

STATE OF SOUTH CAROLINA
IN THE
SUPREME COURT

Appeal from the Court of Common Pleas
For Beaufort County
Honorable Doyet A. Early, III, Circuit Judge
Civil Action No.: 2007-CP-07-0993
RECEIVED
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South Carolina Court of Appeals, Supreme Court
Opinion No. 4799, filed 2 March 2011

L. Paul Trask, Jr., Personally, and as Next of Kin and as
the Duly Appointed Personal Representative of the Estate
of L. Paul Trask, III, deceased, and Meredith C. Trask,

Petitioners,

v.

Beaufort County; Curtis Copeland, in His Official Capacity
as Coroner of Beaufort County; Judy C. Copeland, as Personal
Representative of the Estate of Curtis M. Copeland; and
Copeland Company of Beaufort, LLC,

Respondents.

PETITIONERS' BRIEF ON CERTIORARI

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I. STATEMENT OF THE ISSUES ON CERTIORARI APPEAL

- A. Should The Court Of Appeals Have Reversed The Copeland Respondents' Grant Of Summary Judgment When The Trasks Presented Substantial Evidence Of The Copeland Respondents' Negligence, Negligence *Per Se*, And Gross Negligence?
- B. Should The Court Of Appeals Have Reversed The Copeland Respondents' Grant Of Summary Judgment Since The Copeland Respondents' Actions Constituted Negligence *Per Se* In Violation Of S. C. Code Ann. § 16-17-600 (Thomson West 2005)?
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- D. Should The Court Of Appeals Have Reversed The Copeland Respondents' Grant Of Summary Judgment Since The Copeland Respondents Committed Third-Party Spoliation Of Evidence By Destroying Evidence Related To Paul Trask III's Accident?
- E. Should The Court Of Appeals Have Reversed The Copeland Respondents' Grant Of Summary Judgment Since The Copeland Respondents Were Not Immune From Liability Under S.C. Code Ann. § 32-8-350(A) (Thomson West 2005)?

II. STATEMENT OF THE CASE

On 11 April 2007, the Petitioners, L. Paul Trask, Jr., Personally, and as Next of Kin and as the Duly Appointed Personal Representative of the Estate of L. Paul Trask, III, deceased, and Meredith C. Trask (the "Trasks"), sued the Respondents, Beaufort County; Curtis Copeland, in his official capacity as Coroner of Beaufort County¹ (the "County Respondents") and Curtis Copeland, individually; and Copeland Company of Beaufort, LLC's (the "Copeland Respondents"). (R.p.4; R.pp.19-34).² The Trasks sought damages for the Copeland Respondents' gross negligence and intentional misconduct arising from their abysmal mismanagement/abdication of their duties to investigate the tragic death of the Trasks' son, L. Paul Trask, III. (R.pp.19-34).

The Trasks asserted claims against the County Respondents for (a) negligence, negligence *per se*, and gross negligence (R.p.4; R.pp.20-27, paras. 7-46, 47-51), (b) negligent supervision and training (R.p.4; R.pp.20-29, paras. 7-46, 52-61), and (c) for negligent spoliation of evidence (R.p.4; R.pp.20-26, 29-30, paras. 7-46, 62-70). They asserted claims against Copeland and the Copeland Funeral Home for (a) negligence, negligence *per se*, and gross negligence (R.p.4; R.pp.20-26, 31, paras. 7-46, 71-75) and (b) intentional and/or negligent spoliation of evidence (R.p.4; R.pp.20-26, 32-33, paras. 7-46, 84-89). The Trasks also asserted claims against Copeland for intentional infliction of emotional distress. (R.p.4; R.pp.20-26, 31-32, paras. 7-46, 76-83).

¹ Even though both Beaufort County and Coroner Copeland, in his official capacity as Beaufort County Coroner, are listed in the caption, none of the County Respondents are parties to this current appeal. This Supreme Court denied certiorari as to the Beaufort County parties. In addition, during the pendency of this appeal, Copeland passed away. His wife, Judy C. Copeland, as Personal Representative of his estate, has been substituted in his stead.

² The Copeland Company of Beaufort, LLC operated a funeral home in Beaufort under the name Copeland Funeral Home. (R.p.5; R.p.23, para. 30).

