

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

The Honorable G. Thomas Cooper, Circuit Court Judge  
The Honorable Jocelyn Newman

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Appellate Case No. 2018-000948  
Case No. 2015-CP-40-5598

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**RECEIVED**  
NOV 21 2018  
SC Court of Appeals

Modesta Brinkman, David Brinkman,  
James Coleman, Carl Foster, Karen  
Foster and Robert Collins ..... Appellants,

v.

City of Columbia, South Carolina, North  
American Pipeline Management and Layne  
Inliner..... Respondents.

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**INITIAL BRIEF OF  
RESPONDENT NORTH AMERICAN PIPELINE MANAGEMENT**

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November 21, 2018

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## STATEMENT OF ISSUES ON APPEAL

- I. Are several of Plaintiffs' arguments before this Court preserved for appellate review?
- II. Did the Circuit Court properly hold that, based on its plain language, S.C. Code Ann. § 16-11-780 is inapplicable in this case?
- III. Did the Circuit Court properly hold that, to date, the archaeological resource/archaeological structure(s) at issue have been designated as historic by any applicable and/or governing preservation and/or conservation authority(ies)?
- IV. Did the Circuit Court properly hold that, even if S.C. Code Ann. § 16-11-780 applied, NAPM falls under the utility worker exception found in § 16-11-780(K)(3)?

## STATEMENT OF THE CASE

This real property dispute arises out of alleged damage to Plaintiffs Modesta Brinkman, David Brinkman, James Coleman, Carl Foster, Karen Foster, Robert Collins and Pamela Collins' (collectively "Plaintiffs") properties resulting from a City of Columbia construction project to evaluate and repair the West Columbia Basin Sanitary Sewer System.

In 2007, Plaintiff David Brinkman discovered some large rock arrangements, which he believes to have been old bridge abutments, on his property located at 154 Castle Road, Columbia, South Carolina. In order to gather more information, Mr. Brinkman contacted Dr. Jonathan Leader, South Carolina's State Archaeologist, to come and inspect the rocks. Thereafter, Mr. Brinkman and Dr. Leader continued to keep in contact on a professional and social basis, including through their respective memberships of the Columbia chapter of the Explorer's Club.

In May 2008, in response to Mr. Brinkman's request for the bridge abutments to be considered for listing on the National Registry, the South Carolina Archives and History Center declined the request stating, in short, "that a great deal more research and archaeological investigation and assessment will be necessary. . . ." (Letter to David Brinkman from State Historic Preservation Office, May 30, 2008). More specifically, the State Historic Preservation Office questioned "whether there is a sufficient amount of physical remains from the ferry and bridge site to convey in any tangible way the history of this area of the river before, during and immediately following the Civil War" despite an "abundance of documentary material" compiled and submitted by Mr. Brinkman. (Id.).

In or around 2012, the City of Columbia ("the City") began a construction project to evaluate and repair the West Columbia Basin Sanitary Sewer System. The City engaged Weston

& Sampson Engineers, Inc. (“Weston and Sampson”) to provide certain services on the project, including reviewing CCTV footage of the sewer lines and helping identify manholes requiring repair. The City also contracted with Layne Inliner to serve as the contractor for the project. Layne Inliner, in turn, engaged North American Pipeline Management (“NAPM”) to assist with the work. In order to access several manholes located along Plaintiffs’ properties, NAPM needed to create access along the City’s sewer line easement. Plaintiffs allege that the creation of this means of access to repair the sewer line disturbed and/or destroyed the rock arrangements found by Mr. Brinkman.

More specifically, Plaintiffs contend NAPM and Layne Inliner, at and upon the recommendation of Weston and Sampson, built a “road”<sup>1</sup> across their properties that exceeded the scope and purpose of the City’s sewer line easement. Plaintiffs further allege that some of their properties contained archaeological structures that were destroyed by the construction of this road.

As a result, Plaintiffs filed suit against Weston and Sampson, the City, NAPM and Layne Inliner alleging various causes of action, including one for the destruction of archaeological structures pursuant to S.C. Code Ann. § 16-11-780(I) (Supp. 2016).

However, despite Plaintiffs’ allegations to the contrary, NAPM was never aware of any historical structures, has never seen any documentation of any historical structures and began its work without any knowledge of the area in question having a historical designation. (See generally Affidavit of Shannon Herford). Further, NAPM neither intentionally, maliciously or recklessly destroyed any historical structure nor did NAPM ever knowingly or maliciously move or displace any rocks allegedly part of a historical structure. (Id.). Finally, NAPM did not enter

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<sup>1</sup> This “road” was a temporary dirt access way and not an established, paved public road.

