).  
 Given our position that it is immediately appealable, we do not want the court to be left without cases to try the week  
 of November 14, 2016.

>>

>> What is a good time for all to try and get on the phone today?

>>

>> Have a great day. Blessings.

>>

>> Randy

>>

>> S. Randall Hood

>> McGowan, Hood & Felder, LLC

>> 1539 Health Care Drive

>> Rock Hill, SC 29732  
>> 803-327-7800 (MHF Phone)  
>> 803-327-7828 (Randy Hood Direct Dial)  
>> 877-327-3800 (Toll Free)  
>> rhood@mcgowanhood.com (Email)  
>> www.mcgowanhood.com (Website)

>>  
>> Other McGowan, Hood & Felder, LLC office locations:

>>  
>> Columbia, SC   Anderson, SC   Charlotte, NC   Georgetown, SC  
>> Sumter, SC

>>  
>> LET JUSTICE ROLL ON LIKE WATERS, RIGHTEOUSNESS LIKE A MIGHTY STREAM

>>  
>> Amos 5:24  
>> Excerpt from Dr. Martin Luther King's "I have a Dream" speech (1963)

>>  
>> POSITIVE THOUGHTS AND ACTIONS ARE THE BEGINNING OF A VICTORIOUS DAY

>>  
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>>  
>> -----Original Message-----  
>> From: Stephanie Flynn [mailto:SFlynn@gwblawfirm.com]  
>> Sent: Friday, November 4, 2016 10:07 AM  
>> To: Randy Hood <rhood@mcgowanhood.com>; Cooper, G. Thomas  
>> <GCooperJ@sccourts.org>  
>> Cc: Whitney Harrison <wharrison@mcgowanhood.com>; Cooper, G. Thomas  
>> Law Clerk (George C. James, III) <GCooperLC@sccourts.org>; Mitch  
>> Norrell <mnorrell@comporium.net>; Norrell, LLC Norrell & Powers  
>> <resipsa@comporium.net>; Brent Stewart <brent@stewartlawoffices.net>;  
>> Howard Boyd <Hboyd@gwblawfirm.com>; Shawn B. Deery  
>> <sdeery@mcgowanhood.com>; Jessica Cooksey <jessica@mcgowanhood.com>  
>> Subject: RE: Roddey v. Wal-Mart, C.A. No. 2007-CP-29-593

>>  
>> Judge Cooper and George,

>>  
>> Our position is and always has been that the negligent hiring cause of action is dead by operation of law on grounds of res judicata. As we knew Plaintiff intended to proceed as if that cause of action still existed, our motion was borne out of a need to make clear that the negligent hiring cause of action had already been determined by a jury, was never appealed, and was no longer viable and, therefore, Plaintiff should not be allowed to try to re-litigate it or offer evidence and testimony regarding that issue during re-trial.

>>  
>> Our motion, regardless of how it was initially couched or titled, took the position we outline above and was fully briefed, contrary to what was represented to the Court by Plaintiff. Nonetheless, we further addressed and clarified the proper procedural posture of the motion in our letter reply that was submitted to the Court with the proposed Order. There was no need to strike or dismiss the negligent hiring action because it does not exist. The Order, which properly

frames the issue as an evidentiary matter, acknowledges that the cause of action has been determined by a jury, was never appealed and is res judicata

>>

>> Plaintiff cannot appeal from Defendants' motion or now use the motion to try to re-characterize this Court's Order. It is the Order on which the appeal will be taken, and the Order is clearly interlocutory and not immediately appealable. Any appeal from this Order would be frivolous. It does not end the case or prevent a final judgment from which Plaintiff may seek appellate review. Furthermore, in addition to being interlocutory and not immediately appealable, the appeal has no merit. This is the clearest example of res judicata there could possibly be. If the Plaintiff appeals, we will move for sanctions on the ground the appeal is frivolous and without a good basis on law or fact.

>>

>> Mr. Hood improperly suggests that the Court has not ruled. Obviously, the Court has signed an Order excluding any evidence of negligent hiring on the re-trial of the case. The Plaintiff just needs to file a Rule 59 motion for reconsideration of that Order. There is no procedural basis for rearguing the motion once the Court has decided. It does not matter how the Defendants couched the motion initially. After further consideration of the motion, we realized our motion was mischaracterized and should be characterized as a motion in limine to exclude evidence relating to a cause of action that had already been determined by a jury. That is what the Court ruled.

>>

>> Even if the Order were immediately appealable, it is our position that an appeal of the Order has no effect on and will not require a continuance of the case on the negligence cause of action. Under Rule 241(a), SCACR, generally once a notice of appeal is filed, that automatically stays the matter decided in the Order. The lower court retains jurisdiction over matters not affected by the appeal. The negligence action for the pursuit, which is subject to different kinds and quantities of proof than that for negligent hiring, can proceed independently and unaffected by the appeal. This is a wrongful death wreck case.

>>

>> Obviously, if the Court adheres to its position that the appeal will divest the Court of jurisdiction, we cannot proceed with the trial on November 14. However, for all of the reasons outlined above, and the fact that this case is now 10 years old, we would respectfully request that the Court reconsider the jurisdictional issue and allow this case to proceed on November 14 on the only cause of action that remains.

>>

>> As always, we appreciate your consideration of these issues.

>>

>> Howard Boyd

>> Stephanie Flynn

>>

>>

>> Stephanie G. Flynn

>> Partner

>> sflynn@GWBlawfirm.com

>>

>> Gallivan, White & Boyd P.A.

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>> Website:

>> [https://urldefense.proofpoint.com/v2/url?u=http-3A\\_\\_www.gwblawfirm.co](https://urldefense.proofpoint.com/v2/url?u=http-3A__www.gwblawfirm.co)

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>> Thank you -----Original Message-----

>> From: Randy Hood [mailto:rhoor@mogowanhood com]

>> Sent Thursday, November 3, 2016 11:00 PM

>> To: Cooper, G. Thomas

>> Cc: Whitney Harrison, Stephanie Flynn, Cooper, G Thomas Law Clerk

>> (George C. James, III); Mitch Norrell, Norrell, llc Norrell & powers,

>> Brent Stewart; Howard Boyd; Shawn B. Deery; Jessica Cooksey

>> Subject Re. Roddey v Wal-Mart, C A. No 2007-CP-29-593

>>

>> Judge Cooper

>>

>> We are available tomorrow at your convenience to try and determine whether the motion to dismiss/strike the  
negligent hiring, training, supervision issue will be decided in defense or plaintiffs favor It is my belief that if the cause of  
action is stricken/dismissed, then Plaintiffs plan to appeal the issue. Thank you in advance

>>

>> Blessings.

>>

>> Randy Hood

>>

>> S Randall Hood

>> McGowan, Hood and Felder, LLC

>> Rock Hill, South Carolina

>> 803-327-7800 (general)

>> 803-327-7828 (direct dial)

>> rhoor@mogowanhood com

>> www.mogowanhood.com

>>

>> Additional offices located in:

>>

>> Columbia, SC . Anderson, SC .

>> Sumter, SC . Georgetown, SC

>>

>>

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anomalies, please ignore them I apologize for any inaccuracies in spelling and/or grammar in this email

>>

>>> On Nov 3, 2016, at 7:36 PM, Cooper, G. Thomas <GCooperJ@sccourts org> wrote.

>>>

>>> Counsel I leave for an overseas vacation at 11 00 am Monday the 7th Anything that needs to be done by me, needs  
to be done by then. I am available to you this weekend by email or phone @ 803-432-5455 or my cell @ 803-243-0063 I  
would like to resolve the trial issue (as would the Lancaster C of C) as soon as possible

>>>

>>> Sent from my iPad

>>>

>>> On Nov 3, 2016, at 3:49 PM, Randy Hood <[rhoor@mogowanhood.com](mailto:rhoor@mogowanhood.com)<<mailto:rhoor@mogowanhood.com>>>

wrote:

>>>

>>> Judge Cooper and George

>>>

>>> First, I apologize for any additional stress our position may cause. I know the Defendants may disagree, but there are certain issues that need to be addressed which concern judicial economy and both law firms' resources - financially, time spent, etc

>>> At the October 25th hearing, I spoke with Defense counsel regarding our intent to appeal if we were unsuccessful retaining the negligent hiring claim. At that time, I hope I adequately expressed that my concerns were borne out of potentially wasted resources and effort by all parties. I certainly think I can speak for us all when I say we do not want to try this case a third time under any circumstances

>>>

>>> As Whitney mentioned in her previous email, Defendants' motion was to strike the negligent hiring cause of action. Yet despite not being the issue briefed or argued, the Order prohibits the introduction of evidence for that cause of action. Under Defendants' theory if we cannot present evidence on that issue, Defense counsel will simply stand up at the end of our case and move for a DV since we were prevented from introducing evidence to support it. While at first glance a ruling on a motion in limine versus a motion to exclude presents the same outcome, they are significantly different from an appealability standpoint. Defendants' motion was one to strike not to limit evidence, as such it is appealable.

>>>

>>> One of the problems for us is we are spending firm resources on experts (out-of-state) on issues relating to the negligent hiring claim. Because of that, this ruling directly affects our mode of trial and in turn affects a substantial right of the Plaintiff. We were planning on expending much more resources over the next 1 ½ weeks but it depends on the mode of trial. I am not only concerned with costs, but am concerned that everyone spends the next 1 ½ weeks preparing, having experts at trial, serving subpoenas, having witnesses at the courthouse, etc., only for us to file our anticipated appeal that would give the appellate court's jurisdiction in the eleventh hour.

>>>

>>> Again, I apologize for any inconvenience, but my concern is doing what is best for our client. I know you are going on vacation next week and am loathe to send this at all

>>>

>>> Have a great day. Blessings.

>>>

>>> Randy

>>>

>>> S. Randall Hood

>>> McGowan, Hood & Felder, LLC

>>> 1539 Health Care Drive

>>> Rock Hill, SC 29732

>>> 803-327-7800 (MHF Phone)

>>> 803-327-7828 (Randy Hood Direct Dial)

>>> 877-327-3800 (Toll Free)

>>> [rhoor@mogowanhood.com](mailto:rhoor@mogowanhood.com)<<mailto:rhoor@mogowanhood.com>> (Email)

>>> [www.mogowanhood.com](http://www.mogowanhood.com?urldefense.proofpoint.com/v2/url?u=http-)<<https://urldefense.proofpoint.com/v2/url?u=http->

>>> 3>> A>

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>>>

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>>> Sumter, SC

>>>

>>> LET JUSTICE ROLL ON LIKE WATERS, RIGHTEOUSNESS LIKE A MIGHTY STREAM

>>>

>>> Amos 5:24

>>> Excerpt from Dr. Martin Luther King's "I have a Dream" speech (1963)

>>>

>>> POSITIVE THOUGHTS AND ACTIONS ARE THE BEGINNING OF A VICTORIOUS DAY

>>>

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>>>

>>> From: Whitney Harrison

>>> Sent: Thursday, November 03, 2016 12:11 PM

>>> To: Stephanie Flynn; Cooper, G. Thomas, Cooper, G. Thomas Law Clerk

>>> (George C. James, III)

>>> Cc: Howard Boyd; Randy Hood; Shawn B. Deery, Jessica Cooksey

>>> Subject: RE: Roddey v. Wal-Mart, C.A. No. 2007-CP-29-593

>>>

>>> Judge Cooper and George,

>>>

>>> We agree with Defense counsel that the Rule 59(e) motion would be due on or before November 14. However, as you might imagine, we disagree with the substance of their email. While it is our intent to fully address everything in the coming 59(e) motion, in light of Defense counsel's email, a brief statement of our position follows:

>>>

>>> First, this issue is immediately appealable. Defendants filed a motion to exclude the negligent hiring and supervision cause of action (or in the alternative for summary judgment) and that matter was heard on October 25th. All arguments presented at the hearing addressed the exclusion of the cause of action, not evidence relating to the cause of action. However, Defendants' proposed order, changed what was a motion to exclude (or to strike) into a motion in limine. 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.

>>>

>>> It has always been Plaintiff's position that the negligent hiring and supervision cause of action never went away because of the Supreme Court's grant of a new trial (as we argued at the hearing). So there would have been no need for Plaintiff to file a motion to revive it. Defendants' motion was to exclude or strike because we were saying it still existed. Now, it appears Defendants are arguing the exact opposite.

>>>

>>> In addition, we believe the filing of a notice of appeal would provide the appellate courts with jurisdiction and stay the action in this Court. The two claims (as even acknowledged by Defense counsel) are intertwined. For this reason, the Order (and its implications) affects a substantial right of Plaintiff and therefore, is immediately appealable. As such, we believe this case cannot proceed until an appellate court rules on the appeal.

>>>

>>>

>>> Whitney

>>>

>>>

>>> From: Stephanie Flynn [mailto:SFlynn@gwblawfirm.com]

>>> Sent: Thursday, November 03, 2016 11:00 AM

>>> To: Cooper, G Thomas; Cooper, G. Thomas Law Clerk (George C. James,

>>> III)

>>> Cc: Howard Boyd; Randy Hood, Shawn B Deery; Jessica Cooksey;

>>> Whitney Harrison

>>> Subject: Roddey v. Wal-Mart, C A. No. 2007-CP-29-593

>>>

>>> Dear Judge Cooper and George.

>>>

>>> We received the email from Whitney Harrison late yesterday, advising that Plaintiff intends to file a Rule 59 motion for reconsideration and will appeal the Court's decision granting our motion to exclude evidence of negligent hiring in the re-trial of the negligence cause of action. We disagree that this requires that the trial of this case be continued, and are writing to provide the Court with our position that this case should proceed as scheduled on Monday, November 14

>>>

>>> First, the Court's Order as to the exclusion of evidence as to negligent hiring is interlocutory and not immediately appealable. The order excludes evidence of negligent hiring because Plaintiff's action for negligent hiring is now barred under principles of res judicata. Plaintiff has made no motion to revive that cause of action, nor could they do so. It simply doesn't exist any longer since Plaintiff failed to appeal the jury verdict from the first trial on the negligent hiring cause of action

>>>

>>> Second, even if the plaintiff took an appeal from the court's denial of its Rule 59 motion for reconsideration, that would not stay further proceedings in the trial court. The Order does not end the case or prevent a final judgment from which Plaintiff may seek appellate review. Moreover, the resolution of the negligent pursuit cause of action may render the negligent hiring cause of action moot if the defendants prevail on that cause of action. Without an underlying tort to support it, the negligent hiring of Jones could not be the proximate cause of Ms. Hancock's death

>>>

>>> We would respectfully request that the Court summarily deny the Plaintiff's Rule 59 motion, which will be required to be filed on or before November 14, prior to the start of trial and that we proceed with the trial of the negligent pursuit cause of action

>>>

>>> As always, we appreciate the court's consideration of our position in regard to this issue.

>>>

>>> With kind regards,

>>>

>>> Howard

>>> Stephanie

>>>

>>>

>>>

>>> <image001.jpg>

>>>

>>> Stephanie G. Flynn

>>>

>>> Partner

>>>

>>> sflynn@GWBlawfirm.com<mailto:sflynn@GWBlawfirm.com>

>>>  
 >>>  
 >>>  
 >>> Gallivan, White & Boyd P A  
 >>>  
 >>> Office 55 Beattie Place | Suite 1200 | Greenville SC 29601  
 >>>  
 >>> 864 271 5426 Direct | 864 271 9580 Main | 864 271 7502 Fax  
 >>>  
 >>> Mailing Post Office Box 10589 | Greenville SC 29603  
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 >>> U c HguT\_zS2JghUmLGgbdDI3xoE830o0QtgW4iG8bKM&e=>  
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>>> This message is from the law firm Gallivan, White & Boyd, PA and may be a confidential and privileged legal  
 communication to the named recipient(s) If you receive this message in error or are not the named recipient(s), please  
 notify the sender and delete this email. Thank you

>>>

>>>

>>>

>>>

>>> ~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information  
 that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any  
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 the message and any attachments.



**Exhibit 11:**

Plaintiff's Motion to Alter or Amend and for Reconsideration, filed  
November 5, 2016

See R. 353

**Exhibit 12:**

Order Denying Motion to Reconsider, filed November 7, 2016

See R. 10

**Exhibit 13:**

Plaintiff's Motion to Stay, filed November 7, 2016

See R. 431

# **Exhibit 14**

## Whitney Harrison

**From:** Whitney Harrison  
**Sent:** Monday, November 07, 2016 9:47 AM  
**To:** 'Cooper, G Thomas Law Clerk (George C James, III)', Randy Hood, Cooper, G Thomas, Stephanie Flynn, Norrell, Ilc Norrell & powers, Mitch Norrell  
**Cc:** Shawn B Deery; Howard Boyd  
**Subject:** RE Roddey v Walmart, C A No 2007-CP-29-593--- Plaintiff's Motion to Alter or Amend and for Reconsideration  
**Attachments:** motion to stay signed pdf, Plaintiff's Motion to Stay Exhibits.pdf, Matter of Decker pdf, In re Estate v Connor pdf

Judge Cooper and George,

Thank you for letting us know your ruling on our Motion to Alter or Amend and Reconsideration. Attached is our Motion to Stay the November 14, 2016 trial until an appellate court resolves the appeal. As we discussed on Friday, it is our belief that the filing of the notice of appeal automatically triggers exclusive jurisdiction to the appellate court. The following motion addresses how the negligent hiring and supervision cause of action affects the negligent pursuit cause of action to the extent you disagree that an automatic stay is in place.

Also, on Friday you asked to be briefed on the appeal of a denial of a stay. Based on my reading of case law, following the denial of a motion to stay a party may appeal the ruling through a supersedeas. The filing of the supersedeas does not remove the circuit court's jurisdiction until such time the court of appeals either grants a temporary stay or a stay outright. I have attached two cases for your further review on this subject matter. Generally it is the party seeking the removal of the automatic stay who seeks appellate review. While the facts in the case before you are an inverse, I believe the final analysis for your jurisdictional inquiry is you would retain jurisdiction if you were to deny a motion to stay and retain such jurisdiction until the court of appeals makes a ruling granting a stay.

If you decide to deny our motion to stay, we ask that you have George send us your order at our Rock Hill office so that we may file it in the Lancaster Clerk's Office or with your permission we ask to file this pdf copy with the Lancaster Clerk's office.

Please let us know if you have any questions or concerns.

Whitney

Whitney B. Harrison  
McGowan, Hood & Felder, LLC  
803 779.0100  
[wharrison@mcgowanhood.com](mailto:wharrison@mcgowanhood.com)

**From:** Cooper, G. Thomas Law Clerk (George C. James, III) [mailto:GCooperLC@sccourts.org]  
**Sent:** Monday, November 07, 2016 9:36 AM  
**To:** Randy Hood; Cooper, G. Thomas; Stephanie Flynn; Norrell, Ilc Norrell & powers; Mitch Norrell  
**Cc:** Whitney Harrison; Shawn B. Deery; Howard Boyd  
**Subject:** RE: Roddey v Walmart, C.A. No. 2007-CP-29-593--- Plaintiff's Motion to Alter or Amend and for Reconsideration

Counsel,

Attached is a scanned copy of the signed Order Denying Plaintiff's Motion for Reconsideration that was submitted over the weekend

Thank you,

George James  
Law Clerk to the Honorable G Thomas Cooper, Jr  
Circuit Court of South Carolina, Fifth Circuit  
1701 Main St , Room 320  
P.O Box 192  
Columbia, SC 29201  
Phone. (803) 576-1783  
Fax: (803) 576-1741

**From:** Randy Hood [mailto:rhoo@mcgowanhood.com]  
**Sent:** Monday, November 07, 2016 9 11 AM  
**To:** Cooper, G Thomas <GCooperJ@sccourts.org>; Stephanie Flynn <SFlynn@gwblawfirm.com>; Norrell, Ilc Norrell & powers <resipsa@comporium.net>; Mitch Norrell <mnorrell@comporium.net>  
**Cc:** Whitney Harrison <wharrison@mcgowanhood.com>, Cooper, G Thomas Law Clerk (George C. James, III) <GCooperLC@sccourts.org>; Shawn B. Deery <sdeery@mcgowanhood.com>; Howard Boyd <Hboyd@gwblawfirm.com>  
**Subject:** RE: Roddey v. Walmart, C.A No 2007-CP-29-593--- Plaintiff's Motion to Alter or Amend and for Reconsideration

Thank you Your Honor. As soon as we receive the order on the 59e, we will file a motion to stay (almost immediately, sent by email to you and George and all others on this email). If you are going to deny a motion to stay, would you mind simply denying it before you leave I think a Form 4 will suffice but, of course, leave that to you I really appreciate you addressing this issue this morning. Once again, I hope you have a safe and wonderful holiday

Have a great day. Blessings.

Randy

S. Randall Hood  
McGowan, Hood & Felder, LLC  
1539 Health Care Drive  
Rock Hill, SC 29732  
803-327-7800 (MHF Phone)  
803-327-7828 (Randy Hood Direct Dial)  
877-327-3800 (Toll Free)  
[rhoo@mcgowanhood.com](mailto:rhoo@mcgowanhood.com) (Email)  
[www.mcgowanhood.com](http://www.mcgowanhood.com) (Website)

Other McGowan, Hood & Felder, LLC office locations:

Columbia, SC . Anderson, SC . Charlotte, NC . Georgetown, SC . Sumter, SC

**LET JUSTICE ROLL ON LIKE WATERS, RIGHTEOUSNESS LIKE A MIGHTY STREAM.**

Amos 5 24  
Excerpt from Dr Martin Luther King's "I have a Dream" speech (1963)

**POSITIVE THOUGHTS AND ACTIONS ARE THE BEGINNING OF A VICTORIOUS DAY**

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**From:** Cooper, G. Thomas [<mailto:GCooperJ@sccourts.org>]  
**Sent:** Monday, November 07, 2016 8:53 AM  
**To:** Randy Hood, Stephanie Flynn, Norrell, Ilc Norrell & powers; Mitch Norrell  
**Cc:** Whitney Harrison, Cooper, G. Thomas Law Clerk (George C. James, III); Shawn B. Deery, Howard Boyd  
**Subject:** RE: Roddey v. Walmart, C.A. No. 2007-CP-29-593--- Plaintiff's Motion to Alter or Amend and for Reconsideration

We did not work Sunday Your Motion will be addressed within the hour GTC

**From:** Randy Hood [<mailto:rhoood@mcgowanhood.com>]  
**Sent:** Monday, November 07, 2016 8:43 AM  
**To:** Stephanie Flynn <[SFlynn@gwblawfirm.com](mailto:SFlynn@gwblawfirm.com)>; Norrell, Ilc Norrell & powers <[resipsa@comporium.net](mailto:resipsa@comporium.net)>; Mitch Norrell <[mnorrell@comporium.net](mailto:mnorrell@comporium.net)>  
**Cc:** Whitney Harrison <[wharrison@mcgowanhood.com](mailto:wharrison@mcgowanhood.com)>; Cooper, G. Thomas <[GCooperJ@sccourts.org](mailto:GCooperJ@sccourts.org)>; Cooper, G. Thomas Law Clerk (George C. James, III) <[GCooperLC@sccourts.org](mailto:GCooperLC@sccourts.org)>; Shawn B. Deery <[sdeery@mcgowanhood.com](mailto:sdeery@mcgowanhood.com)>; Howard Boyd <[Hboyd@gwblawfirm.com](mailto:Hboyd@gwblawfirm.com)>  
**Subject:** RE: Roddey v. Walmart, C.A. No. 2007-CP-29-593--- Plaintiff's Motion to Alter or Amend and for Reconsideration

Judge Cooper and George

I called Judge Cooper's office number provided by the SC Judicial website. The message asked that in lieu of leaving a message to send a message to [gcooperlc@sccourts.org](mailto:gcooperlc@sccourts.org). I was simply wondering where we could obtain the order denying our 59(e).

If someone could write back and let us know or call me on my direct dial at 803-327-7828, it would be greatly appreciated. I am not attempting any type of ex parte communication but was simply inquiring about location of an order. Thanks in advance.

Blessings

Randy

S. Randall Hood  
McGowan, Hood & Felder, LLC  
1539 Health Care Drive  
Rock Hill, SC 29732  
803-327-7800 (MHF Phone)  
803-327-7828 (Randy Hood Direct Dial)  
877-327-3800 (Toll Free)  
[rhoood@mcgowanhood.com](mailto:rhoood@mcgowanhood.com) (Email)  
[www.mcgowanhood.com](http://www.mcgowanhood.com) (Website)

Other McGowan, Hood & Felder, LLC office locations

Columbia, SC . Anderson, SC . Charlotte, NC . Georgetown, SC . Sumter, SC

**LET JUSTICE ROLL ON LIKE WATERS, RIGHTEOUSNESS LIKE A MIGHTY STREAM.**

Amos 5:24

Excerpt from Dr. Martin Luther King's "I have a Dream" speech (1963)

**POSITIVE THOUGHTS AND ACTIONS ARE THE BEGINNING OF A VICTORIOUS DAY**

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**From:** Randy Hood

**Sent:** Sunday, November 06, 2016 3 10 PM

**To:** Stephanie Flynn

**Cc:** Whitney Harrison, [gcooperj@scccourts.org](mailto:gcooperj@scccourts.org), [gcooperlc@scccourts.org](mailto:gcooperlc@scccourts.org); Shawn B. Deery; Howard Boyd

**Subject:** Re: Roddey v Walmart, C A. No. 2007-CP-29-593--- Plaintiff's Motion to Alter or Amend and for Reconsideration

Judge Cooper and George

I will not regurgitate our disagreement with Defense Counsel. We have each laid out our positions. I simply ask that you post your order by scanned copy before you leave on vacation (today if possible). We will then file a Motion to stay (assume it will be denied). If possible to send the decision on Motion to Stay by scan today, we can then file our appeal from that decision. I apologize for asking these to be done before you leave for vacation. The appeal of motion to stay can then be heard in Court of Appeals next week (hopefully). Lastly, should we consider electronic submission of orders by you to be acceptable as a result of the exigency of this situation. Thank you in advance. I sincerely hope you have a wonderful and safe vacation.

Blessings Have a wonderful day.

Randy Hood

S. Randall Hood

McGowan, Hood and Felder, LLC

Rock Hill, South Carolina

803-327-7800 (general)

803-327-7828 (direct dial)

[rhoo@mcbgowanhood.com](mailto:rhoo@mcbgowanhood.com)

[www.mcbgowanhood.com](http://www.mcbgowanhood.com)

Additional offices located in:

Columbia, SC . Anderson, SC .

Sumter, SC . Georgetown, SC

This email is being sent from my iPhone with auto-correct feature. If there are mis-spellings or other language anomalies, please ignore them. I apologize for any inaccuracies in spelling and/or grammar in this email.

On Nov 6, 2016, at 2:36 PM, Stephanie Flynn <[SFlynn@gwblawfirm.com](mailto:SFlynn@gwblawfirm.com)> wrote.

Dear Judge Cooper and George,

We have had the opportunity to review Plaintiff's Motion to Alter or Amend and for Reconsideration and, in the way of a brief response, we do not believe there is basis for the Court to reconsider its ruling.

The Order is not excluding or striking a cause of action, but appropriately excluding evidence against USSA of negligent hiring as that cause of action was tried to a jury and is now res judicata. The proper framing of this issue was clarified in our letter to the Court and is properly addressed in the Order from which the appeal will be taken. This Court is obviously not limited in its determination of this issue by the title of the motion. As Plaintiff even pointed out in cases in the motion to reconsider (p. 3, fn. 4), it is the substance of the requested relief that matters, regardless of form in which the request for relief was framed. See, e.g., *Richland County v. Kaiser*, 351 S.C. 89 (Ct. App. 2002). Argument of the specific evidentiary issues associated with the negligent hiring case (e.g., relevance of a pre-hiring drug screen of Jones by USSA) was deferred because we believe the ruling that negligent hiring is res judicata is determinative as to the relevance and admissibility of such evidence. Any probative value such evidence could possibly have on the negligent pursuit action is strongly outweighed by the danger of unfair prejudice, confusion of the jury and misleading of the issues.

The second portion of Plaintiff's Motion is again directed to the relief requested in the original filings provided to the Court on this issue. We responded to the arguments made by Plaintiff by way of our letter reply of October 31<sup>st</sup>, which we have attached and would incorporate herein by reference. Plaintiff's motion continues to either misinterpret or misconstrue the arguments and issues on appeal. The arguments made by Defendants on appeal that USSA/Jones should not be subjected to retrial together with Walmart were directed to the negligent pursuit action, as were the Court's discussions of that issue, since that was the only cause of action on appeal. We found no need to clarify an issue not before the appellate courts.

As another point, Plaintiff's motion contends the Court overlooked the way in which the directed verdict was made. Plaintiff has conceded, however, and even conceded before this Court, that Jones was not an employee of Walmart. Plaintiff implies that he attempted to clarify Judge Goldsmith's directed verdict ruling on three occasions, but was cut-off. Negligent hiring was never even uttered and, in any event, Plaintiff fully briefed the issue for Judge Goldsmith the very next day in a 23 page motion with no mention of negligent hiring. If they thought that issue needed to be preserved against Walmart, they should have done so. Similarly, if they believed that Walmart's dismissal from the case warranted an appeal on their cause of action for negligent hiring, it should have been included on appeal.