The Copeland Respondents denied the material allegations (R.pp.41-40, paras. 9-13, 16, 21, 24-25, 27-28, 30-33, 35-38, 40-41, 43, 45-46, 48-51, 53-61, 63, 70, 72-75, 77-83, 85-89, 91-95) and asserted various affirmative defenses. (R.pp.50-52, paras. A-L). They later moved for summary judgment. (R.pp.53-54).³ The Trasks, in turn, moved for partial summary judgment as to liability. (R.pp.55-56).

The Circuit Court granted summary judgment to the Copeland Respondents on all claims (R.pp.3-18) and denied the Trasks' motion. (R.p.3 n.1). The Trasks unsuccessfully sought reconsideration, to amend the Circuit Court's findings, and to alter/amend the judgment. (R.p.1; R.pp.150-164). This appeal followed.

The Court of Appeals affirmed the Circuit Court.⁴ The Trasks filed an unsuccessful Petition for Rehearing with Suggestion for Rehearing *En Banc*. The Trasks timely filed their Petition for Writ of Certiorari with this Supreme Court which was granted, in part. The Trasks now filed their Petitioners' Brief.

III. STATEMENT OF THE FACTS

A. Paul Trask's Accident

Paul Trask, a sophomore at The Citadel (R.p.3; R.p.20, para. 7; R.p.41, para. 7), was on Thanksgiving holiday visiting his parents in Beaufort, South Carolina. (R.p.3; R.p.20, para. 7; R.p.41, para. 7; R.pp.171-173). Late on 21 November 2005, Paul Trask III drove his father's 1999 Isuzu Trooper automobile (R.p.3; R.p.20, para. 8; R.p.41, para. 8) to the Xpress Lane, Inc. – a gas station located in Beaufort. (R.p.3; R.pp.20-21, para. 9). Using cash he withdrew from an on-site ATM machine, Paul

³ The Copeland Respondents subsequently filed a Supplemental Motion for Summary Judgment. (R.pp.57-60).

⁴ See *Trask v. Beaufort County*, 392 S.C. 560, 709 S.E.2d 536 (Ct.App. 2011).

Trask III purchased two 24-ounce cans of beer and a pack of Camel cigarettes. (R.p.3; R.pp.20-21, para. 9). The Xpress Lane's sales clerk failed to (a) have Paul Trask III produce picture and age identification or (b) determine if he was already impaired due to prior alcohol consumption. (R.p.3; R.p.21, para. 10).

Leaving the Xpress Lane at approximately 11:58 p.m. (R.p.3; R.p.21, para. 12), Paul Trask drove the 22 miles from the Xpress Lane to Fripp Island arriving at the security gate sometime between 12:00 midnight and 1:00 a.m. (R.p.3; R.p.21, paras. 13-14; R.p.42, para. 13). The gate security guard, James Irby, refused to give him an entry pass to the gated community. (R.p.3; R.p.21, paras. 13-15; R.p.42, paras. 13-15). Paul Trask III then drove back north on the Sea Island Parkway (U.S. Highway 21) for about 3.8 miles away from the Fripp Island security gate. (R.p.3; R.pp.21-22, paras. 15-16; R.p.42, paras. 15-16). Tragically, while approaching a curve in the road, Paul Trask III apparently lost control of the Isuzu Trooper (R.p.3; R.p.22, para. 16; R.p.42, para. 16)⁵ and collided with a tree on the side of the Sea Island Parkway. (R.p.3; R.p.22, paras. 16-17; R.p.42, paras. 16-17). Upon impact, the vehicle burst into flames. (R.p.3; R.p.22, paras. 16-17; R.p.42, paras. 16-17). Paul Trask III sadly died as a result of his injuries. (R.p.3; R.p.22, para. 17; R.p.42, para. 17).

