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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE	)	CASE NO. 2021-CP-21-02042
Thomas Rodriquis Nelson,	)	
Plaintiff,	)	**ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**
v.	)	
Florence Concrete Products, Inc.,	)	
Defendant.	)	

RECEIVED
May 27 2022
SC Court of Appeals

This matter came before the Court on the parties' cross-motions for summary judgment. The parties to this declaratory judgment action reached a settlement agreement of the underlying litigation that is dependent upon the Court answering two questions of law regarding the duty Defendant Florence Concrete, Inc., owed to Plaintiff Thomas Rodriquis Nelson and whether it breached a duty. The parties agreed to stipulated facts. They filed cross-motions for summary judgment and supporting memoranda.

The Court held a hearing on March 10, 2022. Present for Plaintiff Nelson were Ashley B. Nance, Kathleen C. Barnes, and Linward C. Edwards. Present for Defendant Florence Concrete were Anthony W. Livoti, Cordes B. Kennedy, and John R. Owen. After carefully considering the parties' memoranda, hearing argument of counsel, and reviewing the applicable law, the Court grants Plaintiff's motion for summary judgment, answering "yes" in favor of Plaintiff with regard to the two questions presented. This Court denies Defendant's motion.

STANDARD

"Where cross motions for summary judgment are filed, the parties concede the issue before us should be decided as a matter of law." *Quicken Loans, Inc. v. Wilson*, 425 S.C. 574, 579, 823 S.E.2d 697, 700 (Ct. App. 2019) (internal quotation marks omitted). "Cross motions for summary

judgments do authorize the court to assume that there is no evidence which needs to be considered other than that which has been filed by the parties." *Mead v. Beaufort Cnty. Assessor*, 419 S.C. 125, 131, 796 S.E.2d 165, 168 (Ct. App. 2016) (internal quotation and alteration marks omitted).

FACTS

The facts are taken directly from the stipulated facts that the parties agreed to as part of their settlement and this declaratory judgment action.[1]

Florence Concrete hired Nesbitt Transportation to haul a 72-foot-long cement slab that it manufactured. The length of the slab required a special oversize permit that restricted the transportation time to daylight hours only. When Nelson drove to work in the dark around 6:30 a.m., he came upon the tractor trailer hauling the oversize load. The vehicles collided, and the accident rendered Nelson a quadriplegic.

Nelson sued Florence Concrete for his injuries. He alleged its negligence in failing to ensure its oversize load was transported during an allowed time of day under the permit and in selecting Nesbitt Transportation to transport the load because of a poor safety rating. (Am. Cmplt. pp. 6-7). Florence Concrete defended on the basis that it hired an independent contractor that is solely liable for Nelson's injuries. (Order p. 2 ¶ 8.c.; Ans. to Am. Cmplt.).

Florence Concrete manufactures concrete slabs. More than half of its products are longer than 60 feet. (Order p. 2 ¶ 8.a., c.). A load that is over 60-feet-long is not supposed to be on the public roadways unless the transporter of the load applies for and receives an oversize permit from the South Carolina Department of Transportation ("SCDOT"). *Id.* at ¶ 8.a; S.C. Code Ann. §§ 57-

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[1] At the hearing, both parties alleged the other presented the Court with facts outside of, and in one instance, contrary to the stipulated facts. In reaching its decision, the Court considered only the stipulated facts.

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3-130, 56-5-4070. A SCDOT oversize permit restricts the time of day that the permittee can travel to only daylight hours. Travel is restricted to only Monday through Saturday from half-an-hour after official sunrise until half-an-hour before official sunset. (SCDOT permit). If the oversize load is traveling in a large urban area, travel is further prohibited from 7:00 a.m. to 9:00 a.m. on all days and from 3:00 p.m. to 6:00 p.m. on school days.

The cement slab that injured Nelson was 72-feet-long and 24-inches-wide and required an oversize permit. (Order p. 2 ¶ 8.a.). Florence Concrete verbally contracted with Nesbitt Transportation to haul the slab from its Sumter, SC, manufacturing facility to a bridge construction project in North Carolina. *Id.* at p. 2 ¶ 8.a-b. Nesbitt Transportation applied for and received oversize load permits from SCDOT and NCDOT. *Id.* at p. 2 ¶ 8.c.

Under the permit terms, the parties agree that the oversize load could not be on the road from 3:00 p.m. on January 3, 2019, until 9:00 a.m. on January 4, 2019.[2] (Order p. 3 ¶ 8.d.). Florence Concrete knew the permit for this oversize load contained "travel restrictions imposed for the protection of the general public." *Id.* at p. 2 ¶ 8.c.