Finally, Plaintiff contends Restatement exceptions to res judicata dictate that it does not apply. Plaintiff recites subsection (b) in support of the proposition that the Supreme Court expressly reserved Plaintiff's right to proceed on negligent hiring, which simply goes back to Plaintiff's previous arguments on that issue. Subsection (c) applies when a plaintiff cannot seek a certain remedy due to limitations of subject matter jurisdiction or restrictions of the court's authority to entertain multiple theories or demands for multiple remedies or forms of relief. Here, there was no restriction based on subject matter jurisdiction or on the court's authority during the first trial. The court itself determined the claims that were decided by the jury. Finally, Plaintiff cites no extraordinary reason for requiring USSA to be subjected to negligent hiring again when a jury has already ruled.

We appreciate your continued consideration of these issues and are happy to address any questions or concerns the Court may have

**Stephanie G. Flynn**  
Partner  
sflynn@GWBlawfirm.com

**Gallivan, White & Boyd P.A.**  
**Office** 55 Beattie Place | Suite 1200 | Greenville SC 29601  
864 271 5426 Direct | 864 271 9580 Main | 864 271 7502 Fax

<image001.jpg>

**Mailing** Post Office Box 10589 | Greenville SC 29603

vCard | BioURL | Website

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**From:** Whitney Harrison [<mailto:wharrison@mcgowanhood.com>]  
**Sent:** Saturday, November 5, 2016 4:40 PM  
**To:** [gcooper@sccourts.org](mailto:gcooper@sccourts.org); [gcooperlc@sccourts.org](mailto:gcooperlc@sccourts.org)  
**Cc:** Randy Hood; Shawn B. Deery; Howard Boyd; Stephanie Flynn  
**Subject:** Roddey v. Walmart, C.A. No. 2007-CP-29-593--- Plaintiff's Motion to Alter or Amend and for Reconsideration

Judge Cooper and George,

Attached please find Plaintiff's Motion to Alter or Amend and for Reconsideration, along with exhibits for your review.

In the event you deny the motion, we were wondering if it would be possible for George to mail the original order and original order denying the 59(e) to our Rock Hill office (address listed below) so that we may file the orders with the Lancaster clerk's office. If it is more convenient, with your permission we will file the scanned copies with the clerk's office.

Randy Hood  
McGowan, Hood & Felder, LLC  
1539 Health Care Drive  
Rock Hill, SC 29732

Please let us know if you have any questions or concerns.

Thanks!

Whitney

Whitney B. Harrison  
McGowan, Hood & Felder, LLC  
803.779.0100  
[wharrison@mcgowanhood.com](mailto:wharrison@mcgowanhood.com)

<Roddey - Judge Cooper Ltr pdf>

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Exhibit 15:

Form 4 Order Denying Motion to stay, filed November 7, 2016

See R. 12

Exhibit 16

Whitney Harrison

From: Cooper, G Thomas Law Clerk (George C James, III) <GCooperLC@sccourts.org>
Sent: Monday, November 07, 2016 10 10 AM
To: Whitney Harrison, Randy Hood, Cooper, G Thomas, Stephanie Flynn, Norrell, Ilc Norrell & powers, Mitch Norrell
Cc: Shawn B. Deery, Howard Boyd, Kathy Hall
Subject: RE: Roddey v Walmart, C A No 2007-CP-29-593
Attachments: 11 7 16 Form 4 Roddey v Walmart pdf

Counsel,

Attached is a scanned copy of the original signed Form 4 Denying Plaintiff's Motion to Stay I will be sending the original along with the original Order Denying the Plaintiff's Motion for Reconsideration to the Lancaster County Clerk of Court today

I have included the contact at the Lancaster County Clerk of Court, Ms Kathy Hall, to keep her up to date on this case Judge Cooper has told me to inform her that it is to be assumed that we will continue on with this case as scheduled beginning Monday November 14, until we hear otherwise from the Plaintiff's appeal

Thank you,

George James
Law Clerk to the Honorable G. Thomas Cooper, Jr.
Circuit Court of South Carolina, Fifth Circuit
1701 Main St , Room 320
P.O Box 192
Columbia, SC 29201
Phone: (803) 576-1783
Fax (803) 576-1741

From: Whitney Harrison [mailto:wharrison@mcgowanhood.com]
Sent: Monday, November 07, 2016 9.48 AM
To: Cooper, G. Thomas Law Clerk (George C James, III) <GCooperLC@sccourts.org>, Randy Hood <rhood@mcgowanhood.com>; Cooper, G. Thomas <GCooperJ@sccourts.org>; Stephanie Flynn <SFlynn@gwblawfirm.com>; Norrell, Ilc Norrell & powers <resipsa@comporium.net>; Mitch Norrell <mnorrell@comporium.net>
Cc: Shawn B. Deery <sdeery@mcgowanhood.com>; Howard Boyd <Hboyd@gwblawfirm.com>
Subject: RE: Roddey v. Walmart, C A. No 2007-CP-29-593--- Plaintiff's Motion to Alter or Amend and for Reconsideration

Judge Cooper and George,

Thank you for letting us know your ruling on our Motion to Alter or Amend and Reconsideration. Attached is our Motion to Stay the November 14, 2016 trial until an appellate court resolves the appeal. As we discussed on Friday, it is our belief that the filing of the notice of appeal automatically triggers exclusive jurisdiction to the appellate court. The following motion addresses how the negligent hiring and supervision cause of action affects the negligent pursuit cause of action to the extent you disagree that an automatic stay is in place.

Also, on Friday you asked to be briefed on the appeal of a denial of a stay. Based on my reading of case law, following the denial of a motion to stay a party may appeal the ruling through a supersedeas. The filing of the supersedeas does not remove the circuit court's jurisdiction until such time the court of appeals either grants a temporary stay or a stay outright. I have attached two cases for your further review on this subject matter. Generally it is the party seeking the removal of the automatic stay who seeks appellate review. While the facts in the case before you are an inverse, I believe the final analysis for your jurisdictional inquiry is you would retain jurisdiction if you were to deny a motion to stay and retain such jurisdiction until the court of appeals makes a ruling granting a stay.

If you decide to deny our motion to stay, we ask that you have George send us your order at our Rock Hill office so that we may file it in the Lancaster Clerk's Office or with your permission we ask to file this pdf copy with the Lancaster Clerk's office.

Please let us know if you have any questions or concerns.

Whitney

Whitney B. Harrison
McGowan, Hood & Felder, LLC
803.779 0100
wharrison@mcgowanhood.com

From: Cooper, G. Thomas Law Clerk (George C. James, III) [<mailto:GCooperLC@scccourts.org>]
Sent: Monday, November 07, 2016 9:36 AM
To: Randy Hood; Cooper, G. Thomas; Stephanie Flynn; Norrell, llc Norrell & powers; Mitch Norrell
Cc: Whitney Harrison; Shawn B. Deery; Howard Boyd
Subject: RE: Roddey v. Walmart, C.A. No. 2007-CP-29-593--- Plaintiff's Motion to Alter or Amend and for Reconsideration

Counsel,

Attached is a scanned copy of the signed Order Denying Plaintiff's Motion for Reconsideration that was submitted over the weekend.

Thank you,

George James
Law Clerk to the Honorable G. Thomas Cooper, Jr
Circuit Court of South Carolina, Fifth Circuit
1701 Main St , Room 320
P O Box 192
Columbia, SC 29201
Phone: (803) 576-1783
Fax: (803) 576-1741

From: Randy Hood [<mailto:rhodd@mcgowanhood.com>]
Sent: Monday, November 07, 2016 9:11 AM
To: Cooper, G. Thomas <GCooperJ@scccourts.org>, Stephanie Flynn <SFlynn@gwblawfirm.com>, Norrell, llc Norrell & powers <resipsa@comporium.net>, Mitch Norrell <mnorrell@comporium.net>
Cc: Whitney Harrison <wharrison@mcgowanhood.com>, Cooper, G. Thomas Law Clerk (George C. James, III)

<GCooperLC@sccourts.org>; Shawn B Deery <sdeery@mcgowanhood.com>, Howard Boyd <Hboyd@gwblawfirm.com>
Subject: RE: Roddey v Walmart, C A No 2007-CP-29-593--- Plaintiff's Motion to Alter or Amend and for Reconsideration

Thank you Your Honor As soon as we receive the order on the 59e, we will file a motion to stay (almost immediately, sent by email to you and George and all others on this email). If you are going to deny a motion to stay, would you mind simply denying it before you leave I think a Form 4 will suffice but, of course, leave that to you I really appreciate you addressing this issue this morning. Once again, I hope you have a safe and wonderful holiday

Have a great day Blessings

Randy

S Randall Hood
McGowan, Hood & Felder, LLC
1539 Health Care Drive
Rock Hill, SC 29732
803-327-7800 (MHF Phone)
803-327-7828 (Randy Hood Direct Dial)
877-327-3800 (Toll Free)
rhoor@mcgowanhood.com (Email)
www.mcgowanhood.com (Website)

Other McGowan, Hood & Felder, LLC office locations:

Columbia, SC . Anderson, SC . Charlotte, NC . Georgetown, SC . Sumter, SC

LET JUSTICE ROLL ON LIKE WATERS, RIGHTEOUSNESS LIKE A MIGHTY STREAM.

Amos 5.24

Excerpt from Dr. Martin Luther King's "I have a Dream" speech (1963)

POSITIVE THOUGHTS AND ACTIONS ARE THE BEGINNING OF A VICTORIOUS DAY

CONFIDENTIALITY NOTE: THIS EMAIL WAS SENT FROM A LAW FIRM IT MAY CONTAIN PRIVILEGED OR CONFIDENTIAL INFORMATION AND IS INTENDED SOLELY FOR THE USE OF THE PERSON(S) NAMED ABOVE OR THE PERSON(S) WHO IS THE INTENDED RECIPIENT OF THE MESSAGE. IF YOU ARE NOT AN INTENDED RECIPIENT OF THIS EMAIL, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION OR DUPLICATION OF THIS E-MAIL IS PROHIBITED AND THAT THERE SHALL BE NO WAIVER OF ANY PRIVILEGE OR CONFIDENCE BY YOUR RECEIPT OF THIS TRANSMISSION IF YOU HAVE RECEIVED THIS E-MAIL IN ERROR, PLEASE NOTIFY US BY COLLECT TELEPHONE CALL TO 803-327-7800 OR ONE OF THE NUMBERS INDICATED ABOVE.

From: Cooper, G. Thomas [<mailto:GCooperJ@sccourts.org>]

Sent: Monday, November 07, 2016 8:53 AM

To: Randy Hood, Stephanie Flynn; Norrell, Ilc Norrell & powers, Mitch Norrell

Cc: Whitney Harrison; Cooper, G. Thomas Law Clerk (George C James, III), Shawn B Deery; Howard Boyd

Subject: RE: Roddey v. Walmart, C A. No. 2007-CP-29-593--- Plaintiff's Motion to Alter or Amend and for Reconsideration

We did not work Sunday Your Motion will be addressed within the hour GTC

From: Randy Hood [<mailto:rhoor@mcgowanhood.com>]

Sent: Monday, November 07, 2016 8 43 AM

To: Stephanie Flynn <SFlynn@gwblawfirm.com>; Norrell, Ilc Norrell & powers <resipsa@comporium.net>; Mitch Norrell

<mnorrell@comporium.net>

Cc: Whitney Harrison <wharrison@mcgowanhood.com>; Cooper, G Thomas <GCooperJ@sccourts.org>; Cooper, G Thomas Law Clerk (George C. James, III) <GCooperLC@sccourts.org>; Shawn B Deery <sdeery@mcgowanhood.com>; Howard Boyd <Hboyd@gwblawfirm.com>

Subject: RE: Roddey v Walmart, C.A. No 2007-CP-29-593--- Plaintiff's Motion to Alter or Amend and for Reconsideration

Judge Cooper and George

I called Judge Cooper's office number provided by the SC Judicial website. The message asked that in lieu of leaving a message to send a message to gcooperlc@sccourts.org. I was simply wondering where we could obtain the order denying our 59(e).

If someone could write back and let us know or call me on my direct dial at 803-327-7828, it would be greatly appreciated. I am not attempting any type of ex parte communication but was simply inquiring about location of an order. Thanks in advance.

Blessings

Randy

S Randall Hood
McGowan, Hood & Felder, LLC
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Rock Hill, SC 29732
803-327-7800 (MHF Phone)
803-327-7828 (Randy Hood Direct Dial)
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rhod@mcgowanhood.com (Email)
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From: Randy Hood
Sent: Sunday, November 06, 2016 3:10 PM
To: Stephanie Flynn

Cc: Whitney Harrison; gcooperj@sccourts.org; gcooperlc@sccourts.org, Shawn B. Deery; Howard Boyd
Subject: Re: Roddey v Walmart, C A No. 2007-CP-29-593--- Plaintiff's Motion to Alter or Amend and for Reconsideration

Judge Cooper and George

I will not regurgitate our disagreement with Defense Counsel. We have each laid out our positions. I simply ask that you post your order by scanned copy before you leave on vacation (today if possible). We will then file a Motion to stay (assume it will be denied). If possible to send the decision on Motion to Stay by scan today, we can then file our appeal from that decision. I apologize for asking these to be done before you leave for vacation. The appeal of motion to stay can then be heard in Court of Appeals next week (hopefully). Lastly, should we consider electronic submission of orders by you to be acceptable as a result of the exigency of this situation. Thank you in advance. I sincerely hope you have a wonderful and safe vacation.

Blessings Have a wonderful day

Randy Hood

S. Randall Hood
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Additional offices located in

Columbia, SC . Anderson, SC .
Sumter, SC . Georgetown, SC

This email is being sent from my iPhone with auto-correct feature. If there are mis-spellings or other language anomalies, please ignore them. I apologize for any inaccuracies in spelling and/or grammar in this email.

On Nov 6, 2016, at 2:36 PM, Stephanie Flynn <SFlynn@gwblawfirm.com> wrote.

Dear Judge Cooper and George,

We have had the opportunity to review Plaintiff's Motion to Alter or Amend and for Reconsideration and, in the way of a brief response, we do not believe there is basis for the Court to reconsider its ruling

The Order is not excluding or striking a cause of action, but appropriately excluding evidence against USSA of negligent hiring as that cause of action was tried to a jury and is now res judicata. The proper framing of this issue was clarified in our letter to the Court and is properly addressed in the Order from which the appeal will be taken. This Court is obviously not limited in its determination of this issue by the title of the motion. As Plaintiff even pointed out in cases in the motion to reconsider (p. 3, fn 4), it is the substance of the requested relief that matters, regardless of form in which the request for relief was framed. See, e.g., *Richland County v. Kaiser*, 351 S.C. 89 (Ct. App. 2002). Argument of the specific evidentiary issues associated with the negligent hiring case (e.g., relevance of a pre-hiring drug screen of Jones by USSA) was deferred because we believe the ruling that negligent hiring is res judicata is determinative as to the relevance and admissibility of such evidence. Any probative value such evidence

could possibly have on the negligent pursuit action is strongly outweighed by the danger of unfair prejudice, confusion of the jury and misleading of the issues

The second portion of Plaintiff's Motion is again directed to the relief requested in the original filings provided to the Court on this issue. We responded to the arguments made by Plaintiff by way of our letter reply of October 31st, which we have attached and would incorporate herein by reference. Plaintiff's motion continues to either misinterpret or misconstrue the arguments and issues on appeal. The arguments made by Defendants on appeal that USSA/Jones should not be subjected to retrial together with Walmart were directed to the negligent pursuit action, as were the Court's discussions of that issue, since that was the only cause of action on appeal. We found no need to clarify an issue not before the appellate courts.

As another point, Plaintiff's motion contends the Court overlooked the way in which the directed verdict was made. Plaintiff has conceded, however, and even conceded before this Court, that Jones was not an employee of Walmart. Plaintiff implies that he attempted to clarify Judge Goldsmith's directed verdict ruling on three occasions, but was cut-off. Negligent hiring was never even uttered and, in any event, Plaintiff fully briefed the issue for Judge Goldsmith the very next day in a 23 page motion with no mention of negligent hiring. If they thought that issue needed to be preserved against Walmart, they should have done so. Similarly, if they believed that Walmart's dismissal from the case warranted an appeal on their cause of action for negligent hiring, it should have been included on appeal.

Finally, Plaintiff contends Restatement exceptions to res judicata dictate that it does not apply. Plaintiff recites subsection (b) in support of the proposition that the Supreme Court expressly reserved Plaintiff's right to proceed on negligent hiring, which simply goes back to Plaintiff's previous arguments on that issue. Subsection (c) applies when a plaintiff cannot seek a certain remedy due to limitations of subject matter jurisdiction or restrictions of the court's authority to entertain multiple theories or demands for multiple remedies or forms of relief. Here, there was no restriction based on subject matter jurisdiction or on the court's authority during the first trial. The court itself determined the claims that were decided by the jury. Finally, Plaintiff cites no extraordinary reason for requiring USSA to be subjected to negligent hiring again when a jury has already ruled.

We appreciate your continued consideration of these issues and are happy to address any questions or concerns the Court may have.

Stephanie G. Flynn
Partner
sflynn@GWBlawfirm.com

Gallivan, White & Boyd P.A.
Office 55 Beattie Place | Suite 1200 | Greenville SC 29601
864 271 5426 Direct | 864 271 9580 Main | 864 271 7502 Fax
Mailing Post Office Box 10589 | Greenville SC 29603
vCard | BioURL | Website

<image001.jpg>

This message is from the law firm Gallivan, White & Boyd, P.A. and may be a confidential and privileged legal communication to the named recipient(s). If you receive this message in error or are not the named recipient(s), please notify the sender and delete this email. Thank you.

From: Whitney Harrison [mailto:wharrison@mcgowanhood.com]
Sent: Saturday, November 5, 2016 4:40 PM
To: gcooperj@sccourts.org; gcooperlc@sccourts.org

Cc: Randy Hood; Shawn B. Deery; Howard Boyd; Stephanie Flynn
Subject: Roddey v. Walmart, C.A. No. 2007-CP-29-593--- Plaintiff's Motion to Alter or Amend and for Reconsideration

Judge Cooper and George,

Attached please find Plaintiff's Motion to Alter or Amend and for Reconsideration, along with exhibits for your review.

In the event you deny the motion, we were wondering if it would be possible for George to mail the original order and original order denying the 59(e) to our Rock Hill office (address listed below) so that we may file the orders with the Lancaster clerk's office. If it is more convenient, with your permission we will file the scanned copies with the clerk's office.

Randy Hood
McGowan, Hood & Felder, LLC
1539 Health Care Drive
Rock Hill, SC 29732

Please let us know if you have any questions or concerns.

Thanks!

Whitney

Whitney B. Harrison
McGowan, Hood & Felder, LLC
803.779 0100
wharrison@mcgowanhood.com