B. The Accident "Investigation"

At approximately 1:16 a.m. a passing motorist notified Mr. Irby of the automobile fire and he, in turn, contacted the Beaufort County non-emergency dispatch. (R.p.3; R.p.22, paras. 18-19; R.pp.42-43, paras. 18-19). Copeland was notified of the fatal

⁵ Paul Trask was likely driving impaired from the beer he bought at Xpress Lane (R.pp.20-22, paras. 9-10, 16; R.p.188, lines 22-24) and consumed while driving to and, possibly, from Fripp Island. (R.p.21, para. 13).

accident so he could execute his investigatory duties under South Carolina law. (R.p.3; R.p.23, para. 20; R.p.43, para. 20). When Copeland arrived at the accident scene, he made no attempt to identify the body in the car. (R.p.22, para. 21). Instead, after learning Mr. Trask – Paul Trask III’s father- owned the vehicle (R.p.4; R.p.22, para. 22; R.p.43, para. 22) Copeland advised others at the scene he believed the body was that of Mr. Trask. (R.p.22, paras. 21-23; R.p.43, para. 23). Instead of positively identifying the remains as he was required to do,⁶ Copeland (R.p.3; R.p.22-23, para. 24) simply left the accident scene. (R.p.22-23, para. 24; R.p.217, lines 15-24).⁷

Instead of carrying out his statutory duties and based solely on vehicle ownership, Copeland then accompanied Reverend Andrew Chaney, pastor of the Beaufort Presbyterian Church, and Raymond Heroux, a City of Beaufort police officer, to the Trasks' home. (R.p.4; R.p.23, para. 28; R.p.174, p.93, lines 1-12). When Copeland and his entourage arrived, they were met at the door initially by Mr. Trask (R.p.174, lines 2-14) and then Mrs. Trask joined them. (R.p.174, lines 20-23).⁸ After looking around the house, the Trasks determined the only person not accounted for was

⁶ Copeland never positively identified Paul Trask’s body (R.p.22-23, para. 24; R.p.217, lines 15-24), even though he had a statutory duty to investigate the accident and to identify the victim. 39 S. C. Juris., Coroners, §§ 10-11, 12 (S.C. Bar CLE Division 1992 and Thomson/Reuters West 2008 Supp.) (citing S.C. Code Ann. §§ 17-7-10 *et seq.* (Thomson West 2003 rev.)). Copeland stated it was “inconsequential” to him where the driver (Paul Trask III) intended to go. (R.p.199, lines 14-20). Copland never sought the advice of nor consulted with any medical and/or scientific personnel regarding identification of the remains. (R.p.22-23, para. 24; R.p.203, lines 10-17).

⁷ Copeland apparently did travel to the Fripp Island Security Gate and speak with Mr. Irby about any information he might have had regarding Paul Trask III and the accident report.

⁸ Mrs. Trask was understandably unnerved by having Copeland appear at her door in the middle of the night. She immediately asked Copeland “which one, which one?” to which he responded that he didn’t know. (R.p.174, lines 23-25). Mrs. Trask obviously was concerned that one or more of her children had suffered some type of fatal accident since Copeland was “darkening her doorstep” muck like the Grim Reaper.

Paul Trask, III. (R.p.23, para. 29; R.p.44, para. 29; R.p.175, lines 1–9).⁹ Copeland then told the Trasks about the accident and the death even though Copeland had not yet conclusively identified the remains through any physical and/or or scientific means. (R.p.175, lines 9-13).¹⁰ Moments after advising the Trasks of their son’s apparent death, Copeland then next solicited the Trasks to use him and his company, Copeland Funeral Home, to handle the burial arrangements of the still unidentified body. (R.p.23, para. 30; R.p.175; lines 13-16). In shock from Copeland’s news, the Trasks consented to this solicitation. (R.p.175, lines 15-21). At that point, Mrs. Trask specifically requested an autopsy be performed on the remains. (R.p.24, para. 32; R.p.175, p.95; lines 16-18; R.p.184, lines 2-25; R.p.190, line 21 – R.p.191, line 6).¹¹ Copeland stated there was no need for an autopsy to be undertaken because the cause of death, assumably of Paul Trask III, was more than obvious. (R.p.24, para. 32; R.p.175, p.95; lines 16-18; R.p.184, lines 2-25; R.p.190, line 21 – R.p.191, line 6).¹²

⁹ At this point, a distraught Mrs. Trask “yelled out, [that] maybe it wasn’t Paul [Trask III, that] maybe someone [had taken their] car.” (R.p.175, lines 5-6). Apparently unfazed, Copeland dismissed her comment and emphatically stated that the vehicle involved in the accident was the Trasks’ automobile. (R.p.175, lines 7-8).