Plaintiffs' property(ies) for the purpose of destroying or defacing any historical or archaeological resource. (Id.).

NAPM moved for summary judgment on Plaintiffs' claims for destruction of archaeological structures pursuant to S.C. Code Ann. § 16-11-780(I) on the basis that NAPM did not enter Plaintiffs' property(ies) for the sole purpose of moving or removing an archeological resource and the archeological resource/archaeological structure(s) at issue have not been designated as historic. (See generally Defendant North American Pipeline Management's Memorandum in Support of its Motion for Summary Judgment). NAPM's Motion was heard by Judge G. Thomas Cooper on May 8, 2018. (See generally Transcript of Hearing, May 8, 2018). By Order dated May 16, 2018, Judge Cooper granted summary judgment to NAPM with respect to Plaintiffs' claims pursuant to S.C. Code Ann. § 16-11-780(I). (See generally Order Granting Defendant North American Pipeline Management's Motion for Summary Judgment, May 16, 2018).

On or about May 17, 2018, Plaintiffs served a Notice of Appeal as to Judge Cooper's grant of summary judgment to NAPM. (Notice of Appeal).

### **STANDARD OF REVIEW**

When reviewing an order granting summary judgment, an appellate court applies the same standard as the court below. David v. McLeod Reg. Med. Ctr., 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006). Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRPC (2018); Garvin v. Bi-Lo, Inc., 343 S.C. 625, 628, 541 S.E.2d 831, 832 (2001). A court must construe all ambiguities, conclusions, and inferences arising from the evidence against the moving party. City of Columbia v. Town of Irmo, 316 S.C. 193, 195, 447 S.E.2d 855, 856

(1994). However, the opposing party may not rest upon mere allegations or denials, but must respond with specific facts showing a genuine issue of material fact. Id. More specifically, a responding party “may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.” Rule 56(e), SCRCP . A grant of summary judgment is “completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner.” David, 367 S.C. at 250, 626 S.E.2d at 5.

### **ARGUMENTS**

At the outset, the Circuit Court found that there exists no genuine issue of material fact and NAPM is entitled to judgment as a matter of law because: 1) while the plain language of S.C. Code Ann. § 16-11-780(C) and the legislative intent behind the statute requires some level of intent before the statute can apply to the facts of this case, the record was absent of evidence showing the requisite intent to enter Plaintiffs’ property(ies) for the purpose of disturbing/destroying a known historical/archaeological resource; 2) no authoritative body has designated the site at issue as historically significant and Plaintiffs’ own archaeological expert believes additional archaeological work and research are needed; and 3) even assuming the former statements are, in fact, true, NAPM’s work falls under the utility worker exception found in § 16-11-780(K)(3). (See generally Order Granting Defendant North American Pipeline Management’s Motion for Summary Judgment, May 16, 2018).

Based on the record before the Court and for the reasons addressed more fully herein, NAPM respectfully requests that this Court affirm the Circuit Court’s grant of summary judgment to NAPM with respect to Plaintiffs’ claims pursuant to S.C. Code Ann. § 16-11-780(I).

**I. Several of Plaintiffs' arguments before this Court are not preserved for appellate review.**

As an initial matter, NAPM submits that several of Plaintiffs' arguments before this Court are not preserved for appellate review. For example, in general, while Section I of Plaintiff's Initial Brief addresses the Circuit Court's statutory interpretation of § 16-11-780(C), portions of Plaintiffs' Initial Brief touch on arguments that were either not fully developed or argued and/or presented in opposition to the City's Motion for Summary Judgment on an unrelated cause of action. More specifically, in Sections I and II, Plaintiffs support their argument with the notion that obtaining the proper permits and performing certain "due diligence" prior to starting the project would have required a cultural resource study and/or otherwise put NAPM (and others) on notice of the historical significance of the area. However, Plaintiffs fail to present any evidence or support for this theory other than conclusory statements. As Plaintiffs have the burden of presenting an adequate record, this Court should not consider any fact not appearing in the record on appeal. See Rule 210(h), SCACR (2018); Harkins v. Greenville Cnty., 340 S.C. 606, 616, 533 S.E.2d 886, 891 (2000).