<Roddey - Judge Cooper Ltr pdf>

~~~~ CONFIDENTIALITY NOTICE ~~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

**Exhibit 17:**

Testimony of Jeff Gross  
(p. 119-131)

See R. 530-542

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

**RECEIVED**

NOV 08 2016

**SC Court of Appeals**

APPEAL FROM LANCASTER COUNTY  
Court of Common Pleas

G Thomas Cooper, Circuit Court Judge

Case No. 2007-CP-23-593

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

v.

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

**RESPONDENT'S RESPONSE TO APPELLANT'S  
PETITION FOR WRIT OF SUPERSEDEAS AND  
MOTION TO DISMISS APPEAL**

In an astonishing filing, Appellant has sought the intervention of this Court under a Writ of Supersedeas to stay the trial of this case -- which has been scheduled for several months to begin next Monday, November 14, 2016, by special order of the Lancaster County Court of Common Pleas -- until a ruling on his appeal from the trial judge's order excluding evidence relating to the negligent hiring, training, supervision and/or entrustment of Derrick Jones by U.S. Security Associates. The appeal from Judge Cooper's ruling is not only plainly interlocutory, and not immediately appealable, but is frivolous and totally devoid of any merit, as the following discussion will reveal, and the Petition for Writ of Supersedeas is equally baseless. The issues

on appeal will have no effect on the trial of the negligent pursuit cause of action. The Petition should therefore be denied, the appeal should be summarily dismissed, and the trial should proceed as scheduled next week

“[T]he purpose . . . of a supersedeas is to stay proceedings in the trial court, to preserve the status quo pending the determination of the appeal . . . , and to preserve to appellant the fruits of a meritorious appeal where they might otherwise be lost to him ” *Graham v Graham*, 301 S.C. 128, 130, 390 S.E.2d 469, 470 (Ct. App. 1990) (quoting *See* 4A C.J.S. Appeal & Error § 662 at 494-95 (1957)).

[T]he power . . . to stay proceedings or to supersede an order of a Circuit Judge, pending an appeal to [an appellate court], . . . is a power which should be exercised with great caution and circumspection, and only to the extent clearly made to appear to be necessary to prevent irreparable injury or a miscarriage of justice ”

*Andrews v Sumter Commercial & Real Estate Co* , 87 S.C. 301, 304, 69 S.E. 604, 606 (1910)  
(citations omitted).

Rule 241(a), SCACR, provides as follows.

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

(emphasis added) “Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal, the lower court or administrative tribunal shall have jurisdiction to entertain petitions for writs of supersedeas as provided by Rule 241.” Rule 205, SCACR. However, “[n]othing in these Rules shall prohibit the lower court, commission or

tribunal from proceeding with *matters not affected by the appeal*” *Id.* (emphasis added), *see e g*, *Metts v Mims*, 384 S C 491, 496, 498, 682 S.E 2d 813, 816-17 (2009) (finding, in a defamation action, that the trial court properly proceeded on the merits of the petitioner’s summary judgment motion regarding constitutional actual malice even though an appeal was already pending as to a contempt order imposed after the defendant newspaper refused “to comply with a discovery order compelling it to provide financial data relevant to petitioner’s punitive damages claim”, that “the summary judgment matter was unaffected by the appeal of the contempt order”; and that the trial court’s ruling on the constitutional actual malice issue was “clearly unrelated” to the discovery dispute involving the newspapers’ financial data); *Grosshuesch v Cramer*, 377 S C 12, 31 n 7, 659 S.E.2d 112, 122 n 7 (2008) (noting that the trial court properly ruled on a second discovery matter involving a deposition after the parties had filed appeals from the trial court’s first order because the first order dealt with the subject of initial discovery responses). Under the facts and procedural history of this case, and applicable law, there is no support for Appellant’s appeal or Petition for Writ of Supersedeas.

This matter was originally tried in 2010. At the directed verdict stage, 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. Plaintiff, who *conceded* Derrick Jones was not an employee of Wal-Mart, made no claim at the directed verdict stage that Wal-Mart was subject to any causes of action other than negligence in connection with its actions. After the trial court granted Wal-Mart’s motion for directed verdict,

holding (1) there was no evidence of negligence by Wal-Mart and (2) alternatively, even if Wal-Mart was negligent, there was no evidence such negligence was a proximate cause of the accident, Plaintiff made multiple oral requests for reconsideration and further submitted a 23-page written motion for reconsideration, all of which were restricted to evidence establishing the alleged breach of duty by Wal-Mart and proximate causation of the accident (*i.e.*, negligence). Plaintiff completely abandoned and never even attempted to argue Wal-Mart was still liable for negligent hiring, training, supervision and/or entrustment, which the trial court therefore had no need to address. The trial proceeded as to U.S. Security Associates and Jones, who received favorable verdicts from the jury both on the negligence cause of action and the cause of action for negligent hiring, training, supervision and entrustment, decided separately by the jury. Appellant appealed the grant of directed verdict in favor of Wal-Mart, and was successful in obtaining an order from the South Carolina Supreme Court reversing the trial court's decision on that issue and remanding the case for a new trial set to begin next week.

Importantly, Appellant did not appeal the jury verdict in favor of U.S. Security Associates on the negligent hiring cause of action, and that cause of action is now *res judicata*, as confirmed by Judge Cooper in his November 2, 2016 Order which Appellant has inexplicably appealed. As Judge Cooper correctly ruled, having been fully tried to a jury verdict in favor of U.S. Security Associates, and the jury having determined that the negligent hiring of Jones was not a proximate cause of the accident and death of Hancock<sup>1</sup>, that cause of action is no longer alive, and was not revived by the Supreme Court's decision reversing and remanding for a new trial so that the jury could compare the negligence of Plaintiff with that of all Defendants on the

---

<sup>1</sup> See Exhibit A, attached.

negligent pursuit cause of action, which was the only matter before the Supreme Court on appeal.

Appellant now attempts to frame the Order excluding evidence of negligent hiring, training, supervision and/or entrustment against U S Security as an Order "striking" a negligent hiring cause of action not only as to U S. Security, but also as to Wal-Mart. As Judge Cooper's Order explains, the negligent hiring cause of action against U S. Security was tried to a jury and is barred by operation of law under principles of *res judicata*. Inexplicably, and despite that Plaintiff abandoned the negligent hiring, training, and supervision claim against Wal-Mart at trial, conceding that Jones was not a Wal-Mart employee, Appellant now claims for the first time ever that, by grant of the directed verdict in favor of Wal-Mart at trial, Wal-Mart was "effectively removed" from the case on both the negligent pursuit action *and* the negligent hiring and supervision cause of action. They therefore reason that the Supreme Court must have therefore intended for the retrial to include a cause of action against Wal-Mart for negligent hiring and supervision. Appellant leaps to this sweeping conclusion despite that Appellant never contested this issue as to Wal-Mart at the directed verdict stage and the trial court never addressed negligent hiring and supervision as to Wal-Mart in granting a directed verdict.

Even if not abandoned, the negligent hiring and supervision claim was not appealed and was not before the Supreme Court as to any party. Plaintiff would nonetheless seek to transform any direction or request for assistance made by Wal-Mart to Jones as evidence of or support for a "negligent supervision" cause of action, which at best evidences a complete misunderstanding of the cause of action in the technical sense or, at worst, is an intentional attempt to mislead the Court. To be clear, a cause of action for negligent supervision, as set forth in Judge Cooper's Order, is based on an employer/employee relationship. 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 requires 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). As with negligent hiring, this is examined by analysis of the nature of prior acts of wrongdoing by the employee and nexus or similarity between the prior acts and ultimate harm. It is hard to understand Appellant's argument that Wal-Mart's employee's instruction to Jones to "get the license tag" as he was engaged in a hot pursuit of Hancock's vehicle and about to exit the parking lot premises is a negligent hiring or supervision claim.

Contrary to Appellant's position, the Order issued by Judge Cooper does nothing to exclude the alleged acts of negligence that Plaintiff intends to assert against Wal-Mart, set forth on pages 11-12 of the Petition, and which Appellant has strained to characterize as acts of "negligent supervision" of Jones on the part of Wal-Mart. Rather, the Order is devoted exclusively to the evidence upon which Appellant unsuccessfully attempted to prove a negligent hiring and supervision cause of action against U.S. Security Associates in the first trial (i.e., that Jones should not have been hired due to lack of a valid license, pending criminal charges, a positive drug screen, misrepresentations on his application for registration as a security officer, and failure to have been removed from the job when not timely licensed as a security officer). That cause of action now having been determined conclusively by the jury, Judge Cooper properly ruled that such evidence must be excluded in the second trial. But his Order does not preclude the Plaintiffs from offering evidence in an effort to establish that Wal-Mart was negligent in causing or contributing to cause the pursuit by Wal-Mart's interactions with Jones.

on the night of the incident. Hence, Appellant *can* offer evidence that Wal-Mart asked Jones to get the license tag of a vehicle in an adjacent parking lot on his first day of work and argue that Wal-Mart was negligent in asking Jones to get the tag, watching him leave the property, and failing to try to call off the chase. It is not necessary, however, to have evidence that U.S. Security negligently hired Jones to be able to present that evidence and argument to the Court and jury. Negligent hiring was already separately presented to a jury and was conclusively determined not to have been a proximate cause of the accident. Since the jury has conclusively determined U.S. Security's negligent hiring of Jones – which was admitted – was not a proximate cause of the accident, it automatically follows that Wal-Mart's derivative negligence, if any, in failing to "supervise" U.S. Security's hiring of Jones cannot be a proximate cause of the accident.

In addition, the Defendants have conceded throughout this case that Jones was in violation of his post duties in pursuing Beckham and Hancock, and that he should not have pursued them. Defendants will continue to concede these obvious issues under the undisputed facts of the case, and Appellant will not be prevented from making whatever claim can be made relating to the pursuit in light of these concessions.

For all of these reasons, evidence directed to the negligent hiring of Jones by U.S. Security is not so intertwined with Plaintiff's cause of action for negligence against all Defendants in connection with the pursuit, which was also treated separately by the jury at the verdict stage in the first trial. Plaintiff just wants the benefit of saying Jones should not have been hired by U.S. Security due to lack of a valid license, pending criminal charges, a positive drug screen, misrepresentations on his application for registration as a security officer, and failure to

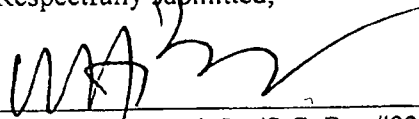
have been removed from the job when not timely licensed as a security officer, all of which the prior jury determined was not a proximate cause of the accident.

The circumstances presented by Appellant do not present the kind of situation here where Appellant is subject to irreparable injury or miscarriage of justice. Allowing appeals from the exclusion of evidence that has no impact on the cause of action to proceed at trial would completely incapacitate the trial court's ability to proceed with trial and dispose of cases. Parties would seek immediate appeal and stay of a trial for any Order that rebukes their intent to introduce certain evidence at trial.

For all of these reasons, the Petition for Writ of Supersedeas should be denied, the appeal dismissed as interlocutory and without merit, and the trial which has been scheduled for several months should be allowed to proceed next Monday on the sole remaining cause of action in this case.

Pursuant to Rule 222 of the South Carolina Appellate Court Rules, Respondents request attorneys' fees and costs in connection with the filing of this Petition for Writ of Supersedeas and Notice of Appeal.

Respectfully submitted,



W. Howard Boyd, Jr. (S C Bar #826)

[hboyd@gwblawfirm.com](mailto:hboyd@gwblawfirm.com)

Stephanie G. Flynn, Esq. (S C. Bar #16653)

[sflynn@gwblawfirm.com](mailto:sflynn@gwblawfirm.com)

GALLIVAN, WHITE & BOYD, P A

55 Beattie Place, Suite 1200

P.O. Box 10589

Greenville, SC 29603

(864) 271-9580

Attorneys for Respondents

# **EXHIBIT A**

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LANCASTER )  
 )  
TRAVIS RODDEY, Individually and as )  
the Personal Representative of the Estate )  
of Alice Monique Beckham Hancock, )  
Deceased, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
WAL-MART STORES EAST, L.P., U.S. )  
SECURITY ASSOCIATES, INC., AND )  
DERRICK L. JONES, )  
 )  
Defendants. )

IN THE COURT OF COMMON PLEAS  
CASE NO. 07-CP-29-593

VERDICT FORM

200 APR 15 A R 50

1. As to the Plaintiffs' claim against the Defendants for negligence relating to Derrick Jones's actions, do you find that the Defendants were negligent?  
☒ YES. GO TO QUESTION 2  
☐ NO. STOP AND DELIBERATE NO FURTHER
2. Do you find that the Defendants' negligence proximately caused the Plaintiffs' injury?  
☒ YES. GO TO QUESTION 3  
☐ NO. STOP AND DELIBERATE NO FURTHER
3. Do you find that the Decedent Alice Monique Beckham Hancock was negligent?  
☒ YES. GO TO QUESTION 4  
☐ NO. GO TO QUESTION 6
4. Do you find that the Decedent Alice Monique Beckham Hancock's negligence proximately caused the Plaintiffs' injury?  
☒ YES. GO TO QUESTION 5  
☐ NO. GO TO QUESTION 6

- 5 If your answers to questions 1, 2, 3, and 4 are all YES, then answer this question

Taking the combined negligence that proximately caused the parties' injuries as one hundred percent (100%), what percentage of that negligence is attributable to the Defendants and what percentage is attributable to the Decedent, Alice Monique Beckham Hancock?

Defendants. 35 %  
Decedent Alice Monique Beckham Hancock 65 %  
Total 100%

If Defendants' percentage of negligence is 0% STOP AND DELIBERATE NO FURTHER.

If Defendants' percentage of negligence is 1% or greater. CONTINUE TO QUESTION 6.

6. As to the Plaintiffs' claim against the Defendant U.S. Security Associates, Inc. for negligent hiring, negligent training, negligent supervision and negligent retention, do you find that the Defendant was negligent?

☒ YES GO TO QUESTION 7  
☐ NO

7. Do you find that the Defendant U.S. Security Associates, Inc.'s negligent hiring, negligent training, negligent supervision and negligent retention proximately caused the Plaintiffs' injury?

☒ YES  
☐ NO

If the Decedent, Alice Monique Beckham Hancock's percentage of negligence as allocated in Question 5 is greater than 50% AND the answers to either Questions 6 or 7 are NO, then STOP AND DELIBERATE NO FURTHER.

If the Decedent, Alice Monique Beckham Hancock's percentage of negligence is 50% or less, OR the answers to Questions 6 and 7 are both YES, then GO TO QUESTION 8

- 8 Please state the total amount of actual damages, if any, sustained by the Plaintiffs

\_\_\_\_\_ DOLLARS actual damages  
(\$ \_\_\_\_\_ 00) actual damages

If you find that the Plaintiff is entitled to actual damages, you may then consider the issue of whether the Plaintiff is entitled to punitive damages. Please state the total amount of punitive damages, if any, awarded to the Plaintiff:

\_\_\_\_\_ DOLLARS punitive damages  
( \$ \_\_\_\_\_ 00 ), punitive damages

Nathan M. Zimmerman  
FOREPERSON

LANCASTER COUNTY, SOUTH CAROLINA  
April 13, 2010

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM LANCASTER COUNTY  
Court of Common Pleas

G. Thomas Cooper, Circuit Court Judge

Case No. 2007-CP-23-593

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

v

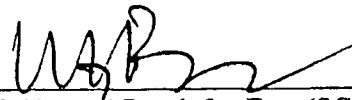
Wal-Mart Stores East L.P., U S Security Associates, Inc., and Derrick L Jones,  
... Respondents

**PROOF OF SERVICE**

The undersigned hereby certifies that on the 8<sup>th</sup> day of November, 2016, he served a copy of the Respondents' Response to Appellant's Petition for Writ of Supersedeas and Motion to Dismiss Appeal, upon all counsel of record, by electronic mail and by depositing a copy thereof in the United States Mail, postage prepaid, and addressed as follows:

S Randall Hood, Esq  
William A McKinnon, Esq  
McGowan, Hood, Felder & Johnson, L L C  
1539 Health Care Drive  
Rock Hill, SC 29732

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SC Court of Appeals



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November 8, 2016

*Via Hand Delivery*

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**SC Court of Appeals**

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

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

Dear Ms. Kitchings,

Enclosed please find for filing the original and six copies of Respondents' Response to Appellant's Petition for Writ of Supersedeas and Motion to Dismiss Appeal. By copy of this letter we are filing this response with the Clerk of the Lancaster Court of Common Pleas and serving it on counsel for Appellant

An extra copy of the Response and Motion is enclosed, which we would appreciate your stamping as filed and returning to us.

With kind regards,

Sincerely,

GALLIVAN, WHITE & BOYD, P.A.

W Howard Boyd, Jr

WHB,Jr/lrb

Enclosures

cc: Mr. Jeff Hammond (w/encls) (Via E-Mail and U.S. Mail)  
S. Randall Hood, Esq. (w/encls.) (Via E-Mail and U.S. Mail)  
Whitney B. Harrison, Esq. (w/encls) (Via E-Mail and U.S. Mail)  
Shawn B. Deery, Esq. (w/encls) (Via E-Mail and U.S. Mail)

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM LANCASTER COUNTY  
Court of Common Pleas

G Thomas Cooper, Circuit Court Judge

Case No 2007-CP-29-593

**RECEIVED**  
NOV 08 2016  
**SC Court of Appeals**

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,

**REPLY TO**

**APPELLANT'S PETITION FOR WRIT OF SUPERSEDEAS**

**TO STAY THE TRIAL SCHEDULED FOR NOVEMBER 14, 2016**

**IMMEDIATE ACTION REQUIRED: 4 BUSINESS DAYS UNTIL TRIAL**

As set forth in Appellant's Petition for Writ of Supersedeas, the trial court erred in (1) failing to apply the general rule that the notice of appeal automatically stays the trial and (2) failing to recognize that the absence of the negligent hiring and supervision cause of action would negatively affect a trial on the negligent pursuit cause of action

Respondents misconstrue both the trial court's order and this Court's inquiry for the purpose of the Supersedeas. First, the trial court's denial of Appellant's 59(e) makes two distinct rulings (1) it eliminates the negligent hiring and supervision cause of action *as to all Respondents* and (2) prohibits any evidence related to that cause of action (**Exhibit 15, Order**

denying Motion to Stay)<sup>1</sup> Specifically, the trial court's Order states "This reconsideration applies not only to Plaintiff's Negligent Hiring, Training, and Supervision, and/or Entrustment cause of action, but also to any evidence to support that cause of action as set forth in this Court's order dated November 2, 2016 " *Id* at 1. That the negligent hiring and supervision cause of action was struck as to all Respondents, is clear when reading the trial court's orders. Thereby, making the issue immediately appealable.

Notably, a considerable portion of Respondents' arguments are based on the merits of Appellant's appeal—arguments which would be more properly addressed in their brief on the appeal—not in a response on Appellant's petition for the stay. Among their arguments are Respondents' contentions that this is an interlocutory appeal, the scope of the directed verdict during the first trial, the appealability of the same, and res judicata.

Generally, under Rules 205 and 241, SCACR, the notice of appeal removes jurisdiction from the trial court and stays all remaining matters. *Grosshuesch v Cramer*, 377 S C 12, 31 n 7, 659 S E 2d 112, 122 n 7 (2008) ("We take this opportunity to reiterate that while an appeal is pending, a lower court cannot act on matters affecting the issue on appeal.") This general rule applies in this case. See S C Code Ann. §14-3-330. The negligent hiring and supervision cause of action goes to the very heart of this litigation, and its striking severely limits Appellant's ability to seek his requested judgment and relief. Rules 205 and 241, SCACR are in place to allow Appellant to seek judicial review (particularly on such a drastic ruling) without having to proceed on matters that are affected by the ruling. The trial court's denial of the Motion to Stay was unwarranted given the intertwined nature of the causes of action.

---

<sup>1</sup> The exhibits referenced herein correlate to the exhibits included with Appellant's Petition for Writ of Supersedeas filed November 7, 2016.

Significantly, the facts of this case are distinguishable from times in which our appellate courts have denied a stay. This is not a circumstance in which unrelated claims or counterclaims could proceed separate from the merits of the appeal. See *Metts v Mims*, 384 S C 491, 682 S E 2d 813 (2009) (holding "the trial court's ruling on the constitutional actual malice issue was clearly unrelated to the discovery dispute involving the Newspapers' financial data"), *Grosshuesch*, 377 S C. at 31, 659 S E 2d at 122 (finding remaining issues were unrelated to appeal because appeal concerned initial discovery responses and remaining issue concerned deposition questions). This is also not a situation like that often seen in family court where a child custody matter is on appeal and the issue of alimony may still be resolved by the lower court.

Instead, the trial court's order eliminates not only the negligent hiring and supervision cause of action, but also any reference to the evidence and facts supporting that cause of action. Respondents assert Appellants can use certain evidence at the second trial, however this is in direct contradiction to a plain reading of the trial court's order. The November 7, 2016 Order excludes not only the cause of action, "but also . . . any evidence to support that cause of action .

" Despite Respondent's interpretation, the trial court has spoken on this issue.

This expansive ruling hinders Appellant's ability to prove the requisite elements of the negligent pursuit cause of action and perhaps even to establish causation and foreseeability. For example, under the trial court's order Appellant is prohibited from introducing evidence of Wal-Mart's supervision on the night of the pursuit. Specifically, Appellant would not be allowed to discuss the contents of the Master Agreement between Wal-Mart and U S Security, which was entered into evidence in the first trial. See **Exhibit 1**, Master Agreement. Among other things, the Master Agreement provides: "Services must meet the *approval of Wal-Mart* and be subject to

*Wal-Mart's general right of inspection and supervision to secure the satisfactory completion thereof* Contractor shall use the best practices acknowledged in the industry and shall adhere to Wal-Mart's policies and specifications regarding the Services " *Id* at p 4 This evidence goes to both causes of action, yet under the trial court's ruling it would be prohibited outright. Significantly, this scenario is just one of many ways in which the issues affected by the appeal impacts the remaining cause of action such that the trial should be stayed.

The Supreme Court's opinion further supports the entwined nature of these causes of action, and the complexity of this case. The majority opinion, in *reversing* then Chief Judge Few, explained that it was an error of law for the trial court to grant a directed verdict and for Judge Few to uphold such a ruling given the evidence presented at that time, evidence that included, among other things, the Master Agreement. As a result of that error, the Supreme Court found that the only way to remedy the error was to grant a new trial. Specifically, Acting Justice Toal held

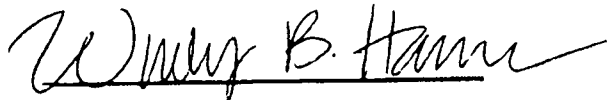
In addition to [Plaintiff's] claim that Jones was Wal-Mart's agent and thus, Walmart is vicariously liable for his conduct, *[Plaintiff] also alleged that Wal-Mart was liable based on its failure to properly supervise Jones and Wal-Mart's improper advice or instruction to Jones to follow Hancock to obtain 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*

(Exhibit 5, *Roddey v Wal-Mart Stores East, LP*, Op. No. 7615 (Shearouse Adv. Sh. No. 13, p 31). While the scope of the relief granted by the Supreme Court will be addressed by the appeal, the impact of the negligent hiring and supervision cause of action on the negligent pursuit cause of action is undeniable. Simply put, the negligent hiring and supervision claim (and the evidence related to it) directly affects the remaining negligence claim.

## CONCLUSION

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

RESPECTFULLY SUBMITTED,



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Attorneys for Plaintiff

November 8, 2016  
Columbia, SC

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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM LANCASTER COUNTY  
Court of Common Pleas

G. Thomas Cooper, Circuit Court Judge

Case No 2007-CP-29-593

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

v

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

**PROOF OF SERVICE**

The undersigned hereby certifies that on November 8, 2016, she served counsel for  
Respondents with the *Reply to Petition for Writ of Supersedeas* in this matter by mailing a copy  
of the same by United States Mail with first class postage prepaid to the following addresses

Stephanie Flynn & Howard Boyd  
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Greenville, SC 29603

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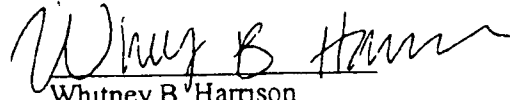
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**SC Court of Appeals**

*Signature Page to Follow*

Respectfully submitted,

November 8, 2016  
Columbia, SC



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November 7, 2016

Honorable Jenny Abbott Kitchings  
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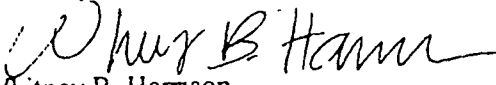
RE *Travis Roddey, individually and as the Personal Representative of the Estate of Alice Monique Beckham Hancock, deceased v Wal-Mart Stores East, L P, U S Security Associates, Inc, and Derrick L. Jones*

Dear Ms. Kitchings,

Enclosed please find for filing Appellant's Reply to the Petition for Writ of Supersedeas. By copy of this letter, I am serving it upon counsel for Respondents. Please clock in and return to me the enclosed copy in the envelope provided.

With kind regards,

Sincerely,

  
Whitney B. Harrison

cc:  
Stephanie Flynn, Esquire  
Howard Boyd, Esquire

Enclosures

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SC COURT OF APPEALS

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STATE OF SOUTH CAROLINA  
COURT OF COMMON PLEAS  
COUNTY OF LANCASTER  
2007-CP-29-0593

TRAVIS RODDY, et als.

VS.

WAL-MART STORES EAST, U. S. SECURITY, ET ALS.

LANCASTER, SOUTH CAROLINA

APRIL 6-13, 2010

BEFORE THE HONORABLE BROOKS P. GOLDSMITH

APPEARANCES

FOR THE PLAINTIFFS: HOOD, MCKINNON, STEWART

FOR THE DEFENDANTS: BOYD, FLYNN

REPORTED BY: MICHAEL C. WATKINS

OFFICIAL COURT REPORTER

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## TESTIMONY OF JEFF GROSS

1 Q Are the people in the parking lot -- who is supposed  
2 to protect them?

3 A Well, there's an increase risk proportionate to the  
4 decreased risk that you get by having him there. If  
5 there's a deterrent value, people are going to see the  
6 cars or snatch merchandise or attack people in the parking  
7 lot or break-in to a car, the deterrent value he has is  
8 that he is there to observe, report, that the bad guy  
9 arguably would be looking for a security presence and if  
10 he leaves then that's gone. So any member of the public  
11 or even the employees whose cars are parked out there,  
12 people coming and going, children, would all have some  
13 increase of risk if the security person is gone.

14 Q Okay.

15 MR. HOOD: Your Honor, at this time I would move to  
16 have this -- I would move the security officer's guide, I  
17 would move it into evidence as Plaintiff's 7.

18 MR. BOYD: No objection.

19 THE COURT: It's without objection.

20 Q Now, this is not -- I don't have a board for it. Did  
21 Derrick Jones sign for a receipt of his security officer  
22 guide handbook?

23 A Yes, part of his personnel package.

24 Q So he would have been aware of these policies and  
25 procedures.

## TESTIMONY OF JEFF GROSS

1 A Yes. And they should have been reviewed if he would  
2 have been trained correctly.

3 MR. HOOD: I would move at this time, Your Honor, to  
4 have admitted Plaintiff's 8, Derrick Jones receipt of his  
5 handbook.

6 MR. BOYD: Without objection.

7 THE COURT: Admitted without objection.

8 Q Now, are you aware of guidelines for private security  
9 policies that were in the truck at the time that Derrick  
10 Jones was employed?

11 A Yes, they have a handout.

12 Q And this was created by Wal-Mart, wasn't it?

13 A It was created by Wal-Mart for their rules of  
14 engagement as a contractor in the area of security. These  
15 were Wal-Mart's rules that applied to the contractor.

16 Q And this would have been in his truck at the time of  
17 this particular situation.

18 A Yes.

19 Q Now, I'll ask you to look at the first page of this  
20 guideline. Do you see that?

21 A Yes.

22 Q Do you see where it says the primary function?

23 A Yes.

24 Q And what is the primary function under Wal-Mart's  
25 guidelines?

## TESTIMONY OF JEFF GROSS

1 A It says the primary function for private security  
2 contractors provide our customers with a safe shopping  
3 experience, the basic security method consists of two  
4 parts. The first part: Protection. Enables the security  
5 contractor to protect persons and property by acting as a  
6 deterrent in order to prevent thefts, damages or accidents  
7 and. And the second: Communications. Enables the  
8 security contractor to be a source of information to  
9 Wal-Mart management, and essentially it is observe and  
10 report.

11 Q Okay. And under number seven it says, "Because  
12 Wal-Mart expects security at the specific areas if the  
13 security contractor must leave his or her post please  
14 notify a member of Wal-Mart management first."

15 A That's correct.

16 Q Now, why do they have that particular policy?

17 A Well, you're paying for the benefit of having this  
18 security officer there. They've already defined what it  
19 is, the benefit that Wal-Mart enjoys and that is the  
20 deterrent value in the observe and report possibility, so  
21 if he leaves it's gone.

22 Q And up here it says, "This is to provide our  
23 customers with a safe shopping experience." Do you see  
24 that?

25 A Certainly.

## TESTIMONY OF JEFF GROSS

1 Q And when they violate these particular guidelines,  
2 are they providing a safe shopping experience?

3 A Not as safe as they would if he was there, otherwise  
4 they wouldn't have the function to begin with. If they  
5 didn't believe it was valuable they wouldn't do it.

6 Q Okay. I'm going to have you look at the second page  
7 of this --

8 THE COURT: Mr. Hood, let me interrupt you one quick  
9 second. You probably would have the attention of three or  
10 four more jurors if you could stand on the other side and  
11 do it the other way.

12 MR. HOOD: Yes, sir, Your Honor, I sure will.

13 Q Do you see number 14, Mr. Gross? And you can get up  
14 if you would like to.

15 THE WITNESS: May I, Judge?

16 THE COURT: Sure.

17 A Yes.

18 Q And number 14 says, "The patrol vehicle should not  
19 leave Wal-Mart property except for gas or maintenance."

20 A That's correct.

21 Q And do you have an opinion about whether that was  
22 violated in this case?

23 A Clearly it was.

24 Q And number 15, "For safety please drive at slow speed  
25 and wear your seatbelt and be aware of other cars and

## TESTIMONY OF JEFF GROSS

1 pedestrians that may be in or around the Wal-Mart parking  
2 lot."

3 A Yes, very important, especially to drive at a slow  
4 speed.

5 Q Why is that important?

6 A Well, the faster you go you run into a problem of  
7 recognition time versus reaction time. You might  
8 recognize that somebody has stepped out in front of you or  
9 a car has backed out in front of you but the faster you're  
10 going the less reaction time that you have to apply the  
11 brake. So going slow gives you time to recognize the  
12 hazard and avoid that hazard, and you're more observant  
13 when you are traveling slowly.

14 Q Have you had an opportunity to see the video of  
15 Derrick Jones engaging Ms. Hancock?

16 A Yes.

17 Q How would you describe that?

18 A I would not define what I'm seeing there as slow. I  
