

**Reply To**

HELEN F. HISER  
Direct Dial: (843) 576-2930  
helen.hiser@mgclaw.com

July 10, 2019

RECEIVED  
JUL 12 2019  
SC Court of Appeals

**Via U.S. Mail**

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

RE: Richard L. Winslow and Charmayne Winslow v. Matthew W. Hudson and Waste Pro USA, Inc., and Waste Pro of South Carolina, Inc., and Liberty Mutual Fire Insurance Co., and Liberty Mutual Insurance Group, Inc.  
Civil Action Nos.: Civil Action No. 2017-CP-27-115 and Civil Action No. 2018-CP-27-00442  
Date of Incident: November 4, 2015  
Carrier Claim No.: AB505-382519-01  
MGC File No.: 2095.17210  
Appeal No. 2018-001955

Dear Ms. Kitchings:

We are writing to update the Court regarding developments at the Circuit Court in Civil Action Nos. 2017-CP-27-115 and 2018-CP-27-00442, both pending in the Jasper County Court of Common Pleas. Waste Pro has refiled its Motion to Dismiss Pursuant to Rule 12(b)(8), or Alternatively, Motion to Consolidate in Docket No. Civil Action No. 2018-CP-27-00442. Currently, that Motion is scheduled to be heard on August 1, 2019. In addition, Waste Pro has written letters to the Jasper County Clerk of Court in both dockets advising of this Court's February 7, 2019 Order and seeking resolution of the pending motions. See attached.

We will provide another update 30 days from today's date. If you have any questions, please do not hesitate to contact me.

Sincerely,  
McAngus Goudelock & Courie, LLC



Helen F. Hiser

**Attachments**

cc: Patrick W. Carr, Esquire  
David S. Cobb, Esquire  
Kathleen C. Barnes, Esq.

# The South Carolina Court of Appeals

Richard L. Winslow and Charmayne Winslow,  
Respondents,

v.

Matthew W. Hudson, Waste Pro USA, Inc., and Waste  
PRO of South Carolina, Inc., Defendants,

Of which Matthew W. Hudson is the Appellant.

Appellate Case No. 2018-001955

---

## ORDER

---

Waste Pro USA, Inc.'s motion to intervene is granted. Waste Pro's motion to dismiss this appeal is denied; however, the motion to stay this appeal is granted to the extent that this appeal shall be stayed until the circuit court issues its orders on the motions currently pending before it in Civil Action No. 2017-CP-27-00115 and Civil Action 2018-CP-27-00442. Waste Pro shall provide this court with status updates every thirty days until the motions are resolved.



FOR THE COURT

Columbia, South Carolina

cc:

David Starr Cobb, Esquire  
Patrick W. Carr, Esquire  
Kathleen Chewing Barnes, Esquire  
Benjamin B. Davis, Esquire  
Helen F Hiser, Esquire

**FILED**

*February 7, 2019*

EXHIBIT

A

STATE OF SOUTH CAROLINA

)

IN THE COURT OF COMMON PLEAS

COUNTY OF JASPER

)

Civil Action No. 2018-CP-27-00442

RICHARD L. WINSLOW AND  
CHARMAYNE WINSLOW,

)

)

)

)

Plaintiffs,

)

)

vs.

)

)

WASTE PRO USA, INC. AND WASTE  
PRO OF SOUTH CAROLINA, INC.,

)

)

)

Defendants.

)

)

**DEFENDANTS' JOINT  
MOTION TO DISMISS  
PURSUANT TO RULE 12(b)(8),  
OR ALTERNATIVELY,  
MOTION TO CONSOLIDATE**

YOU WILL PLEASE TAKE NOTICE that ten (10) days after service hereof, or as soon thereafter as undersigned counsel may be heard, Defendants Waste Pro USA, Inc. and Waste Pro of South Carolina, Inc. (collectively "Waste Pro"), will move for an Order granting dismissal of this action with prejudice pursuant to Rule 12(b)(8), SCRPC. Alternatively, Defendants will move for an Order to Consolidate the present case with the Plaintiffs' other action against Waste Pro that is already pending in the Jasper County Court of Common Pleas, bearing Civil Action No 2017-CP-27-115, pursuant to Rule 42(a), SCRPC.

Waste Pro previously filed a similar Motion which this Court dismissed without prejudice until an appeal in a related case was resolved. The South Carolina Court of Appeals recently stayed that appeal, Appellate Case No. 2018-001955, until this Court decides the motions in this docket and in Civil Action No. 2017-CP-27-00115.

Waste Pro's motion to dismiss pursuant to Rule 12(b)(8), SCRPC, is based on the grounds that the Plaintiffs already have a separate action pending between the same parties for the same claim. Specifically, in another action pending in the Jasper County Court of Common Pleas, bearing Civil Action No. 2017-CP-27-115, these same Plaintiffs assert claims arising from

a November 4, 2015 motor vehicle collision against these same Defendants. In the present case, bearing Civil Action No. 2018-CP-27-442, Plaintiffs assert the same claims arising from the same incident against these same Defendants. A review of the respective Complaints filed in each case confirms that Civil Action No. 2018-CP-27-442 stems from the same incident, involves the same parties, and involves the same or substantially the same issues (Plaintiffs' Complaint in 2017-CP-27-115 attached as *Exhibit A*, and Plaintiffs' Complaint in 2018-CP-27-442 attached as *Exhibit B*).