In addition, in Section IV of their Initial Brief, Plaintiffs have asked the Court to "take judicial notice" that the properties at issue are "within the 'Broad River Historic District,' which is listed on the National Register of Historic Places." (Appellants' Initial Brief, p. 34). However, this was never presented to the Circuit Court. See Rule 210(h), SCACR ("The appellate court will not consider any fact [that] does not appear in the record on appeal.").

Moreover, Section V stands on the proposition that the Circuit Court's alleged misstatement and misquoting of the language in § 16-11-780(C) is an error that "is grounds for reversal in and of itself." (Appellants' Initial Brief, p. 34). Plaintiffs go on to cite to other perceived errors based on the Circuit Court's wording that they claim caused a misapplication of

controlling law. (See generally id. at p. 34-35). However, Plaintiffs cite no case law in support of this argument. Therefore, the argument should not be considered by this Court. See Bryson v. Bryson, 378 S.C. 502, 510, 662 S.E.2d 611, 615 (Ct.App. 2008) (“An issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not supported by authority.”); Glasscock, Inc. v. U.S. Fid. & Guar. Co., 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct.App. 2001) (“[S]hort, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review.”); and State v. Lindsey, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct.App.2011) (stating that when a party provides no legal authority regarding a particular argument, the argument is abandoned and the court will not address the merits of the issue).

Finally, Plaintiffs argue the Circuit Court erroneously applied the utility worker exception found in § 16-11-780(K)(3), providing that this exception only applies to individual workers and not corporations or municipalities. (Appellants’ Initial Brief, p. 36-38). However, that argument was never raised to the Circuit Court and only presented for the first time on appeal. See S.C. Dep’t of Transp. v. First Carolina Corp. of S.C., 372 S.C. 295, 301, 641 S.E.2d 903, 907 (2007) (“[A]n issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review. . . . There are four basic requirements to preserving issues at trial for appellate review. The issue must have been (1) raised to and ruled upon by the trial court, (2) raised by the appellant, (3) raised in a timely manner, and (4) raised to the trial court with sufficient specificity.”) (internal quotation marks omitted).

What is more, while Plaintiffs argue the utility worker exception does not apply in their appellate arguments, Plaintiffs conceded during oral arguments before the Circuit Court that NAPM was, in fact, a utility worker for purposes of the exception. (Transcript of Hearing, May

8, 2018, p. 15, l. 12 through p. 16, l. 7; p. 27, ll. 11-17; p. 47, l. 19 through p. 48, l. 5). Thus, Plaintiffs cannot now take a contrary position for appellate purposes. See City of Greer v. Humble, 402 S.C. 609, 614, 742 S.E.2d 15, 18 (Ct.App. 2013) (stating an issue conceded in the trial court cannot be argued on appeal); Gurganious v. City of Beaufort, 317 S.C. 481, 488, 454 S.E.2d 912, 916 (Ct.App. 1995) (holding a party may not present one ground at trial and then change his theory on appeal; the same ground argued on appeal must have been argued at trial).

Based on the above, this Court should decline to reach and/or consider these issues and arguments because they are not preserved for review. See S.C.D.O.T. v. M & T Enterprises of Mt. Pleasant, LLC, 379 S.C. 645, 659, 667 S.E.2d 7, 15 (Ct.App. 2008) (“[E]ven if an issue is preserved at the trial court level, it must still be properly raised and argued to the appellate court.”).

**II. The Circuit Court properly held that, based on its plain language, S.C. Code Ann. § 16-11-780 is inapplicable in this case.**

By way of background and to provide context for the statute at issue, the South Carolina General Assembly enacted S.C. Code Ann. § 16-11-780 as part of South Carolina’s criminal code. The statute is located in Chapter 11 of Title 16 (Crimes and Offenses of the South Carolina Code of Laws) for “Offenses Against Property.” Section 16-11-780(C) provides:

it is unlawful for a person to willfully, knowingly, or maliciously enter upon the lands of another or the posted lands of the State and disturb or excavate a prehistoric or historic site *for the purpose of discovering, uncovering, moving, removing, or attempting to remove an archaeological resource.* . . .