19 could not apply a speed to it but I think that it's  
20 intuitive when you see the video that it's not slow.

21 Q Do you have an opinion about whether he violated that  
22 particular safety rule?

23 A Yes.

24 Q Okay. And then number 16, "For safety always be  
25 alert for cars backing out of parking spaces and customers

## TESTIMONY OF JEFF GROSS

1 walking between cars." Why is that important?

2 A Well, you don't want to hit them. And, of course,  
3 distraction is going to increase your chance if you're  
4 going to hit someone. And speed, again, we've already  
5 talked about that, is certainly a problem.

6 Q When he was pursuing this car in the parking lot and  
7 out into the road, how was he being safe in being alert  
8 for these cars backing out?

9 A Well, the word safety means absence of risk, that's  
10 essentially what it means in our business. And if he's  
11 doing something that creates risk it just can't be safe,  
12 the more unsafe it is the more risk is associated with it  
13 so he increases risk here, therefore less safety.

14 Q Do you have an understanding of the amount of  
15 merchandise that was taken, or alleged to have been taken  
16 in this case?

17 A Not a dollar value. I know volume wise there was a  
18 bag that was sat down before the person exited the store,  
19 I see that in the video but I don't have a dollar amount.  
20 But volume wise it --

21 Q Have you seen the incident report that lists three or  
22 four pair of jeans at about \$50.

23 A I do, but I didn't recall a dollar amount.

24 Q Does \$50, whether she took it or left it at the exit  
25 before she ever left or whether she took it, would that

## TESTIMONY OF JEFF GROSS

1 ever justify what happened in this particular case?

2 A Well, no. But also Wal-Mart's own policies caution  
3 their people that no merchandise is worth getting hurt  
4 over, no merchandise is worth hurting anybody over, that's  
5 part of their policy and procedure. So they're cautioning  
6 their own employees, "We don't want to get people hurt  
7 over merchandise." So they're not saying more than \$150  
8 or less than \$150, they're saying merchandise is not worth  
9 getting hurt over.

10 Q Now, under number 26, "In the event of a shoplifter  
11 situation the security contractor should act as a witness  
12 and only assist when directed by a member of Wal-Mart  
13 management or loss prevention or when you see the Wal-Mart  
14 associate in trouble or danger." Do you see that?

15 A Yes.

16 Q Now, in this particular case, can you tell this jury  
17 who actually told Mr. Jones to get the license plate?

18 A One of the CSM's by radio.

19 Q Did the CSM see him leave the parking lot?

20 A Yes, testified that she did.

21 Q And can you tell this jury what Wal-Mart management  
22 did to call off this particular chase?

23 A Nothing. They told him to get the plate number and  
24 he drove at a right angle away from the store and engaged  
25 the person -- the plaintiff's vehicle at the front of it,

## TESTIMONY OF JEFF GROSS

1 that was in plain view in the front. They took off and he  
2 went after them and they did nothing. They saw it and  
3 they didn't call him back or do anything.

4 Q Now, look at number 29, this Wal-Mart policy. It  
5 says, "Think safety first."

6 A Yes.

7 Q "Always remember to protect yourself and if possible  
8 assist others before attempting to protect property.  
9 Remember, security contractors are precluded from  
10 searching or pursuing suspects."

11 A Yes.

12 Q Do you see that?

13 A Yes.

14 Q Was that violated?

15 A Yes, he pursued the suspects.

16 Q And who violated that safety rule?

17 A Well, Derrick Jones, the security officer, did, but  
18 it was secondary to a request by Wal-Mart to go get the  
19 plate number.

20 Q They both violated that policy.

21 A Yeah.

22 Q Now, you can have a seat again, Mr. Gross.

23 MR. HOOD: And at this time, Your Honor, I would move  
24 that the guidelines for private security contractors be  
25 admitted as Plaintiff's Exhibit 9.

## TESTIMONY OF JEFF GROSS

1 MR. BOYD: No objection.

2 THE COURT: Admitted without objection.

3 Q Now, here is a Wal-Mart policy about the  
4 investigation and detention of shoplifters. Do you see  
5 that?

6 A Yes.

7 Q Now, do you see the four elements of what is  
8 considered to be a shoplifter, at the bottom, number four  
9 exiting the facility and passing the last point.

10 A Yes.

11 Q Have you had an opportunity to see the video in this  
12 particular case?

13 A Yes.

14 Q And from your witness of the video, do you have an  
15 opinion about whether she met the Wal-Mart policy of being  
16 a shoplifter?

17 A Up to the point that she puts the bag down, yes.  
18 Once she puts the bag down and the contents wasn't even  
19 confirmed at that point, then I would say no. At that  
20 point there was no defined loss, it was over with  
21 according to their policy.

22 Q And their own manager said it was over with at that  
23 time too, didn't he?

24 A Yes. And even at that their policy says if they are  
25 going to go outside the store after someone not to go more

## TESTIMONY OF JEFF GROSS

1 than 10 feet.

2 Q Okay. And I will put the second page of this up.

3 Down here where it says limitations in the pursuit and  
4 detention of suspects, do you see that?

5 A Yes, sir.

6 Q Can you read the first one for the jury?

7 A "Never pursue a fleeing suspect more than  
8 approximately 10 feet beyond the point where you are  
9 located when the suspect begins to run to avoid detention,  
10 10 feet is about three long steeps. This limitation  
11 applies both inside and outside the facility."

12 Q And can you read the second one for the jury?

13 A "Never pursue a suspect who is in a moving vehicle."  
14 And it says after that, "Never pursue a suspect off the  
15 facility's property, never use a moving vehicle to pursue  
16 a suspect and terminate the pursuit of a suspect if the  
17 suspect begins to enter a vehicle."

18 Q Do you have an opinion to a reasonable degree of  
19 certainty whether these policies were violated?

20 A They were not -- they were violated, yes. They were  
21 not adhered to, no.

22 Q Who broke these rules?

23 A Well, physically USA (sic) Security did, Mr. Jones,  
24 but what I would call through tacet approval Wal-Mart  
25 didn't do anything to stop him. So they didn't tell him

## TESTIMONY OF JEFF GROSS

1 not to, they told him to go out and get this license plate  
2 number, but with that they didn't give any other direction  
3 or guidance.

4 Q Can you tell the jury why they have policies like  
5 this, or safety rules like this?

6 A Because pursuits are dangerous. If you're dealing  
7 with a shoplifter you always have the possibility of a  
8 fight, you have the possibility of production of a weapon,  
9 you have the possibility that the employee will be injured  
10 in the physical altercation. When vehicles are involved  
11 you have the possibility that somebody pulls a weapon from  
12 a vehicle as they are getting in, the vehicle itself can  
13 be used as a weapon, it's escalating the possibilities of  
14 injury at each step. And what Wal-Mart has done in my  
15 professional opinion is they've tried to engineer out  
16 these risks through developing these policies. This is  
17 how we're going to stay away from these problems, we're  
18 going to have these procedures and policies.

19 Q Now, in regard to never pursue a fleeing suspect,  
20 never, never, never, never, did Derrick Jones have a valid  
21 driver's license at this time?

22 A No.

23 Q Do you have an opinion to a reasonable degree of  
24 certainty about whether you should have a valid driver's  
25 license if you're driving a vehicle patrolling a Wal-Mart

## TESTIMONY OF JEFF GROSS

1 parking lot?

2 A Should have one if you are patrolling or not. If you  
3 drive a vehicle the state requires you to have a driver's  
4 license.

5 Q And who should have discovered that?

6 A Well, if it was discoverable by doing a background  
7 check prior to employment, in other words, the date of  
8 suspension or the violation that caused the suspension was  
9 discoverable at that point they would have known there was  
10 a problem coming with his driver's license. At the point  
11 that he received a suspension notice he certainly could  
12 have told his employer.

13 Q And is a marijuana conviction, is that -- do you get  
14 an automatic suspended license in South Carolina?

15 A My understanding in South Carolina you do.

16 Q If they would have done a background check on him  
17 would they have discovered that?

18 A They would have discovered it and I would have  
19 expected them to react to it.

20 Q Why would a security company allow someone they knew  
21 was going to lose his license, why would they have allowed  
22 him or hire him as someone who could patrol a parking lot?

23 A I can't give a good reason other than profits.

24 MR. HOOD: Your Honor, previously I had used a flow  
25 chart and asked about U. S. Security Associates, at this

## TESTIMONY OF JEFF GROSS

1 time because I forgot to move that into evidence I would  
2 move into evidence U. S. Security and Associates Policy and  
3 Procedure 630-02 with the attachments.

4 MR. BOYD: No objection.

5 THE COURT: Admitted without objection.

6 MR. HOOD: And at this time, Your Honor, I would also  
7 move into evidence the Wal-Mart investigation and detention  
8 of shoplifter policy, it's about 70 pages, I would move  
9 that in as Plaintiff's Exhibit 11 at this time.

10 MR. BOYD: May I look at that just for a moment?

11 THE COURT: Sure.

12 MR. BOYD: No objection.

13 THE COURT: It will be admitted without objection.

14 Q Now, Mr. Gross, have you had an opportunity to look  
15 at the videotapes in this particular case?

16 A Yes.

17 Q And have you had an opportunity to read all of the  
18 depositions and all of the materials given to you in this  
19 case?

20 A Yes.

21 Q Could you tell this jury and explain to this jury  
22 exactly what occurred when Donna Beckham left the  
23 Wal-Mart -- when she dropped the bag with the greeter and  
24 then exited the store that night?

25 A She places the bag on the ground, she walks out of

## TESTIMONY OF JEFF GROSS

1 the store and she's walking in the driveway just in front  
2 of the store where the doors are. The security vehicle  
3 comes up to her, and, of course, I can't hear anything but  
4 obviously there's some type of exchange. The vehicle  
5 stops and she's in the driver's side of the vehicle and at  
6 that point she picks up her pace and starts running out  
7 into the parking lot and the security vehicle has a little  
8 trouble, he's trying to backup and turn around, did a  
9 U-turn in the driveway, and she's now getting out into the  
10 parking lot area and here comes the truck behind her. She  
11 gets into the vehicle out there in the parking lot and the  
12 truck cuts them off and they have to get themselves out of  
13 being blocked in, and I think he actually tries to block  
14 them the second time. And eventually you will see -- what  
15 I see as they go off the property with the security truck  
16 behind them.

17 MR. HOOD: Take one second Your Honor.

18 (Break in proceedings.)

19 MR. HOOD: Your Honor, at this time I would like to  
20 show them the videos that Mr. Gross has been describing.  
21 We may have to dim the lights. Your Honor, while we're  
22 waiting for the lights, would it be okay for Mr. Gross if  
23 he goes up close to this and he's able to point things out  
24 that he sees?

25 THE COURT: Certainly.

## TESTIMONY OF JEFF GROSS

- 1 (At this time the video clip was played for the jury.)
- 2 Q Is the person in the white shirt Donna Beckham?
- 3 A Yes. We have the greeter down on the right, she
- 4 places the bag, she's now coming in to view on the left on
- 5 the ground and she leaves.
- 6 Q And did you see where she opened up her pocketbook
- 7 for the greeter?
- 8 A Yes, she did.
- 9 Q And then she leaves the store.
- 10 A Yes. She exits the store and you'll see the division
- 11 from this camera and the exterior of the camera.
- 12 Q Can we go to the next clip? And before we start,
- 13 where is the white security truck of Mr. Jones?
- 14 A It's in the foreground there. It's the vehicle
- 15 closest to the 6:00 position on the screen.
- 16 Q That's the white pickup truck with a little light on
- 17 top?
- 18 A Yes.
- 19 Q Can you play the clip, now?
- 20 (The video was played.)
- 21 Q Can you stop right there? Now, do you see a white
- 22 person coming out of the store up at the top?
- 23 A Yeah. The pixel breaks up here but you can just to
- 24 the right of the cars center crosswalk area is a person
- 25 coming out, that would be the same person we saw.

## TESTIMONY OF JEFF GROSS

- 1 Q Donna Beckham?
- 2 A Yes.
- 3 Q Keep going, please.
- 4 (The video was played.)
- 5 Q Okay. Stop. From the time she left that store until
- 6 she meets the truck, how would you describe how she was
- 7 walking?
- 8 A She's walking not slow, she's certainly not running,
- 9 she's just walking at a steady pace.
- 10 Q And now can we go -- now, from the rest of that clip,
- 11 what happened once she was engaged by Mr. Jones?
- 12 A Well, the pace picks up, she starts to run. She
- 13 starts to run out toward the parking lot after she had
- 14 some type of communication with him. It appears to be a
- 15 confrontation, I can't hear anything but an assumption and
- 16 also -- not an assumption, but in his deposition he says
- 17 that he told her that he had needed to talk to her.
- 18 Q Prior to his engagement, was she running?
- 19 A No.
- 20 Q If you could go to the next clip, please. And is
- 21 that Donna Beckham going across the parking lot?
- 22 A Yes.
- 23 Q And that's Alice Hancock's car with the headlights on
- 24 it.
- 25 A Yes.

## TESTIMONY OF JEFF GROSS

- 1 Q And then that's Derrick Jones' truck.
- 2 A Yes.
- 3 Q What had Derrick Jones been told by Wal-Mart
- 4 management at this particular time?
- 5 A Don't pursue, don't chase. As far as policy goes
- 6 don't pursue or chase, but they told him to get the
- 7 license plate number, they told him that on the radio.
- 8 Q You've seen this on video, how was he trying to get
- 9 the license plate number by blocking them?
- 10 A You can't because in this state the license plate
- 11 number is on the back.
- 12 Q How was he trying to get the license number?
- 13 A Arguably block her in and get out of his vehicle and
- 14 go get it, but it doesn't stand to reason you can get the
- 15 license plate number from the front.
- 16 Q Okay. Do you see this?
- 17 A Yes. He's in front of her again and now the vehicles
- 18 appear to be nose to nose here.
- 19 Q How was he trying to get her license plate there?
- 20 A Again, you can't. The license plate is on the back
- 21 so the only thing I can come up with here is that he's
- 22 trying to block her in and stop her from going somewhere.
- 23 Q You see him go up. And that's the last video footage
- 24 we have, right?
- 25 A Yes, sir.

## TESTIMONY OF JEFF GROSS

1 Q And so you don't know what that video shows?

2 A No, sir.

3 Q Would you agree with me that if she would have been  
4 parked close to the store three spaces, I think, from the  
5 driveway entrance in an area where pedestrians were likely  
6 to be and an area where there was likely to be more  
7 congestion, then it would have been more difficult for her  
8 to be the getaway car driver then if she were parked in an  
9 open area some distance away?

10 A Possibly.

11 Q Now, you are familiar with the testimony in the case  
12 that Donna Beckham jumped into the back seat of the car as  
13 it was rolling toward her and told Ms. Hancock, "Get them  
14 the hell out of here?"

15 A Yes.

16 Q You don't have any problem with anything Wal-Mart did  
17 within the store that evening, do you?

18 A Not at all.

19 Q They followed the Wal-Mart policies appropriately and  
20 to the letter within the store, did they not?

21 A Yes, they did.

22 Q And you don't have a problem with the greeter  
23 confronting Ms. Beckham as she left and asking for a  
24 receipt.

25 A Not at all.

## TESTIMONY OF JEFF GROSS

- 1 Q Do you recall that when Ms. Beckham was confronted by  
2 the greeter and asked for a receipt she lied to the  
3 greeter, did she not, and she said, "I don't have it but I  
4 think my sister has it and I will go get it from her?"
- 5 A Yes, she did.
- 6 Q In fact, that wasn't true, was it?
- 7 A It was not true.
- 8 Q And you certainly don't have any problem with  
9 Wal-Mart internally observing Ms. Beckham or any other  
10 shopper for that matter of who may be suspected of being  
11 about shoplifting?
- 12 A No.
- 13 Q Good retail practice.
- 14 A Appropriate retail practice.
- 15 Q Now, you've already testified that the Wal-Mart  
16 policies and procedures were appropriate. In fact, isn't  
17 it true that the only two things you're questioning here  
18 are the decision by a Wal-Mart customer service manager to  
19 ask Mr. Jones to get the license tag and their failure to  
20 call him back once he pursued Ms. Hancock off the  
21 premises?
- 22 A From Wal-Mart's part, yes.
- 23 Q Isn't it true, Mr. Gross, that the customer service  
24 manager did not ask Mr. Jones to get the license tag until  
25 after he was already engaged with Ms. Hancock and her

TESTIMONY OF JEFFREY ALBERT

1 her.

2 A Well, according to his testimony, yes, that's true.

3 But we do know from the video that she did scoot a little  
4 faster to the car and jump in the back seat.

5 Q And you call that walking. She was actually running  
6 pretty fast from the scene, wasn't she?

7 A I can't tell you if she was -- I'll use the word  
8 going along a little faster than a walk and not quite a  
9 sprint.

10 Q And before Derrick Jones had pursued anyone,  
11 Ms. Beckham began to run across the parking lot, correct?

12 A Well, I don't want to argue semantics about running.  
13 But yes, I will agree with you that she went quickly.

14 Q Ad she was trying to get away from him.

15 A It certainly seemed that way, yes, sir.

16 Q And there is no question that Ms. Hancock was trying  
17 to help Ms. Beckham get out of there quickly.

18 A I would agree with that, it seemed that way by  
19 looking at the video, yes, sir.

20 Q And there is no question that they were trying to get  
21 away because Ms. Beckham had been shoplifting. You agree  
22 with that, don't you?

23 A Well, I can't get in the head of what either woman  
24 was thinking or doing, but certainly they were trying to  
25 get out of there quickly, I would agree with that.

## TESTIMONY OF DONNA BECKHAM

1 Brett, and we stopped by Wal-Mart. We went into Wal-Mart  
2 to browse around, my sister wasn't feeling well so she  
3 went to the car. I then went and got a bag and went to  
4 put some pants into the bag I shouldn't have done it.  
5 Then when I went to leave Wal-Mart the lady at the door  
6 asked me for a receipt, I told her I didn't have it, I sat  
7 the bag down and I went to leave.

8 Q And you told her you didn't have a receipt. Did you  
9 tell her anything else? Did you tell her where the  
10 receipt was?

11 A I told her that my sister had it but that was a lie.

12 Q Now, once you sat the bag down -- hold on one second,  
13 I apologize. I want to show you the video from Wal-Mart  
14 with where you actually met the greeter and then I want to  
15 ask you some questions about that. Okay?

16 A Yes, sir.

17 Q Now, is this you in the white shirt approaching the  
18 greeter?

19 A Yes, sir.

20 Q Okay. Stop. Now, is that where you put the bag  
21 down?

22 A Yes, sir.

23 Q If you could kind of go forward, and stop. What were  
24 you doing there?

25 A I was showing her my purse.

## TESTIMONY OF DONNA BECKHAM

- 1 Q Why were you showing her your purse?
- 2 A I think she asked me, everything was so fast.
- 3 Q Okay. Now, you have seen from the time that you left
- 4 the greeter until you exited Wal-Mart, right?
- 5 A Yes, sir.
- 6 Q How would you describe how you were walking at that
- 7 time?
- 8 A I was just walking.
- 9 Q Okay. Can we go to the next clip? Stop for a
- 10 second. Do you see the white car with the light on top?
- 11 A Yes, sir.
- 12 Q Do you know what that is?
- 13 A A security truck.
- 14 Q Is that the truck that Derrick Jones was in?
- 15 A Yes, sir.
- 16 Q Can you keep going, please? Okay. Stop. Can you
- 17 see the person in the white shirt at the very top?
- 18 A Yes, sir.
- 19 Q Who is that?
- 20 A That's me.
- 21 Q And how were you proceeding out of the store at that
- 22 time?
- 23 A I was walking.
- 24 Q Okay. Can you keep going? Stop. Now, right there,
- 25 what occurred right there?

1 A It's about half time spent on vehicle accident  
2 reconstruction and about half time on fires.

3 Q And Mr. Olson, have you been accepted by the courts  
4 in the field of accident reconstruction in this state and  
5 in other states?

6 A Yes. Here in South Carolina, of course, Georgia,  
7 Alabama and Virginia.

8 Q More than ten times?

9 A Last count about 12.

10 Q And have you investigated the accident which is the  
11 subject matter of this lawsuit?

12 A Yes, I have.

13 MR. MCKINNON: Your Honor, we would offer Mr. Olson as  
14 an expert in mechanical engineering and accident  
15 reconstruction.

16 MR. BOYD: No objection.

17 THE COURT: So qualified.

18 Q Mr. Olson, what were you asked to look at in this  
19 mater?

20 A Let me break it down into two items. First of all is  
21 to perform an engineering analysis of the crash, and then  
22 to reconcile witness and testimony with the available  
23 facts and evidence that we have.

24 Q And what was your procedure and method you used to do  
25 these things for this case?

## TESTIMONY OF DANIEL OLSON

1 A Well, first of all I would like to get some  
2 background. The first individual assigned to this case  
3 was Mr. Phillip Darnell. Mr. Darnell got started with it  
4 but he then left the Warren Group to go rejoin the South  
5 Carolina Highway Patrol where he now is teaching troopers  
6 and other law enforcement officers on how to do this kind  
7 of work, vehicle accident reconstruction, so when he left  
8 I took over, he had already inspected the Hancock vehicle  
9 and the collision scene. Then the next thing I did after  
10 I looked at what he had done, I reviewed a collection of  
11 statements and testimony that were available,  
12 telecommunications records were important. There were  
13 quite a number of photographs of the collision scene and  
14 the vehicles, and I studied some aerial images of the  
15 region where -- between Wal-Mart and where the collision  
16 occurred and especially the roadways that were between  
17 here and there to determine the pathway. I also took a  
18 look at some video recordings of the security cameras of  
19 the parking lot of Wal-Mart.

20 Q Of all of those things you looked at, Mr. Olson, what  
21 were the things you relied on in formulating your opinions  
22 in this case?

23 A Well, primarily it was some parts of all of those,  
24 but in particular the statements and testimony that I  
25 looked at was the deposition of Donna Beckham. I then

## TESTIMONY OF DANIEL OLSON

1 looked at statements and testimony of Derrick Jones. I  
2 looked at -- I took some information from the deposition  
3 of Mr. Sam Huey, the deposition of Trooper Howard, the  
4 deposition of David McCandless and the statement of Ms.  
5 Izzard.

6 Q And, Mr. Olson, did you actually personally go out  
7 and take a look at the crashed Mazda?

8 A No, I didn't. Mr. Darnell and the highway patrol did  
9 a good job of that and they well documented the condition  
10 of it and I didn't need to do that.

11 Q What about a personal inspection of the accident  
12 scene?

13 A Not at first. My initial evaluation was done on the  
14 basis of all of the documentation that Mr. Darnell and the  
15 highway patrol performed, I found that adequate for my  
16 work. I did however go to the collision scene later after  
17 I had gone and was evaluating some of the things that  
18 Mr. Jones had said that he did, and I came to Lancaster to  
19 come and look at that.

20 Q Mr. Olson, you heard the Judge tell the jury everyone  
21 has agreed in this case there was nothing wrong with  
22 Ms. Hancock's car mechanically.

23 A That's correct.

24 Q You said you were asked to reconcile the witness  
25 statement and testimony with the available facts and

## TESTIMONY OF DANIEL OLSON

1 evidence. What statements and testimony did you need to  
2 reconcile?

3 A Well, there was a disagreement between the two  
4 witnesses to this. First, Donna Beckham said that  
5 Mr. Jones, the security guard, chased them the whole way  
6 from the Wal-Mart right up to the collision, and matter of  
7 fact, the last words that she said is that the car is  
8 still behind them just before the mishap occurred.  
9 Derrick Jones, however, the driver of the security  
10 vehicle, stated and testified that he lost sight of the  
11 Mazda on the way and he spent some time looking around the  
12 neighborhood and says ten minutes in one of his statements  
13 before he came upon the crashed Mazda. I wanted to see if  
14 it was possible -- physically possible for him to do all  
15 of the things that he said that he did and still get there  
16 in time to be acknowledged by Ms. Izzard to make a 911  
17 call. We figured out that timeline and compared those  
18 things.

19 Q Mr. Olson, what was your process for reconciling what  
20 Mr. Jones said happened that night with the physical  
21 evidence?

22 A Well, first of all I established that timeline I  
23 talked to you about. I wanted to know from that timeline  
24 of the 911 call that I could figure out from Mr. Huey's  
25 testimony just how much time had elapsed between when the

Direct Examination by Ms. Flynn  
TESTIMONY OF HOPE RAWLINGS

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- 1 Q Did you notify both door greeters?
- 2 A I did.
- 3 Q What did you tell them to do?
- 4 A To stop her and ask her for a receipt.
- 5 Q Is that part of the normal job description or job
- 6 duties of a door greeter, to ask customers for a receipt?
- 7 A Sometimes.
- 8 Q Would it be out of the ordinary for a door greeter to
- 9 ask for a receipt?
- 10 A No.
- 11 Q Do door greeters sometimes ask to see receipts for
- 12 other customers leaving the Wal-Mart even if they are not
- 13 suspected of shoplifting?
- 14 A Yes.
- 15 Q Did you describe Donna Beckham to the door greeter?
- 16 A I did.
- 17 Q And how did you describe her?
- 18 A The thing that came to me first was the big
- 19 pocketbook so that's what I told them.
- 20 Q After notifying the door greeters, what did you do
- 21 next?
- 22 A When I got to the grocery door and told her I could
- 23 see security was sitting right in front of the grocery
- 24 door so I walked out there and told him, and while I was
- 25 telling him Shaun came over the radio and said she's going

## TESTIMONY OF HOPE RAWLINGS

1 out the GM door. So I went back in the grocery door and  
2 he went down towards the GM door.

3 Q You're referring to security, and was that Derrick  
4 Jones?

5 A It was.

6 Q Who is Derrick Jones employed by?

7 A I have no idea.

8 Q Was he employed by Wal-Mart?

9 A No.

10 Q Did you have any responsibility over him?

11 A No.

12 Q Did you have any authority over him?

13 A No.

14 Q Did you walk outside just because you saw his truck  
15 as you were talking to the door greeter?

16 A I did.

17 Q What would be the purpose in telling Mr. Jones about  
18 the shoplifter?

19 A Just to give us some kind of security I guess for the  
20 door greeters when they stop this person until management  
21 gets up there.

22 Q Did you intend for him to do anything in particular?

23 A No.

24 Q Exactly what did you tell him before Shaun came over  
25 the radio?

## TESTIMONY OF HOPE RAWLINGS

1 A I just said we had a shoplifter and I seen her  
2 putting stuff in bags.

3 Q Did you have any other conversations before you heard  
4 Shaun?

5 A No.

6 Q Were you intending to try to stop Donna Beckham or  
7 detain her in any way that night?

8 A No.

9 Q Were you intending for Derrick Jones to do that?

10 A No.

11 Q Did you ask him to approach her?

12 A No.

13 Q Did you ask him to delay her?

14 A No.

15 Q Did you ask him to even talk to Donna Beckham at all?

16 A No.

17 Q Were you intending at all to try to make him do  
18 something that you could not do under the rules?

19 A No.

20 Q Were you trying to make him out to be a scape goat in  
21 any way?

22 A No.

23 Q And I believe after you said Shaun Cox came over the  
24 radio, where did Mr. Jones go?

25 A He went down to the GM door.

## TESTIMONY OF HOPE RAWLINGS

1 of shoplifting and were going to leave the exit at general  
2 merchandise."

3 A I never told him that I thought she was going to  
4 leave from the GM exit.

5 Q And U. S. Security says that Ms. Rawlings asked  
6 Mr. Jones to stop or delay the suspected shoplifter.

7 A I did not say that.

8 Q Was U. S. Security wrong?

9 A I guess.

10 Q And they said Mr. Cox and I think they're talking  
11 about Ms. Cox.

12 A Right.

13 Q And she was the person that was there that night as  
14 well, right?

15 A Right.

16 Q And it says, "Ms. Cox notified Mr. Jones of a  
17 suspected shoplifter and told Mr. Jones to obtain the  
18 license plate number for Ms. Hancock's car."

19 A I remember her saying, "Just get the tag number."

20 Q The thing is Ms. Cox -- okay. Y'all have a Wal-Mart  
21 shoplifting policy, right?

22 A Right.

23 Q And this Wal-Mart shoplifting policy, it has four  
24 different elements, right?

25 A Right.

# Direct Examination by Ms. Flynn

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## TESTIMONY OF SHAUN COX

1 Q When you got to the doorway what exactly did you see?

2 A When I walked outside of the door directly to my left

3 I saw Derrick Jones pulled left into the aisle, Ms.

4 Beckham's car had come out in reverse and that's when the

5 start of the chase pursued, she hit the median in the

6 parking lot, went backwards then she flipped her car

7 around to face the correct direction and then they went

8 out of the parking lot up by Chic-Fil-A.

9 Q At any point during that process did you come over  
10 the video -- radio?

11 A When she started exiting the store I just got a  
12 description that she was leaving the door and what she was  
13 wearing, when I got outside and saw as soon as her car  
14 went to turn around to go to the other direction is when I  
15 said, "Get her tag number."

16 Q At any point when Derrick Jones was in front of car  
17 did you ever tell him to get the tag when he was in front  
18 of the car?

19 A No.

20 Q Was it after she turned around?

21 A Yes.

22 Q Did you tell him once or more than once?

23 A Once.

24 Q Why did you do that?

25 A I didn't know why he was chasing her, if he could get

## TESTIMONY OF SHAUN COX

1 the tag number when they left it could be handled at a  
2 different time. I didn't know what happened in the  
3 parking lot beforehand.

4 Q Did you think that he would stop in the parking lot?

5 A I didn't think he would leave the parking lot.

6 Q When he left the parking lot, were you surprised?

7 A Very.

8 Q Is it Wal-Mart's policy to pursue shoplifters out of  
9 the parking lot?

10 A No.

11 Q Did anybody at Wal-Mart do that that night?

12 A No.

13 Q Who employees Mr. Jones?

14 A U. S. Security.

15 Q What is his basic job?

16 A I don't know all of the details of the parking lot  
17 security, but I know what they've done for immediate  
18 customers is to escort people to their cars and control  
19 the parking lot.

20 Q Is there any prohibition to you talking to the U. S.  
21 Security guard?

22 A No.

23 Q Is there any rule or prohibition against writing down  
24 a license plate?

25 A No.

## TESTIMONY OF CHRIS TIPTON

1 this as a group, though, that some people are better note  
2 takers than other people and a juror's notes are not to be  
3 given any greater weight than the recollection of other  
4 jurors and the recollection of other jurors and the  
5 recollection of individual jurors should be considered as  
6 reliable as notes taken by other jurors. And I also should  
7 tell you that studies have indicated that when you are  
8 taking notes sometimes you may miss other things such as  
9 the body language or demeanor of a witness which may be  
10 important in deciding the witness' credibility.  
11 8:45 Monday morning? There's great hope that we'll be able  
12 to finish on Tuesday I am told but it's also possible  
13 Wednesday, that is for planning purposes. There's great  
14 hope we can finish on Tuesday but it could be Wednesday.  
15 Anybody have a problem with being here on Monday at 8:45?  
16 See you then.

17 (The jury left the courtroom.)

18 THE COURT: Are y'all ready to argue motions?

19 MR. BOYD: We can go ahead and argue if you would like  
20 to, Your Honor, suit me fine to go ahead and argue and be  
21 done. May it please the Court, Your Honor? At this time  
22 the defendant's would move for a directed verdict in their  
23 favor on all causes of action in the complaint considering  
24 all of the evidence and viewing that evidence in the light  
25 most favorable to the plaintiff, the plaintiff's have

## DIRECTED VERDICT MOTION

1 failed to establish the elements of their causes of action.  
2 Let me start with Wal-Mart if I may, Your Honor. I think  
3 the only two allegations that have been made against  
4 Wal-Mart of any alleged wrongdoing are the instructions  
5 given by Shane (sic) Cox to Mr. Jones to obtain the license  
6 tag, and the failure of any of the Wal-Mart employees in  
7 the parking lot, or at the front door actually, or within  
8 the building to instruct Mr. Jones to stop and cease and  
9 desist or come back to the store. We would submit to the  
10 Court, number one, that neither of those are wrongful acts  
11 in and of themselves. There certainly is absolutely  
12 nothing wrong with Ms. Cox asking Mr. Jones to get the  
13 license tag, and that obviously in our view was not a  
14 proximate cause of anything, certainly not a proximate  