Should Waste Pro be unable to prevail on its Rule 12(b)(8) motion, in the alternative, it would contend the action Plaintiffs' bring here (2018-CP-27-442) should be consolidated, in its entirety, into and/or with Plaintiff's other pending action (2017-CP-27-115), pursuant to Rule 42(a), SCRCP. Defendants base this motion upon grounds similar to those relied upon in supporting their Rule 12(b)(8) motion. The Waste Pro Defendants request that this Motion be decided along with Plaintiffs' Motion to Dismiss and Defendants' Motion to Vacate pending in Docket No. 2017-CP-27-00115, as all three motions are inter-related.

This motion is based upon the pleadings, the statutory and common law of the State of South Carolina, the applicable South Carolina Rules of Civil Procedure, supporting memoranda which will be filed separately with the Court, and oral argument presented at the corresponding hearing of this motion.

*(Signature page follows)*

Respectfully submitted,

McANGUS GOUDELOCK & COURIE, LLC

s/Benjamin B. Davis

Benjamin B. Davis

Bar No: 74955

Post Office Box 650007

735 Johnnie Dodds Blvd, Suite 200 (29464)

Mt. Pleasant, South Carolina 29465

(843) 576-2900

ATTORNEYS FOR DEFENDANTS, WASTE  
PRO USA, INC. AND WASTE PRO OF  
SOUTH CAROLINA, INC.

June 14, 2019

STATE OF SOUTH CAROLINA )

COUNTY OF JASPER )

RICHARD L. WINSLOW and )  
CHARMAYNE WINSLOW, )

Plaintiffs, )

v. )

MATTHEW W. HUDSON, and )  
WASTE PRO USA, INC., and )  
WASTE PRO OF SOUTH CAROLINA, )  
INC., )

Defendants. )

IN THE COURT OF COMMON PLEAS

FOURTEENTH JUDICIAL CIRCUIT

C/A NO.: 2017-CP-27-\_\_\_\_\_

COMPLAINT

The Plaintiffs, complaining of the Defendants herein, would respectfully show this Court the following:

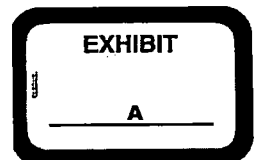
**PARTIES AND JURISDICTION**

1. Plaintiff, Richard L. Winslow (hereafter "Richard"), is a citizen and resident of Berkeley County, South Carolina.

2. Plaintiff, Charmayne Winslow (hereafter "Charmayne"), is a citizen and resident of Berkeley County, South Carolina.

3. Defendant, Matthew W. Hudson (hereafter "Defendant Hudson"), upon information and belief, is a citizen and resident of Chatham County, Georgia.

4. Upon information and belief, Defendant Waste Pro USA, Inc. (hereafter "Defendant Waste Pro USA"), is a foreign corporate entity which owns and operates as a large commercial and residential waste collection and recycling service provider all over the



United States. Upon information and belief, this Defendant transacts business, serves customers, and employs agents throughout South Carolina, including particularly in Jasper County, South Carolina.

5. Upon information and belief, Defendant Waste of South Carolina, Inc. (hereafter "Defendant Waste Pro of SC"), is a domestic corporate entity with its principal place of business located at 422 Industrial Park Road in Hardeeville, Jasper County, South Carolina. Upon information and belief, this Defendant owns property, transacts business, serves customers, and employs agents throughout South Carolina, including particularly in Jasper County, South Carolina.

6. Upon information and belief, the two corporate Defendants herein enjoy a close corporate relationship as parent, sister, subsidiary, franchisor, franchisee, affiliate, or some other similar mutually beneficial business connection such that they enjoy a sufficient amalgamation of interests and are to be treated as one and the same in this action.

7. Upon information and belief, each and all of the Defendants herein derive substantial revenue and profits from their business operations throughout the United States, including particularly in Jasper County, South Carolina.

8. At all times herein, Defendant Hudson was operating a large commercial garbage and sanitation truck, owned by his employers, Defendants Waste Pro USA, Inc. and Waste Pro of South Carolina, Inc., with express permission and consent.

9. At all times herein, Defendants Waste Pro provided their employee the heavy machinery, garbage and sanitation truck, Defendant Hudson, to serve as a means of use and convenience for their mutual financial benefit.

10. At all times herein, Defendant Hudson was operating a large commercial garbage truck owned by the Waste Pro Defendants, and Defendant Hudson was acting in the course and scope of his employment with the corporate Defendants herein.

11. The motor vehicle collision described herein occurred in Beaufort County, South Carolina along Highway 278 at approximately 7:40 a.m. on November 4, 2015.

12. This Court has jurisdiction over the parties and the subject matter herein, and venue is proper in the Jasper County Court of Common Pleas.

13. This action is timely brought, and all necessary and proper parties are correctly identified and properly joined herein.

14. All allegations raised herein below and above shall be incorporated as to each cause of action raised herein, and all allegations shall be deemed raised jointly against each and all of the Defendants.

**FOR A FIRST CAUSE OF ACTION**  
**(Negligence)**

15. Plaintiffs reallege and incorporate the contents of the preceding paragraphs as if fully set forth verbatim.

16. On or about November 4, 2015, Richard was operating a Jeep vehicle owned by his fiancée, Charmayne, with her express permission and consent.

17. On this date, Richard was lawfully operating this Jeep vehicle along Highway 278 in Beaufort County, South Carolina.

18. Richard brought this vehicle to a full stop due traffic conditions ahead.

19. At all times herein, Richard was operating Charmayne's Jeep vehicle

lawfully, attentively, and with due regard for his safety and that of others.