S.C. Code Ann. § 16-11-780(C) (emphasis added). Further, § 16-11-780(I) provides that a “landowner, in the case of private lands, . . . may bring a civil action for a violation of this section to recover the greater of the archaeological resource’s archaeological value or commercial value, and the cost of restoration and repair of the site where the archaeological

resource was located, plus attorney's fees and court costs." S.C. Code Ann. § 16-11-780(I). More importantly, § 16-11-780(K)(3) contains an exception to the above cited rules and provides that nothing outlined in § 16-11-780 "shall limit or interfere with . . . the lawful acts of a utility worker acting in the scope of and in the course of his employment. . . ." S.C. Code Ann. § 16-11-780(K)(3).

In applying the statute to this case, the rules of statutory construction must first be reviewed for guidance in determining whether or not Plaintiffs actually have a civil claim under the statute. In doing so, the ultimate conclusion is that the statute is inapplicable to the facts of this case and, therefore, NAPM is entitled to judgment as a matter of law.<sup>2</sup>

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. Charleston County Sch. Dist. v. State Budget and Control Bd., 313 S.C. 1, 437 S.E.2d 6 (1993). Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute. In re Vincent J., 333 S.C. 233, 509 S.E.2d 261 (1998) (citations omitted). Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and a court has no right to impose another meaning. Id. at 233, 509 S.E.2d at 262 (citing Paschal v. State Election Comm'n, 317 S.C. 434, 454 S.E.2d 890 (1995)). Further and more importantly, "[w]hat a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature."

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<sup>2</sup> As noted by the Circuit Court, Plaintiffs' request to have appoint the State Archaeologist as an expert under S.C. Code Ann. § 16-11-780(B) was denied by Order filed September 20, 2017. (See generally Order denying Plaintiffs' Motion to appoint the State Archaeologist pursuant to S.C. Code § 16-11-780, September 20, 2017). In that Order, the Circuit Court specifically interpreted "this statute to allow appointment of the State Archaeologist *in a criminal matter involving a violation of Section 16-11-780.*" (Id.) (emphasis added).

Hodges v. Rainery, 341 S.C. 79, 85, 533 S.E. 2d 578, 581 (2000) (quoting Norman J. Singer, *Sutherland Statutory Construction* § 46.03 at 94 (5th ed. 1992)).

“[W]hen a statute is penal in nature, it must be construed strictly against the State and in favor of the defendant.” State v. Blackmon, 304 S.C. 270, 273, 403 S.E.2d 660, 662 (1991). The statutory language must be construed in light of the intended purpose of the statute. Town of Mt. Pleasant v. Roberts, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011). “A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers.” State v. Sweat, 386 S.C. 339, 350, 688 S.E.2d 569, 575 (2010) (quotation marks and citation omitted). “In interpreting a statute, the language of the statute must be read in a sense that harmonizes with its subject matter and accords with its general purpose.” Roberts, 393 S.C. at 342, 713 S.E.2d at 283.

“In offenses at common law, and under statutes which do not disclose a contrary legislative purpose, to constitute a crime, the act must be accompanied by a criminal intent, or by such negligence or indifference to duty or to consequences as is regarded by the law as equivalent to a criminal intent.” State v. Ferguson, 302 S.C. 269, 272, 395 S.E.2d 182, 183 (1990) (quoting State v. Am. Agric. Chem. Co., 118 S.C. 333, 337, 110 S.E. 800, 802 (1922)). “Therefore, whether knowledge and intent are necessary elements of a statutory crime must be determined from the language of the statute, construed in the light of its purpose and design.” Guinyard v. State, 260 S.C. 220, 227, 195 S.E.2d 392, 395 (1973). In a criminal case in South Carolina, the State cannot rely on civil concepts of negligence and recklessness, i.e. statutory violations, to meet its burden of proving a defendant's state of mind; the import of the terms negligence and recklessness as used in civil law and in criminal law are neither equivalent nor interchangeable. State v. Rowell, 326 S.C. 313, 317, 487 S.E.2d 185, 187 (1997).

In reading the plain language of § 16-11-780(C), it is clear that the legislature intended this criminal statute to apply in situations where a person *willfully, knowingly or maliciously* enters another's lands *for the sole purpose* of discovering, uncovering, moving, removing or attempting to remove an archeological resource. Therefore, reading the plain and unambiguous language of § 16-11-780(C), based on the record presented, there is no evidence NAPM entered upon Plaintiffs' properties for the sole purpose of finding and removing—to any degree—an archaeological resource. As noted above, the only reason NAPM was in and about Plaintiffs' properties was to evaluate and repair the West Columbia Basin Sanitary Sewer System. Anything else that may or may not have allegedly occurred on Plaintiffs' properties has no bearing on the issues currently pending. If Plaintiffs cannot point to any evidence that NAPM or any other party were on their properties only to find and disturb an archaeological resource, then there cannot be a violation of the statute.

