

Case 1

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ALLENDALE COUNTY
Court Of Common Pleas

The Honorable Perry M. Buckner, III, Circuit Court Judge

Case No: 2011-CP-03-38

RECEIVED
MAY 09 2012
SC Court of Appeals

Charles E. Harley, Sr. as Personal Representative
of the Estate of Charles E. Harley, Jr. Respondent,

v.

United Parcel Service and Matthew C. Fields.....Appellants.

NOTICE OF APPEAL

Pursuant to Rules 201 and 203 of the South Carolina Appellate Court Rules, Appellants United Parcel Service, Inc., and Matthew C. Fields ("Appellants") hereby appeal the Orders of the Court of Common Pleas dated April 11, 2012, and filed April 23, 2012, denying Appellants' Motion to Join Arthur Badger as a Defendant pursuant to Rules 19 and 20 of the South Carolina Rules of Civil Procedure and the Uniform Contribution Among Tortfeasors Act, S.C. Code Ann. § 15-38-10, *et seq.*, as well as Appellants' Motion to Consolidate. Appellants received written notice of entry of the Orders on April 23, 2012.

These Orders involve the merits and affect substantial rights of the Appellants and, thus, are immediately appealable under S.C. Code Ann. §§ 14-3-330(1) and (2).

(Signature page to follow.)

May 9, 2012

By:



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Other counsel of record:

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ALLENDALE COUNTY
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The Honorable Perry M. Buckner, III, Circuit Court Judge

Case No: 2011-CP-03-38

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ALLENDALE COUNTY
Court Of Common Pleas

The Honorable Perry M. Buckner, III, Circuit Court Judge

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Case No: 2011-CP-03-39

SC Court of Appeals

Arthur Badger as Personal Representative
of the Estate of Donna Badger. Respondent,

v.

United Parcel Service and Matthew C. Fields.....Appellants.

NOTICE OF APPEAL

Pursuant to Rules 201 and 203 of the South Carolina Appellate Court Rules, Appellants United Parcel Service, Inc., and Matthew C. Fields ("Appellants") hereby appeal the Orders of the Court of Common Pleas dated April 11, 2012, and filed April 23, 2012, denying Appellants' Motion to Join Arthur Badger as a Defendant pursuant to Rules 19 and 20 of the South Carolina Rules of Civil Procedure and the Uniform Contribution Among Tortfeasors Act, S.C. Code Ann. § 15-38-10, *et seq.*, as well as Appellants' Motion to Consolidate. Appellants received written notice of entry of the Orders on April 23, 2012.

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ALLENDALE COUNTY
Court Of Common Pleas

The Honorable Perry M. Buckner, III, Circuit Court Judge

Case No: 2011-CP-03-40

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SC Court of Appeals

Eva Mae Marshall. Respondent,

v.

United Parcel Service and Matthew C. Fields.....Appellants.

NOTICE OF APPEAL

Pursuant to Rules 201 and 203 of the South Carolina Appellate Court Rules, Appellants United Parcel Service, Inc., and Matthew C. Fields ("Appellants") hereby appeal the Orders of the Court of Common Pleas dated April 11, 2012, and filed April 23, 2012, denying Appellants' Motion to Join Arthur Badger as a Defendant pursuant to Rules 19 and 20 of the South Carolina Rules of Civil Procedure and the Uniform Contribution Among Tortfeasors Act, S.C. Code Ann. § 15-38-10, *et seq.*, as well as Appellants' Motion to Consolidate. Appellants received written notice of entry of the Orders on April 23, 2012.

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ALLENDALE COUNTY
Court Of Common Pleas

The Honorable Perry M. Buckner, III, Circuit Court Judge

Case No: 2011-CP-03-40

Eva Mae Marshall. Respondent,

v.

United Parcel Service and Matthew C. Fields..... Appellants.

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ALLENDALE COUNTY
Court Of Common Pleas

The Honorable Perry M. Buckner, III, Circuit Court Judge

Case No: 2011-CP-03-41

RECEIVED

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SC Court of Appeals

Barbara Williams..... Respondent,

v.

United Parcel Service and Matthew C. Fields..... Appellants.

NOTICE OF APPEAL

Pursuant to Rules 201 and 203 of the South Carolina Appellate Court Rules, Appellants United Parcel Service, Inc., and Matthew C. Fields ("Appellants") hereby appeal the Orders of the Court of Common Pleas dated April 11, 2012, and filed April 23, 2012, denying Appellants' Motion to Join Arthur Badger as a Defendant pursuant to Rules 19 and 20 of the South Carolina Rules of Civil Procedure and the Uniform Contribution Among Tortfeasors Act, S.C. Code Ann. § 15-38-10, *et seq.*, as well as Appellants' Motion to Consolidate. Appellants received written notice of entry of the Orders on April 23, 2012.