20. On this same date and location, Defendant Hudson was travelling behind Richard in the same lane of travel along Highway 278.

21. Defendant Hudson was operating his employers' garbage and sanitation truck with their express permission and consent.

22. Defendant Hudson was not paying proper attention to the roadway ahead of him and caused his large commercial vehicle to crash into the rear of Richard and Charmayne's vehicle.

23. This collision caused Richard to collide with another vehicle ahead of him on the roadway who was also stopped at the red traffic signal.

24. The Waste Pro Defendants herein are legally responsible for the tortious conduct of their employee, Defendant Hudson, committed during the course and scope of his employment, pursuant to the doctrine of respondeat superior.

25. This collision was the fault of the Defendants, and Richard did not cause or contribute to the collision in any manner.

26. This collision caused Richard to experience personal injuries and other damages.

27. This collision caused damages to Charmayne's Jeep vehicle.

28. After the collision occurred, Defendant Hudson admitted he was driving while distracted because he was looking at his mobile electronic device.

29. Distracted driving while using mobile electronic devices is a public safety hazard that results in numerous unnecessary deaths and injuries on our roadways every

year, both locally and nationally.

30. This multi vehicle collision sequence occurred during daylight conditions along a flat and straight stretch of highway.

31. During this collision sequence, Richard injured his knee when it struck the dashboard or other areas within the vehicle.

32. After the collision, Richard was treated and diagnosed for injuries to his head, neck, back, shoulder, and knee areas.

33. The medical diagnoses provided to Richard following this collision by his treating healthcare professionals were correct, accurate, and proximately caused by this collision.

34. Because of this collision, Richard required surgeries to his knee and shoulder areas to treat internal abnormalities caused by the trauma from this event.

35. Richard was diagnosed with post-concussion syndrome due to this incident, and he continues to experience, dizziness and blackout episodes that he did not experience prior to this collision.

36. Richard continues to experience pain and limitations with his knee and shoulder due to this incident.

37. As a user of the highways of the State of South Carolina, Defendant Hudson owes certain duties of care to others using the highways.

38. As the owners, operators, employers, and providers of commercial vehicle and waste services in South Carolina, the Waste Pro Defendants owe certain duties of care to others using the highways.

39. Each and all of the Defendants herein breached their duties of ordinary care owed to Richard and Charmayne by their careless, negligent, grossly negligent, reckless, willful and wanton conduct and omissions as follows:

- a. Failing to keep a vehicle under proper control;
- b. Failing to keep a proper lookout on the roadway;
- c. Failing to yield the right of way;
- d. Failing to properly hire, train, monitor, and supervise a commercial truck operator with safe driving practices;
- e. Traveling too fast for conditions;
- f. Driving while distracted by reason of a mobile electronic device;
- g. Traveling in excess of the posted speed limit;
- h. Operating a motor vehicle without proper brakes, or if so properly equipped, in failing to properly apply such brakes;
- i. Failing to use that degree of care and caution which a reasonably prudent person or commercial truck owner/operator would have used under the circumstances;
- j. Failing to look and observe traffic and traffic conditions on or about the roadway at the time of the collision;
- k. Failing to take the proper precautions to insure the safety of those persons using the highway;
- l. Operating a motor vehicle with a reckless disregard for the rights of others using the highway;

- m. Causing a large commercial vehicle to collide with others lawfully on the highway;
- n. Violating one or more of the requirements for commercial truck operators under the Federal Motor Carrier Safety Regulations;
- o. Violating one or more of the traffic statutes made and provided under the Code of Laws for South Carolina; and,
- p. Such other and further acts of negligent, reckless and willful conduct as will be shown by the evidence produced at trial.

40. Defendants' conduct on this date and location demonstrated a substantial disregard for the safety of Richard and others.

41. There were no obstacles or conditions existing on the roadway at the location of the collision, which in anyway impaired Defendant Hudson's view and ability to observe and react to the conditions on the roadway in front of him.

42. As a direct and proximate result of the careless, negligent, grossly negligent, reckless, willful and wanton acts and omissions of each and all of the Defendants herein, Plaintiffs Richard Winslow and Charmayne Winslow have suffered injuries and other damages, including some or all of the following:

- a. Physical injuries;
- b. Medical expenses, including physicians, hospital, medicines, physical therapy expenses, rehabilitation expenses, and transportation expenses connected with medical treatment;
- c. Mental anguish and emotional distress;

- d. Fear and anxiety;
- e. Future damages resulting from permanent injuries;
- f. Permanent impairment of health;
- g. Vehicle repair and damage expenses;
- h. Vehicle loss of use and depreciation;
- i. Inconvenience and transportation expenses associated with medical visits and medical procedures;
- j. Out of pocket expenses;
- k. Pain and suffering;
- l. Loss of enjoyment of life;
- m. Loss of income and earning capacity;
- n. Loss of spousal consortium;
- o. Alteration of lifestyle; and,
- p. Such other damages as will be shown by the evidence at trial.

43. Plaintiffs are entitled to judgment against each and all of the Defendants herein, jointly and severally, for actual damages, for punitive damages, for the costs of this action, for pre-judgment interest on all special damages, for post-judgment interest, and for such other and further relief as this Court may deem just and appropriate.