To be sure, NAPM was never aware of any historical structures, has never seen any documentation of any historical structures and began its work without any knowledge of the area in question having a historical designation. (Affidavit of Shannon Herford, ¶¶ 2-3, 7). Further, NAPM neither intentionally, maliciously or recklessly destroyed any historical structure nor did NAPM ever knowingly or maliciously move or displace any rocks allegedly part of a historical structure. (*Id.* at ¶¶ 4-5). Finally, NAPM did not enter Appellants' property(ies) for the purpose of destroying or defacing any historical or archaeological resource. (*Id.* at ¶ 6).

Based on the above, it is clear the plain language of S.C. Code Ann. § 16-11-780(C) and the legislative intent behind the statute requires some level of intent before the statute can apply to the facts of this case. Since this criminal statute requires an intent to enter Plaintiffs' property(ies) for the sole purpose of disturbing/destroying a known historical/archaeological

resource, Plaintiffs must come forth with some evidence that NAPM knowingly violated the terms of the statute. However, no such evidence is available from the record before the Court; therefore, S.C. Code Ann. § 16-11-780 is inapplicable in this case and NAPM is entitled to judgment as a matter of law on Plaintiffs' claims for destruction of archaeological structures pursuant to S.C. Code Ann. § 16-11-780(I). As a result, this Court should affirm the Circuit Court's grant of summary judgment to NAPM with respect to Plaintiffs' claims under § 16-11-780(I).

**III. The Circuit Court properly held that, to date, the archaeological resource/archaeological structure(s) at issue have been designated as historic by any applicable and/or governing preservation and/or conservation authority(ies).**

As outlined above, in 2007, Plaintiff David Brinkman discovered some large rock arrangements on his property which he believes to have been old bridge abutments. In order to gather more information, Mr. Brinkman contacted Dr. Jonathan Leader, South Carolina's State Archaeologist, to come and inspect the rocks. Thereafter, in May 2008, in response to Mr. Brinkman's request for a listing on the National Registry, the South Carolina Archives and History Center determined, among other things, "that a great deal more research and archaeological investigation and assessment will be necessary. . . ." before the site could be eligible for consideration. (See generally Letter to David Brinkman from State Historic Preservation Office, May 30, 2008).

More specifically, the State Historic Preservation Office questioned "whether there is a sufficient amount of physical remains from the ferry and bridge site to convey in any tangible way the history of this area of the river before, during and immediately following the Civil War" despite an "abundance of documentary material" compiled and submitted by Mr. Brinkman. (Id.) Mr. Brinkman was referred to professionals at the South Carolina Institute of Archaeology

and Anthropology “to determine what additional research and archaeological investigations might be advisable . . . to answer some of the questions still outstanding.” (*Id.*). As a result, the State Historic Preservation Office did “not believe the site is eligible for the National Register” and could not “recommend that a formal nomination be prepared.” (*Id.*). Therefore, based on the above, Plaintiffs cannot point to any evidence that the alleged archeological resource/archaeological structure(s) at issue have been designated as historic by any applicable and/or governing preservation and/or conservation authority(ies). As a result, Plaintiffs’ claims under S.C. Code Ann. § 16-11-780 fail as a matter of law.

Even still, Plaintiffs moved the Circuit Court to appoint the State Archaeologist, Dr. Leader, to provide certain testimony pursuant to S.C. Code Ann. § 16-11-780(B) related to their alleged archaeological damages. NAPM, along with others, opposed this appointment and the Circuit Court ultimately denied Plaintiffs’ request by Order filed September 20, 2017. (See generally Order denying Plaintiffs’ Motion to appoint the State Archaeologist pursuant to S.C. Code § 16-11-780, September 20, 2017). However, Plaintiffs have engaged Dr. Leader as an unpaid expert and rely on his expertise to calculate their alleged archaeological damages. Despite this fact, Dr. Leader has testified he has not done any independent research, excavation, archaeological research or other testing that would result in any governing authority issuing a historical designation for the site at issue. (See Deposition of Dr. Jonathan Leader, February 16, 2018, p. 20, ll. 9-14; p. 25, ll. 7-10; p. 32, l. 8 through p. 33, l. 6; p. 41, ll. 5-12; p. 41, ll. 20-25; p. 42, ll. 1-5; p. 43, ll. 3-6; p. 43, l. 23 through p. 44, l. 10; p. 46, ll. 6-13; p. 91, l. 24 through p. 92, l. 5; p. 103, ll. 7-14; p. 160, ll. 17-25).