15 cause of the accident. The accident was caused either by  
16 the negligence and recklessness of Ms. Hancock alone or the  
17 negligence and recklessness of Ms. Hancock and Mr. Jones in  
18 combination. I don't think there would be a possible  
19 reasonable inference in this case that the accident was  
20 caused by any conduct, certainly not anything remotely  
21 approaching recklessness on the part of Wal-Mart, we don't  
22 think Wal-Mart's conduct was the proximate cause of the  
23 accident. Obviously Wal-Mart does not employ Jones, has no  
24 respondeat superior liability for his conduct. This event  
25 I would submit to the Court is about as classically

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1 unforeseeable as any event in the history of the law and  
2 there was simply no way for anyone to foresee that Derrick  
3 Jones would pursue Ms. Hancock off of the premises of  
4 Wal-Mart in a high speed pursuit just because he was asked  
5 to get a license tag on the premises. So on the grounds  
6 that no negligence on the part of Wal-Mart, secondly on the  
7 ground that no negligence of Wal-Mart was the proximate  
8 cause, we would ask that the Court grant our motion for  
9 directed verdict as to Wal-Mart and dismiss them from the  
10 lawsuit. Alternatively if Wal-Mart is not dismissed  
11 entirely, we would ask that the Court direct a verdict on  
12 the punitive damages claim against Wal-Mart. This case  
13 does not come within a million miles of what is required to  
14 be shown to establish liability for punitive damages.  
15 Wal-Mart's negligence was simple negligence at best. It is  
16 nowhere near the reprehensibility requirement for the  
17 constitutional application of punitive damages, and we  
18 believe any liability for Wal-Mart could have in this case  
19 would be only for compensatory damages even if our motion  
20 for directed verdict is not granted.

21 THE COURT: Let's do these one at a time if you don't  
22 mind. What about it, Mr. Hood or Mr. McKinnon, somebody?

23 MR. HOOD: Sure, I've got it, Your Honor. One, we had  
24 Mr. Gross, and Mr. Gross was the security expert.  
25 Mr. Gross said one -- you know, we don't know what to

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1 believe of Mr. Jones but it's in evidence that one, he left  
2 the premises on his first or second day on the job, that's  
3 a violation of policy. He said it was a violation of  
4 policy, and if violation of policy under South Carolina  
5 law -- when you violate a policy, that's the definition of  
6 recklessness, it's conscious disregard, that is the  
7 definition. And when you get into a situation not just  
8 that first time but especially in that second time our own  
9 expert witness has testified, and I believe that  
10 Mr. Boyd -- and I don't want to get them mixed up, but I  
11 believe Mr. Boyd actually made a motion about he can't talk  
12 about recklessness and he actually talked about the  
13 recklessness of Wal-Mart. And Derrick Jones -- well, first  
14 of all U. S. Security and as Ms. Flynn says that Hope  
15 Rawlings told him to stop and detain.

16 THE COURT: Who said that? I'm sorry.

17 MR. HOOD: U. S. Security has said in their  
18 interrogatory responses that he was told to stop and  
19 detain. Now, Mr. Tipton to his credit said, "Well, I  
20 believe Ms. Rawlings when she said that she didn't say  
21 that, I believe her." But credibility is an absolute issue  
22 here. He said that if he did say stop and detain that's a  
23 violation of policy, once again, recklessness, conscious  
24 disregard, knowing that you shouldn't have done it. She  
25 herself says she knows that she shouldn't -- you would have

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1 known not to do that. The next thing is Ms. Cox says that  
2 she told him to get a license plate. Well, unfortunately  
3 they're stuck with Mr. Jones. Mr. Jones says that he was  
4 told to get a license plate way before he began this  
5 engagement and that's why he said something to Ms. Beckham  
6 in the first place. And Mr. Jones says, "I was told to get  
7 the license plate." And Mr. Tipton honestly once again  
8 said there was no reason to get the license plate, but then  
9 amazingly Ms. Cox admits under oath that she asked him to  
10 get the license plate after he began the pursuit. She knew  
11 that there was a policy about not pursuing, not pursuing,  
12 not pursuing. Our own security expert has said you -- one,  
13 it was a violation to get the license tag; two, it was a  
14 violation not to tell him to stop. Mr. Tipton once again  
15 said, yes, you could have said it this time, she could have  
16 said it when he first began, he could have said it when he  
17 first drove up to them the second time, could have done it  
18 at the stop sign, could have done it at the red light and  
19 could have done it when she was going down Highway 9.  
20 There are multiple, multiple instances. Violation of a  
21 policy by itself is conscience disregard. When you have  
22 element after element after element, those elements lead up  
23 to recklessness because it is not about reprehensibility,  
24 it is about recklessness. Willful, wanton or reckless,  
25 they all get a charge for punitive damages including gross

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1 negligence. Recklessness is simply conscience disregard.  
2 To be honest with you, Your Honor, there's actually -- I  
3 think this is really interesting, it came up -- it didn't  
4 come out too long ago -- in Exxon Shipping vs. Baker which  
5 is a United States Supreme Court case, it says  
6 recklessness, and it gives two different things, and it  
7 says if the actor knows or has reason to know of facts  
8 which create a high degree of risk, or harm to another and  
9 proceeds to act or failed to act in conscious disregard or  
10 indifference to that risk, and the other, the actor has  
11 such knowledge or reason to know of the facts but does not  
12 realize or appreciate the high degree of risk involved,  
13 although a reasonable man in his position would do so.  
14 Under that definition of recklessness by our United States  
15 Supreme Court, which would apply here because we apply  
16 punitive damages, we still use State vs. Gamble -- the  
17 Gamble factors, our court has adopted those, under that  
18 particular definition, Your Honor, this witness, Ms. Cox  
19 said, "Yeah, it was dangerous." Yes, it was dangerous.  
20 Our own security expert says it was dangerous, Mr. Tipton  
21 said this was dangerous for him to begin this pursuit.  
22 Well, she didn't tell him to get the license plate until  
23 after the pursuit began. And that fits in the definition  
24 of both the first and the second prong, either one. And so  
25 I think that under this specific case and the facts that we

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1 have here, I will be the first to admit that there is --  
2 Mr. Boyd is put in a terrible position because he's put in  
3 this horrible untenable position of arguing for and against  
4 Derrick Jones, but they're stuck with Derrick Jones'  
5 testimony, now it's up to the jury to decide whether it's  
6 credible or not. In one sense they want to say it's true  
7 because he wasn't following them, but in everything else  
8 they want to say, no, he wasn't true, it was a lie and so  
9 unfortunately you're stuck with it. And when you have all  
10 of these factors and all of these things that they did  
11 wrong and our own security expert saying, yeah, they did  
12 wrong, did wrong, yes, they violated Wal-Mart policy over  
13 and over again, it all rises to the level where that would  
14 be something that would require a submission to the jury  
15 for their decision. The jury can decide whether there's no  
16 punitive damages or not, and we've got to prove by clear  
17 and convincing evidence, it's not even we've got to prove  
18 by preponderance of the evidence, we've got to prove by  
19 clear and convincing evidence that there's a reason to  
20 submit these punitive damages, Your Honor. And it is only  
21 after we show and meet that burden that they can come back  
22 with something and if they say we haven't, then we haven't  
23 met that burden, but it is worthy of a submission to this  
24 jury for the punitive damages and to allow the jury to  
25 decide that issue. Thank you.

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1 MR. BOYD: Your Honor, if I may briefly reply. And  
2 first, I left out one ground and I would like to supplement  
3 my motion with, we would also move for a directed verdict  
4 on the ground that the only reasonable inference to be  
5 drawn from the evidence in this case is Ms. Hancock's own  
6 negligence and recklessness was a greater than 50 percent  
7 cause of the accident, even if Mr. Jones was involved and I  
8 think that is -- there's simply no way the jury could  
9 conclude anything else. She's the one that ran off the  
10 road and crashed into the tree. He didn't lose control of  
11 his car, she had to be more negligent and reckless than he  
12 was as a matter of law. But let me go back for a moment  
13 and talk about the grounds that I argued the first time and  
14 I want to supplement a couple of things and respond to what  
15 Mr. Hood argued. The plaintiff's own expert, Mr. Gross,  
16 testified there was nothing with Derrick Jones speaking to  
17 Ms. Beckham in the parking lot or asking if he could speak  
18 to her, I do not believe the plaintiff's have presented any  
19 expert testimony that that was a wrongful act. So even if  
20 Mr. Jones was asked to go speak with Ms. Beckham by  
21 Ms. Rawlings, that is just not a wrongful act. We're  
22 talking here about very remote causes and not the  
23 foreseeable proximate cause of this accident. There has  
24 been no evidence of any violation of Wal-Mart's policy by a  
25 Wal-Mart employee asking Mr. Jones to get the tag in the

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1 parking lot or failing to call Mr. Jones back, we don't  
2 have any policy violations there. In fact, the evidence is  
3 to the contrary that there's nothing wrong with asking for  
4 the license tag. Obviously under the shock of this sudden  
5 very unusual event the mere failure within a few seconds to  
6 think clearly enough to call him back I think would not be  
7 negligence in any event. I doubt any of us in this room  
8 would have thought quickly enough to know what to do, and  
9 certainly it was reasonable for Ms. Cox to be trying to get  
10 in touch with her manager to deal with this very unusual  
11 and bizarre situation. Furthermore, the videotape and the  
12 undisputed evidence makes it clear that Mr. Jones was  
13 already pursuing and so the request to get the tag is as a  
14 matter of law not the proximate cause of his pursuit of the  
15 Hancock vehicle. If Shaun Cox had said nothing, what's  
16 going to happen? Derrick Jones is going to keep going,  
17 he's already going, and the fact that Shaun Cox in an  
18 effort to get him to stop said, "Just get the tag," or  
19 meant, "Just get the tag," is not the proximate cause of  
20 the pursuit. I would go even further, Your Honor, and say  
21 that even if somehow asking to get the tag was somehow a  
22 cause, it is a very remote cause and is equivalent to this  
23 argument they're making on the negligent hiring, that the  
24 fact that Derrick Jones was on the premises is a proximate  
25 cause of the accident. For all of those reasons we think

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1 that Wal-Mart should be dismissed from the case, and  
2 certainly the motion -- the punitive damages claim should  
3 be stricken. The plaintiff's have got to make a showing by  
4 clear and convincing evidence in their case in chief that  
5 they are entitled to punitive damages. They haven't made a  
6 clear and convincing showing, they haven't shown the  
7 reprehensibility or reckless conscience indifference to  
8 safety by Wal-Mart and Wal-Mart shouldn't be in the case  
9 and it certainly shouldn't be in the case for punitive  
10 damages.

11 MR. HOOD: Your Honor, it's just elementary. We've  
12 had expert testimony saying they've breached standards and  
13 they've breached policies and broken safety rules. As far  
14 as negligence goes, simple negligence, I think that's  
15 just -- Wal-Mart is in this thing. In regard to the  
16 punitive damages, in regard to what Mr. Boyd said, now once  
17 again they're stuck with the testimony of Mr. Jones and I  
18 want to put this on the record, and this is what he  
19 testifies before this jury: "And then it appears she's  
20 backing up and you're following her as she's backing up.  
21 Right. At that time on the walkie-talkie talking to the  
22 people in Wal-Mart telling them, 'Well, what do you want me  
23 to do?' Basically, I mean, you didn't never -- they never  
24 really gave me any distinctive instructions of what I'm  
25 supposed to do when she came out of the store so I just

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1 looked at it -- I just took the approach of I can't detain  
2 her, I can't arrest her so I'm just trying to slow her up,  
3 just trying to stall for time until they come and get her,  
4 but that didn't happen that way. When she ran to the car I  
5 followed behind her. They was trying -- she jumped in the  
6 car, they were trying to leave the parking lot so that's  
7 when I pulled in front of them. At that time that's when  
8 we backed out and we see. That's when we're going up the  
9 other side." Okay. And this is where he says, "At that  
10 time I'm on the walkie-talkie and we're telling them --  
11 they're trying to exit the parking lot, I'm behind them  
12 trying to get the license plate number and they're telling  
13 me, 'You need to get that license tag number.' Were they  
14 aware that at the time that they told you that that she was  
15 leaving the parking lot" and he said "yes." They all said  
16 they saw him leaving the parking lot, they're stuck with  
17 Mr. Jones' testimony, Your Honor, they can't get away from  
18 that. And because they're stuck with Mr. Jones' testimony  
19 and what you said -- now, the jury may say it's not  
20 credible and just like Mr. Boyd is kind of stuck with both  
21 of them I am too. So me saying certain things, we both  
22 have to kind of like say, well, you believe him here, you  
23 don't believe him there, but the bottom line is that's  
24 something for the jury to decide. And it was reckless and  
25 it was reckless for him to leave this parking lot,

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1 everybody has said that. Alpert has said this, Gross has  
2 said this, and to instruct him -- Mr. Boyd says that you  
3 can't -- he said the beginning of the pursuit was the  
4 beginning of the negligent-conduct by Mr. Jones, but there  
5 can be concurrent causes. There's a specific jury  
6 instruction about concurrent causes, and in this particular  
7 case if they do something that escalates this particular  
8 situation that escalates that is recklessness or evidence  
9 of recklessness, then that is something that should be  
10 submitted to this jury, and that's if you take Wal-Mart's  
11 position. If you take Mr. Jones' position he says, "I was  
12 told to get the license tag number before I ever talked to  
13 her," and everything was then put into motion by Wal-Mart  
14 and they never called him off. Thank you, Your Honor.

15 THE COURT: Thank you, Mr. Hood. Okay. On the issue  
16 of Wal-Mart, I do not find that the Court is able to find  
17 as a matter of law that Hancock was more than 50 percent  
18 negligent. However, I do find that there is insufficient  
19 evidence that Wal-Mart was negligent, or even if they were  
20 there is lack of proximate cause that the events were not  
21 foreseeable and I grant the motion to dismiss as to  
22 Wal-Mart on all of the grounds argued. Next motion.

23 MR. HOOD: Your Honor, I want just a clarification  
24 Your Honor. When our expert witness says --

25 THE COURT: I've already ruled.

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1 MR. HOOD: But when our expert witness said --

2 THE COURT: I've already ruled.

3 MR. HOOD: I understand that, but I'm just trying to  
4 get a clarification. When our expert witness says that it  
5 is a breach in Wal-Mart and then we have proximate cause  
6 testified to by both Gross and Alpert, how does that not  
7 meet the definition --

8 THE COURT: Mr. Hood, I've already ruled.

9 MR. HOOD: Thank you, Your Honor.

10 MR. BOYD: Your Honor, the only remaining motion we  
11 have, and I will not trouble the Court to make a motion for  
12 directed verdict on behalf of U. S. Security Associates in  
13 view of the Court's ruling about the comparative negligence  
14 offense, that would be the only ground I think we would  
15 have in regard to the accident. However, we would move for  
16 a directed verdict on the ground that the negligent hiring  
17 cause of action should be dismissed as a matter of law,  
18 because there is simply -- it's just not the proximate  
19 cause of anything. It was not foreseeable -- as a matter  
20 of law it was not foreseeable that Derrick Jones having a  
21 marijuana conviction on his record that he didn't have, or  
22 had a suspended driver's license and all of the other  
23 myriad of mistakes that were made in the negligent hiring  
24 of Mr. Jones would make it foreseeable that Mr. Jones would  
25 engage in a high speed pursuit down the highway off the

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1 premises. And we simply think that this case ought to boil  
2 down to a matter of whether Mr. Jones acting as our  
3 employee caused the accident, and if he did cause it or  
4 joined with Ms. Hancock in causing it, whether her  
5 comparative negligence bars her claim. But the negligent  
6 hiring that we've heard so much about during the trial is a  
7 rabbit trail into the bush leading no where, and as we  
8 argued at the motion for summary judgment under the  
9 standard for liability here it must be foreseeable to U. S.  
10 Security Associates that he will do something like this and  
11 we would submit to the Court that it's just not foreseeable  
12 based on the mistakes that were made in the hiring and the  
13 record that Mr. Jones had, that he is going to engage in  
14 this kind of conduct and there simply is no proximate cause  
15 relationship between Jones' prior bad acts and his actions  
16 in following Ms. Hancock from Wal-Mart premises. And we  
17 have argued, Your Honor, even a properly hired  
18 non-negligently hired employee could have made the same  
19 mistake that Derrick Jones made, and so to us the fact that  
20 he was negligently hired and had a marijuana conviction and  
21 a suspended licenses for a marijuana possession, not for  
22 bad driving -- he would have been recklessly driving in the  
23 past and caused a lot of wrecks it might be a different  
24 story. But we move for a directed verdict on that ground  
25 as to the negligent hiring cause of action.

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1 THE COURT: I will be glad to hear from Mr. Hood but I  
2 disagree with you, Mr. Boyd. I think there's sufficient  
3 evidence for that matter to go to the jury.

4 MR. HOOD: Thank you, Your Honor.

5 MR. BOYD: Thank you. That's all the motions I think  
6 we have at this time, Your Honor.

7 THE COURT: Anything else from the plaintiff?

8 MR. HOOD: Nothing.

9 THE COURT: Any chance I could get y'all before Monday  
10 to e-mail to my law clerk a proposed verdict form, proposed  
11 charges?

12 MR. MCKINNON: Sunday afternoon, Your Honor?

13 MR. BOYD: We'll give that to you Sunday afternoon.

14 THE COURT: All right.

15 MR. HOOD: I would like a motion on the record, I  
16 would like to make a motion for reconsideration of your  
17 decision in regard to Wal-Mart, just to make sure I'm  
18 preserving the record.

19 MR. MCKINNON: Can I say one thing on that issue, Your  
20 Honor?

21 THE COURT: On what issue.?

22 MR. MCKINNON: On the issue of a directed verdict on  
23 Wal-Mart, Your Honor?

24 THE COURT: Are we going to argue the motion for  
25 reconsider right now?

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1 MR. MCKINNON: Can I just put one thing on the record  
2 so that we can preserve it.?

3 THE COURT: Do we want to argue the motion for  
4 reconsideration now?

5 MR. MCKINNON: Not if you don't want me to, Your  
6 Honor.

7 THE COURT: No. I'm asking you do you want to argue  
8 it now?

9 MR. HOOD: Just get it on the record so that we can  
10 preserve it.

11 THE COURT: We can get it on the record and that will  
12 be the end of argument on it today.

13 MR. HOOD: Just put it on the record.

14 MR. MCKINNON: Your Honor, as it came out in court  
15 today Ms. Flynn signed an interrogatory response in which  
16 she said Jones was instructed by Wal-Mart to --

17 THE COURT: Was that in the plaintiff's case?

18 MR. MCKINNON: It's an interrogatory response, Your  
19 Honor, it's in the record.

20 THE COURT: Was it entered during the plaintiff's  
21 case?

22 MR. BOYD: No.

23 MR. MCKINNON: It's a pleading, Your Honor, it's in  
24 the record.

25 THE COURT: You can't introduce it as evidence; isn't

## DIRECTED VERDICT MOTION

1 that right?

2 MR. HOOD: It was not introduced as evidence in the  
3 case in chief, Your Honor.

4 THE COURT: I know. No, not in the plaintiff's case.

5 MR. HOOD: No, sir.

6 THE COURT: It was introduced in the defense case;  
7 isn't that right?

8 MR. BOYD: That's right.

9 THE COURT: I mean, am I missing something?

10 MR. HOOD: I think it goes -- just being real frank,  
11 Your Honor, I think that there has been an overwhelming  
12 amount of evidence that has been submitted that Wal-Mart  
13 was negligent, including our own security expert who said  
14 that it was a breach -- there were multiple breaches by  
15 Wal-Mart personnel. And based on that -- and I understand  
16 your ruling -- but for a reconsideration issue that there's  
17 been testimony by this particular security expert that said  
18 there were multiple breaches by Wal-Mart and in regard to  
19 that he said there was proximate cause, they testified  
20 about proximate cause about that as well and obviously that  
21 meets the supreme court's definition that requires a  
22 scintilla of evidence, and that would be our argument.

23 THE COURT: I'll let you know Monday.

24 (Court adjourned for the afternoon and resumed on  
25 Monday, April 12, 2010 at 8:45 a.m.)

## DIRECTED VERDICT MOTION

1 MS. FLYNN: Your Honor, can we discuss an issue with  
2 you about the deposition to be played this morning --

3 THE COURT: Before we do that, let's -- over the  
4 weekend I received a motion to reconsider from the  
5 plaintiff, I do not see a written motion in response to it  
6 from the defense, is that correct, Mr. Boyd?

7 MR. BOYD: That is correct.

8 THE COURT: Do you seek additional arguments other  
9 than what is in the motion?

10 MR. MCKINNON: No, Your Honor. I will rely on the  
11 written motion, it was some 22 pages in length.

12 THE COURT: I will say the motion is a great motion,  
13 it appears a lot of work was put into it, very well  
14 written -- again, as I said, a great motion but I still  
15 deny the motion.

16 MS. FLYNN: We have some issues. Dr. Mandell's  
17 deposition that we are going to play in the video but there  
18 is one issue that I think -- we can do it now or at a later  
19 time.

20 THE COURT: Who do you plan on -- is it going to  
21 happen this morning?

22 MR. BOYD: Your Honor, we plan to call as the first  
23 witness Archie Bryant, then our expert --

24 THE COURT: Let's make sure and do it before the video  
25 is played.

1 MR. BOYD: I don't have any plans to argue about that.

2 MR. HOOD: One other thing, we would object to the  
3 curative instruction just for the record about Wal-Mart.

4 MR. BOYD: As would the defendant, and again would  
5 renew our request that the Court would tell the jury that  
6 you have dismissed Wal-Mart from the case.

7 THE COURT: I understand both arguments and deny both  
8 requests.

9 (A recess was taken.)

10 MR. BOYD: At this time, Your Honor, the defense would  
11 move for a directed verdict in their favor and would renew  
12 the motions previously made at the closing of the  
13 plaintiffs case on the grounds that there is no causal  
14 relation as a matter of law between the negligent hiring of  
15 Derrick Jones and this accident, rather the negligent  
16 hiring of Mr. Jones was merely a remote cause or a  
17 condition and was not a direct and proximate cause of the  
18 accident as a matter of law. We would further move for a  
19 directed verdict on the ground that the plaintiff's  
20 comparative negligence was as a matter of law a greater  
21 than 50 percent cause of the accident and her resulting  
22 death and we would move for a directed verdict on the  
23 grounds that there is no evidence on conscience pain and  
24 suffering in the record. Furthermore, Your Honor, we would  
25 move to strike the negligent entrustment claim, which is a

1 for.

2 THE COURT: Can't we tell them that?

3 MR. BOYD: Sure.

4 MR. MCKINNON: We would definitely oppose that.

5 THE COURT: You want the verdict form to say that?

6 MR. MCKINNON: We do not want it to say that.

7 THE COURT: I'm sorry, I thought you wanted them both  
8 as joint defendants.

9 MR. MCKINNON: No. We want a verdict against Jones  
10 and against U. S. Security separately, that's what we've  
11 been arguing for.

12 THE COURT: I understand that, but on which cause of  
13 action?

14 MR. MCKINNON: Well, obviously the negligent hiring,  
15 negligent retention, negligent supervision and those apply  
16 only to the defendant U. S. Security. But as to -- well,  
17 the other causes would apply only to Jones, right, so that  
18 really --

19 THE COURT: Yeah, the negligent --

20 MR. MCKINNON: What cause of action do you think  
21 applies to both defendants, Howard?

22 MR. BOYD: The first cause of action is a wreck case  
23 essentially where the plaintiff alleges that Jones was  
24 negligent and/or reckless in causing the vehicle accident.  
25 We are vicariously liable for whatever he did so there

1 can't be a verdict against Derrick Jones, if it's against  
2 Derrick Jones it is against us.

3 THE COURT: Well, there can be a verdict against him  
4 but --

5 MR. BOYD: Not if we're conceding respondeat superior.

6 MR. MCKINNON: There's two sets of claims, Your Honor.  
7 One applies only to Jones, the negligence for the accident,  
8 they are on the hook financially respondeat superior. But  
9 the question is not did U. S. Security drive the truck,  
10 it's did Jones, and there's separate claims negligent  
11 hiring, retention, supervision that apply to the security  
12 company and not to Jones. I don't think there's any cause  
13 of action where they have to apply to the same defendant,  
14 is there?

15 MR. BOYD: I have never had a case where the  
16 employer's name doesn't go on the verdict form when the  
17 claim is its employee acting -- against its employee acting  
18 within the course and scope of the duty. So to me the  
19 first cause of action is against the defendants and the  
20 second cause of action is against only U. S. Security. And  
21 it's fine if the Court wants to use defendants as opposed  
22 to Jones and U. S. Security to make it simpler, but it's  
23 definitely against both and we just again do not want this  
24 jury to think they can go crazy and award some huge award  
25 against Jones that we haven't got to pay.

1 MR. BOYD: I think that's the law.

2 MR. HOOD: One more thing, you and Mr. Hood had a long  
3 colloquy about the elements of negligence, I just wanted to  
4 make sure for the record that we have a directed verdict  
5 motion that you have denied on the issue of negligent  
6 hiring. You and Mr. Hood went through all of the elements  
7 arguing -- he said they admitted negligence yesterday but  
8 if that has not been formally done --

9 MR. BOYD: We certainly admit we negligently hired  
10 Derrick Jones, we do not admit that was the proximate cause  
11 of this accident and the wrongful death of Ms. Hancock.

12 MR. MCKINNON: We just want to make sure, Your Honor,  
13 that we've made that directed verdict motion and Your Honor  
14 has denied it.

15 THE COURT: I just didn't remember Mr. Hood making a  
16 motion.

17 MR. MCKINNON: I'll make a motion for a directed  
18 verdict on the issue of negligent hiring, Your Honor.

19 THE COURT: So you're asking for the Court to make a  
20 finding, a ruling that as a matter of law the defendant --

21 MR. MCKINNON: Negatively hired Derrick Jones.

22 MR. BOYD: I have told the jury we negligently hired  
23 Mr. Jones, there's no issue about that.

24 THE COURT: I know you have.

25 MR. MCKINNON: But they're arguing -- we would want

## CLOSING ARGUMENTS

1 was driving too fast or otherwise failed to maintain proper  
2 control of her vehicle. Now, let's talk a little bit about  
3 the real issues. As I talked about, the negligent hiring  
4 was a mess. It was a combination of mistakes. Bill  
5 Thompson misread the drug test. Mr. Hood makes a big deal  
6 about the fact we didn't call Bill Thompson to testify.  
7 Why would we do that? He has already admitted and we've  
8 admitted he misread the drug test. Why would I call  
9 Mr. Thompson and say, "Mr. Thompson, did you misread the  
10 drug test? Yes, I did. Thank you, Mr. Thompson, no  
11 further questions." Why would I waste your time doing  
12 that? No reason to do that. He misread the test, it was  
13 an innocent mistake, he just made a mistake. As a result  
14 Derrick Jones should have been -- the hiring process should  
15 have been terminated. Again, though, the fact that he was  
16 hired and on the job has nothing to do as a proximate cause  
17 of this accident, it was a mere remote condition and did  
18 not cause the accident. Negligent hiring, as Judge  
19 Goldsmith will explain to you, turns on the knowledge of U.  
20 S. Security, and, of course, U. S. Security didn't have any  
21 knowledge of his marijuana conviction, and the  
22 foreseeability of the harm to third parties. Without that  
23 you've got to have some prior incident where Derrick Jones  
24 had been misconducting himself in this manner before that  
25 we -- before we can be liable. There is absolutely no

## CLOSING ARGUMENTS

1 evidence that Derrick Jones had ever driven his vehicle  
2 recklessly on his driving record on other than the  
3 marijuana possession which led to his suspension 30 days  
4 after he was hired, the only moving violations he had was a  
5 speeding ticket for 10 miles over the speed limit and  
6 failing to use a turn signal. There was absolutely no  
7 evidence of any record of reckless driving in Derrick  
8 Jones' past, and even had U. S. Securities known about his  
9 driving record they would have no reason to foresee he  
10 might recklessly pursue someone off the premises at  
11 Wal-Mart that evening. Now, marijuana and lack of a valid  
12 driver's license -- and by the way, the lack of the  
13 driver's license didn't occur until the Saturday before  
14 this incident, so Derrick Jones as you saw had a valid  
15 driver's license almost the entire time he was working at  
16 Wal-Mart. No evidence despite the fact his license was  
17 suspended that he could not drive a vehicle. This is not  
18 the kind of case where someone is entrusting a vehicle to  
19 someone who cannot drive. Now, as you know we have  
20 admitted that Derrick Jones should not have pursued Donna  
21 Beckham and Alice Hancock off of the premises at Wal-Mart.  
22 I told you to start with he was negligent in doing that, I  
23 am still telling you he was negligent in doing that, he  
24 should not have done that. But when Mr. Hood was talking  
25 about the undisputed facts of this case, what fact did he

## CLOSING ARGUMENTS

1 status of security officers he needs to take up that with  
2 the South Carolina Law Enforcement Division because SLED  
3 says that is perfectly okay. And as you heard Mr. Bryant  
4 testify in every other case that he's submitted  
5 applications to SLED, hundreds over the years, the response  
6 from SLED comes back prompt, in this case unfortunately it  
7 did not. But it was perfectly okay under South Carolina  
8 law for Mr. Jones had we not negligently hired him to be  
9 working for 20 probationary days, there's nothing wrong  
10 with that, that's a red herring in this case. He talks  
11 about gambling with someone's life. Again, SLED says it's  
12 okay for someone to work on probation that can't carry a  
13 firearm, they're not going to be doing duties that would be  
14 putting people at risk and SLED says pending our review and  
15 our getting back to you it's okay for someone to work as a  
16 probationary employee. Unfortunately the normal process  
17 didn't work, and as I told you to start with, ladies and  
18 gentlemen, this is a case like Murphy's Law, everything  
19 that could go wrong did go wrong but it's never happened  
20 before or since and this is just a very unusual and  
21 unfortunate case. The handwriting was different on the two  
22 drug screens. Well, the plaintiff likes the first drug  
23 screen that Mr. Jones failed, he doesn't like the one he  
24 passed on June 26th of 2006. Different people may have  
25 written if the handwriting is different, doesn't mean

## CLOSING ARGUMENTS

1 aspect of this that the defendants have no liability  
2 because Derrick Jones did not cause the accident and  
3 Ms. Hancock did and that would be the end of your  
4 consideration of that issue. But if you disagree with me  
5 and you find that Derrick Jones somehow contributed to the  
6 accident then you need to do the comparative negligence  
7 analysis. We would submit to you that a reasonable  
8 allocation to that would be 20 percent to Derrick Jones and  
9 80 percent to Mr. Hancock. She was much more at fault in  