**WHEREFORE**, Plaintiffs Richard Winslow and Charmayne Winslow, having raised their Complaint against these Defendants, Matthew W. Hudson, and Waste Pro USA, Inc., and Waste Pro of South Carolina, Inc., pray that this Court inquire into the matters set forth

herein and grant them judgment against these Defendants, jointly and severally, for actual damages, for punitive damages, for the costs of this action, for pre-judgment interest on all special damages, for post-judgment interest, and for such other and further relief as this Court deems just and appropriate.

Dated: March 16, 2017

Hilton Head Island, South Carolina

/s/ Patrick W. Carr  
Patrick W. Carr, Esquire  
SC Bar No. 15585; Fed. I.D. No. 07190  
BERRY & CARR, P.C.  
Attorneys at Law  
2 Spanish Wells Road  
Hilton Head Island, SC 29926  
Phone: (843) 686-5432  
Facsimile: (843) 785-6173  
E-mail: [Patrick@hiltonheadlawyers.com](mailto:Patrick@hiltonheadlawyers.com)  
*Attorney for Plaintiffs*

ELECTRONICALLY FILED - 2017 Mar 20 11:42 AM - JASPER - COMMON PLEAS - CASE#2017CP2700115  
ELECTRONICALLY FILED - 2019 Jun 14 12:49 PM - JASPER - COMMON PLEAS - CASE#2018CP2700442

STATE OF SOUTH CAROLINA )

COUNTY OF JASPER )

RICHARD WINSLOW and )  
CHARMAYNE WINSLOW, )

Plaintiffs, )

v. )

WASTE PRO USA, INC., and WASTE )  
PRO OF SOUTH CAROLINA, INC., )

Defendants. )

IN THE COURT OF COMMON PLEAS

FOURTEENTH JUDICIAL CIRCUIT

C/A NO.: 2018-CP-27-\_\_\_\_\_

COMPLAINT

The Plaintiffs, complaining of the Defendants herein, would respectfully show this Court the following:

**PARTIES, JURISDICTION, FACTUAL BACKGROUND**

1. Plaintiff, Richard Winslow (hereafter "Richard"), is a citizen and resident of Berkeley County, South Carolina.

2. Plaintiff, Charmayne Winslow (hereafter "Charmayne"), is a citizen and resident of Berkeley County, South Carolina.

3. Upon information and belief, Defendant Waste Pro USA, Inc. (hereafter "Defendant Waste Pro USA"), is a domestic corporate entity which owns property, maintains agents and employees, and otherwise transacts business in Jasper County, South Carolina.

4. Upon information and belief, Defendant Waste Pro of South Carolina, Inc. (hereafter "Defendant Waste Pro of SC"), is a domestic corporate entity which owns property, maintains agents and employees, and otherwise transacts business in Jasper



County, South Carolina.

5. Upon information and belief, Defendant Waste Pro of SC maintains its principal place of business in Jasper County, South Carolina.

6. Upon information and belief, each and all of the Defendants herein are collectively and actively engaged in the business of owning, operating, controlling, supervising, and otherwise conducting a waste collection and recycling business throughout the southeastern portion of the United States, while operating numerous large commercial trucks in connection with same.

7. Upon information and belief, each and all of the Defendants herein own and operate more than 75 locations in Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Tennessee, North Carolina, and South Carolina.

8. Upon information and belief, each and all of the Defendants herein profess to operate a successful and responsible corporate operation, with using statements on their website such as: "Waste Pro has a commitment to caring."

9. Upon information and belief, each and all of the Defendants herein profess to honor a culture of dependability, doing the right thing, and being connected to their customers, communities, regulators, and each other.

10. Upon information and belief, each and all of the Defendants herein are connected by way of a parent, subsidiary, affiliate, sister, or other close corporate relationship such that they enjoy a mutually beneficial financial relationship and are joined with respect to the issues involved in this action and have an amalgamation of interests such that they are to be treated as one and the same for all causes of action raised herein.

11. Upon information and belief, each and all of the Defendants herein derive substantial revenue and profits from their business operations in Jasper County, South Carolina.

12. At all times herein, Defendants employed a commercial vehicle operator known as Matthew W. Hudson, and this individual was operating a commercial garbage and sanitation truck, owned by his employer, Waste Pro of South Carolina, Inc., with express permission and consent.

13. At all times herein, Defendants Waste Pro provided their employee the heavy machinery, garbage and sanitation truck, Defendant Hudson, to serve as a means of use and convenience for their mutual financial benefit.

14. At all times herein, Matthew W. Hudson was acting within the course and scope of his employment with the Defendants herein, and the Defendants herein are jointly and severally liable for the tortious acts and omission of Hudson as described herein pursuant to the legal doctrine respondeat superior.

15. The motor vehicle collision described herein occurred in Beaufort County, South Carolina on November 4, 2015.

16. On the aforementioned date and location, Defendants' driver and employee, Hudson, caused a three-vehicle pile-up rear end collision along Highway 278 during the morning hours in Beaufort County, South Carolina.

17. On the aforementioned date and location, Hudson was operating a large commercial truck owned by the Defendants herein, while acting in the course and scope of his employment with these Defendants, and with the garbage truck he was operating

weighing in excess of 33,000 pounds.

18. The collision described herein was solely the fault of Defendants' employee and driver, Matthew W. Hudson.

19. A previous civil action was filed and pursued with respect to damages caused to Plaintiffs by Matthew W. Hudson, specifically civil action number 2017-CP-27-00115, with said action resulting in a judicial determination that Plaintiffs are entitled to damages of no less than One Million Nine Hundred Sixty Thousand Four Hundred Forty-Four and 66/100 Dollars (\$1,960,444.66) stemming from the subject motor vehicle collision.