In fact, Dr. Leader’s opinions and damage calculations are based on the *assumption* that a historical site is located on Plaintiffs’ property(ies). (*Id.* at p. 91, l. 24 through p. 92, l. 5). More

importantly, Dr. Leader believes that, while Mr. Brinkman's research is impressive, there still remains significant work to do to verify his ultimate conclusions regarding the historical nature of the property(ies). (*Id.* at p. 20, ll. 9-14; p. 25, ll. 7-10; p. 32, l. 8 through p. 33, l. 6; p. 41, ll. 5-12; p. 41, ll. 20-25; p. 42, ll. 1-5; p. 43, ll. 3-6; p. 43, l. 23 through p. 44, l. 10; p. 46, ll. 6-13; p. 91, l. 24 through p. 92, l. 5; p. 103, ll. 7-14; p. 160, ll. 17-25).

Since no authoritative body has designated this site as historically significant and Plaintiffs' own archaeological expert believes additional archaeological work and research are needed, Plaintiffs' claims under Section 16-11-780 fail as a matter of law. As a result, NAPM is entitled to summary judgment on Plaintiffs' claims for destruction of archaeological structures pursuant to S.C. Code Ann. § 16-11-780(I). Thus, this Court should affirm the Circuit Court's grant of summary judgment to NAPM.

**IV. Even if S.C. Code Ann. § 16-11-780 applied, the Circuit Court properly held that NAPM falls under the utility worker exception found in § 16-11-780(K)(3).**

Even assuming, *arguendo*, that S.C. Code Ann. § 16-11-780(C) and the legislative intent behind the statute *did not* require some level of intent before the statute can apply in this case and that an authoritative body has designated the site at issue as historically significant, NAPM's work falls under the utility worker exception found in the statute.

Section 16-11-780(K)(3) contains an exception to liability and provides that nothing outlined in § 16-11-780 "shall limit or interfere with . . . the lawful acts of a utility worker acting in the scope of and in the course of his employment. . . ." S.C. Code Ann. § 16-11-780(K)(3). As detailed above, the work at issue performed by NAPM was part of a larger project to evaluate and repair the West Columbia Basin Sanitary Sewer System. In fact, during arguments on NAPM's Motion for Summary Judgment, Plaintiffs acknowledged NAPM was on their property(ies) for the purpose of doing utility work. (See Transcript of Hearing, May 8, 2018, p.

15, l. 12 through p. 16, l. 7; p. 27, ll. 11-17; p. 47, l. 19 through p. 48, l. 5). Thus, NAPM's presence on Plaintiffs' property(ies) was in the course and scope of their employment as a utility worker. As a result, NAPM cannot be liable for any alleged damage to any archaeological resource(s) located on Plaintiffs' property(ies) under the terms of § 16-11-780(K)(3).

Therefore, even assuming § 16-11-780 applies to the facts of this case, Plaintiffs' claims for destruction of archaeological structures pursuant to S.C. Code Ann. § 16-11-780(I) fail as a matter of law as to NAPM. As such, the Circuit Court's decision should be affirmed.

### CONCLUSION

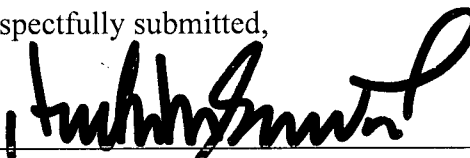
The Circuit Court properly granted summary judgment to NAPM with respect to Plaintiffs' for destruction of archaeological structures pursuant to S.C. Code Ann. § 16-11-780(I). In this case, the plain language of S.C. Code Ann. § 16-11-780(C) and the legislative intent behind the statute requires some level of intent before the statute can apply to the facts of this case. Since this criminal statute requires an intent to enter Plaintiffs' property(ies) for the sole purpose of disturbing/destroying a known historical/archaeological resource, Plaintiffs must come forth with some evidence that NAPM knowingly violated the terms of the statute. However, no such evidence is available from the record before the Court; therefore, S.C. Code Ann. § 16-11-780 is inapplicable in this case.