Florence Concrete put the cement slab onto a Nesbitt Transportation extended trailer located at Florence Concrete's facility in Sumter. *Id.* at p. 2 ¶ 8.b. Florence Concrete attached to the trailer the SCDOT and NCDOT permits that stated the restricted travel times. *Id.* at p. 3 ¶ 8.c. The SCDOT permit states in capital letters that it "shall be signed." SCDOT guidelines for oversize loads state: "An Oversize/Overweight Permit is not valid until signed by an authorized representative of the permittee." The oversize permit for this load is not signed.

On January 3, 2019, a Nesbitt Transportation employee came to Florence Concrete's facility and picked up the oversize load at 5:02 p.m.—a travel time prohibited by the permits. *Id.*

[2] Sumter is a large urban area, and January 4, 2019, was a school day.

at ¶ 8.d. Florence Concrete did not monitor its lot or know when this load left the lot. *Id.* at ¶¶ 8.b., -e.

The driver took the oversize load to a commercial parking lot in Lynchburg, SC, left it overnight, and then got on the road the next morning around 6:30 a.m.—a travel time still prohibited by the permits. *Id.* at ¶ 8.d.-e. Around 6:30 a.m., before sunrise, while Nelson drove to work, he came upon the truck and trailer hauling the oversize cement slab. (Order p. 3 ¶ 8.f.). The vehicles collided in the dark, and Nelson suffered injuries and became a quadriplegic. *Id.*

Starting in 1992, Florence Concrete regularly hired Nesbitt Transportation to haul loads. *Id.* at p. 4 ¶ 8.k. They did not have a written agreement or operate under any policies or procedures. *Id.* Florence Concrete did not have a qualification process for evaluating a commercial motor carrier's fitness before selecting it to haul a load, including oversize loads. *Id.* Florence Concrete never looked into Nesbitt Transportation's safety rating. *Id.* at ¶ 8.j.-k.

At the time of the collision, the Federal Motor Carrier Safety Administration ("FMCSA") rated Nesbitt Transportation's safety as "conditional." *Id.* at p. 3 ¶ 8.h. Nesbitt Transportation lost a satisfactory safety rating in 2015 after a failed safety audit showed it violated numerous regulations. *Id.* A conditional safety rating means the FMCSA found Nesbitt Transportation lacked "adequate management controls and systems necessary to operate safely which could lead to a number of safety violations regulated by the FMCSA." *Id.* at p. 4 ¶ 8.h. Nesbitt Transportation could still operate as a motor carrier and haul an oversize load with a conditional safety rating. *Id.* at ¶ 8.i.

In 2019, Nelson filed a negligence action against Florence Concrete. (2019-CP-31-00296). Florence Concrete's shipping manager admitted "that being on the road with an oversized shipment at a time that is not allowable creates an inherent risk and danger to the public." (Order

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p. 2 ¶ 8.c.). After extensive litigation and mediation, the parties reached a settlement agreeing to proximate cause and Nelson's damages but making the amounts payable dependent on the outcome of the Court's answers to two questions of law. (Am. Cmplt. p. 4). The parties agreed to stipulated facts, and Nelson filed this declaratory judgment action. (Am. Cmplt.).

Nelson's main contentions against Florence Concrete are that it acted negligently in failing to ensure that an inherently dangerous oversize load was transported during an allowed time of day under the permits and in selecting Nesbitt Transportation to transport the load because of its conditional safety rating. (Am. Cmplt. pp. 6-7).

In a Consent Order that incorporates the parties' stipulated facts, the Court agreed to answer these two questions:

1. Did Defendant Florence Concrete Products, Inc., as a shipper of oversized loads that require an oversize/overweight permit for travel over the highway, owe a duty of care to Plaintiff to take measures beyond verbally contracting for the shipment of the load, when the shipper contracts with a properly-insured independent contractor motor carrier that has U.S. Department of Transportation operating authority and where the independent contractor motor carrier has secured the proper permits from the South Carolina and North Carolina Departments of Transportation for such oversize/overweight loads?

2. If Defendant Florence Concrete Products, Inc. owed a duty of care, did it breach that duty?

The Court answers both questions in the affirmative as explained below.

ANALYSIS

Based on the unique, stipulated facts of this case, the Court answers both questions "yes." The Court bases its ruling in accordance with the inherent danger exception to the general rule that an employer is not liable for the work of an independent contractor.