¹⁰ Copeland stated, rather inexplicably, that he never even considered seeking any scientific advice regarding identification of the remains in order to support his certification that the body was actually that of Paul Trask III. (R.p.200, lines 6-13).

¹¹ Copeland was required to order an autopsy of the remains found at the accident scene. 39 S. C. Juris., *Coroners*, §§ 15, 16 (S.C. Bar CLE Division 1992) (citing *S.C. Code Ann.* § 17-7-10 (Thomson West Supp. 2007)). The statute specifically provides that “[t]he coroner of the county in which a body is found dead . . . shall order an autopsy or post-mortem examination to be conducted to ascertain the cause of death.” *S.C. Code Ann.* § 17-7-10 (Emphasis added). “Ordinarily, the use of the word “shall” in a statute means that the action referred to is mandatory. *TNS Mills, Inc. v. S. C. Dep’t of Revenue*, 331 S.C. 611, 620 n.3, 503 S.E.2d 471, 476 n.3 (1998) (citing *S. C. Dep’t of Hwys. & Pub. Transp. v. Dickinson*, 288 S.C. 189, 191, 341 S.E.2d 134, 135 (1986)).

¹² This was clearly an assumption by Copeland based solely upon his exterior view of the remains. Copeland certainly could not have determined from this viewing whether Paul Trask III had suffered a cardiac infarction, a cerebral aneurysm, been shot, been stabbed, or sustained some other sudden and unexplained physical and/or medical occurrence.

However misguided, Copeland inexplicably failed to initially tell the Trasks that the body had been burned beyond recognition. (R.p.183, lines 15-18). Subsequent to the accident and the burial, the Trasks talked with other fire and rescue personnel and viewed the burned vehicle. (R.p.192, lines 8-13). By that time, February 2006, they finally realized the extent and severity of the fire. (R.p.192, lines 8-13). The Trasks then went to Copeland Funeral Home to ask Copeland “just how badly Paul[Trask III]’s body was burned”. (R.p.192, lines 15-16). Unbelievably, now some months after the accident, Copeland finally admitted to the Trasks that “you couldn’t tell if the body was **black, white[,] or Mexican**” (R.p.192, lines 14-18) (Emphasis added).¹³ Had the Trasks known this on 22 November 2005, they unquestionably “would have demanded and insisted on an autopsy had [they] known those facts, which [Copeland] never revealed to [them].” (R.p.183, lines 16-20). Mr. Trask stated:

So [Copeland] kept [the actual condition of Paul Trask III’s remains] from us. [Copeland] then **cremated our son’s body when he knew doggone well he shouldn’t have.** He didn’t have to. [Copeland] could have easily told us, look, **the law is we’ve got to make sure this is your son. We can do dental examination. We can do a DNA examination. We can’t cremate his body. We have to be certain that this is your son.** That’s what he should have done. We’ve got to perform an autopsy as is set forth in the standard autopsy procedures. The standard autopsy procedures in the case of a burned body, a badly burned body, a standard autopsy procedure required or the standard autopsy procedure requires an autopsy.

(R.p.192; line 18 – R.p.193, line 6) (Emphasis added).

¹³ With the remains in such dire shape the only means with which to accurately determine the true identity of the body was necessarily through scientific and invasive physical methods. Copeland’s “assumptions”, based on a mere exterior view, were reckless at best.