10 this situation than Mr. Jones was. He was trying to do a  
11 good thing, he was doing it very badly, he was trying to  
12 get the license tag he thought he was supposed to get.  
13 Ms. Hancock meanwhile is deliberately fleeing assuming the  
14 risk of her own injury and driving recklessly down the road  
15 until she wrecks and we would suggest that allocation.  
16 Now, let's go to the negligent hiring claim which is number  
17 six on the form, and obviously as we have told you all  
18 along in this case we negligently hired Derrick Jones so  
19 check yes for that, I agree with Mr. Hood on that. Did the  
20 negligent hiring cause the accident? Absolutely not. All  
21 the negligent hiring did was put Mr. Jones on the scene  
22 that night, and as I explained to you earlier and Judge  
23 Goldsmith will explain to you, that is not the direct and  
24 efficient proximate cause of this incident. It didn't do  
25 anything until Ms. Jones -- or Ms. Hancock made the

## JURY CHARGE

1 speaking there are two kinds of evidence presented during a  
2 trial, direct evidence and circumstantial evidence.  
3 Circumstantial evidence is proof of a chain of facts and  
4 circumstances indicating the existence of a fact. It is  
5 evidence which immediately establishes collateral facts  
6 from which the main fact may be inferred. Circumstantial  
7 evidence is based on inference and not on personal  
8 knowledge or observation. It is proof that does not  
9 actually establish the fact in question but that asserts or  
10 describes something else from which you may either  
11 reasonably infer the truth of the fact or at least  
12 reasonably infer an increase in the probability that the  
13 fact is true. For substantial evidence to be sufficient to  
14 warrant a finding of a fact, the circumstances must lead to  
15 that fact with reasonable certainty. The facts and  
16 circumstances should be considered in the light in the  
17 ordinary experience and common sense. The existence of a  
18 fact cannot be based on speculation, surmise or conjecture.  
19 The law makes absolutely no distinction between the weight  
20 or value to be given to either direct or circumstantial  
21 evidence, nor is a greater degree of certainty required of  
22 circumstantial evidence than of direct evidence. Now, the  
23 plaintiffs in this case claim that the defendants were  
24 negligent and should compensate the plaintiff for the  
25 injuries suffered by the plaintiff as a result of the

## JURY CHARGE

1 negligence of the defendants. In order to prove that the  
2 defendants were negligent, the plaintiffs must prove by a  
3 preponderance or greater weight of the evidence four  
4 things. First, the plaintiff must prove by a preponderance  
5 or greater weight of the evidence that the defendant owed  
6 the plaintiff a duty of care. Next the plaintiff must  
7 prove by a preponderance or greater weight of evidence that  
8 the defendant breached that duty by a negligent act or  
9 omission. Negligence simply means that a person has done  
10 something that a reasonable person would not have done or  
11 has failed to do something that a reasonable person would  
12 have done in the same situations. A plaintiff must also  
13 prove by a preponderance or greater weight of the evidence  
14 that the plaintiff suffered damages as a result of the  
15 defendants' breach of duty. Finally, the plaintiff must  
16 prove by a preponderance or greater weight of the evidence  
17 that the damages were proximately caused by the defendants'  
18 breach of duty. Proximate cause is something that produces  
19 a natural chain of events which in the end brings about the  
20 injuries. It is the direct cause of the injury. To prove  
21 that the defendants' negligence proximately caused the  
22 plaintiff's injury, the plaintiff must first prove  
23 causation in fact, and this is proven by showing that the  
24 injury would not have occurred but for a defendant's  
25 negligence. The plaintiff must also prove legal cause.

## JURY CHARGE

1 Legal cause is proven by showing that an injury was  
2 foreseeable, this means that the injury occurred as a  
3 natural and probable consequence of a defendant's  
4 negligence. The plaintiff must prove that some injury from  
5 the defendant's negligence was foreseeable, but does not  
6 have to prove that the particular injury that occurred was  
7 foreseeable. However, a defendant cannot be held  
8 responsible for things which could not be expected to  
9 happen. Proximate cause does not mean the only cause. The  
10 defendant's act can be the proximate cause of a plaintiff's  
11 injury if it was at least one of the direct or concurring  
12 causes of the injury. The defendants claim that the  
13 plaintiff's own negligence proximately caused the  
14 plaintiff's damages and injuries. If you find that the  
15 defendants' were negligent then you must decide whether the  
16 plaintiff was also negligent. The defendant must prove by  
17 a preponderance or greater weight of the evidence that the  
18 plaintiff breached a duty of care which proximately caused  
19 the plaintiff's injuries. The same law which I have told  
20 you to use in deciding whether a defendant was negligent  
21 should be used in deciding whether the plaintiff was  
22 negligent. If you find that the negligence of both the  
23 plaintiff and the defendant proximately caused the  
24 plaintiff's injuries you must then decide how much the  
25 negligence of the plaintiff contributed to the plaintiff's

## JURY CHARGE

1 injuries and how much the defendant's negligence  
2 contributed to the plaintiff's injuries. In deciding the  
3 percentages of negligence of the plaintiff and of the  
4 defendant you may consider among other things the following  
5 factors: Whether each party's conduct was only inadvertent  
6 or whether it was engaged in or with an awareness of the  
7 danger involved, the magnitude of the risk created by each  
8 party's conduct including the number of persons endangered  
9 and possible severity of injury, the significance of a goal  
10 that each party was trying to reach and the need to achieve  
11 the goal in that manner, each party's capabilities and  
12 abilities to realize and eliminate the risks involved, the  
13 particular circumstances confronting each party at the time  
14 the conduct occurred, the relative closeness of the casual  
15 relationship of the negligent conduct of the defendant and  
16 the harm to the plaintiff and whether the conduct of either  
17 party involved a violation of a statute or a regulation.  
18 The plaintiff must also prove legal cause, and that is  
19 proved by showing that the injury was foreseeable. This  
20 means that an injury occurred as a natural and probable  
21 consequence of the defendant's negligence. Plaintiff must  
22 prove that some injury from the defendant's negligence was  
23 foreseeable but does not have to prove that the particular  
24 injury occurred was foreseeable. Although a person is not  
25 required by law to act, if the person voluntarily

## JURY CHARGE

1 undertakes an act, the person has the duty to use due care.  
2 If you find that the plaintiff impliedly assumed risks  
3 inherent in the activity there is no duty to the plaintiff.  
4 In order to show that the plaintiff assumed the risk it  
5 must be shown that the plaintiff had knowledge of the facts  
6 constituting the dangerous condition, knew the condition  
7 was dangerous, appreciated the nature and extent of the  
8 danger and voluntarily exposed herself to the danger.  
9 Necessarily, ladies and gentlemen, you must determine the  
10 credibility of witnesses who have testified in this case,  
11 and this simply means the believability. It becomes your  
12 duty as jurors to evaluate the evidence and determine which  
13 evidence convinces you of its truth. In determining the  
14 believability of the witnesses you may believe one witness  
15 over several witnesses or several witnesses over one  
16 witness. You may believe part of the testimony of a  
17 witness and reject the remaining part of the testimony of  
18 that very same witness. You may believe the testimony of a  
19 witness in its entirety or reject the testimony of a  
20 witness in its entirety. You may consider whether the  
21 witness had any interest in the results of the trial and  
22 whether the witness is prejudiced towards either the  
23 plaintiff or to the defendant, as well as the opportunity  
24 for the witness to have seen the matters and things about  
25 which the witness may have testified, and the way the

## JURY CHARGE

1 person who is not authorized to do so in violation of the  
2 provisions of the laws of this state, and no person shall  
3 drive a motor vehicle upon a highway of this state unless  
4 that person has a valid motor vehicle driver's license  
5 issued to him under provisions as provided by law. I  
6 further tell you that the driver of a motor vehicle should  
7 not be allowed to follow another vehicle more closely than  
8 is reasonable and prudent having due regard for the speed  
9 of such vehicle and the traffic upon the condition of the  
10 highway. Failure to follow statutory rules is negligence  
11 as a matter of law. If you find that a defendant failed to  
12 follow these statutory rules you must then decide whether  
13 the failure proximately caused a plaintiff's injury. The  
14 violation of a statute does not in and of itself constitute  
15 recklessness, willfulness and wantonness, however, it may  
16 be considered as evidence in deciding whether the defendant  
17 was reckless, willful and wanton. I tell you that an  
18 employer can be held liable for negligent hiring and  
19 employment by failing to select an employee fit or  
20 competent to perform the services of employment. The basis  
21 of responsibility under the negligent hiring doctrine is  
22 the employer's own negligence in hiring an incompetent  
23 employee who the employer knew or should have known, or by  
24 the exercise of reasonable or ordinary care should have  
25 known was incompetent or unfit, thereby creating an

## JURY CHARGE

1 unreasonable risk of harm to another. An employer may also  
2 be directly liable to a third person for its negligence in  
3 the training and supervision of its employees to invoke the  
4 theory of liability based on negligent supervision. It is  
5 necessary to show by the greater weight of evidence that  
6 the employer knew or should have known that its employee  
7 behaved in a dangerous and otherwise incompetent or unfit  
8 manner, and that the employer armed with this actual or  
9 constructive knowledge failed to adequately supervise the  
10 employee. If an employer is in some way negligent in the  
11 hiring, supervising, retaining or assigning of an employee  
12 with the knowledge that the employee or agent was in some  
13 way unfit, incompetent or unworthy to perform the work of  
14 the employer, or if the employer fails to use the same  
15 degree of care that normally would be required to discover  
16 this unfitness, such negligent supervision or negligent  
17 hiring constitutes an independent basis for liability of  
18 the employer if it is shown by the greater weight of the  
19 evidence. Although it's stated, an employer can be held  
20 liable for negligent hiring, training and supervision of an  
21 employee, the plaintiff is still required to prove by the  
22 greater weight or preponderance of the evidence that the  
23 employer, U. S. Security in this case, that the employer's  
24 negligence in the hiring, training or supervision of the  
25 employee, Derrick Jones, that that was nevertheless a

## JURY CHARGE

1 proximate cause of the accident and the resulting death of  
2 Ms. Hancock. I tell you that a standard of care in a given  
3 case may be established and defined by a defendant's own  
4 policies and guidelines. In this case U. S. Security  
5 agreed to some guidelines for private security contractors  
6 as part of their written contract, and these guidelines  
7 include, number one, the patrol vehicle should not leave  
8 Wal-Mart property except for gas or maintenance. Number  
9 two, security officers are not a policing force and should  
10 not be used as one. U. S. Security issues manuals to  
11 security guards like Derrick Jones. The manual includes  
12 the following rules: Number one, the security officer is  
13 not a police officer nor does he have any police powers of  
14 arrest. A security officer on duty cannot leave a post for  
15 any reason until properly relieved until there is no  
16 schedule relief shift. Number three, relieving or  
17 abandoning your post may result in immediate termination.  
18 If you find, ladies and gentlemen, that Alice Hancock  
19 experienced conscious pain and suffering as a result of the  
20 injuries that she received prior to her death, you may  
21 award damages for such pain and suffering. I tell you that  
22 pain and suffering compensates a plaintiff for physical  
23 discomfort and the emotional response to the sensation of  
24 pain caused by the injury itself. There's no definite  
25 standard by which to compensate a plaintiff for pain and

## JURY CHARGE

1 maintain a proper lookout, keep her vehicle under control,  
2 driving an appropriate speed, et cetera, and I know we had  
3 submitted something on that.

4 THE COURT: Let's see. Maybe I didn't make it  
5 clear -- let me look at my notes. On the 12, 13 and 14,  
6 maybe I didn't announce it but I had decided not to give  
7 that charge on remoteness on 12, 13 and 14.

8 MR. BOYD: I think you had told us that, Your Honor, I  
9 think I was just excepting to the charge to make the record  
10 clear that we would except to the charge on those  
11 particular. And then in addition our requested charges  
12 number 22, 23, 24, and 25, I don't think the comparative  
13 negligence --

14 MR. HOOD: He didn't do comparative negligent. Then  
15 22, 23, and 24 were the motorist regulations we believe  
16 that the Court should instruct the jury on regarding Ms.  
17 Hancock.

18 MR. MCKINNON: Those are all proper lookout charges,  
19 and my recollection was Your Honor did say you would charge  
20 proper lookout language from your own charge.

21 THE COURT: I think I did, I'm not sure I did, though.  
22 Did I?

23 MR. BOYD: I did not hear that charge.

24 THE COURT: I think I dropped the ball. I've got that  
25 issue to resolve. What other issues can we resolve?

## JURY CHARGE

1 MR. MCKINNON: Only, Your Honor, just want to make  
2 sure we object to the verdict form on the record, that we  
3 don't believe that the questions -- that the first question  
4 should say defendants, it should say Derrick Jones only  
5 under the James case.

6 MR. HOOD: Or both.

7 THE COURT: Say that again.

8 MR. HOOD: That it needs to say defendant U. S.  
9 Security and Derrick Jones or just defendant Derrick Jones.  
10 Because it is not identifying Derrick Jones who actually  
11 was the person that was involved in that particular  
12 accident, Your Honor.

13 THE COURT: Okay.

14 MR. MCKINNON: Also, Your Honor, under the Longshore  
15 case and the James case question two should not say stop  
16 and deliberate no further. We could get a negligent hiring  
17 verdict without the negligence verdict. And we also  
18 believe, Your Honor, that on the comparative negligence  
19 question five that the proper -- it should say Derrick  
20 Jones because that is particularly to the negligence cause  
21 of action.

22 THE COURT: Hold on one second. You're right, that  
23 has to do -- yeah, you're right.

24 MR. BOYD: Hold on a second. If we didn't proximately  
25 cause the injury the negligent hiring is negligent in the

## JURY CHARGE

1 air and so they should stop.

2 MR. MCKINNON: That is exactly what Longshore says is  
3 not the case.

4 THE COURT: I see what you're saying there. In other  
5 words let's suppose they come back and say that -- all  
6 right, let's suppose they come back and say that Jones did  
7 nothing wrong, zero, then where are we?

8 MR. MCKINNON: Our position is the verdict form -- we  
9 should have a negligent hiring verdict regardless under the  
10 Longshore case. In that case they zeroed them on the  
11 negligence case and the court of appeals said --

12 MR. BOYD: I just disagree and if that happened and  
13 went up to the court of appeals Longshore would no longer  
14 be good law, I promise you.

15 THE COURT: They didn't award damages but they did say  
16 that there was --

17 MR. MCKINNON: The negligence was zero damages was the  
18 verdict on --

19 THE COURT: Right. But they found --

20 MS. FLYNN: There was negligence.

21 MR. MCKINNON: With no damages.

22 THE COURT: Yeah, they found negligence, right? They  
23 found negligence and proximate --

24 MR. MCKINNON: 50/50 comparative --

25 THE COURT: Which is different than what is being

## JURY CHARGE

1 proposed here. Okay. You're talking about just that one  
2 sentence that says it's a separate cause of action  
3 unrelated --

4 MR. MCKINNON: It says stop and deliberate no further.

5 THE COURT: -- which makes you think that you could  
6 have the right to bring a negligent hiring action by itself  
7 without having any damages.

8 MR. MCKINNON: That is our position, yes.

9 THE COURT: I know it says that, I can't possibly  
10 believe that the law means that, so if they find no  
11 negligence and no proximate it's my understanding of the  
12 law is that would end the case.

13 MR. MCKINNON: And we understand your ruling.

14 MR. BOYD: And Mr. McKinnon at the motion for summary  
15 judgment hearing did finally concede that he had to prove  
16 the negligent hiring caused the accident.

17 (Break in proceedings.)

18 MR. BOYD: Your Honor, in that regard we would also  
19 except to the Court's failure to charge our request to  
20 charge 29 and 30. I think you decided you weren't going to  
21 do it but I'm just excepting for the record.

22 MR. MCKINNON: Wait a minute, Howard, I think this was  
23 by agreement they were not going to be charged.

24 MR. BOYD: 18, 19, 35 and 36.

25 MR. MCKINNON: Wait, this was by agreement. The

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STATE OF SOUTH CAROLINA  
COURT OF COMMON PLEAS  
COUNTY OF LANCASTER

Travis Roddey, PR of the Estate of Alice Beckham, deceased  
vs.  
Wal-Mart Stores East, L.P.; U.S. Security Associates, Inc.

Camden, South Carolina  
October 25, 2016  
Before the Honorable G. Thomas Cooper

APPEARANCES

For the Plaintiff: Randy Hood, Whitney Harrison  
For the Defendants: Howard Boyd, Stephanie Flynn

Reported by: Michael C. Watkins  
Official Court Reporter

1           THE COURT: I have been over your pretrial motions. I  
2 don't have the benefit of having pulled the original file,  
3 don't have the complaint and the answers, or amended  
4 complaint or whatever that was filed, but I have been  
5 through your motions and I asked Mike to be here today.  
6 Mike is going to be the -- of course, he's done it once, he  
7 will do it again, so I thought we would try to get some of  
8 these motions decided and out of the way so that you'll  
9 know kind of where we are going when we get to trial. Of  
10 course, this is a -- I don't know how you dealt with, or  
11 how Judge Goldsmith dealt with the issue of the fact that  
12 Wal-Mart probably touches the lives of everybody in the  
13 rural community, or semi-rural community, and that somehow  
14 you went through the process of selecting a jury. I don't  
15 have any voir dire from you, don't know what you -- I know  
16 we talked about a questionnaire and I sort of said I wasn't  
17 too much in favor of that, but I assume you're going to  
18 have some voir dire and I would like to have it so we can  
19 sort of get a handle on it and plan on how to deal with  
20 that. How long did the jury selection take you the first  
21 time around?

22           MR. BOYD: We had a pretty extensive voir dire, and I  
23 want to say maybe a couple of hours. We had a couple of  
24 issues that we'll try to remedy this time. We had a juror  
25 who in response to our question about relatives and lawyers

1 and who you might know did not speak up. It turns out her  
2 boyfriend was being represented by Randy's firm, but  
3 technically I guess she was right, that didn't come within  
4 the question. But in any event --

5 MR. HOOD: We didn't know that.

6 MR. BOYD: But other than that it went pretty  
7 smoothly. And you're right, there were a lot of people  
8 spoke up having dealt with Wal-Mart --

9 THE COURT: If anybody had ever dealt with Wal-Mart I  
10 expect everybody would stand, but I've had that happen  
11 before, too, but we'll deal with it.

12 MR. BOYD: But we'll get you the voir dire, we'll do  
13 that pretty quickly.

14 MR. HOOD: Would you say Friday you would like that or  
15 by tomorrow or Thursday?

16 THE COURT: I'm still in Winnsboro, it's Tuesday.  
17 Yeah, I'm going to ask you for some other things, let's  
18 hold that and I will try to get everything wrapped up. I'm  
19 on a seven -- the week starting the 7th I'll be out of the  
20 country so we need to get stuff pretty well in hand by that  
21 time. I will be here this week and next week and then I go  
22 on this short vacation. All right. The way I'm looking at  
23 what you've provided me so far, I'm just prepared for the  
24 plaintiff to go make your motions and you make your motions  
25 and we'll take them one at a time. All right?

1           MR. HOOD: Yes, sir. I think the first one, though --  
2 did you want to address the negligent hiring?

3           MR. BOYD: Negligent hiring is probably the logical  
4 first one. We had moved, as you know, to exclude that  
5 cause of action from the retrial. It's a huge issue and  
6 obviously depending on the Court's ruling will have a  
7 significant effect on the trial. But our position on that  
8 is very simple as you have seen from the papers that we've  
9 submitted, that cause of action was tried, it was decided  
10 by the jury, it only goes against U.S. Security Associates,  
11 Wal-Mart had nothing --

12          THE COURT: Do you agree it has nothing to do with  
13 Wal-Mart?

14          MR. HOOD: Sir?

15          THE COURT: Do you agree that it has nothing to do  
16 with Wal-Mart?

17          MR. HOOD: Well, I mean, Wal-Mart -- to the extent  
18 of --

19          THE COURT: Negligent hiring.

20          MR. HOOD: Negligent hiring? No. Wal-Mart did not  
21 participate in the hiring. Sorry.

22          THE COURT: That's good.

23          MR. HOOD: And to us the only issue on appeal was  
24 whether the directed verdict in favor of Wal-Mart on the  
25 other cause of action, the pursuit cause of action that

1 Wal-Mart they say was involved in, and the Court didn't  
2 have negligent hiring before it on appeal, and therefore we  
3 think that is res judicata and it's over and done with.  
4 We've tried that cause of action and won it. The Supreme  
5 Court certainly can't revive a cause of action that has not  
6 been appealed and has been decided by the jury, and they  
7 did not have jurisdiction of the negligent hiring cause of  
8 action in order to remand it. So for all of those reasons  
9 we believe negligent hiring is gone. And then finally  
10 obviously as we argued in our papers, alternatively if the  
11 Court disagrees with that we would move for summary --  
12 would renew our motion for summary judgment on that cause  
13 of action, because the negligent hiring had nothing to do  
14 with the pursuit. And it was certainly not foreseeable to  
15 U.S. Security Associates that because Derrick Jones smoked  
16 marijuana or didn't have a driver's license or had not  
17 answered accurately his employment or his arrest record  
18 that he would engage in some pursuit of a motor vehicle  
19 leaving the Wal-Mart parking lot.

20 THE COURT: What's the other cause of action against  
21 U.S. Security?

22 MR. BOYD: There are two causes of action, the  
23 negligent pursuit --

24 THE COURT: Pursuit.

25 MR. BOYD: -- by Jones, the negligent pursuit, and

1 then the negligent hiring in the other.

2 THE COURT: Pursuit and hiring. I assume then that  
3 you agree with Judge Pleicones in his descent.

4 MR. BOYD: Well, I agreed with Justice Pleicones and  
5 Justice Kittredge on the decision by the Supreme Court, I  
6 thought they made the wrong decision on the --

7 THE COURT: Well, it says, "I'm unable to determine  
8 why the majority concludes without discussions that USAA  
9 and Jones should again face a jury trial on the possibility  
10 of liability."

11 MR. BOYD: Well, they were talking about the pursuit  
12 cause of action, they were not talking about negligent  
13 hiring, which was not before the Supreme Court. What  
14 the -- it was judge -- one of the judges on the Court of  
15 Appeals, Judge Short, I think, came up -- or maybe -- I  
16 can't remember it, I think it was Judge Short came up with  
17 the idea that because U.S. Security Associates won on the  
18 pursuit cause of action at trial we should not be subject  
19 to retrial on that cause of action.

20 THE COURT: Now, when you say won on the pursuit cause  
21 that was because of comparative issue?

22 MR. BOYD: That's right, 65/35. And the jury found  
23 obviously both Jones and Hancock were negligent in the  
24 race, or the pursuit, whatever you want to call it. But in  
25 any event, only Justice Pleicones and Kittredge agreed with

1 Judge Short on that issue, so we now agree that we have to  
2 retry the pursuit cause of action as much as I would like  
3 not to. But on the negligent hiring, that to me is really  
4 simple and straight forward. That cause of action only  
5 involved U.S. Security Associates, did not involve the  
6 issue on appeal with Wal-Mart, it was not appealed after a  
7 jury verdict and therefore it is the law of the case res  
8 judicata, whatever you want to say. But certainly we don't  
9 have to retry that after we won that the first time around  
10 fair and square.

11 THE COURT: How about it, Mr. Hood?

12 MR. HOOD: I'm going to let Whitney argue that.

13 THE COURT: Okay, Whitney.

14 MS. HARRISON: First I think it's important to note  
15 that it's not just negligent hiring, it's negligent  
16 supervision, retention and entrustment, and so I think it  
17 does involve Wal-Mart as to the second issue. When I look  
18 at this case I think of it as a plain reading of what the  
19 Supreme Court said, and they decided to reverse and remand  
20 this matter for a new trial giving no limitation as to the  
21 causes of action. And I think that when you read on page  
22 ten of the opinion Justice Toal wrote, not only does she  
23 believe that the only relief that is possible is a new  
24 trial as to all defendants, she actually acknowledges the  
25 fact that there is this second cause of action. And so I

1 think it's significant that she's recognizing that we have  
2 both of these causes of action in play, and that, you know,  
3 it certainly is not a normal circumstance to have a new  
4 trial as to all defendants, but this is what they came up  
5 with. And I think that Mr. Boyd's concerns about, you  
6 know, the fairness and res judicata, I believe that's  
7 exactly what Chief Justice Pleicones was writing in his  
8 dissent and what Justice Kittredge was concurring with,  
9 this idea that it doesn't seem fair to them, why you  
10 require these defendant to do this again. However, I think  
11 through that conversation we know that the majority getting  
12 a 3-2 decision believed that this was the proper recourse.  
13 I also think it's important that we recognize that the  
14 Supreme Court, if they wanted to have a limitation as to  
15 the new trial, they could have given a lower tribunal  
16 instruction. We know in this past year the Supreme Court  
17 in granting a new trial in Allegro as well as in the Hilton  
18 versus Claycord (phonetically) cases, they've actually  
19 granted a new trial but they've provided explicit  
20 limitations as to what causes of action will be addressed.  
21 And so I think that without having any specific language as  
22 to what the limitations on a new trial are, it explicitly  
23 shows the intent of the Supreme Court to give a new trial  
24 outright. Also I think we have to recognize that these  
25 kind of appellate issues that are being discussed were more

1 appropriate for a petition for rehearing under Rule 221,  
2 and that if there is a concern about the relief that was  
3 being granted from the Supreme Court, that conversation  
4 should have taken place before those five justices, and in  
5 fact, the defendants did file a petition for rehearing, and  
6 in the fourth argument that they made in that petition they  
7 raise issues of preservation and appealability and whether  
8 or not issues were properly before the Supreme Court. That  
9 argument was denied in a 3-2 decision by the Supreme Court,  
10 and accordingly they lost that right in my opinion for --

11 THE COURT: Is that a reported opinion?

12 MS. HARRISON: Well, it's in the petition for  
13 rehearing that's included in the exhibit packet, it's just  
14 a straight signature block. But upon -- I think --

15 THE COURT: Which exhibit is it so I don't have to  
16 look through?

17 MS. HARRISON: Yes, sir. I believe that it is Exhibit  
18 G. And so I think that denial ended this conversation as  
19 to appealability. But to the extent that you do want to  
20 get into conversations about appealability and  
21 preservation, when we look at the transcript of the  
22 directed verdict we know that defense counsel raises  
23 concerns over negligence. They moved for a DV, and the  
24 trial judge grants that DV on two issues. Mr. Hood on  
25 three separate occasions after that time got up trying to

1 object, trying to address those issues, and Judge Goldsmith  
2 said, "I've already ruled." And we know from State v.  
3 Douglas, a 2004 Court of Appeals opinion, and it's just the  
4 well settled traditional practice of you can only object so  
5 many times. And so to the extent we're arguing about  
6 whether or not an objection was made or whether or not --  
7 what the directed verdict encompassed, we know that  
8 arguments were made by Mr. Hood, he attempted to address  
9 that. But at the end of the day the Supreme Court had the  
10 opportunity to hear this argument. In their respondent's  
11 brief in a footnote on page 12, which I can provided you in  
12 the brief, defendants make an argument that this case  
13 should not involve a new trial as to the negligent hiring  
14 and retention cause of action. That issue again was before  
15 the Supreme Court, they chose to address it in the means of  
16 excluding this argument, instead just say new trial with no  
17 limitation, and as a result I believe that the negligent  
18 cause -- or negligent hiring cause of action is properly  
19 before the circuit court.

20 MR. BOYD: Your Honor, if I may --

21 MR. HOOD: Were you finished?

22 MS. HARRISON: Well, would you like me to go ahead and  
23 address summary judgment as well?

24 THE COURT: I don't think it's necessary.

25 MR. BOYD: If I may briefly in response. The

1 plaintiff's position is entirely misguided. There was no  
2 issue on appeal about the negligent hiring, because the  
3 plaintiff did not appeal the jury verdict on negligent  
4 hiring nor could they. They got all of the evidence in,  
5 the jury decided against them, there's no appeal from that,  
6 that's a done deal. The jury said the negligent hiring was  
7 not a proximate cause of the collision and Ms. Hancock's  
8 death, that's the end of that cause of action. We didn't  
9 raise negligent hiring on appeal, I'm not sure about Ms.  
10 Harris' argument in that regard. The only issue that we  
11 raised on appeal was they did not properly raise some issue  
12 in their appellate argument that we think meant on the  
13 pursuit cause of action they weren't able -- I've forgotten  
14 what the issue was, you'll have to help me, Stephanie.  
15 There was some issue that we thought on the pursuit cause  
16 of action they had not preserved for appeal, nobody argued  
17 anything about negligent hiring on appeal. There's not a  
18 single mention of negligent hiring in the Court's opinion,  
19 nor would you expect there to be. And the -- again, Judge  
20 Short in the Court of Appeals is the Judge who raised the  
21 issue, "Well, since U.S. Security Associates has already  
22 won the pursuit cause of action, why is it fair to make  
23 them have to retry that question?" Now, candidly I don't  
24 know that that was the correct procedural analysis since  
25 the plaintiff's argument that had Wal-Mart been there you

1 would combine Wal-Mart and U.S. Security Associates'  
2 negligence under the unit rule, so that may not be a sound  
3 position. But nobody on appeal, either the Court of  
4 Appeals or the Supreme Court, was even remotely thinking  
5 about negligent hiring, because that issue was appealed.  
6 It is now the law of the case or res judicata and I don't  
7 know how to make that any simpler. I mean, that's just to  
8 me -- this is a black letter law example of what's res  
9 judicata is all about, and you simply cannot revive a cause  
10 of action that was tried and decided by the jury and not  
11 appealed, I'm confident as I can be about that. So again,  
12 not to beat a dead horse, I think that's just clear. What  
13 the argument Ms. Harrison makes completely misses is they  
14 didn't appeal negligent hiring, that cause of action was  
15 not on appeal, the Supreme Court had no jurisdiction of it.  
16 And the Supreme Court obviously cannot remand to the  
17 circuit court a cause of action that was not before it on  
18 appeal, nor would they need to since it's been tried to a  
19 jury.

20 THE COURT: Okay. Let me ask you -- let's do this,  
21 how soon can you -- both of you give me a proposed order on  
22 this issue?

23 MR. BOYD: Well, we could do that by the end of week,  
24 by Friday.

25 MS. HARRISON: Sure, by Friday?

1 THE COURT: All right, done. And let me ponder this  