I. DUTY

Nelson argued two bases for a duty: (1) the inherent danger exception to the general rule that an employer is not liable for the work of an independent contractor, and (2) the duty to exercise

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reasonable care in the selection of an independent contractor. For the reasons explained below, the Court finds a duty to exist in light of the inherent danger exception. This Court will not address the second proposed basis for liability offered by Plaintiff.

The first question asks whether Florence Concrete "owe[d] a duty of care to Plaintiff to take measures ***beyond*** verbally contracting" with a shipper with operating authority, insurance, and a proper permit. (Order pp. 1-2) (emphasis added). Nelson argues that, because Florence Concrete agreed it owes a minimal duty to contract with a shipper with operating authority, insurance, and a proper permit, it is established that Florence Concrete owes some duty despite its contention that Nesbitt Transportation is an independent contractor. Florence Concrete argued at the hearing that it did not concede it owed any duty based on the language of the question. However, Florence Concrete failed to explain what the question means if it does not acknowledge at least a minimal duty. For example, Florence Concrete never argued that, because it is using an independent contractor, it may choose any trucking company, even if uninsured, without operating authority, and without proper permitting, and still avoid liability. Regardless, while the Court finds the first question does presuppose that Florence Concrete owes some duty—disproving the argument that hiring an independent contractor absolved Florence Concrete of liability—the Court would find the duty discussed below notwithstanding that language.

A. Inherent Danger Exception

An "exception to the general rule" that an employer is not liable for the negligence of an independent contractor is that "[l]iability cannot be evaded by employing an independent contractor to do work which is inherently or intrinsically dangerous unless proper precautions are taken." *Alexander v. Seaboard Air Line R.R. Co.*, 221 S.C. 477, 487-88, 71 S.E.2d 299, 303-04 (1952). The exception "is difficult of application to varying conditions and circumstances and

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virtually every case has to be considered on its own peculiar facts." *Allison v. Ideal Laundry & Cleaners*, 215 S.C. 344, 354, 55 S.E.2d 281, 284 (1949). Considering the exception in light of the "peculiar facts" of this case, the Court finds that it applies and Florence Concrete owed Nelson a duty to take "proper precautions" for transportation of its oversize load.

Nelson does not challenge that Nesbitt Transportation acted as an independent contractor, bringing this case, initially, within the general rule. To come within the exception to the rule, the work Florence Concrete hired Nesbitt to perform must be inherently dangerous unless proper precautions are taken. Florence Concrete agreed in the stipulated facts "that being on the road with an oversized shipment at a time that is not allowable creates an ***inherent risk and danger*** to the public." (Order p. 2) (emphasis added). The Court finds that this fact alone is sufficient to hold a duty exists under the inherent danger exception.

Even without that stipulated fact, the Court would still find the exception applies because hauling an oversize load is work that is "inherently or intrinsically dangerous unless proper precautions are taken." *Alexander*, 221 S.C. at 487-88, 71 S.E.2d at 304. The General Assembly declared that SCDOT, "in the public interest for ***safety*** on the highways, may issue . . . permits for moving oversize loads and vehicles." S.C. Code Ann. § 57-3-190 (emphasis added). It specified that SCDOT "may issue special permits authorizing" the movement of oversize loads or vehicles upon "good cause being shown that it is in the ***public interest***." S.C. Code Ann. § 57-3-130(A) (emphasis added). SCDOT then determined that an oversize load may travel on the roads only during certain hours of certain days. (SCDOT Permit). The restricted travel includes times of darkness, school days, and additional restrictions for large urban areas. These restrictions exist for the safety of the traveling public that may share a roadway with an oversize load. Applying that law to the oversize 72-foot-load in this case, the Court finds that this alone supports a finding that

hauling an oversize load is inherently dangerous to the traveling public unless proper precautions are taken.

Even without the stipulated facts and the statutory and regulatory law, case law alone also supports the Court's conclusion. In *Alexander v. Seaboard Air Line R.R. Co.*, 221 S.C. 477, 71 S.E.2d 299 (1952), the Supreme Court held that a railroad company could not avoid liability for spraying weed killer that ruined a nearby cotton crop by hiring an independent contractor to perform the work. The defendant railroad hired an independent contractor to spray weed killer on the track bed and right-of-way located near a cotton field. *Id.* at 482, 71 S.E.2d at 301. The property owner sued the railroad for the cotton crop, alleging it knew the spray was destructive to growing plants and that it placed the spraying under the control of a negligent entity. *Id.* at 480, 71 S.E.2d at 300. The jury returned a verdict for the plaintiff. The railroad appealed, raising as one issue that it was entitled to a JNOV because the spray company was an independent contractor for whom it was not liable. *Id.* at 481-82, 71 S.E.2d at 301.