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APPEAL FROM ALLENDALE COUNTY
Court Of Common Pleas

The Honorable Perry M. Buckner, III, Circuit Court Judge

Case No: 2011-CP-03-41

Barbara Williams..... Respondent,

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APPEAL FROM ALLENDALE COUNTY
Court Of Common Pleas

The Honorable Perry M. Buckner, III, Circuit Court Judge

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SC Court of Appeals

Case No: 2011-CP-03-42

Lakasha Hay..... Respondent,

v.

United Parcel Service and Matthew C. Fields.....Appellants.

NOTICE OF APPEAL

Pursuant to Rules 201 and 203 of the South Carolina Appellate Court Rules, Appellants United Parcel Service, Inc., and Matthew C. Fields ("Appellants") hereby appeal the Orders of the Court of Common Pleas dated April 11, 2012, and filed April 23, 2012, denying Appellants' Motion to Join Arthur Badger as a Defendant pursuant to Rules 19 and 20 of the South Carolina Rules of Civil Procedure and the Uniform Contribution Among Tortfeasors Act, S.C. Code Ann. § 15-38-10, *et seq.*, as well as Appellants' Motion to Consolidate. Appellants received written notice of entry of the Orders on April 23, 2012.

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ALLENDALE COUNTY
Court Of Common Pleas

The Honorable Perry M. Buckner, III, Circuit Court Judge

Case No: 2011-CP-03-42

Lakasha Hay..... Respondent,

v.

United Parcel Service and Matthew C. Fields..... Appellants.

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ALLENDALE COUNTY
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SC Court of Appeals

The Honorable Perry M. Buckner, III, Circuit Court Judge

Case No: 2011-CP-03-43

Arthur Badger..... Respondent,

v.

United Parcel Service and Matthew C. Fields..... Appellants.

NOTICE OF APPEAL

Pursuant to Rules 201 and 203 of the South Carolina Appellate Court Rules, Appellants United Parcel Service, Inc., and Matthew C. Fields ("Appellants") hereby appeal the Orders of the Court of Common Pleas dated April 11, 2012, and filed April 23, 2012, denying Appellants' Motion to Join Arthur Badger as a Defendant pursuant to Rules 19 and 20 of the South Carolina Rules of Civil Procedure and the Uniform Contribution Among Tortfeasors Act, S.C. Code Ann. § 15-38-10, *et seq.*, as well as Appellants' Motion to Consolidate. Appellants received written notice of entry of the Orders on April 23, 2012.

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ALLENDALE COUNTY
Court Of Common Pleas

The Honorable Perry M. Buckner, III, Circuit Court Judge

Case No: 2011-CP-03-43

Arthur Badger..... Respondent,

v.

United Parcel Service and Matthew C. Fields..... Appellants.

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STATE OF SOUTH CAROLINA)
COUNTY OF ALLENDALE)
CHARLES E. HARLEY, SR. AS)
PERSONAL REPRESENTATIVE OF THE)
ESTATE OF CHARLES E. HARLEY, JR.,)

Plaintiff,

vs.

UNITED PARCEL SERVICE AND)
MATTHEW C. FIELDS.)

Defendant(s).

STATE OF SOUTH CAROLINA)

COUNTY OF ALLENDALE)

ARTHUR BADGER AS PERSONAL)
REPRESENTATIVE OF THE ESTATE)
OF DONNA BADGER,)

Plaintiff,

vs.

UNITED PARCEL SERVICE AND)
MATTHEW C. FIELDS.)

Defendant(s).

STATE OF SOUTH CAROLINA)

COUNTY OF ALLENDALE)

EVA MAE MARSHALL,)

Plaintiff,

vs.

UNITED PARCEL SERVICE AND)
MATTHEW C. FIELDS.)

Defendant(s).

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2011-CP-03-38

**ORDER DENYING MOTION
TO CONSOLIDATE IN PART
AND GRANTING IN PART**

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2011-CP-03-39

RECEIVED

MAY 09 2012

SC Court of Appeals

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2011-CP-03-40

#1
PMB

STATE OF SOUTH CAROLINA)

COUNTY OF ALLENDALE)

BARBARA WILLIAMS,)

Plaintiff,)

vs.)