2 one, I go back and -- I don't have the Court of Appeals  
3 opinion but I don't think I need it, but I'll go back  
4 and -- I had not seen the exhibits either, so let me just  
5 take that one under advisement.

6 MS. HARRISON: Judge, do you need me to get the  
7 summary judgment on the record for you?

8 THE COURT: Sure, go ahead. I'm not even sure what  
9 the summary judgment is.

10 MS. HARRISON: If you were to agree with us that this  
11 cause of action was properly before the Court based on  
12 Justice Toal's majority opinion as well as the ability to  
13 raise any issues regarding relief, so in this instance if  
14 you were to say that basically my entire appellate argument  
15 from the last portion of this motion, which was this idea  
16 that any complaint you had with the relief that had been  
17 granted by the Supreme Court, feeling that it was not  
18 proper, that issue belongs in a petition for rehearing.  
19 And so if you were to agree with us on that, their  
20 alternative argument that Mr. Boyd has argued is that  
21 summary judgment should be granted in their favor as far as  
22 the defendants, and our position is that motion should be  
23 denied.

24 THE COURT: On what issue?

25 MS. HARRISON: Sir?

1 THE COURT: On what issue?

2 MS. HARRISON: On the negligent hiring and supervision  
3 cause of action.

4 THE COURT: Okay.

5 MS. HARRISON: And so first and foremost we believe  
6 that when you look at Section 40-18-80A4 it lays out the  
7 qualifications for a person to serve as a security guard in  
8 South Carolina, and Mr. Jones could not qualify for that  
9 level of a job based on a prior --

10 THE COURT: Was a summary judgment motion made prior  
11 to trial on this issue?

12 MS. HARRISON: That --

13 MR. HOOD: I believe it was.

14 THE COURT: And was it ruled on?

15 MR. BOYD: Judge Goldsmith denied --

16 MS. FLYNN: I think he just denied all motions for  
17 summary judgment across the board.

18 MR. BOYD: Yeah. He denied everything across the  
19 board, so nothing was granted. But on the question about  
20 the petition for rehearing, let's think about that for a  
21 minute.

22 MR. HOOD: Your Honor, she wasn't finished.

23 MR. BOYD: I'm sorry, I didn't mean to interrupt.

24 MS. HARRISON: No, it's fine. So pretty much what our  
25 viewpoint is in the arguments that were made in briefs by

1 defendants, they suggest that we cannot demonstrate that an  
2 employer had knowledge and that this act was foreseeable.  
3 And it's our position, and I'm happy to just rely on the  
4 brief, but very quickly, our position is that the employer  
5 was negligent in hiring Mr. Jones because he statutorily  
6 could not meet the qualifications to serve as an employee  
7 for U.S. Security because of his prior misdemeanor as well  
8 as his testing positive for drugs. Additionally that's in  
9 direct violation of the agreement between Wal-Mart and U.S.  
10 Security because they require that the security guards who  
11 were working at Wal-Mart to meet all state and federal  
12 statutory requirements, here he was unable to do that.  
13 Additionally he did not have a license, which is also a  
14 requirement for Wal-Mart's policies as well as the contract  
15 between U.S. Security and Wal-Mart. And so it's our belief  
16 that their failure to act, their failure to have knowledge  
17 created this foreseeable event and so that summary judgment  
18 would be improper as to the hiring. As to the retention  
19 and supervision, we would just say that there is a direct  
20 violation of Wal-Mart's policies by telling Mr. Jones to  
21 procure the plate numbers as well as the continual  
22 encouragement, and we believe evidence in the record  
23 supports that. It would be foreseeable that this event  
24 would have occurred because Mr. Jones has testified that  
25 this was not his first, but actually his second time in

1 breaking Wal-Mart policy and continuing far beyond the  
2 limitations that the policy sets forth for the safety of  
3 the customers as well as its employees and independent  
4 contractors, and because of that we can survive a summary  
5 judgment motion.

6 THE COURT: If Judge Goldsmith has already ruled on  
7 it, would I have the authority to overrule him and grant  
8 it?

9 MS. HARRISON: I think that you would have the  
10 authority if you agree with us that this cause of action is  
11 being retried, because if the Supreme Court has ordered a  
12 new trial I believe you do have a right to hear us on both  
13 causes of action.

14 THE COURT: Okay. Mr. Boyd?

15 MR. BOYD: Yes, sir. Of course, we won the negligent  
16 hiring cause of action at trial. If you think about their  
17 argument it's illogical. Our petition for rehearing was  
18 only on the pursuit cause of action asking the Supreme  
19 Court to reconsider its decision that Judge Goldsmith made  
20 an error in throwing the case out against Wal-Mart. We  
21 weren't talking about negligent hiring. Why in the world  
22 after we won negligent hiring at trial and they didn't  
23 appeal it would Stephanie and I be dumb enough to raise the  
24 negligent hiring issue on appeal? What vehicle would there  
25 be for us to raise that? It's not before the Court, we've

1 won it, it's over and done with, so that argument is just  
2 completely illogical. And again, on the summary judgment I  
3 don't think we need to get there, I think the cause of  
4 action is out of the case, but the jury, the jury decided  
5 in the first case completely free of error that the  
6 negligent hiring was not the proximate cause of the  
7 accident in Ms. Hancock's death.

8 MS. FLYNN: The negligent hiring --

9 MR. BOYD: Huh?

10 THE COURT: The negligent hiring --

11 MR. BOYD: And there's no doubt as I think I said  
12 before and as we've admitted from day one, we negligently  
13 hired Jones, there isn't any question about that, we  
14 admitted that the first time all of the way around. And  
15 the problem for the plaintiff is that because he failed the  
16 marijuana test, because he didn't have a driver's license,  
17 none of that is foreseeable that he will then conduct a  
18 police like pursuit off of the station where he is supposed  
19 to be doing his duties, so that's why the jury found in our  
20 favor the first time around and we believe that should  
21 stand and dispose of that issue and we don't need to fool  
22 with it any further.

23 MR. HOOD: I think, too, Your Honor, the one thing  
24 that I don't think Mr. Boyd seems to understand is when  
25 they DV Wal-Mart, it infected the entire case. We had put

1 up evidence against Wal-Mart, we had put up evidence  
2 against U.S. Security, we had put up evidence against them  
3 both joint. And when you take a situation where we have  
4 prepared a case and we've put forth evidence on a number of  
5 different issues, especially when our security expert said  
6 that that was the case, when you have that type of an issue  
7 that infects the entire case in toto, you don't know what  
8 affect it has on a jury, because that's what the Supreme  
9 court is saying, it infects the whole case. You can't say  
10 "Okay, here it is, we're going to take it away and you just  
11 have to forget it all." We've all heard because we're all  
12 trial lawyers when the skunk is in the box it's in the box,  
13 and the skunk was in the box, and then Judge Goldsmith took  
14 it away and that's why the Supreme Court -- that's one of  
15 the reasons they did reverse this and say new trial on all  
16 issues.

17 MR. BOYD: They didn't say that, they said new trial  
18 on the pursuit cause of action as to all defendants, not  
19 all issues, that's not in the decision. And --

20 MR. HOOD: Does it say as to the pursuit cause of  
21 action?

22 MS. HARRISON: It says new trial. And the way that we  
23 know that it's more than just one cause of action is the  
24 fact that Justice Toal, two sentences prior to her saying  
25 we therefore grant a new trial as to all defendants

1 references this negligent hiring and supervision cause of  
2 action.

3 MR. BOYD: You'll have to point that language out to  
4 me, I don't think that's in the decision.

5 MS. HARRISON: Page 10 of the opinion.

6 THE COURT: Well, my opinion only has eight pages.  
7 All right. Well, let's move on.

8 MS. HARRISON: The first motion that we made for  
9 motions in limine was an omnibus motion on I believe it is  
10 41 just of your standard motions regarding approaching the  
11 bench, informing the witness of any motions in limine,  
12 collateral source, I'm happy to list them all out. I'm not  
13 sure if defense counsel has any objections.

14 THE COURT: Well, I will take judicial of those, I  
15 don't think I need to rule on each one of them. I've tried  
16 a lot of cases and that's pretty standard procedure. I  
17 recognize your concern, apparently it was a difficult trial  
18 the first time through.

19 MR. HOOD: We refer to it as the Hood rules and it's  
20 not talking about me.

21 MR. BOYD: And A lot of those issues are not going to  
22 come up. It's a general motion that I see plaintiffs  
23 lawyers use in every case, but a lot of this -- we don't  
24 have a collateral source rule issue here, we're not going  
25 to be going in to that, so --

1 MR. HOOD: And even though it was a difficult case to  
2 try I will say this, Ms. Flynn and Mr. Boyd and I, we got  
3 along famously during the trial. We may have disagreed on  
4 things but there didn't appear to be any underhanded type  
5 stuff that was going on.

6 THE COURT: I will keep this as my Bible on the bench.  
7 Move on.

8 MS. HARRISON: Thank you, Your Honor. Our second  
9 motion deals with the exclusion of certain deposition  
10 materials. The first one as to Derrick Jones, and we are  
11 seeking to prohibit the defendants from using any portion  
12 of his deposition pursuant to Rule 32A of the South  
13 Carolina Rules of Civil Procedure. And we base that on the  
14 fact that we believe he is not joining us for trial based  
15 on his own decisions not to be here, and so when you read  
16 the plain language of the rule 32A3B it suggests a level of  
17 discretion to you, Your Honor, that you do not actually  
18 have to enforce if a witness is more than 100 miles away  
19 from the courthouse.

20 THE COURT: Tell me about this guy, Jones. I mean,  
21 where is he?

22 MS. HARRISON: That I'm not sure.

23 MR. BOYD: We believe he's in New York, Your Honor.  
24 We have been trying to get him to cooperate with us. We  
25 fired him, of course, after this incident, he's not

1 cooperative. We were able through Stephanie's heroic  
2 efforts to get him to a deposition where unfortunately we  
3 didn't have a chance to ask a -- we had a chance but we  
4 didn't take the opportunity to ask any questions then, not  
5 realizing Jones would be gone, so the only one that's  
6 prejudiced by not having him here is us. But in any event,  
7 he's in New York, we believe, Stephanie has tracked him  
8 down again. He's got family up there, he's in the Buffalo  
9 area somewhere and we believe he's up there in that area  
10 and we can't get him back. We've tried, we would like to  
11 have him back obviously but we just can't get him. And we  
12 have a full deposition that was taken by Mr. Hood that they  
13 showed the first time, and our position is if they're going  
14 to show part of that deposition in fairness they need to  
15 show all of it. We didn't procure Mr. Jones' absence, U.S.  
16 Security Associates is completely innocent here in that  
17 regard.

18 MS. HARRISON: And I think what is significant,  
19 though, is that counsel is representing all three  
20 defendants.

21 THE COURT: Now, you're asking that the deposition not  
22 be used in toto.

23 MS. HARRISON: Yes, sir.

24 THE COURT: He just said something about a portion of  
25 the deposition.

1           MR. BOYD: Well, maybe I'm wrong. Is the plaintiff's  
2 position that the deposition of Jones does not come in at  
3 all?

4           MS. HARRISON: We believe that we could have a right  
5 to use it but we're saying we do not believe that the  
6 defendant should be allowed to use it because Mr. Jones --

7           THE COURT: You can use it but they can't.

8           MS. HARRISON: Yes. But after doing some lengthy  
9 discussions on trial strategy we don't plan to use it.

10          MR. BOYD: Your Honor, I'm sorry, that hit me out of  
11 deep left center field. Could I have a couple of days to  
12 think about that and respond? We may go along with that, I  
13 don't know.

14          THE COURT: Well, I may too.

15          MR. BOYD: But on the other hand, and I'll have to  
16 think through this, I don't see how the plaintiff makes out  
17 their case without that, but whatever.

18          MR. HOOD: They can -- the experts can rely on  
19 anything they need to rely on. The thing is in this  
20 particular case under Rule 32, it says -- the plain meaning  
21 of the rule says we could use it for any purpose.

22          THE COURT: I know that.

23          MR. HOOD: We tried to do that, we argued that before  
24 Judge Goldsmith and Judge Goldsmith said "No, I'm not going  
25 to allow you to do that. You have to either play it all or

1 none," that's what he said, and that is not the plain and  
2 ordinary wording of the statute. And so, you know, if -- I  
3 mean, obviously the defendant, if we designated a small  
4 portion they have every right to counter designate that  
5 which is responsive.

6 THE COURT: Has that been done?

7 MS. FLYNN: We did extensive page and line  
8 designations throughout the last trial, it wasn't start to  
9 finish.

10 MR. BOYD: The problem with Jones' testimony is he's  
11 very harmful to Wal-Mart and U.S. Security Associates in  
12 about half of what he says, the other half he's very  
13 helpful to U.S. Security Associates. So, of course, the  
14 plaintiff's want --

15 THE COURT: Well, what happened the first time, played  
16 the whole thing?

17 MR. BOYD: Played the whole thing. At our request  
18 Judge Goldsmith agreed that under Rule 32 where one party  
19 offers some the other party is entitled in fairness to get  
20 the rest in also, and also the rule of completeness under  
21 Rule 106.

22 THE COURT: I was going to say, 106 would seem to be  
23 in play there.

24 MR. BOYD: Yes. And I think it would be terribly  
25 unfair to use part and not all of Jones' testimony, that

1 would be very unfair and misleading to the jury.

2 THE COURT: Well, what I think Ms. Harris is saying,  
3 they don't plain to use it, they don't want you to use it;  
4 is that right?

5 MS. HARRISON: That's correct.

6 MR. BOYD: Well again, that's news to me. I thought  
7 their position was the same as it had been the first time,  
8 which they get to use it and we don't get to use it, so I  
9 would need a little time to reflect on that.

10 THE COURT: Well, their motion papers basically say  
11 that neither Jones nor defense should receive the benefit  
12 of his prior testimony when he could be at trial. You  
13 know, you go back to the whole issue that Mr. Hood can't  
14 cross examine a piece of paper and neither can you, and  
15 that's why we spend such time and effort to get witnesses  
16 in front of the jury. My inclination would be that neither  
17 party would be able to use it if he's not here.

18 MR. BOYD: Well it's a videotaped deposition so the  
19 jury will get to see Derrick Jones testify on tape. But  
20 anyway, the other thing I really didn't understand --

21 THE COURT: Was it taken de bene esse?

22 MR. HOOD: No.

23 MR. BOYD: No, just videotaped. As I say, we  
24 didn't ask any questions.

25 THE COURT: For discovery?

1           MR. BOYD: It was just discovery. We didn't ask any  
2 questions not realizing we would never see Derrick Jones  
3 again.

4           MR. HOOD: Obviously our strategy would have been  
5 different if it was a de bene esse deposition.

6           THE COURT: Well, I would think so.

7           MR. BOYD: But I didn't understand. One of the things  
8 that Mr. Hood said is the experts can rely upon that  
9 deposition testimony, not if it's not offered to the jury  
10 they can't, it would be a nullity. So if it's out it's out  
11 completely, and that's why I say I don't think the  
12 plaintiff can prove her case -- his case without that  
13 deposition testimony.

14          MR. HOOD: Hundley vs. Rite Aid was a case that was  
15 tried in 1997 in York County, South Carolina, and Oliver  
16 Wood was able to give testimony from the neuropsychiatrist  
17 and he was able to give her testimony and his testimony and  
18 the Court found that that was the case, Hundley versus Rite  
19 Aid.

20          THE COURT: That's a source that experts normally rely  
21 on, is that --

22          MR. HOOD: Yes.

23          THE COURT: That's the rule.

24          MR. HOOD: Yes.

25          MR. BOYD: But you've got to have evidence before the

1 expert can rely upon it. If the deposition is not offered  
2 it's not evidence, the expert can't mention it, that's  
3 pretty elementary, I think.

4 MR. HOOD: They can look at -- if you don't call a  
5 party at trial they can rely on someone's statement, sworn  
6 testimony under oath, and they can rely on that, they can  
7 rely on a picture. They can rely on a number of things if  
8 it's something that they normally rely on in being able to  
9 give their opinion, that's just been black letter law since  
10 that Hundley versus Rite Aid case for the last 19 years.

11 MR. BOYD: I just flatly disagree with that. You  
12 can't ever have a witness testify about what some other  
13 witness testified without that underlying evidence being in  
14 the case.

15 THE COURT: Well, that's not the issue right now,  
16 that's speculation on the part of Mr. Hood, but that's what  
17 may occur, although it may have occurred already, I don't  
18 know. The question right now is whether Jones' deposition  
19 can be used by either party.

20 MR. BOYD: And again, Your Honor, I would respectfully  
21 request just a couple of days to think about that and  
22 submit something further to the Court. We may agree with  
23 that position, I just not have thought about it until right  
24 now and would appreciate just a couple of days to reflect  
25 on that and come up with our position.

1 THE COURT: All right. How about Mandell?

2 MS. HARRISON: Our view on Mandell is that he has no  
3 real weight to this case because he was a physician that  
4 treated our client for chronic pain management and also  
5 dealt with some depression --

6 THE COURT: For four years before?

7 MS. HARRISON: -- four years before.

8 THE COURT: How about that, Mr. Boyd?

9 MS. FLYNN: Your Honor, Dr. Mandell's testimony goes  
10 directly to the wrongful death act, it's completely  
11 relevant to all of the damages that are available to the  
12 family under the wrongful death act. He didn't treat her  
13 because he fired her after they got into a disagreement  
14 about her prescription fraud abuse, nobody else treated her  
15 after that except for sporadic doctors. Her condition  
16 hands down stayed the same, the family members corroborate  
17 that, the disability records all corroborate that up to a  
18 few months prior to trial. Her last medical record says  
19 she overdosed on cocaine three months before the accident.  
20 Everything is consistent that the day --

21 THE COURT: Was she seeing the doctor then?

22 MS. FLYNN: What's that? She went to the hospital for  
23 the overdose, she was not being treated --

24 THE COURT: Tell me how -- I don't understand how a  
25 doctor who saw the lady four years before the accident

1 could testify about her medical condition as of the date of  
2 the accident. I mean, how in the world?

3 MS. FLYNN: I think that the thing to do is to look at  
4 her consistent period after that, and everything  
5 corroborates that she remain the same, or in fact, actually  
6 worsened since the date. He provides the background--

7 THE COURT: That's not what we're talking about, her  
8 medical record, you're talking about a doctor testifying  
9 about what he saw four years ago.

10 MR. BOYD: Well, she had a chronic condition, it  
11 didn't change the chronic fibromyalgia that was found, and  
12 as Stephanie indicated, all corroborates she never got well  
13 from, she couldn't work continuously.

14 MS. FLYNN: He's going to say, "I don't know how she  
15 was on the date of the accident." But every indication was  
16 that she was having the same exacerbation the entire time  
17 all of these conditions --

18 THE COURT: Why can't you use those medical records?

19 MS. FLYNN: He sort of lays the framework for how she  
20 got the way she did, it was in the course of six car  
21 accidents that he treated her and it remained the same.

22 THE COURT: What do you think?

23 MS. HARRISON: I would argue as well that I think that  
24 the suggestion that couldn't change over the course of four  
25 years would suggest that someone couldn't get better,

1 especially on the mental issues and their relation to the  
2 accidents and that kind of thing. I think four years is  
3 just too far removed when it comes to the fact that when he  
4 was deposed Dr. Mandell says he has no idea what happened  
5 to her after 2002.

6 THE COURT: I'm going to grant your motion, I will  
7 grant the motion on Mandell. Did Mandell testify in  
8 person?

9 MS. FLYNN: No, sir, it was de bene esse.

10 THE COURT: I'm going to exclude the deposition, just  
11 make one firm ruling.

12 MS. HARRISON: Our next motion deals with seven issues  
13 regarding some terminology and that kind of thing, I'm  
14 happy to walk through them. The first of the motion deals  
15 with shoplifter and getaway vehicle terminology, and we're  
16 just seeking that outside of any discussion by defense  
17 counsel about what Ms. Donna Beckham did inside this store,  
18 that any other conversation about either her or our client  
19 not include phrases like shoplifter or getaway vehicle.  
20 Because they were not actually shoplifters, they did not  
21 meet that standard as far as the Wal-Mart policy because  
22 they discarded the clothes prior to walking out, and  
23 additionally no charges were ever brought. We think that  
24 the use of those kind of words would have a prejudicial  
25 effect on our case.

1 THE COURT: Well, how about it, Mr. Boyd?

2 MR. BOYD: They were, in fact -- she -- Ms. Beckham  
3 was, in fact, shoplifting. The distinction that Ms.  
4 Harrison is overlooking is Wal-Mart does not prosecute  
5 shoplifters unless there is what they call an unlawful  
6 taking and someone actually leaves the store with the  
7 goods. There is no doubt and is a matter of law Ms.  
8 Beckham shoplifted. She took merchandise, hid it in a bag,  
9 moved it from one area of the store to another and actually  
10 attempted to leave the store and passed the last point of  
11 purchase when she was caught by the greeter and asked for a  
12 receipt, so there's no doubt she is a shoplifter. And  
13 there's no doubt that Ms. Hancock was driving the getaway  
14 car, both the Court of Appeals and the Supreme Court agreed  
15 with that characterization. They made arrangements for  
16 a --

17 THE COURT: Why do you say the Supreme Court agreed  
18 with that?

19 MR. BOYD: Well, just in the argument and in the  
20 opinions themselves I think it was, I think, generally  
21 agreed --

22 THE COURT: So the use of that word?

23 MR. BOYD: I thought it was actually in the opinion.  
24 But it was certainly agreed, I think, by all of the  
25 appellate court judges that that's what she was doing.

1 They made arrangements for Ms. Hancock to move the car, she  
2 --

3 THE COURT: Isn't it to-use an overbroad try to raise  
4 part of res gestae? Isn't is it part of this whole case?

5 MR. BOYD: Well, sure.

6 THE COURT: It's the act which implemented everything  
7 that went forward? Can you --

8 MR. BOYD: If she hadn't been driving the getaway car  
9 there wouldn't have been a pursuit, she was attempting to  
10 flee the scene.

11 MR. HOOD: Well, if he would have never been hired  
12 there would have never been a pursuit.

13 THE COURT: But if she -- but for the lack of a nail,  
14 if she hadn't picked up those goods and put them in the  
15 bag. I think there's certainly evidence from which -- I  
16 think it's pretty clear that there was shoplifting  
17 involved, whether it went outside the store, it was --  
18 that's what triggered this whole series of events, I don't  
19 think you can get around that. Now, whether it's a getaway  
20 car or a car driving away fast with the allege perp in it,  
21 I'm not going to restrict you in terms of use of the words  
22 shoplifter or getaway car, so on that motion, Ms. Harris,  
23 I'm going to deny your motion. But, you know, I reserve  
24 the right at trial if I think either party is exceeding the  
25 bounds of what's proper action in cross examination or

1 cross examining or comments to the side, I don't know  
2 whether you're talking about opening remarks or closing  
3 remarks or -- I still reserve the right to rule on whether  
4 something is appropriate or not or relevant or not. I'm  
5 not going to -- but I'm not going to hamstring either one  
6 of you. Some of these papers say that the Court shouldn't  
7 be interfering with strategy, I think that was your  
8 position, but I'm not going to deny that sort of  
9 terminology. It wouldn't have happened if something didn't  
10 trigger this whole series of events, which probably was Ms.  
11 Beckham picking up something and putting it in the bag,  
12 whether she intended to shoplift or not.

13 MR. BOYD: Well, she admits she was attempting to  
14 shoplift.

15 THE COURT: Oh, I don't know, I don't have the benefit  
16 of all of those facts. But anyway, that motion is denied.

17 MS. HARRISON: Okay. The second motion goes right  
18 along with that, and we're just asking that Alice Hancock  
19 not be called a shoplifter, or at least kind of  
20 acknowledgment that she herself did not shoplift.

21 THE COURT: Now, she --

22 MS. HARRISON: She is the individual that went to the  
23 car first.

24 THE COURT: She's the driver.

25 MS. HARRISON: She is the driver.

1 THE COURT: Did she go in the store?

2 MR. BOYD: Oh, yeah.

3 MS. HARRISON: She did go into the store but left, she  
4 was not feeling well.

5 MR. BOYD: Our position was this was sort of a joint  
6 venture, they were in on this together.

7 THE COURT: I thought she waited outside, I'm  
8 factually deficient. All right. Then the same is true as  
9 to Alice Hancock, that motion is also denied. Now, you've  
10 got criminal history of Travis Roddey?

11 MS. HARRISON: Yes, sir, he is the PR.

12 THE COURT: What in the world is his -- what's the  
13 relevance of his criminal history?

14 MR. BOYD: The credibility of his testimony, which is  
15 at issue, about what Ms. Hancock could or could not do.  
16 Basically what we have in this case, Your Honor, I  
17 realize --

18 THE COURT: He wasn't there, was he?

19 MR. BOYD: He wasn't at the accident. But the family  
20 is all testifying that Ms. Hancock could do all of this  
21 stuff.

22 THE COURT: What stuff?

23 MR. BOYD: Well, work and help out with people. She  
24 was a crippled permanently disabled woman who had not  
25 worked for ten years, had not been able to really do much

1 around the house, so all of that is in dispute.

2 THE COURT: Travis Roddey testified?

3 MS. FLYNN: Yes, sir.

4 MR. HOOD: And just so Your Honor knows, and Howard  
5 knows this and so does Ms. Flynn, we've taken lost wages  
6 off the table. We're not putting up Oliver or Charles  
7 Vander Kolk, and so lost wages are off the table.

8 THE COURT: For Alice Hancock.

9 MR. HOOD: Yes.

10 MR. BOYD: But we've still got the issue of how much  
11 the loss of her use, society and comfort to the family was.  
12 And in a wrongful death case a defendant always gets to  
13 show how the family was getting along. This family wasn't  
14 getting along very well, they had a lot of disputes, the  
15 medical history of Ms. Hancock was very poor. The whole  
16 family --

17 THE COURT: Get back to the issue I raised, Travis  
18 Roddey's criminal history, I don't see what it's got --

19 MR. BOYD: It's relevant to impeach his testimony --  
20 his credibility. He says things that manifestly are not  
21 true, I think we're entitled to show that he's got a  
22 criminal record for dishonesty.

23 THE COURT: Well, I will reserve that for trial after  
24 I hear his testimony, I'm skeptical as to whether that  
25 would be proper cross examination. As in many limine

1 motions I'll decide that at trial.

2 MR. BOYD: All right, sir. And as far as Donna  
3 Beckham goes, she's an eye witnesses, or claims to be, to  
4 the accident and what happened, and obviously to the extent  
5 we've got a criminal record we can impeach her with, that  
6 would be entirely proper.

7 THE COURT: I haven't got to her yet. Is that a  
8 motion?

9 MS. HARRISON: Yes, sir. For the criminal history as  
10 to Alice Hancock, Travis Roddey and Donna Beckham.

11 THE COURT: Oh, okay.

12 MR. BOYD: They were moving to excluding us impeaching  
13 all of them.

14 MS. HARRISON: So our viewpoint is that when you go  
15 through a 404 analysis the only issues that we get to as  
16 far as like more than a year possible punishment, and then  
17 also any argument as far as like something that deals with  
18 like proof of character are those check fraud issues, and  
19 we think that when you also get into the ten year time year  
20 limitation under 609 and --

21 THE COURT: Who are you talking about?

22 MS. HARRISON: I'm sorry, I'm talking about Alice  
23 Hancock and Donna Beckham.

24 THE COURT: The deceased?

25 MS. HARRISON: The deceased, yes, sir.

1 THE COURT: Criminal record?

2 MS. HARRISON: Yes. Just that the ten year time lapse  
3 has already passed, and so while you do have the discretion  
4 to allow it in, our position is that it would be  
5 prejudicial.

6 THE COURT: Tell me about that. I mean, ten year --

7 MR. BOYD: Well, we're --

8 MS. FLYNN: As to Hancock, she's sorted of limited, I  
9 mean, her history obviously is.

10 MR. BOYD: Yeah, she died in 2006.

11 MS. FLYNN: So the fact that it's ten years ago now, I  
12 think for other witnesses -- any witnesses testifying at  
13 trial could be impeached on their testimony as they're  
14 testifying at trial for anything they've done in the past  
15 ten years and I think we're entitled to do that for any  
16 witness that comes to testify at trial if they deny the  
17 criminal record. Hancock is a little bit different because  
18 obviously we've only got a very limited time frame for her.  
19 So anything within those ten years back from her date of  
20 death we think is relevant, we certainly think it's  
21 relevant on issues of loss of her society and  
22 companionship.

23 THE COURT: What evidence are you talking about?

24 MS. FLYNN: Let's see. I don't know if --

25 MR. BOYD: The entire family really has kind of a

1   lengthy criminal record, it's really -- this is just not a  
2   great plaintiff's case for a lot of reasons.

3           THE COURT: Well, I've had terrific plaintiff's cases  
4   and terrible plaintiffs.

5           MR. BOYD: That is true, you can certainly have that.  
6   However, for purposes of a wrongful death case, Randy is a  
7   great lawyer but it's very difficult to put this together  
8   and make this family look like this was just really a --

9           THE COURT: No school teachers.

10          MR. BOYD: Right. She is not the little old librarian  
11   in the small town. But anyway, regardless of that, this  
12   case is a little unusual procedurally since we've had such  
13   a long period of time, it was on appeal for six years. So  
14   a lot of this evidence to me ought to still be relevant to  
15   a 2010 -- 2006 incident and 2010 original trial.

16          THE COURT: I'm not arguing with that. I'm just  
17   questioning the use of a more -- you say more than a ten  
18   year old conviction of Donna Beckham or Alice Hancock?

19          MS. HARRISON: It goes to both. Just really briefly,  
20   Your Honor. So Alice Hancock, she had some criminal  
21   domestic violence in 2001, she had some check fraud in 2003  
22   and 2004 which is what brings us in to looking at the ten  
23   year limitation, and then controlled substance fraud in  
24   2007.

25          THE COURT: This is the deceased's?

1 MS. HARRISON: The deceased, yes, sir.

2 THE COURT: And they tried to -- they used that at  
3 trial?

4 MS. HARRISON: I believe that --

5 THE COURT: To impeach the dead lady?

6 MR. BOYD: No.

7 THE COURT: I believe it was on the table the last  
8 time and so I just wanted to get ahead of it.

9 MR. BOYD: If it was used at all, and I can't  
10 remember, it would have been used to undermine the  
11 plaintiff's 20 million dollar demand because of how  
12 wonderful the life of Alice Hancock and her family was, all  
13 of which was abundantly false. And all of this again comes  
14 in, I think, generally speaking to try to show the nature  
15 of the family, the problems they were having. Randy is  
16 correct, they apparently are taking the lost wage claim off  
17 the table, obviously her criminal record would have been  
18 relevant to her ability to obtain a job and to work. So  
19 all of that was part of the flavor of the case and I don't  
20 think it's fair.

21 THE COURT: And it was admitted in the first trial.

22 MR. BOYD: I believe that's right. And I think Judge  
23 Goldsmith correctly made the decision that if the family is  
24 claiming wrongful death damages for the loss of the  
25 decedent then we're entitled to show that loss frankly was

1 not at great as they're claiming.

2 MR. HOOD: Part of that came in because of Vander  
3 Kolk.

4 MR. BOYD: May have.

5 MR. HOOD: For lost wages and not for the other. Some  
6 of it came in because of lost pages and we have taken that  
7 off the table. And also, how do we get Travis Roddey's  
8 stuff in?

9 MS. FLYNN: I think when you have direct proof of  