An autopsy likely would have allowed the Trasks to likely “know for certain whether or not the [remains] w[ere] . . . Paul [Trask III, as well as] the actual cause of death, whether it was the crash itself or whether he burned to death.” (R.p.166, lines 2-19). The Trasks just wanted to know the truth about what happened (R.p.169, lines 19-22; R.p.188, lines 5-17), including, among other things, Paul Trask III’s level of intoxication. (R.p.188, line 25 – R.p.189, line 25; R.p.190, lines 4-20). **Absent the requested autopsy**, the Trasks will never know, if Paul Trask III died from the actual crash of the Isuzu Trooper, the ensuing fire, a brain aneurism, a heart attack, or some other unknown, but likely discoverable, malady, illness, and/or medical/physical condition.¹⁴

C. The Cremation

On 22 November 2005, Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home submitted a Cremation Permit Request form to the Beaufort County Coroner’s Office¹⁵ (*i.e.*; from himself to himself) seeking a Cremation Permit authorizing him to cremate the still as yet unidentified body. (R.pp.24-25, para. 36; R.p.35). Copeland directed Connie Herman, an undisputed employee of Copeland Funeral Home and ostensibly a Beaufort County “Deputy Coroner”¹⁶ (R.p.213, lines 2-18;

¹⁴ With the remains in such dire shape the only means with which to accurately determine the true identity of the body was necessarily through scientific and invasive physical methods. Copeland’s “assumptions”, based on a mere exterior view, were reckless at best.

¹⁵ Copeland, for all practical purposes, “operated” the Beaufort County Coroner’s Office (same employees, same official vehicle, same cell phones, same computers, *etc.*) out of his funeral home business (*i.e.*; Copeland Funeral Home).

¹⁶ Deputy coroners must attend at least 16 hours of annual training. 39 S.C. Juris., Coroners, § 2.1 (*citing S.C. Code Ann.* § 17-5-130(A)). Neither Ms. Herman nor any other Beaufort County Deputy Coroner ever attended and/or completed the annual training. (R.p.213, lines 2-20). A deputy coroner must be approved by a Circuit Court Judge. 39 S.C. Juris., Coroners, § 7 (S.C. Bar CLE Division

R.p.222, line 1 – R.p.223, line 22), to “officially” sign/execute the Cremation Permit “on behalf of” the Beaufort County Coroner’s Office. (R.pp.24-25, para. 36; R.p.35). Ms. Herman did so even though she was not legally qualified to act in the position of the Beaufort County “Deputy Coroner”.

At approximately noon that very same day, Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home, met with the Trasks to have them to sign a cremation authorization for the cremation of what was believed, but still not yet truly known, to be Paul Trask III’s last remains. (R.p.25, para. 41; R.pp.36-38; R.pp.176-184). Notwithstanding the actual time, Copeland instructed the Trasks to write “9:15 a.m.” on the Cremation Authorization Form as the time of their “authorization”. (R.p.25, para. 41; R.pp.36-38; R.pp.180-183). This timing “change” allegedly authorized him, as the crematory owner and operator of Coastal Cremation Services, LLC, to illegally cremate the still yet unidentified body. (R.p.25, para. 41; R.pp.36-38; R.pp.180-183).**17**

1992) (*citing* S.C. Code Ann. § 17-5-70 (Thomson West 2007)). Ms. Herman never took an oath or was approved by a judge. (R.p.213, lines 2-22; R.p.222, line 1 – R.p.223, line 22). In fact, “Deputy Coroner” Herman does not recall ever taking any type of “oath of office” and specifically noted she was never approved by a Circuit Court Judge. (R.p.223, lines 3-9). It is only after being “duly qualified, [as required in S.C. Code Ann. § 17-5-70, that a] deputy coroner may [then] do and perform any or all of the duties appertaining to the office of the coroner.” S.C. Code Ann. § 17-5-70. Ms. Herman was never qualified under S.C. Code Ann. § 17-5-70 as a “deputy coroner” and, therefore, was not authorized to perform the duties of a deputy coroner.

17 See S.C. Code Ann. § 16-17-600 (Thomson West 2003). Copeland, as the owner and operator of Coastal Cremation Services, LLC, personally cremated the body even though he admittedly knew, at the time of the cremation, that no medical or scientific effort whatsoever had been undertaken to positively identify the remains as actually being those of Paul Trask III. (R.p.26, paras. 43, 45; R.p.203, lines 10-17).