UNITED PARCEL SERVICE AND)

MATTHEW C. FIELDS.)

Defendant(s).)

STATE OF SOUTH CAROLINA)

COUNTY OF ALLENDALE)

LAKASHA HAY,)

Plaintiff,)

vs.)

UNITED PARCEL SERVICE AND)

MATTHEW C. FIELDS.)

Defendant(s).)

STATE OF SOUTH CAROLINA)

COUNTY OF ALLENDALE)

ARTHUR BADGER,)

Plaintiff,)

vs.)

UNITED PARCEL SERVICE AND)

MATTHEW C. FIELDS.)

Defendant(s).)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2011-CP-03-41

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2011-CP-03-42

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2011-CP-03-43

FILED FOR COURT
2012 MAR 23
ALLLENDALE COUNTY, S.C.

#2
PMB

This matter came before me on March 21, 2012 at the Allendale County Courthouse on Defendant's Motion to Consolidate these cases pursuant to Rule 42 of the South Carolina Rules

of Civil Procedure. Present before me were Troy Thames for the Defendants and Alex Murdaugh for the Plaintiffs.

This matter arises from a motor vehicle accident on January 28, 2011 involving an SUV driven by Arthur Badger and a UPS truck driven by Matthew Fields. The Estate of Donna Badger and the Estate of Charles Harley both allege claims for wrongful death and survival. Eva Mae Marshall, Barbara Williams, Lakasha Hay and Arthur Badger allege claims for personal injuries. Eva Mae Marshall and Barbara Williams were flown from the scene. Eva Mae Marshall's claimed medical bills exceed \$60,000.00 and Barbara William's claimed medical bills exceed \$35,000.00. Lakasha Hay and Arthur Badger allege injuries with limited medical treatment. Arthur Badger alleges he has incurred Post Traumatic Stress Disorder as a result of his wife dying in his arms.

#3
PMB
In the case of Arthur Badger, the Defendants have pled comparative negligence. In the other cases the Defendants have pled that the wreck was the result of the negligence of a third party (Arthur Badger).

The issue of consolidation is within the broad discretion of the trial court. The moving party has the burden of persuading the court that consolidation is desirable. Keds v. Pierce, 315 S.C.342, 433 S.E. 2d 904 (Ct. App. 1993).

The nature of the damages claimed by the Plaintiffs vary in each case. There are allegations of wrongful death and survival, claims that allege significant injury and extensive treatment and alleged claims with limited medical treatment. Additionally, the Defendants have pled comparative negligence in Arthur Badger's case. Consolidation of these cases for trial would likely cause great confusion of the jury. However, consolidation for purposes of discovery will likely save a great deal of time and expense for the parties. Accordingly, the cases are consolidated for the purposes of discovery only.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'Perry M. Buckner', written over a horizontal line.

The Honorable Perry M. Buckner
Judge, Fourteenth Judicial Circuit

Walterboro, South Carolina

April 11, 2012

STATE OF SOUTH CAROLINA)
)
COUNTY OF ALLENDALE)
)
CHARLES E. HARLEY, SR. AS)
PERSONAL REPRESENTATIVE OF THE)
ESTATE OF CHARLES E. HARLEY, JR.,)

Plaintiff,

vs.

UNITED PARCEL SERVICE AND
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Defendant(s).

STATE OF SOUTH CAROLINA)

COUNTY OF ALLENDALE)

ARTHUR BADGER AS PERSONAL
REPRESENTATIVE OF THE ESTATE
OF DONNA BADGER,

Plaintiff,

vs.

UNITED PARCEL SERVICE AND
MATTHEW C. FIELDS.

Defendant(s).

STATE OF SOUTH CAROLINA)

COUNTY OF ALLENDALE)

EVA MAE MARSHALL,

Plaintiff,

vs.

UNITED PARCEL SERVICE AND
MATTHEW C. FIELDS.

Defendant(s).

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2011-CP-03-38

ORDER DENYING DEFENDANTS'
MOTION FOR JOINDER

FILED FOR RECORD
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CLERK OF COURT
ALLENDALE COUNTY, S.C.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2011-CP-03-39

RECEIVED

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SC Court of Appeals

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2011-CP-03-40

#1
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STATE OF SOUTH CAROLINA)
)
COUNTY OF ALLENDALE)
)
BARBARA WILLIAMS,)
)
Plaintiff,)
)
vs.)
)
UNITED PARCEL SERVICE AND)
MATTHEW C. FIELDS.)
)
Defendant(s).)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2011-CP-03-41

FILED FOR RECORD
MAR 29 11:21
ALLENDALE COUNTY, S.C.