In ruling on the inherent danger exception, the Supreme Court considered whether the railroad "kn[e]w or could they have learned by reasonable inquiry of the injurious effect" the spray would have "on growing cotton if it floated" from the right-of-way. *Id.* at 488-89, 71 S.E.2d at 304. The Court also considered evidence that the weed killer should not be sprayed on a windy day and "the wind was blowing pretty high that day"—*i.e.*, evidence that proper precautions were not taken. *Id.* at 489, 71 S.E.2d at 304-05. It held that evidence required the lower court to submit the negligence issue to the jury. *Id.* The Supreme Court affirmed the denial of the railroad's motion for JNOV and affirmed the judgment against it for the negligent acts of its independent contractor. *Id.* at 491, 71 S.E.2d at 305.

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Applying *Alexander* to the stipulated facts in this case, Florence Concrete knew the inherent danger to the public if an oversize load was transported during times prohibited by the permit. With that knowledge, it allowed the load off of its lot at a prohibited travel time—*i.e.*, failed to take proper precautions.

In *Duane v. Presley Construction Co.*, 270 S.C. 682, 244 S.E.2d 509 (1978), the plaintiff brought an action for water concentration and silting damages to his property caused by development of an adjacent subdivision. *Id.* at 683, 244 S.E.2d at 509. The developer hired a construction company as an independent contractor to clear the land. *Id.* The developer defended the action on the basis that the independent contractor caused the damage. *Id.* The trial court granted summary judgment for the developer.

On appeal, the Supreme Court reversed. It stated that an employer who hires an independent contractor "is responsible[] if the injury is caused by his own negligence in failing to take preventive measures." *Id.* at 683-84, 244 S.E.2d at 510. The Court held that "[i]f the washing of silt into the pond was foreseeable, [the developer] may be liable for ordering the improvements without taking proper precautions." *Id.* at 684, 244 S.E.2d at 510.

Applying *Duane* to the stipulated facts of this case, Florence Concrete owed a duty to take preventive measures to ensure an oversize load left its lot at an allowable travel time because, absent proper precautions, the oversize load posed an inherent danger to persons traveling the public roadways.

The unique facts peculiar to this case inform the Court's decision. The case involves an oversize load regulated by the General Assembly and SCDOT, an activity that Florence Concrete admitted poses an inherent danger absent precautions, and the absence of any written contract, policy, or procedure between the employer and the independent contractor or any employer policy

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governing circumstances in which an oversize load may leave its premises. The Court holds that the unique stipulated facts, statutory and regulatory law, and the case law, individually and cumulatively, warrant the Court finding the inherent danger exception applies, and the answer to the first question is "yes."

Florence Concrete's arguments to the contrary are not convincing.

Florence Concrete argued it is irrelevant that the oversize load left its lot at a prohibited time because the truck driver's decision to leave the next morning at a prohibited time caused the accident. It argued the accident could have occurred regardless of whether the oversize load left the lot earlier in the afternoon on January 3 or during a prohibited time. Nelson responded, and the Court agrees, that Florence Concrete's argument relates to a vicarious liability situation. Nelson does not argue that Florence Concrete is vicariously liable for Nesbitt Transportation's decision to pull onto the road around 6:30 a.m. Nelson argues that Florence Concrete is liable for its own conduct in allowing the load to leave its lot at a prohibited time. Under these stipulated facts, if Florence Concrete prevented Nesbitt Transportation from leaving the lot at 5:02 p.m., the load could not have legally been on the road again until 9:00 a.m. the next morning and would not have been on the road to injure Nelson. Those facts, and not a hypothetical situation, are what the Court must base its decision upon in this case.

Further, Florence Concrete's argument is really that Nesbitt Transportation's employee is the proximate cause of Nelson's injuries, or at least the "intervening" cause, as it argued at the hearing. Those arguments are off point because the parties stipulated to proximate cause and damages. The Court is presented with only the issues of duty and breach.

Florence Concrete argued that it is in the business of manufacturing concrete, and that business is not inherently dangerous. The argument is incorrect because the focus of the inherent

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danger exception is the work that the employer hires the independent contractor to perform. In *Alexander v. Seaboard Air Line R.R. Co.*, 221 S.C. 477, 71 S.E.2d 299 (1952), when addressing whether the inherent danger exception applied, the Supreme Court analyzed the inherent danger of the independent contractor's work spraying weed killer on a right-of-way. It did not analyze the danger of the railroad business in general. The Court rejects Florence Concrete's argument.