Further, the Circuit Court properly held that no authoritative body has designated this site as historically significant and Plaintiffs' own archaeological expert believes additional archaeological work and research are needed. Finally, even assuming the legislative intent behind the statute *did not* require some level of intent before the statute can apply in this case and that an authoritative body has designated the site at issue as historically significant, the Circuit

Court properly found that NAPM's work falls under the utility worker exception found in § 16-11-780(K)(3).

Based on the arguments herein, this Court should uphold the decision of the Circuit Court and hold that Plaintiffs' claims against NAPM for destruction of archaeological structures pursuant to S.C. Code Ann. § 16-11-780(I) should be dismissed as a matter of law.

Respectfully submitted,



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*Attorneys for Respondent North American Pipeline  
Management*

November 21, 2018  
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

**RECEIVED**  
NOV 21 2018  
SC Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

The Honorable G. Thomas Cooper, Circuit Court Judge  
The Honorable Jocelyn Newman

Appellate Case No. 2018-000948  
Case No. 2015-CP-40-5598

Modesta Brinkman, David Brinkman,  
James Coleman, Carl Foster, Karen  
Foster and Robert Collins .....Appellants,

v.

City of Columbia, South Carolina, North  
American Pipeline Management and Layne  
Inliner.....Respondents.

**PROOF OF SERVICE**

I certify that I have served the Initial Brief of Respondent North American Pipeline Management by depositing a copy of the same in the United States Mail, postage prepaid, on the 21 day of November, 2018 addressed to Appellants' attorney of record:

John Adams Hodge, Esquire  
John Adams Hodge & Associates  
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Columbia, South Carolina 29224

~and~

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November 21, 2018  
Columbia, South Carolina

**Reply To**

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November 21, 2018

**RECEIVED**  
NOV 21 2018  
SC Court of Appeals

**HAND DELIVERED**

The Honorable Jenny Abbott Kitchings  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, South Carolina 29201

RE: Modesta Brinkman, David Brinkman, James Coleman, Karen Foster, Carl Foster, Robert Collins and Pamela Collins vs. Weston & Sampson, Inc., Weston & Sampson Engineers, Inc., Weston & Sampson Services, Inc., Weston & Sampson CMR, Inc., City of Columbia, SC, North American Pipeline Management, Inc., Layne Inliner, LLC and Robert Homer, PC  
Civil Action No.: 2018-000948 (Richland)  
Date of Incident: February 10, 2015  
Carrier Claim No.: C00138928  
MGC File No.: 20495.16011

Dear Ms. Kitchings:

I hope you are doing well. Enclosed please find the original and one (1) copy each of the Initial Brief of Respondent North American Pipeline Management, Inc. and Proof of Service in the above-referenced matter. In addition, I have also enclosed the original and one (1) copy each of Respondent North American Pipeline Management, Inc.'s Designation of Matters to be included in the Record on Appeal along with a Proof of Service of the same.

I would appreciate you filing the original of each document and returning a clocked-in copy to my office via my courier.

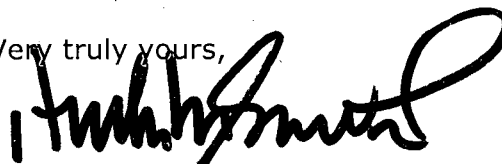
By copy of this correspondence, I am this date providing counsel of record with a copy of the Initial Brief and Designation of Matters of Respondent North American Pipeline Management, Inc. so that they may be aware of my communication and request to your office.

The Honorable Jenny Abbott Kitchings  
November 21, 2018  
Page 2

I appreciate your assistance and attention in this regard. As always, please do not hesitate to contact me should you have any questions, concerns or need any additional information regarding this or any other matter.

With best personal regards, I am,

Very truly yours,

A handwritten signature in black ink, appearing to read "Heath M. Stewart, III". The signature is written in a cursive, flowing style with a large, prominent loop at the end.

Heath M. Stewart, III

HMS/\_etd  
Enclosures

cc: John Adams Hodge, Esquire (via US mail with enclosures)  
Geoffrey K. Chambers, Esquire (via US mail with enclosures)  
Everett A. Kendall, II, Esquire (via US mail with enclosures)  
W. Michael Hemlepp, Esquire (via US mail with enclosures)