STATE OF SOUTH CAROLINA)
)
COUNTY OF ALLENDALE)
)
LAKASHA HAY,)
)
Plaintiff,)
)
vs.)
)
UNITED PARCEL SERVICE AND)
MATTHEW C. FIELDS.)
)
Defendant(s).)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2011-CP-03-42

#2
PMB

This matter comes before me this day 21st day of March 2012 at the Allendale County Courthouse on Defendants' Motion to Join Arthur Badger as a Defendant pursuant to Rules 19 and 20 of the South Carolina Rules of Civil Procedure and the Uniform Contribution Among Tortfeasers Act, S.C. Code Ann. §15-38-10 et seq.. Present for the Defendants is Troy Thames and present for the Plaintiffs is Alex Murdaugh.

This matter arises from an automobile wreck between a vehicle driven by Arthur Badger and a UPS truck driven by Matthew Fields, an employee of UPS. The wreck occurred on January 28, 2011 in Allendale County. The Plaintiff's were passengers in Badger's automobile.

The Defendants seek to join Badger as a Defendant so a jury can consider his fault if any in comparison to the current Defendants and apportion fault to each. Defendants rely on 15-38-15 (D) which states: "A defendant shall retain the right to assert that another potential tortfeasor,


whether or not a party, contributed to the alleged injury or damages and/or may be liable for any or all of the damages alleged by any other party.”

The fact that this subsection uses the word “retain” indicates the legislature’s intent to preserve existing rights, not create new rights. At the time 15-38-15 was enacted, a Defendant had no right to apportionment among tortfeasors (beyond the tort claims context), so this was clearly outside the scope of the rights to which subsection D refers. Defendants still have the right to allege and argue before the jury that Badger caused the alleged injuries of the Plaintiff’s.

It is well settled that a Plaintiff has the sole right to determine which co-tortfeasers he will sue. Doctor v. Robert Lee, Inc., 215 S.C. 332, 55 S.E 2d 68 (1949). Moreover, as the Supreme Court held in regard to another statute regarding apportsment of liability, S.C. Code Ann. §15-78-100(c) (1976) as amended: “The trial court lacked the authority to require personal representative to sue additional allege co-tortfeasors.” Chester v. Dept. of Pub. Safety, 388 S.C. 343, 698 S.E.2d 559 (2010). Although Chester was decided in a tort claims act setting the same logic applies, and I decline to order Arthur Badger to be joined as a Defendant.

Based on the foregoing the Defendants Motions for Joinder are denied.

IT IS SO ORDERED.



The Honorable Perry M. Buckner
Judge, Fourteenth Judicial Circuit

Walterboro, South Carolina

April 11, 2012

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64/61

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May 9, 2012

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

Re: Charles E. Harley, Sr. as Personal Representative of the Estate of Charles E. Harley, Jr. v. United Parcel Service and Matthew C. Fields
Case No. 2011-CP-03-38
Arthur Badger as Personal Representative of the Estate of Donna Badger v. United Parcel Service and Matthew C. Fields
Case No. 2011-CP-03-39
Eva Mae Marshall v. United Parcel Service and Matthew C. Fields
Case No. 2011-CP-03-40
Barbara Williams v. United Parcel Service and Matthew C. Fields
Case No. 2011-CP-03-41
Lakasha Hay v. United Parcel Service and Matthew C. Fields
Case No. 2011-CP-03-42
Arthur Badger v. United Parcel Service and Matthew C. Fields
Case No. 2011-CP-03-43
File No.: 1464.6098

RECEIVED

MAY 09 2012

SC Court of Appeals

Dear Ms. Kitchings:

Enclosed please find the originals and one copy each of the Notices of Appeal and Proofs of Service in each of the six matters referenced above. Also enclosed are the following:

1. Copies of the orders which are to be challenged on appeal; and
2. Our check totaling \$600.00 for the filing fees.

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May 9, 2012
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It would be greatly appreciated if you would please file the original Notices of Appeal and Proofs of Service and return clocked copies of these filings to me via our office courier. Thank you for your assistance with this matter, and please contact me if you have any questions.

With kind regards, I am

Very truly yours,

TURNER, PADGET, GRAHAM & LANEY, P.A.

A handwritten signature in cursive script that reads "Wilson S. Sheldon" followed by a small mark that appears to be "WSS".

Wilson S. Sheldon

WSS/tj

Enclosures

cc: R. Alexander Murdaugh, Esquire (w/enc.)