Florence Concrete also cited to numerous cases that it argued establish that hauling an oversize load is not inherently dangerous. These cases are factually and, in some instances, legally distinguishable.

In *Oulla v. Velazques*, 427 S.C. 428, 831 S.E.2d 450 (Ct. App. 2019), defendant Harbison Community Association bought two pallets of sod from defendant Super-Sod. Harbison employees picked up the sod and did not secure it with straps to their flatbed trailer. *Id.* at 432-33, 831 S.E.2d at 452. The sod fell off of the trailer onto the interstate, backed-up traffic, and the plaintiff was injured when a car hit his stopped vehicle. *Id.* at 433-34, 831 S.E.2d at 452. The plaintiff sued Super-Sod alleging it owed duties as "the loader of a vehicle" under the common law and a statute that requires a vehicle operator to secure a load. *Id.* at 434, 831 S.E.2d at 453. The Court of Appeals rejected both arguments. It held the statute imposed a duty only on the vehicle operator and did not create a duty for Super-Sod to secure "customers' vehicles and trailers." *Id.* at 434, 441, 831 S.E.2d at 453, 457. It held the common law did not create a duty under the facts because Super-Sod did not assume a duty solely by placing the sod on the trailer and "the mere fact that it was foreseeable an unsecured load could be a danger to the [public] [wa]s insufficient to impose liability." *Id.* at 444-45, 831 S.E.2d at 458.

This case is vastly different from *Oulla*. First, this case involves an independent contractor, and *Oulla* does not. In *Oulla*, the defendant did not hire the driver to perform any service for it.

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The driver was simply a customer that picked up a purchased product. In this case, Florence Concrete hired Nesbitt Transportation to transport the oversize load for it. Second, this case involves a regulated oversize load owned by the defendant, and *Oulla* involved an unregulated load owned and transported by the customer driver on a flatbed trailer. Third, this case involves an oversize load that the General Assembly, SCDOT, and Florence Concrete all acknowledge is a danger to the public due when on the roads at a prohibited time.

Finally, Florence Concrete argues that because the statute at issue in *Oulla* applied to the vehicle operator and the permit at issue here applies to the permittee, then the same result is warranted in this case. The Court disagrees. In *Oulla*, the plaintiff sought to use the statute to impose a duty on a product seller and then "extend[]" that duty "to members of the traveling public." *Id.* at 434, 831 S.E.2d at 453. Nelson makes no such argument in this case. Instead, the duty here is based on the inherent danger of the transportation of an oversize load at prohibited times. That a permit is required for the load and is issued to the transportation company does not mean that the employer is relieved of all liability related to the load. Further, the oversize load statute states: "No ***person*** may violate the terms or conditions of the special permit." S.C. Code Ann. § 57-3-130(A) (emphasis added).

Florence Concrete cited to *Norris v. Bryant*, 217 S.C. 389, 60 S.E.2d 844 (1950), as holding that hauling logs is not inherently dangerous. Norris rode in a truck with his legs hanging over the side. *Id.* at 393-94, 60 S.E.2d at 845. When the truck met a truck and trailer hauling logs, one of Norris's legs was severed. *Id.*at 394, 60 S.E.2d at 845. The log truck worked as an independent contractor for a lumber company, and Norris sought to hold the lumber company liable for his injuries. *Id.* In addressing the inherent danger exception, the Supreme Court stated:

> [W]e do not think that the work involved in the instant case was of that quality. It is true that a truck negligently operated on the highway is a dangerous

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> instrumentality, but no case has been cited which holds that hauling logs by truck is so inherently dangerous as to make the owner liable for the negligence of the independent contractor.

Id. at 400, 60 S.E.2d at 848.

This case is distinguishable from *Norris*. First, a log truck is not an oversize load regulated by the General Assembly and SCDOT due to its danger to the public. As stated above, the particular facts of this case form the basis of and inform the Court's decision. Second, Nelson seeks to hold Florence Concrete liable for its own negligent conduct.