10 human life is not possible, so reasonable compensation from  
11 the jury -- reasonable compensation for your client is left  
12 to the sound discretion of the jury. I think the jury gets  
13 to explore and gets to hear any credibility issues he might  
14 have within the ten year time, we're not arguing over that  
15 actually.

16 MR. HOOD: And what about Derrick Jones? How do we  
17 get Derrick Jones' stuff in for the last ten years?

18 THE COURT: Hold on a minute, I don't even know who  
19 Derrick Jones is.

20 MS. FLYNN: The security guard.

21 THE COURT: Back to Roddey. Roddey is not there, he  
22 didn't do anything, he's not claiming any damages, he  
23 wasn't hurt.

24 MR. BOYD: No, he's plaintiff's --

25 MS. FLYNN: He'll be testifying as the --

1 THE COURT: He's the personal representative, he's the  
2 PR. He wasn't hurt, he didn't have any damages himself.

3 MR. BOYD: But he's testifying for damages for the  
4 estate.

5 THE COURT: I understand that. But I don't see at  
6 this point his -- I tell you what, let's do this, get the  
7 criminal records of all of these people and I'll decide  
8 what comes in and what doesn't come in. I'm trying to --  
9 ten years, this under 609-1 and 609-2, I can't process it  
10 all right now.

11 MR. BOYD: Just as one simple example, Judge, if one  
12 of these sons or daughters of Ms. Hancock were in prison,  
13 then obviously their ability to enjoy the use, society and  
14 comfort of Ms. Hancock would have been limited, that's just  
15 an example of how the --

16 THE COURT: Are they?

17 MR. BOYD: Oh yeah, we've got all kinds of prison  
18 sentences here. But that was an example of what we were  
19 trying to show, that this wasn't some Ozzie and Harriet  
20 Nelson kind of family that was enjoying life together.  
21 They were dysfunctional, in jail, et cetera.

22 MR. HOOD: They still miss their mama?

23 MR. BOYD: Huh?

24 MR. HOOD: They still missed their mama, still love  
25 their mama.

1 MR. BOYD: Sure.

2 MR. HOOD: Still love their mama.

3 THE COURT: I'm not a jury, let's move on.

4 MR. BOYD: We're not going to impress Judge Cooper.

5 MS. HARRISON: Our next motion, Your Honor, is to --

6 THE COURT: That one again is under advisement.

7 Criminal records, I need to see the criminal records. All  
8 of these are going to be due when we set that date. Mental  
9 health, suicide, commitment, what is that about?

10 MS. HARRISON: We're just seeking to exclude any  
11 evidence derived from her medical records regarding to her  
12 mental health and treatment in the years leading up to this  
13 incident just because that mental health has nothing to do  
14 with the accident that occurred. So any type of assertion  
15 she was suicidal or that she wanted to die, any kind of  
16 conversation like that we just wanted to shut that down  
17 now.

18 MR. BOYD: I'm sounding like a broken record I  
19 realize, again, all of this we believe is directly relevant  
20 to the issue about damages.

21 THE COURT: So she has some issue about --

22 MR. BOYD: Oh yeah, a long history about that.

23 THE COURT: -- that she used this wreck to commit  
24 suicide?

25 MS. FLYNN: We have never claimed that. We do

1 believe, though, that her mental health goes directly to  
2 the wrongful death damages, it goes to the family  
3 relationships and society and lost wages.

4 MR. BOYD: She had a long history of mental health  
5 issues.

6 THE COURT: All of these goes to damages, right?

7 MR. BOYD: That's right.

8 MR. HOOD: Just so I understand, Your Honor, there's  
9 going to be no allowance of them trying to indicate she was  
10 going to try to commit suicide by running into a tree?

11 MR. BOYD: We do not contend and never have contended  
12 that.

13 MR. HOOD: Well, you were shaking your head yes when  
14 he was asking his question.

15 THE COURT: I will rule that out, but you better  
16 object in a hurry, he'll get it out there in front of a  
17 jury.

18 MR. BOYD: I'm not going there.

19 MS. HARRISON: We jumped over two prior to that, Your  
20 Honor. We had one motion in regards to limiting any  
21 evidence or inquiry or reference into Ms. Hancock's driving  
22 record or prior accidents. We feel as though that  
23 information is only going to be used to prejudice the jury,  
24 we don't think any prior accidents have anything to do with  
25 the accident that took place on the date of the incident.

1           MR. BOYD: She had extensive injuries in those  
2 accidents, and that is -- again, it goes to the issue of  
3 damages. What could Ms. Hancock have done for the family,  
4 our position is, due to these debilitating injuries?

5           THE COURT: All right. That motion is denied, I deny  
6 that motion. Now, go ahead.

7           MR. HOOD: Your Honor, before we move on, though, are  
8 you denying it when it's talking about damages? Because  
9 the one thing we don't want to have is that she's had these  
10 accidents and that these accidents show some type of a lack  
11 of regard for driving. Because every time I've ever been  
12 in a case it has to be a similarity to the same type of an  
13 accident in order to be admissible under that particular  
14 circumstance.

15          THE COURT: This is with regard to prior accidents as  
16 it affected her health and well-being as of the time of the  
17 accident.

18          MR. HOOD: Thank you, Your Honor.

19          MS. HARRISON: Our next motion has to do with prior  
20 drug use by either Donna Beckham, Alice Hancock, Travis  
21 Roddey or any of their family members as to Alice Hancock.  
22 And our position is that the toxicology report on the day  
23 of the incident, she was in no way high, it came back  
24 negative, and so any use of information regarding prior  
25 drug use, be it illegal drugs or prescription drugs, would

1     only be used to prejudice --

2           THE COURT:   The evidence of it?

3           MS. HARRISON:  The evidence of it.

4           THE COURT:   There is evidence of it?

5           MR. BOYD:    Oh, tons of it.

6           MS. HARRISON:  There is evidence of it.

7           MR. BOYD:    Admitted by Ms. Beckham.

8           THE COURT:   Are you talking about evidence that the  
9     coroner's report was correct, that there was no drugs in  
10    her system at this time?

11          MR. BOYD:    You know, we didn't look at the toxicology  
12    report the first time, we'll take another look at that, I'm  
13    not sure that's coming in, we'll see.  But in any event I  
14    have no evidence that it wasn't correct, I don't know  
15    anything about that.

16          MS. FLYNN:   She overdosed three months before.

17          THE COURT:   You have any problem with that?

18          MR. HOOD:    No, Your Honor.  I don't think that there  
19    was any indication that she was intoxicated or impaired in  
20    anyway.

21          MR. BOYD:    But again, it goes to the damages issue,  
22    it's the same thing I have been arguing all along.  She  
23    was -- used drugs a lot, was addicted to drugs, was unable  
24    to function, all of that goes to the wrongful death action.

25          MR. HOOD:    You want to enter into a stipulation since

1 that -- since you're going to get into that stuff do you  
2 want to enter into a stipulation that the coroner's report  
3 stated at the time of the accident that they did a tox  
4 screen that and it came back negative?

5 MR. BOYD: If we check out the toxicology report and  
6 it looks fine, sure, we might be able to do that. Same  
7 thing with Derrick Jones if we have to get there.

8 MS. HARRISON: And then our last motion as to this  
9 one, we seek to exclude any inquiry or reference into the  
10 handbag or bag of clothes that were kept at the highway  
11 patrol office following --

12 THE COURT: Was it in the first trial?

13 MR. BOYD: There was some mention of it, and to be  
14 honest, Your Honor, I don't know that I remember that  
15 issue, and Stephanie and I were talking about it coming  
16 over here. There was some reference to the highway patrol  
17 may have taken custody of the bag that Ms. Beckham was  
18 carrying, she had a handbag in addition to a Wal-Mart bag  
19 if I remember correctly. In any event, I think that's  
20 premature at this point, I don't know whether we can do  
21 anything with that or not and until we figure out what the  
22 issue is --

23 THE COURT: Doesn't sound like it.

24 MR. BOYD: Well, might not be able to frankly. It was  
25 very confusing, she had a couple of bags, it's was just

1 hard to understand.

2 THE COURT: You better come up with some relevance.

3 MR. BOYD: I understand. The relevance would be she  
4 did, in fact, take merchandise out of the store, that would  
5 be the relevance, but I'm not sure we could prove that.

6 MR. HOOD: Dropped it inside the store.

7 MS. HARRISON: And then our last motion, Your Honor,  
8 has to do with voir dire. And we're just seeking that the  
9 Court strike any juror who needs to be asked any type of  
10 rehabilitative question about their ability to be fair,  
11 unbiased, or in the alternative we would ask that the Court  
12 allow us to speak with a perspective juror on how and why  
13 they could be fair instead of just saying can you be fair  
14 and the answer is yes and that being the end of it. And  
15 our basis for that is that there have been a lot of  
16 scholarly articles written about the fact that the social  
17 pressures in a courtroom dealing with bias is that often  
18 times jurors are more likely than not going to say that,  
19 yes, I can be fair, impartial if asked that question  
20 because they're put on a spot by an authority figure. And  
21 so we are just asking that if you don't allow us to  
22 immediately strike that individual that you allow us the  
23 opportunity to inquire about that and have them actually  
24 give more substantive answers to the questions.  
25 THE COURT: I'm not inclined to do that. I have tried

1 a lot of cases, I have had a lot of jurors say, "I cannot  
2 be fair and impartial." I'm not going to grill every juror  
3 about their psychological tendencies one way or the other,  
4 their susceptibility to peer pressure, I'm just not going  
5 to do it, I'll just -- I am going to deny that motion. I  
6 appreciate the scholarly effort you've made to convince me  
7 that I ought to do that, but if you've got problems with  
8 the voir dire let me know and I'll try to remedy them. If  
9 a juror -- more likely than not if a juror has got all kind  
10 of misconceptions or beliefs or this, that or the other I  
11 am just -- I am going to excuse them for cause. I'm going  
12 to try to get you a fair jury the best I can do. I've done  
13 death penalty trials, so -- all right.

14 MR. BOYD: Is that all from the plaintiff? We had a  
15 few additional issues, Your Honor. And some of these may  
16 not still be an issue but I'll have to rely upon counsel  
17 for the plaintiff to let us know. We had moved in limine  
18 concerning certain cross examination issues that came up in  
19 the first trial and we don't want them to come up in the  
20 second. Plaintiff's counsel pitted witnesses throughout  
21 the first trial and --

22 THE COURT: That's like saying plaintiff's counsel led  
23 the witness, they do it all of the time.

24 MR. BOYD: Well, it wasn't that. It was, "Wasn't  
25 Derrick Jones lying when he said this because you were

1 there and that's not what happened?" That was the kind of  
2 stuff going, and we cited several examples in our papers  
3 that were pretty egregious. I hope this is not an issue.

4 THE COURT: Were they objected to?

5 MR. BOYD: We did object and Judge Goldsmith  
6 sustained. We were probably late getting to the objection,  
7 but Judge Goldsmith sustained the objection when we made  
8 it --

9 MR. HOOD: Not every time.

10 MR. BOYD: -- the first time.

11 THE COURT: You've read their papers on this issue.

12 MR. HOOD: Yes, sir. I understand you can't pit a  
13 witness against a witness.

14 THE COURT: Well, then just -- if you'll abide by that  
15 we'll move right on through this. I will sustain  
16 objections to pitting witnesses.

17 MR. HOOD: That's black letter law.

18 THE COURT: Black letter law, don't need to go any  
19 further.

20 MR. BOYD: Also, Your Honor -- and again this issue  
21 was resolved at the first trial so hopefully it's not going  
22 to be an issue -- just before the trial of the last case,  
23 the first trial we took over the defense, we being U.S  
24 Security Associates, of Wal-Mart. Wal-Mart had a lawyer,  
25 we took over the defense and said, "We think we can defend

1 this thing and should defend it jointly," under our  
2 indemnity agreement, U.S. Security Associates had to  
3 indemnify Wal-Mart. Randy made the big deal about the fact  
4 that Stephanie was representing U.S. Security Associates,  
5 we answered an interrogatory accurately saying what Derrick  
6 Jones was going to say, it was different than what the  
7 Wal-Mart witnesses said. I think that's entirely improper,  
8 all Stephanie did was simply answer an interrogatory. So  
9 we don't want to go back through that stuff again and we  
10 would move to exclude any implied or direct criticism of us  
11 for representing both Wal-Mart and U.S. Security  
12 Associates, and certainly any allegation that what  
13 Stephanie did was somehow not proper, which was sort of the  
14 implication of what happened the first time around.

15 MR. HOOD: Your Honor, I would start -- the only thing  
16 that I would say is this: Here is the quandary we're put  
17 into, we've got one attorney, we've got Wal-Mart giving one  
18 story, we've got Derrick Jones giving a different story.

19 THE COURT: Well, that's evidence.

20 MR. HOOD: They're both represented by the same  
21 people, and how do you talk out both sides of your mouth?

22 THE COURT: Well, what does it matter that one set of  
23 lawyers is representing two different defendants with say a  
24 different story?

25 MR. HOOD: Well, they're giving two different

1 statements because they know what Wal-Mart is going to  
2 say --

3 THE COURT: Well, what does that have to do with the  
4 case?

5 MR. HOOD: Because it -- I'm sorry, I apologize.

6 THE COURT: You can certainly show that Wal-Mart  
7 people say one thing and Derrick Jones says something else,  
8 you don't have to impugn the lawyers.

9 MR. HOOD: I don't disagree with that, that I do not  
10 need to impugn the lawyers. But the fact that you say one  
11 thing and then somebody else says another, and then you've  
12 got the same person putting both sides up, it just --

13 THE COURT: Tell the jury that. It may give you  
14 heartburn, but what you want is for the jury to understand  
15 that, not necessarily that one law firm represents both  
16 witnesses -- what does one law firm representing both have  
17 to do with the substance of this case? If you've got  
18 conflicting statements from Wal-Mart and Jones it would  
19 seem to me that that would be substantially to your  
20 benefit. Whether one lawyer or the other put it in the  
21 pleading papers to me doesn't have a whole lot of  
22 relevancy. Tell the jury that.

23 MR. BOYD: And further, Your Honor, I would add that  
24 Wal-Mart is not going to pay a dime in this case, U.S.  
25 Security Associates has agreed to hold them harmless. And

1 if they hit Wal-Mart for five million dollars, that's  
2 coming out of U. S. Security Associates' pocketbook.

3 THE COURT: Well, where are you on that issue?

4 MR. HOOD: They're not going to offer a dime.

5 THE COURT: Okay.

6 MR. HOOD: Or at least that's what I've been told.

7 THE COURT: All right. Well, let's move on.

8 MR. HOOD: And then the last trial conduct motion we  
9 made was to exclude the use of this reptile theory, which  
10 we believe violates the golden rule. The reptile theory,  
11 and the Court may have seen it and may be familiar with it,  
12 but what the reptile theory tries to do is invoke fear in  
13 the jurors and asks them to place themselves in harms way,  
14 and as Randy argued to the jury, which I think is entirely  
15 improper the first time, "Derrick Jones endangered you  
16 ladies and gentlemen of Lancaster County." You can't do  
17 that. You can't do that. That's all of this in the rules  
18 that are violated are unsafe, will expose you to danger and  
19 can be --

20 THE COURT: This is through closing argument?

21 MR. BOYD: Well, it was throughout the trial really,  
22 the reptile theory was used throughout the case.

23 MR. HOOD: When you ask someone -- the reptile theory  
24 is not about necessarily saying you, the jury, it's about  
25 saying who does it put into danger. Who -- what -- it's a

1 strategy no different than what you were talking about  
2 earlier about the getaway car and everything else and  
3 inferences and everything else, how is that strategy any  
4 different -- and I'm not even saying that we called the  
5 reptile, Moe Levine called it something else. This is just  
6 an evolution of trial strategy that's basically the same  
7 thing that people have been doing for 60 years, just like  
8 rules.

9 MR. BOYD: It has been excluded by a number of trial  
10 judges on the grounds that we raised in our papers, Your  
11 Honor, and I think it's appropriately excluded.

12 THE COURT: Well listen, I don't get the clear  
13 connection between this reptile defense or reptile theory  
14 and the Golden Rule, you seem to be merging it into the  
15 Golden Rule. Now, the Golden Rule was pretty plain and  
16 clear, and the case that they cite that they read the  
17 opinion is my case, so --

18 MR. BOYD: Here is an example of what we cited. They  
19 argued, "USSA gambled with the lives of the people in the  
20 parking lot, on the street and in Lancaster County. It's  
21 you who were at risk and who are going to bare the brunt of  
22 USSA's mistakes." I think that's direct analogous to the  
23 Golden Rule. He's asking the jurors to put themselves in  
24 the place of a plaintiff and to illicit fear and  
25 antagonistic views.

1           THE COURT: I'm not going to hamstring -- I'm assuming  
2   that most of the -- I think it would be improper in opening  
3   statement because you don't have a factual basis believing  
4   that that's what the evidence will show. But in closing  
5   argument any reasonable interpretation of the facts is --  
6   my understanding is in closing arguments it is proper. And  
7   if it reaches the point where I think it does violate the  
8   Golden Rule I'll sustain an objection. But I think -- as I  
9   say I'm not going to -- lawyers think up ingenious ways of  
10   trying to convince a jury of something.

11          MR. HOOD: But there's also -- and I'm not talking  
12   about that, I'm talking about something totally different,  
13   just trying to be preemptive. When you talk about  
14   something like the conscious of the community if you're  
15   asking for punitive damages and if Your Honor -- they're  
16   going to obviously make a DV for punitive damages and for  
17   the whole case afterwards, but if you allow punitive  
18   damages to go to the jury we're able to appeal to the jury  
19   and say it is up to you to decide what are punitive damages  
20   and whether it is appropriate or not.

21          THE COURT: All right. Let's talk about that for a  
22   minute. Procedurally what did you do last time with regard  
23   to punitive damages, or did you even have a punitive  
24   damages issue last time?

25          MR. BOYD: They had a claim for punitive damages, they

1 argued it, we didn't oppose that. I think we'll be a  
2 little bit more stringent in our objections to --

3 THE COURT: Was it a bifurcation?

4 MR. BOYD: No. We originally moved to bifurcate but  
5 that got kind of jumbled up so we dropped that motion. It  
6 was all tried together and punitives were just tried,  
7 Oliver Wood testified about punitive damages in the middle  
8 of the trial in the plaintiff's case in chief.

9 MR. HOOD: We're not calling Oliver, we're not going  
10 to call Oliver.

11 MR. BOYD: Well, that may not be an issue. Although  
12 the conscious of the community, I don't think that's  
13 appropriate. I think several courts have said that  
14 inflames the passions of the jury. What you do is you just  
15 talk about the defendant's conduct and you tell the jury,  
16 "It's your obligation to consider this issue in light of  
17 the Judge's instructions, and if you believe punitive  
18 damages are appropriate award them." I don't think they  
19 need to be worried about being the conscious of the  
20 community and getting inflamed about all of that.

21 MR. HOOD: I have given probably different 15  
22 different closing arguments where I have said, "You need to  
23 give a verdict that speaks loud and clear and people are  
24 able to read about it and they're able to see that it means  
25 something to other people and that the people of this

1 county --"

2 THE COURT: I've heard that. I have never excluded  
3 that type of argument.

4 MR. BOYD: I don't have any objection to that.

5 MR. HOOD: Well, that's the conscious of the community  
6 to me.

7 THE COURT: Well, just don't say it.

8 MR. HOOD: Thank you, Your Honor.

9 THE COURT: Following that, you've also got a motion  
10 about corporate executive salaries?

11 MR. BOYD: Yeah. If they're not going to offer that  
12 again it's moot, but they went into how much money  
13 Wal-Mart's executives made --

14 THE COURT: If it's moot it's moot, it's out.

15 MR. BOYD: Okay. Well, the other motions in limine,  
16 Your Honor, fall into maybe the category of your rule at  
17 the time of the evidence being presented, which I  
18 understand is what most judges like to do, however we were  
19 trying to get some help in preparing for trial in view of  
20 these issues. On the negligent hiring, if that issue is  
21 out of the case as we hope and believe it should be, then  
22 we would also move to exclude all of this evidence of  
23 Jones' past conduct in connection with the hiring process,  
24 the marijuana, the conviction, the fact that he flunked the  
25 marijuana test. Again, no evidence he was high on

1 marijuana at the time of this incident. He was interviewed  
2 by the police, interviewed by Wal-Mart, no one saw any  
3 evidence he was under the influence, so none of that is  
4 relevant. He didn't have a driver's license on the day,  
5 there's no evidence he couldn't safely drive a vehicle, in  
6 fact he'd been doing so for years.

7 THE COURT: How did you walk into this guy?

8 MR. HOOD: And just so you know six days after they  
9 tested him and I think that test did show he was positive  
10 for marijuana.

11 MS. FLYNN: No it didn't, he was negative.

12 MR. HOOD: It didn't have the bar across it.

13 MS. FLYNN: It was negative. It was testified at  
14 trial to be negative.

15 MR. BOYD: We didn't have a real good day the day this  
16 guy walked into the office and applied for the job. But in  
17 any event we don't think any of that has any relevance to  
18 the pursuit and the cause of the plaintiff's death.

19 THE COURT: Well, if we are going to try it it may  
20 have some evidence in the case.

21 MR. BOYD: If negligent hiring is in the case then I  
22 certainly can't get it out there, no question about that.

23 MR. HOOD: Well I think also like for instance, it's  
24 cross examination fodder, "Were you aware that this guy who  
25 is supposed to be performing security details for you did

1 not even have the ability to drive?"

2 MR. BOYD: I will be scream about that.

3 MR. HOOD: "That he had a suspended license?"

4 MR. BOYD: That would absolutely be inappropriate.

5 MR. HOOD: That's the truth.

6 MR. BOYD: It's irrelevant.

7 MR. HOOD: It isn't irrelevant because it goes to  
8 Wal-Mart and whether Wal-Mart should know or shouldn't  
9 know.

10 MR. BOYD: Well, that's another issue that we'll have  
11 to be careful about at the trial, because they did this the  
12 entire first trial, they kept conflating Wal-Mart and U.S.  
13 Security Associates, or Wal-Mart and Jones. Obviously  
14 Wal-Mart had nothing to do with Jones. They had no  
15 obligation to supervise him, they had no obligation to do  
16 anything with Jones except allow him to drive his little  
17 truck around the parking lot.

18 MR. HOOD: Well, didn't they have an obligation not to  
19 tell him to go chase that car and try to find --

20 MR. BOYD: Well, the argument is they shouldn't have  
21 said, "Get the tag."

22 THE COURT: "Get the tag, get the tag, get the tag."

23 MR. HOOD: And their argument was also that you should  
24 have told him to cease it and that's what Shawn Cox and  
25 Hope Rawlings said, so when you just told him no that was

1 not the case.

2 MR. BOYD: Anyway, throughout the trial we had a  
3 problem -- for example, Wal-Mart has a whole series of  
4 policies about shoplifting and U.S. Security Associates and  
5 Jones don't have any of those policies, we were out there  
6 in the parking lot, we have nothing to do with that. Okay.  
7 We've talked about all of that and I guess we'll have to  
8 wait and see how the Court rules on the major issue.  
9 There's just a lot of stuff in here about Jones that we  
10 would ask that it be kept out if the negligent hiring cause  
11 of action is out of the case. And then we obviously have  
12 moved to exclude any evidence of Donna Beckham's injuries  
13 and her condition following the accident. She's got a  
14 pending personal injury case and we aren't trying that  
15 today, or in this instance.

16 THE COURT: Well, I think that the motion said  
17 something about Mr. Hood's opening remarks about pins and  
18 broken bones and stuff.

19 MR. BOYD: That's right, it was throughout the early  
20 part of the case. And then they --

21 THE COURT: I think he can say that she was seriously  
22 injured.

23 MR. BOYD: Okay. They were trying to show her  
24 injuries to the jury and show the extent of her --

25 THE COURT: It has something to do with the way the

1 deceased was driving obviously.

2 MR. HOOD: And we didn't pull up any x-rays or  
3 anything and try to show her injuries during trial.

4 MS. FLYNN: Just the scarring.

5 MR. BOYD: Huh?

6 MS. FLYNN: Just the scarring.

7 MS. HARRISON: And I do think that shows the magnitude  
8 of the accident, and so it's not some irrelevant issue.

9 MR. BOYD: Ms. Hancock died in the accident, I think  
10 it was pretty obvious it was a bad accident.

11 MS. HARRISON: I think that it still goes to the heart  
12 of the issue which is how reckless were things getting with  
13 someone pursuing them, and I think it goes to the negligent  
14 pursuit cause of action.

15 THE COURT: This lady was laying in the back seat or  
16 something?

17 MR. BOYD: Yeah, lying in the back floorboard.

18 THE COURT: So she obviously didn't have a belt on.

19 MR. BOYD: No.

20 THE COURT: We're not going to take seven days to try  
21 this case. I'm going to work you hard. I would encourage  
22 you to -- it may be difficult, but there are obviously  
23 things in every case that you can stipulate. And if you  
24 can -- you're going to cut a lot of stuff to the chase if  
25 you can stipulate certain facts that don't necessarily have

1 to be proven by witnesses testimony. If there was no blood  
2 alcohol test or anything done on the deceased you can  
3 stipulate that. I could probably go through here with my  
4 limited knowledge and name a half dozen things that you  
5 could stipulate to, and juries appreciate that. I will  
6 inform them, you know, on the front end that there are  
7 certain stipulations, and as you go through the trial  
8 either you or you can tell the jury, "This is a stipulation  
9 about this set of facts." Wal-Mart's safety procedures  
10 whatever they're called, why can't you stipulate them?

11 MR. BOYD: Well, we did. We had a fairly widespread  
12 agreement about the exhibits and all of that the last time,  
13 I don't think we had a lot of dispute.

14 MR. HOOD: We did.

15 MR. BOYD: We pretty much agreed on what was relevant  
16 and I think we'll be able to do that again. And, you know,  
17 we admitted a lot of stuff. Unfortunately there was not  
18 much I could do to defend Derrick Jones' decision to chase  
19 these ladies off the parking lot, that was just stupid.  
20 But anyway, we'll certainly work on doing all we can.

21 MR. HOOD: They even stipulated that it was wrongful  
22 for him to leave the parking lot.

23 MR. BOYD: Yeah.

24 MR. HOOD: Just so I have some kind of an  
25 understanding because every judge is different and I

1 haven't had the opportunity to try a case in front of you,  
2 do you give us a time limit on opening? I'm not talking  
3 about some crazy two hour opening, I'm just talking about  
4 do you say I want it done in 30 minutes on the close and  
5 the rebuttal and that kind of thing just so we can kind of  
6 prepare and be prepared for that?

7 THE COURT: Oh, I think -- I don't normally. But  
8 since you're telling me this case was seven days the first  
9 time, and I'm going to try to move you through -- in other  
10 words maybe working a little early, working a little late,  
11 it will all depend on the jury whether they can come in at  
12 8:30 or whether they can stay until 6:00, might go ahead  
13 and make sure your lunches are there or something, I may  
14 even feed the jury just to save time. No, I don't have any  
15 strict rules on opening. But I did notice if what the  
16 defendants put in these papers is accurate and drawn from  
17 the trial transcript, you seem to argue in your opening  
18 statement as opposed to laying out the facts that you  
19 intended to prove, or your theory of the case, but it  
20 sounded to me like a final argument that you opened with.  
21 I just point that out as an observation, I don't know that  
22 you would agree with that or not but.

23 MR. HOOD: I wouldn't agree with that.

24 THE COURT: That's fine. If it appears that you're  
25 arguing your case to the jury in opening I might sustain an

1 objection, I might, just let you know that. I don't like  
2 speaking objections. When the lawyer stands up and says,  
3 "Judge, he can't say that because so and so said this and  
4 that's --" I say -- I've told lawyers to sit down trying  
5 criminal cases in Richland County. Anyway, speaking  
6 objections, tell me what your rule is, tell me what basis,  
7 if it's relevance it's relevance, if it's hearsay it's  
8 hearsay, but just don't get up and say, "He can't say  
9 that," tell me why.

10 MR. HOOD: And sure. And just because of all of the  
11 different judges I'm sure Howard has been in front of too,  
12 some prefer us to approach the bench where the court  
13 reporter can hear it so the jury can't hear it, some people  
14 don't mind the jury hearing it, what would Your Honor  
15 prefer?

16 THE COURT: I'll tell you when I want you to approach  
17 the bench. Some things you don't have to approach the  
18 bench on, on hearsay, there either is or isn't unless you  
19 can tell me that, I've got an exception or something like  
20 that.

21 MR. HOOD: No. That's simple, that's easy.

22 THE COURT: I'll tell you when I feel y'all can  
23 approach the bench.

24 (Break in proceedings.)

25 THE COURT: I'll give you until next Monday.

1 MR. BOYD: Next Monday is the 31st, Halloween.

2 THE COURT: Halloween, postmarked, same place you've  
3 been sending these other documents on issues that we've  
4 talked about here today that I have not already ruled on.  
5 Anything else?

6 MR. BOYD: Nothing from the defendant's, Your Honor.

7 MS. HARRISON: One thing I did want to clarify. I  
8 know that you said get you the criminal records, is that by  
9 the 31st as well? Because I know we have placed an order  
10 for some and I think we are still waiting so I'm not sure  
11 if we're going to be able to get --

12 THE COURT: Well, if you haven't got them you haven't  
13 got them. But I assumed you had them because it's all in  
14 your paperwork, what his criminal record is.

15 MS. FLYNN: That was from the first trial?

16 MS. HARRISON: It was just from the first trial so I  
17 wanted to give you an honest reflection of -- since  
18 obviously such a substantial amount of time has passed.

19 THE COURT: Are they in the clerk's file, is that what  
20 you're saying, in Lancaster?

21 MS. FLYNN: What we're talking about is what's  
22 happened between the trial and now, because at the time of  
23 testimony is when it's going to be relevant.

24 THE COURT: Some of these were dismissed or something?

25 MR. HOOD: We have ordered them, we've gotten a

1 private investigator and are in the process of getting all  
2 of that information.

3 THE COURT: All right. Just let me know. All right.  
4 If you haven't got it you haven't got it. I'll be here all  
5 next week. Thank you.

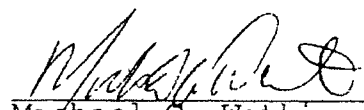
6 (End of the hearing.)

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1 I, the undersigned, Michael C. Watkins,  
2 Official Court Reporter for the Sixth Judicial  
3 Circuit of the State of South Carolina, do hereby  
4 certify that the foregoing is a true, accurate and  
5 complete transcript of the proceedings had and  
6 evidence introduced in the trial of the captioned  
7 case relative to appeal in the Court of Common Pleas  
8 for Lancaster County, South Carolina, on the 25th  
9 day of October, 2016.

10 I do further certify that am neither of kin, counsel,  
11 nor interest to any party hereto.

12  
13 January 11, 2017  
14

15   
16 Michael C. Watkins  
17 Court Reporter  
18  
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25

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

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

V

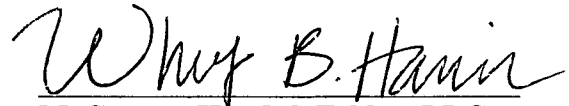
Wal-Mart Stores East, L.P., U.S. Security Associates, Inc., and Derrick L. Jones, . . . . . Respondents.

**Certificate of Counsel**

The undersigned hereby certifies this Record on Appeal contains all material proposed to be included by the parties and not any other materials.

August 1, 2017

Respectfully submitted,



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