20. The Defendants herein have repeatedly failed and refused to accept responsibility for the damages, harms, losses, and other ill effects caused to Plaintiffs by the unsafe driving conduct of their employee, Matthew W. Hudson, even to the point of filing a responsive pleading in the aforementioned civil action (2017-CP-27-00115) wherein they blame Plaintiffs for causing their own damages and cite that Plaintiffs have failed to mitigate their damages.

21. This action is necessitated by the conduct of the Defendants herein and their representatives in failing and refusing to pay a legal judgment against their employee, Matthew W. Hudson, in the amount of One Million Nine Hundred Sixty Thousand Four Hundred Forty-Four and 66/100 Dollars (\$1,960,444.66).

22. This Court has jurisdiction over the parties and the subject matter herein, and venue is proper in the Jasper County Court of Common Pleas.

23. This action is timely brought, and all necessary and proper parties are correctly identified and joined herein.

24. All allegations set forth herein above and below shall be fully incorporated and restated as to each and every party and cause of action raised herein.

**FOR A FIRST CAUSE OF ACTION**  
**(Negligence)**

25. Plaintiffs reallege and incorporate the contents of the preceding paragraphs as if fully set forth verbatim.

26. On or about November 4, 2015, Richard was lawfully operating a red Jeep vehicle owned by his then fiancé and now spouse, Charmayne, along Highway 278 in Beaufort County, South Carolina.

27. Richard brought this red Jeep vehicle to a full stop due to traffic conditions ahead, and Richard made his braking and stopping maneuver in a completely safe, slow, and normal manner.

28. The brake lights on this red Jeep vehicle were fully operational and functional on this date and at all times leading up to the subject collision.

29. On this same date and location, Matthew W. Hudson, while operating a large commercial sanitation truck owned by and provided to him by his employer, the Waste Pro Defendants herein, was traveling behind Richard in the same lane of travel along Highway 278.

30. At all times herein, Matthew W. Hudson was operating his employers' garbage and sanitation truck with their express permission and consent.

31. Defendant Hudson was not paying proper attention to the roadway ahead of him and caused his large commercial sanitation vehicle to crash into the rear of the red Jeep vehicle owned by Charmayne and operated by Richard.

32. This collision caused the vehicle operated by Richard to be pushed forward several feet and collide with the rear of another vehicle ahead of him on the roadway.

33. This crash sequence caused by Defendants' employee Hudson resulted in a secondary impact and whiplash forces against Richard's body within the vehicle he was operating.

34. This collision was the fault of Defendants and their employee Hudson, and Richard did not cause or contribute to the collision in any manner.

35. This collision and crash sequence occurred during daylight conditions along a flat, straight stretch of highway.

36. If Defendants' employee Hudson were paying proper attention to the roadway ahead and keeping his large commercial sanitation truck under proper control, this collision would not have occurred.

37. After the crash occurred, Defendants' employee Hudson apologized to Richard for causing this collision, and he admitted to Richard that the crash occurred because he was distracted by reason of looking at his mobile telephone or similar mobile electronic device.

38. This collision caused Richard and Charmayne to experience personal injuries and other damages.

39. At all times herein, Richard was operating Charmayne's vehicle lawfully, with the right of way, and with due regard for the safety of himself and others.

40. After the collision occurred, Matthew W. Hudson admitted he chose to look at his mobile electronic device rather than the roadway ahead in the moments leading up to

the crash.

41. After the collision, Richard was treated and diagnosed for injuries to his head, right shoulder, and right knee areas.

42. More specifically, Richard went to the emergency room on the date of this crash, and he was diagnosed with a cerebral contusion, a right shoulder contusion, and a right knee contusion.

43. In addition, Richard continued to experience blackout episodes, dizziness, vision changes, mood swings, memory problems, fatigue, and other symptoms consistent with post-concussion syndrome, and Richard never experienced any of these problems prior to the subject motor vehicle crash.

44. Numerous physicians who have treated and evaluated Richard after this crash have concluded that Richard suffers from post-concussion syndrome as a direct and proximate result of this crash.

45. In addition, Richard had a prior injury to his right shoulder which had healed with treatment prior to this motor vehicle crash.

46. After the subject crash, Richard sought treatment and evaluation of his right shoulder pain with an expert orthopedic surgeon, who ordered an MRI study of his right shoulder which revealed a full tear in the anterior supraspinatus tendon (a right shoulder rotator cuff tear).

47. This was a new injury in Richard's right shoulder that did not exist prior to the subject motor vehicle crash.

48. The orthopedic surgeon who treated and evaluated Richard after this wreck

concluded that Richard's right shoulder rotator cuff tear was directly and proximately caused by the subject motor vehicle crash.

49. As a result of his right shoulder rotator cuff tear, Richard underwent a surgical procedure on his right shoulder on May 3, 2016, and he required post-operative physical therapy after this procedure.

50. In addition, Richard had some pre-existing arthritis and pain in his right knee that predated the subject motor vehicle crash.

51. Richard's right knee struck the dash and under steering wheel area within the red Jeep vehicle during this crash sequence.

52. The trauma to Richard's right knee during this crash sequence aggravated the pre-existing arthritis, pain, and physical limitations in Richard's right knee.

53. The trauma to Richard's right knee during this crash sequence aggravated the pre-existing arthritis in Richard's right knee to the point where he required a total knee replacement surgery.