Finally, Florence Concrete cited to a case from the Supreme Court of Alabama, *Fike v. Peace*, 964 So.2d 651 (Ala. 2007), in which a manufacturer hired an independent contractor to transport an oversize load of equipment to one of its plants. The truck's brakes failed and caused a collision. *Id.* at 653. The court addressed "whether this case involves an inherently dangerous activity, thereby imposing liability upon [employer] for the negligence of [independent contractor] in the performance of that inherently dangerous activity." *Id.* at 660. The court equated "inherently dangerous" to "ultrahazardous" and "abnormally dangerous" activities. *Id.* at 661 (internal quotation marks omitted). Using that definition, it held that "the hauling of this heavy load does not meet the definition of an 'inherently dangerous' activity because the major risk of harm from the oversized load could have been alleviated if [employer] and [independent contractor] had used reasonable care." *Id.* at 662.

Fike is not persuasive. First, it is out-of-state, non-controlling authority. Second, it applies a different exception than the one used in South Carolina. In South Carolina, the inherent danger exception applies to "work which is inherently or intrinsically dangerous unless proper precautions are taken."[3] *Alexander v. Seaboard Air Line R.R. Co.*, 221 S.C. 477, 487-88, 71 S.E.2d 299, 303-

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[3] *Accord Restatement (Second) of Torts*, § 416 cmt. d ("[I]t is not essential that the work which the contractor is employed to do be in itself an extra-hazardous or abnormally dangerous activity, or

04 (1952). This is different from strict liability that applies to an ultrahazardous or abnormally dangerous activity. In *Fike*, the Alabama Supreme Court said hauling an oversize load could not be inherently dangerous specifically because proper precautions would eliminate the risk of harm. In South Carolina, that proper precautions eliminate the risk of harm brings an activity within the inherent danger exception and allows for an employer's liability for its negligence in failing to take those proper precautions.

For these reasons, the Court answers the first question "yes" because it finds Florence Concrete owed a duty under the inherent danger exception.

II. BREACH OF DUTY

The Court finds the stipulated facts show that Florence Concrete breached the duty discussed above answering the second question "yes."[4]

"A breach of duty exists when it is foreseeable that one's conduct may likely injure the person to whom the duty is owed." *Horne v. Beason*, 285 S.C. 518, 521, 331 S.E.2d 342, 344 (Ct. App. 1985).

As to the inherent danger exception, Florence Concrete argued almost exclusively about the duty issue and did not really address breach. The Court finds it breached the duty to take precautions to ensure the oversize load left its lot at an allowable travel time. It is foreseeable that allowing an oversize load to travel on public roadways at a prohibited time may likely injure a member of the traveling public. Public safety is the purpose of the permit restrictions.

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that it involve a very high degree of risk to those in the vicinity. It is sufficient that it is likely to involve a peculiar risk of physical harm unless special precautions are taken, even though the risk is not abnormally great.").

[4] Nelson argued that the permit for this oversize load was not signed, and a permit is not valid until signed. This is factually true and, applying it to the language of the first question, means that Florence Concrete breached its minimal duty because Nesbitt Transportation did not have a proper permit.

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Over half of Florence Concrete's business involved manufacturing and shipping oversize loads. (Order p. 2 ¶ 8.a.). Florence Concrete knew its oversize loads required special permits with "travel restrictions imposed for the protection of the general public." *Id.* at ¶ 8.a., c., j. It knew "that being on the road with an oversized shipment at a time that is not allowable creates an inherent risk and danger to the public." *Id.* Florence Concrete had in its possession the oversize permits for the load that injured Nelson and attached them to the trailer. *Id.* at pp. 2-3 ¶ 8.c.

Despite all of this knowledge, Florence Concrete breached its duty by failing to ensure the proper precaution of the oversize load leaving its lot at an allowable time. If Florence Concrete ensured the travel time precautions were followed, the oversize load would not have been on the road at the time of the accident, and Nelson would not be a quadriplegic. That Florence Concrete did not know what time the driver left is not persuasive because it had the ability to monitor the lot. The Court finds that Florence Concrete breached its duty to Nelson to ensure that proper precautions were taken for the inherently dangerous work of transporting an oversize load.

CONCLUSION

For the reasons stated above, this Court GRANTS Plaintiff's motion for summary judgment and answers "yes" in favor of Plaintiff to the two questions of law presented. The Court DENIES Defendant's motion for summary judgment. This final order ends the case.

AND IT SO ORDERED.

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The Honorable Michael G. Nettles
Presiding Judge, Florence County

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Florence Common Pleas

Case Caption:	Thomas Rodriquis Nelson VS Florence Concrete Products Inc , defendant, et al
Case Number:	2021CP2102042
Type:	Order/Summary Judgment

So Ordered

s/ The Honorable Michael G. Nettles #2140

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