IV. ARGUMENT AND CITATION OF AUTHORITY

A. The Trasks Presented Sufficient Evidence To Prevent Summary Judgment On Their Claims Against The Copeland Respondents For Negligence, Negligence Per Se, And Gross Negligence

The Trasks intellectually believe their son died in a single-car accident on 22 November 2005. (R.p.173, lines 5-13). The Trasks only “believe” this because they really don’t know. Not only do the Trasks not 100% know if Paul Trask III actually died that early November morning, but, even if he did, they really do not know either the “how” or the “why”. The Trasks were entitled to know if the remains were definitely Paul Trask III and, if so, how he died. (R.p.81, line 1 – R.p.82, line 19; R.p.85, line 9 – R.p.86, line 17; R.p.166, lines 2-13). The Trasks were entitled to know this as any parent would when burying their child. Tragically, Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home, heaping uncertainty, confusion, and deception upon the Trask’s unbearable grief, prevented the Trasks from having these critically important answers. (R.p.81, line 1 – R.p.83, line 19; R.p.85, line 9 – R.p.86, line 17; R.p.166, lines 2-13, R.p.169, line 3 – R.p.170, line 1; R.p.188, lines 5-17).¹⁸

Recognizing these serious problems, the Court of Appeals concluded that “[t]his case [wa]s troubling because Copeland ***did violate at least some of the statutes***, and ***conducted himself in a manner*** [which the Court of Appeals] believe[d] was ***inappropriate***.” (Emphasis added).¹⁹ Nevertheless, the Court of Appeals concluded that, even though the Trasks had been clearly “wronged”, they did not have any legal

¹⁸ With the remains in such dire shape the only means with which to accurately determine the true identity of the body was necessarily through scientific and invasive physical methods. Copeland’s “assumptions”, based on a mere exterior view, were reckless at best.

¹⁹ Trask v. Beaufort County, 392 S.C. 560, 565, 709 S.E.2d 536, 538.

recourse against either Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) or the Copeland Funeral Home. This result is neither fair nor just nor legally correct.

The record shows Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home admittedly (a) ignored their statutory duties, (b) destroyed evidence, and (c) failed to do their job at every turn.²⁰ Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home should and, indeed, must, be held accountable for their actions and inactions. Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home must be prevented from inflicting this travesty upon someone else. In fact, the Trasks have heretofore been denied even some small measure of redress. The Trasks presented substantial evidence demonstrating Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home failed to meet even their basic responsibilities associated with handling and investigating Paul Trask III's accident and cremation. This Supreme Court should reverse the Court of Appeals' decision and send this matter back to the Circuit Court for a trial on the merits.

²⁰ Copeland, for all practical purposes, "operated" the Beaufort County Coroner's Office (same employees, same official vehicle, same cell phones, same computers, *etc.*) out of his funeral home business (*i.e.*; Copeland Funeral Home). He refused, despite a court order (issued in a related case – Trask v. S.C. Dep't. of Pub. Safety, 2012-UP-623 (Ct.App., filed 21 November 2012)), to produce the computer hard drive from his "office" computer on the grounds that he had sold the Copeland Funeral Home and the computers, admittedly containing records involving Paul Trask III's accident to third-parties and had erased the hard drive prior to the sale. (R.p.253, line 6 – R.p.254, line 1).

Copeland was required by law to “order an autopsy or post-mortem examination to be conducted to ascertain [Paul Trask III’s] cause of death.”²¹ He failed to do so and admittedly made no attempt whatsoever to identify the body (R.p.22, para. 21) or to seek any scientific assistance to do so. (R.p.200, lines 6-13).²² Copeland, after discovering the vehicle was registered to Mr. Trask (R.p.4; R.p.22, para. 22; R.p.43, para. 22), simply jumped to the conclusion that the charred remains were, in fact, those of Mr. Trask. (R.p.22, paras. 21-23; R.p.43, para. 23). Believing it entirely unnecessary, Copeland failed to make any further investigation into or determination of the identity of the remains. (R.p.22-24, para. 24; R.p.200, lines 6-13; R.p.404, lines 10-17).