54. Because of the subject wreck, Richard underwent a total knee replacement surgical procedure, while under general anesthesia, at Summerville Trident Medical Center in the spring of 2016.

55. After the knee operation Richard endured, he suffered substantial physical limitations, was forced to use a walker, a cane, crutches, and a knee immobilizer for a period of time, and required a course of post-operative physical therapy.

56. Richard was never recommended to have a total knee replacement surgical procedure on his right knee prior to the subject crash.

57. The diagnoses provided to Richard by his treating healthcare providers were all correct, accurate, genuine, medically indicated, and founded upon a reasonable degree of medical certainty to a most probable standard.

58. Because of this collision, Richard has incurred past medical expenses in excess of Two Hundred Three Thousand Dollars (\$203,000), with additional expenses most probably to occur in the future.

59. All of the medical charges submitted on Richard's behalf following this crash for treatment and diagnosis of his collision related injuries are reasonable and customary within the medical community in South Carolina.

60. After the surgical procedures performed on Richard's right knee and right shoulder following this motor vehicle crash, Richard continues to experience pain and physical limitations in these areas of his body to a degree and manner that he would not experience if this crash had not occurred.

61. This motor vehicle crash caused Richard to experience physical pain and suffering.

62. This motor vehicle crash caused Richard to experience fear and anxiety.

63. This motor vehicle crash caused Richard to experience emotional distress and mental anguish.

64. This motor vehicle crash caused Richard to experience loss of enjoyment of life.

65. This motor vehicle crash caused Richard to experience loss of income and loss of earning capacity.

66. This motor vehicle crash caused Richard to experience permanent impairment of health.

67. This motor vehicle crash cause Richard to experience scarring and disfigurement associated with his surgical procedures.

68. This motor vehicle crash caused Charmayne to experience, damage, loss of use, depreciation, and other damages associated with her Jeep vehicle.

69. The injuries to Richard's head, knee, and shoulder areas from this traffic collision are most likely to cause future deterioration, worsening, and other adverse health consequences for Richard.

70. As users of the highways of the State of South Carolina, Richard and Charmayne are owed certain duties of ordinary care by others using the highways.

71. Defendants herein, by and through the acts and omissions of their employee driver, Matthew W. Hudson, breached the duties of ordinary care owed to Richard and Charmayne, by such careless, negligent, grossly negligent, reckless, willful and wanton conduct and omissions as follows:

- a. Failing to keep a vehicle under proper control;
- b. Failing to keep a proper lookout on the roadway;
- c. Failing to yield the right of way;
- d. Traveling too fast for conditions;
- e. Driving while distracted by reason of a mobile electronic device;
- f. Traveling in excess of the posted speed limit;
- g. Operating a motor vehicle without proper brakes, or if so properly



- equipped, in failing to properly apply such brakes;
- h. Failing to use that degree of care and caution which a reasonably prudent person would have used under the circumstances;
- i. Failing to look and observe traffic and traffic conditions on or about the roadway at the time of the collision;
- j. Failing to take the proper precautions to insure the safety of those persons using the highway;
- k. Operating a motor vehicle with a reckless disregard for the rights of others using the highway;
- l. Causing a large commercial sanitation vehicle to collide with others lawfully on the highway;
- m. Negligent and inadequate training, hiring, monitoring, and supervision of a commercial vehicle operator;
- n. Violating one or more of the traffic statutes made and provided under the Code of Laws for South Carolina; and,
- o. Such other and further acts of negligent, reckless and willful conduct as will be shown by the evidence produced at trial.

72. Matthew W. Hudson's driving conduct showed a substantial disregard for the safety of Richard on the aforementioned date and location.

73. There were no obstacles or conditions existing on the roadway at the location of the collision, which in anyway impaired Matthew W. Hudson's view and ability to observe and react to the conditions on the roadway in front of him.

74. As a direct and proximate result of the careless, negligent, grossly negligent, reckless, willful and wanton acts and omissions of each and all of the Defendants herein, by and through the conduct of their employee driver, Matthew W. Hudson, both Plaintiffs, Richard Winslow and Charmayne Winslow, have suffered injuries and other damages, including some or all of the following:

- a. Physical injuries;
- b. Medical expenses, including physicians, hospital, medicines, physical therapy expenses, rehabilitation expenses, and transportation expenses connected with medical treatment;
- c. Mental anguish and emotional distress;
- d. Future damages resulting from permanent injuries;
- e. Permanent impairment of health;
- f. Vehicle repair and damage expenses;
- g. Vehicle loss of use and depreciation;
- h. Fear and Anxiety;
- i. Out of pocket expenses;
- j. Pain, past, present and future;
- k. Suffering, past, present and future;
- l. Loss of enjoyment of life;
- m. Loss of income and earning capacity;
- n. Scarring and disfigurement;
- o. Alteration of lifestyle and reduction in quality of life; and,

p. Such other damages as will be shown by the evidence at trial.

75. Distracted driving and mobile electronic device usage constitute a menace to society that presents a tremendous threat to public health and safety.

76. Distracted driving and mobile electronic device usage cause numerous unnecessary tragic deaths and injuries in our state and in our country each year.

77. A motor vehicle operator is more likely to be involved in a crash while distracted by reason of a mobile electronic device than they are if they are operating a motor vehicle while under the influence of alcohol.

78. The Defendants herein enjoy substantial wealth and financial successes, and they are able to respond to an award of punitive damages, and the only way to prevent or deter similar conduct by these Defendants and their drivers in the future is by the imposition of a substantial punitive damages award.

79. Plaintiffs, Richard Winslow and Charmayne Winslow, are entitled to judgment against each and all of the Defendants herein; jointly and severally, for actual damages, for punitive damages, for the costs of this action, for pre-judgment interest on all special damages, for post-judgment interest, and for such other and further relief as this Honorable Court may deem just.

**WHEREFORE**, Plaintiffs, Richard Winslow and Charmayne Winslow, having raised their Complaint against these Defendants, Waste Pro USA, Inc. and Waste Pro of South Carolina, Inc., pray that this Court inquire into the matters set forth herein and grant them judgment against these Defendants, jointly and severally, for actual damages, for punitive

damages, for the costs of this action, for pre-judgment interest on all special damages, for post-judgment interest, and for such other and further relief as this Court deems just.

Dated: August 23, 2018

Hilton Head Island, South Carolina

//s// Patrick W. Carr  
Patrick W. Carr, Esquire  
SC Bar No. 15585; Fed. I.D. No. 07190  
BERRY & CARR, P.C.  
Attorneys at Law  
2 Spanish Wells Road  
Hilton Head Island, SC 29926  
Phone: (843) 686-5432  
Facsimile: (843) 785-6173  
E-mail: [Patrick@hiltonheadlawyers.com](mailto:Patrick@hiltonheadlawyers.com)  
*Attorney for Plaintiffs*

ELECTRONICALLY FILED - 2019 Jun 14 12:49 PM - JASPER - COMMON PLEAS - CASE#2018CP2700442  
ELECTRONICALLY FILED - 2018 Aug 23 12:52 PM - JASPER - COMMON PLEAS - CASE#2018CP2700442

STATE OF SOUTH CAROLINA )

COUNTY OF JASPER )

RICHARD L. WINSLOW AND )  
CHARMAYNE WINSLOW, )

Plaintiffs, )

vs. )

WASTE PRO USA, INC. AND WASTE )  
PRO OF SOUTH CAROLINA, INC., )

Defendants. )

IN THE COURT OF COMMON PLEAS

Civil Action No. 2018-CP-27-00442

**MEMORANDUM IN SUPPORT OF  
DEFENDANTS' JOINT  
MOTION TO DISMISS  
PURSUANT TO RULE 12(b)(8),  
OR ALTERNATIVELY,  
MOTION TO CONSOLIDATE**

Defendants Waste Pro USA, Inc. and Waste Pro of South Carolina, Inc. (collectively "Waste Pro"), hereby submit this memorandum in support of their Joint Motion to Dismiss pursuant to Rule 12(b)(8) or, alternatively, to consolidate this action with the Plaintiffs' other action against Waste Pro that is already pending in the Jasper County Court of Common Pleas, bearing Civil Action No. 2017-CP-27-115, pursuant to Rule 42(a), SCRPC.<sup>1</sup>

Waste Pro's Motion to Dismiss pursuant to Rule 12(b)(8), SCRPC, is based on the grounds that the Plaintiffs already have a separate action pending between the same parties for the same claim. Specifically, in another action pending in the Jasper County Court of Common Pleas, bearing Civil Action No. 2017-CP-27-115, Plaintiffs assert claims arising from a November 4, 2015 motor vehicle collision against these Defendants. This previous action was filed by Plaintiffs on March 20, 2017. (Exhibit A to Motion).

In the present case, bearing Civil Action No. 2018-CP-27-442 and filed August 23, 2018,

---

<sup>1</sup> Waste Pro previously filed a similar Motion which this Court dismissed without prejudice until an appeal in a related case was resolved. The South Carolina Court of Appeals recently stayed that appeal, Appellate Case No. 2018-001955, until this Court decides the motions in this docket and in Civil Action No. 2017-CP-27-00115.

Plaintiffs assert the same claims arising from the same incident against these same Defendants, seeking the same relief. (Exhibit B to Motion). A review of the respective Complaints filed in each case confirms that Civil Action No. 2018-CP-27-442 stems from the same incident, involves the same parties, and involves the same or substantially the same issues (*Compare* Plaintiffs' Complaint in Civil Action No. 2017-CP-27-115, Exhibit A, *with* Plaintiffs' Complaint in Civil Action No. 2018-CP-27-442, Exhibit B).

The only difference in the parties between the two actions is that Plaintiffs have obtained a default judgment against Matthew W. Hudson, the driver, in Civil Action No. 2017-CP-27-115 and, therefore, have not included him in Civil Action No. 2018-CP-27-442. In both cases, a common nucleus of facts gives rise to Plaintiffs' alleged injuries. In both cases, the only liability alleged against Waste Pro is vicarious liability based on the actions of their former employee, Hudson. For reasons known only to Plaintiffs' counsel, after filing their Complaint in Civil Action No. 2017-CP-27-115 against both Hudson and Waste Pro, but only serving Hudson and taking a default judgment against him, Plaintiffs now are attempting to dismiss Waste Pro from Civil Action No. 2017-CP-27-115 and then to pursue Waste Pro in this separate action involving the same set of facts.

Rule 12(b)(8) provides for dismissal of an action where "another action is pending between the same parties for the same claim." Rule 12(b)(8), SCRCP; *see also* State ex rel. Wilson v. Concon, 410 S.C. 331, 333, 764 S.E.2d 247, 248 (2014) (the principle underlying Rule 12(b)(8) is to avoid duplicative litigation); Unisys Corp. v. South Carolina Budget & Control Bd. Div. of Gen. Servs. Info. Tech. Mgmt. Office, 346 S.C. 158, 176-177, 551 S.E.2d 263, 273 (2001) (dismissal of court action under Rule 12(b)(8) was proper because another action already was pending when the action was brought); Cricket Cove Ventures, LLC v. Gilland, 390 S.C.