When Mrs. Trask specifically requested Copeland to perform an autopsy of the remains (R.p.24, para. 32; R.p.175, lines 16-18; R.p.184, lines 2-25; R.p.190, line 21 – R.p.191, line 6), Copeland refused to perform one, asserting the cause of, what was believed to be Paul Trask III, death was obvious. (R.p.24, para. 32; R.p.175, lines 18-20; R.p.184, lines 7-9; R.p.190, line 21 – R.p.191, line 6). Nevertheless, the law did not, however, afford Copeland the discretion to forego ordering an autopsy simply because he felt the cause of death was, in his opinion, obvious.²³ Copeland was legally

²¹ See S.C. Code Ann. § 17-7-10. See also 6 S.C. Juris., Dead Bodies, § 27 (Thomson Reuters West Supp. 2008); 39 S.C. Juris., Coroners, §§ 15, 16 (S.C. Bar CLE Division 1992).

²² With the remains in such dire shape the only means with which to accurately determine the true identity of the body was necessarily through scientific and invasive physical methods. Copeland’s “assumptions”, based on a mere exterior view, were reckless at best.

²³ Copeland was required to order an autopsy of the remains found at the accident scene. 39 S. C. Juris., Coroners, §§ 15, 16 (S.C. Bar CLE Division 1992) (citing S.C. Code Ann. § 17-7-10 (Thomson West Supp. 2007)). The statute specifically provides that “[t]he coroner of the county in which a body is found dead . . . shall order an autopsy or post-mortem examination to be conducted to ascertain the cause of death.” S.C. Code Ann. § 17-7-10 (Emphasis added). “Ordinarily, the use of the word “shall” in a statute means that the action referred to is mandatory. TNS Mills, Inc. v. S. C. Dep’t of Revenue, 331 S.C.

required, indeed compelled, to order an autopsy of the remains and his failure to do so was the “causative violation of a statute [and, in turn,] constitute[d] negligence *per se* and [wa]s evidence of recklessness and willfulness”²⁴

Furthermore, Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home were fully aware of Copeland’s many statutory failures and, nevertheless, recklessly “charged on” with this knowledge and performed the illegal and unauthorized cremation. Neither Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) nor the Copeland Funeral Home can “hide” behind Copeland’s “official position” as a complete barrier to their liability.²⁵ Both Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home must be, as a purely practical matter, deemed to know what Copeland did or did not do in his “official position”.

611, 620 n.3, 503 S.E.2d 471, 476 n.3 (citing *S. C. Dep't of Hwys. & Pub. Transp. v. Dickinson*, 288 S.C. 189, 191, 341 S.E.2d 134, 135). Autopsies are important tools for determining truth and preserving evidence. For example, Section 501.2 of the Autopsy Protocol for the State of Indiana provides, in pertinent part, that “[a] death case with an obvious cause and manner of death may require an autopsy for legal documentation. In such cases, knowledge of specific mechanics of death are desired, *e.g.*; determination of fatal wounds, contribution of any natural disease to the cause of death[,] and the elapsed time between the moment of fatal injury and psychological death.”

²⁴ *Fairchild v. S. C. Dep't of Trans.*, 398 S.C. 90, 100, 727 S.E.2d 407, 412 (2012) (citing *Austin v. Specialty Trans. Servs., Inc.*, 358 S.C. 298, 594 S.E.2d 867 (Ct.App.2004)). *See also Wogan v. Kunze*, 379 S.C. 581, 588 n.6, 666 S.E.2d 901, 907 n.6 (2008).

²⁵ Copeland, for all practical purposes, “operated” the Beaufort County Coroner’s Office (same employees, same official vehicle, same cell phones, same computers, *etc.*) out of his funeral home business (*i.e.*; Copeland Funeral Home). He refused, despite a court order (issued in a related case – *Trask v. S.C. Dep't. of Pub. Safety*, 2012-UP-623 (Ct.App., filed 21 November 2012)), to produce the computer hard drive from his “office” computer on the grounds that he had sold the Copeland Funeral Home and the computers, admittedly containing records involving Paul Trask III’s accident to third-parties and had erased the hard drive prior to the sale. (R.p.253, line 6 – R.p.254, line 1).