312, 321, 701 S.E.2d 39, 44 (Ct. App. 2010) (dismissal under Rule 12(b)(8) is proper where “another action is pending between the same parties for the same claim”). Here, the parties are the same – Plaintiffs have sued Waste Pro in the same capacity in both cases. The claim alleged and the relief sought are identical in the two actions. (*Compare* Plaintiffs’ Complaint in Civil Action No. 2017-CP-27-115, Exhibit A, ¶¶ 15-43, *with* Plaintiffs’ Complaint in Civil Action No. 2018-CP-27-442, Exhibit B, ¶¶ 25-79). Therefore, dismissal under Rule 12(b)(8) is proper in this case.

Not only is dismissal proper, it is necessary here in order avoid duplicative litigation, State ex rel Wilson, 410 S.C. at 333, 764 S.E.2d at 248, and the risk of inconsistent results. *See, e.g., Frow v. De La Vega*, 82 U.S. 552 (1872) (a final default judgment against only one defendant “where a bill makes a joint charge against several defendants” would produce a result that is “incongruous and illegal”); United States use of Hudson v. Peerless Ins. Co., 374 F.2d 942, 945 (4th Cir. 1967) (extending the ruling in Frow to cases where liability is not only joint liability, but also to cases where it is “joint and/or several”); Phoenix Renovation Corp. v. Gulf Coast Software, Inc., 197 F.R.D. 580, 582 (E.D. Va. 2000) (the “avoidance of logically inconsistent judgments in the same action and factually meritless default judgments provide ‘just reason’” for purposes of Rule 54(b)); United Fin. Cas. Co. v. Lewis, No.: 4:08-cv-4014-TLW-TER, 2009 U.S. Dist. LEXIS 85860 \*4-5 (D. S.C. Aug. 13, 2009) (relying on Frow to delay entry of judgment against defaulting defendants because entering judgment on the merits against defaulting defendants “pending the continuance of the case against the remaining defendants would be ‘incongruous’ and ‘absurd’”). As the Fourth Circuit pointed out in Hudson v. Peerless, the problem of inconsistent judgments is not cured where a plaintiff obtains a default judgment in an action against one or some, but not all of the defendants, then dismisses the non-defaulting

defendants, and “the plaintiffs not only have the right under Rule 41 to reinstitute the complaint but actually intend doing so.” 374 F.2d at 944. Here, Plaintiffs not only had the right to reinstitute their claims against Waste Pro, but have done so by filing their Complaint in this Civil Action No. 2018-CP-27-442.

Plaintiffs readily admit that they failed to timely serve Waste Pro with the Complaint filed in Civil Action No. 2017-CP-27-115, (which allowed them to obtain a default judgment against Waste Pro’s former employee without giving Waste Pro a chance to appear and defend), and that their underlying purpose in attempting to dismiss Waste Pro from the pending action in Civil Action No. 2017-CP-27-115 is so that “the default judgment against Defendant Hudson can proceed in the normal course without the necessity of those Defendants who were not served in the earlier filed action.” (See Plaintiffs’ Notice of Motion and Motion to Dismiss Waste Pro Defendants Only, Exhibit C). Despite the lack of service, Waste Pro has filed an Answer and raised defenses to the claim, as well as a Motion for Withdrawal of Order of Reference and/or for Relief from Default Judgment as to Defendant Hudson. (Exhibit D). It is evident that Plaintiffs filed the instant action solely as a vehicle to attempt to avoid withdrawal of the default judgment in the first action. For all these reasons, this Court should dismiss this Complaint pursuant to Rule 12(b)(8), SCRCP.

In the event this Court denies Waste Pro’s Rule 12(b)(8) motion, however, in the alternative, Waste Pro requests that this action (Civil Action No. 2018-CP-27-442) be consolidated, in its entirety, into and with Plaintiffs’ other pending action (Civil Action No. 2017-CP-27-115), pursuant to Rule 42(a), SCRCP. Defendants base this request upon grounds similar to those relied upon in supporting their Rule 12(b)(8) motion. The two pending actions clearly involve common questions of law and fact and, therefore, are appropriate for

consolidation. Rule 42(a), SCRPC.

**CONCLUSION**

For all the reasons stated herein, this Court should grant Waste Pro's Motion to Dismiss pursuant to Rule 12(b)(8) or, in the alternative, to consolidate this claim in its entirety with the pending claim in Civil Action No. 2017-CP-27-115.

Respectfully submitted,

McANGUS GOUDELOCK & COURIE, LLC

*s/Benjamin B. Davis*

Benjamin B. Davis

Bar No: 74955

Post Office Box 650007

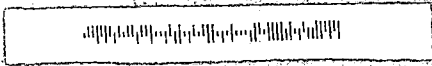
735 Johnnie Dodds Blvd, Suite 200 (29464)

Mt. Pleasant, South Carolina 29465

(843) 576-2900

ATTORNEYS FOR DEFENDANTS, WASTE  
PRO USA, INC. AND WASTE PRO OF  
SOUTH CAROLINA, INC.

June 14, 2019



**mgc** | INSURANCE  
DEFENSE

**RECEIVED**  
JUL 12 2019  
SC Court of Appeals

2095.17210/ HFH/mtb  
The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, SC 29201