Moreover, Copeland *inexplicably* failed to tell the Trasks that Paul Trask III's body was burned beyond recognition. (R.p.183, lines 15-18). It was only *months later* when Copeland finally told the Trasks "*you couldn't tell if the body was black, white[,] or Mexican[.]*" (R.p.192, lines 14-18).²⁶ Given that situation, it cannot be reasonably disputed that the Trasks "would have demanded and insisted on an autopsy had [they] known those facts" (R.p.183, lines 16-20). The Trasks simply wanted to know what truly happened to their son. (R.p.169, lines 19-22; R.p.188, lines 5-17).²⁷ Had Copeland ordered an autopsy as he legally was compelled to do and, in fact, as he should have done when asked to do so (R.p.24, para. 32; R.p.175, lines 16-18; R.p.184, lines 2-25; R.p.190, line 21 – R.p.191, line 6), the Trasks would likely have been able to "know for certain whether or not the [remains were] . . . Paul [Trask III, as well as] the actual cause of death, whether it was the crash itself or whether he burned to death" (R.p.166, lines 12-10) and his actual level of intoxication. (R.p.188, line 25 – R.p.189, line 25; R.p.190, lines 4-20). Copeland's (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home's actions denied them these basic and important truths. Copeland proceeded to personally cremate the remains even though he was fully aware that the Beaufort County Coroner's Office was in violation of the law regarding the issuance of the Cremation Authorization Permit. Copeland's statutory failures, while in his "official position", could have easily been reversed and/or remedied had not Copeland

²⁶ With the remains in such dire shape the only means with which to accurately determine the true identity of the body was necessarily through scientific and invasive physical methods. Copeland's "assumptions", based on a mere exterior view, were reckless at best.

²⁷ Without an autopsy, the Trasks do not know if Paul Trask III died from the accident, the ensuing fire, an aneurism, a heart attack, or some other unknown, but likely discoverable malady.

(individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home recklessly forged ahead with the illegal and unauthorized cremation of the remains.

Furthermore, just after telling the Trasks of their son's tragic death, Copeland solicited the Trasks to use the Copeland Funeral Home (and Coastal Cremation Services) to handle the burial arrangements of the still yet unidentified body. (R.p.23, para. 30; R.p.175; lines 13-16). He asked the Beaufort County Coroner's Office (*i.e.*; his own office) to authorize him, as operator of Coastal Cremation Services, and the Copeland Funeral Home to cremate the still as yet unidentified body. (R.p.24, para. 36; R.p.35).**28** *Copeland Funeral Home employee*, Connie Herman (R.p.213, lines 2-18; R.p.222, line 1 – R.p.223, line 22), ostensibly the "deputy coroner", signed the Cremation Authorization Permit on behalf of the Beaufort County Coroner's Office *notwithstanding* the fact she was untrained and legally unqualified to do so. (R.p.24, para. 36; R.p.35).

At about noon that very same day of the accident, Copeland, still withholding the condition of the remains, requested the distraught and distressed Trasks, to sign a Cremation Authorization Form.**29** (R.p.25, para. 41; R.pp.176-184; R.pp.36-38).**30**

28 Copeland, for all practical purposes, "operated" the Beaufort County Coroner's Office (same employees, same official vehicle, same cell phones, same computers, *etc.*) out of his funeral home business (*i.e.*; Copeland Funeral Home).

29 See generally S.C. Code Ann. § 32-8-320(A)(4) (Thomson West 2007).

30 See S.C. Code Ann. § 16-17-600. Copeland personally cremated the body when he, the Copeland Funeral Home, and Coastal Cremations admittedly knew no medical and/or scientific effort had ever been made to positively identify the remains as actually being those of Paul Trask III. (R.p.26, paras. 43, 45; R.p.203, lines 10-17). The Court of Appeals found it particularly important that "the Trasks authorized the cremation of Paul[Trask III]'s body." Trask v. Beaufort County, 392 S.C. 560, 572, 709 S.E.2d 536, 542. The Trasks, who signed the authorization *within 12 hours of their son's death* (R.p.25,

Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home), even though it was 12:15 p.m. on 22 November 2005, improperly instructed the Trasks to write "9:15 a.m." on the form as their authorization time. (R.p.25, para. 41; R.pp.36-38; R.p.180, line 12 – R.p.183, line 4). This allowed Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home to illegally cremate the still as yet unidentified body at an earlier time than would have legally been allowed. (R.p.25, para. 41; R.pp.36-38; R.p.180, line 12 – R.p.183, line 4). Both Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home admittedly "knew full well that there were laws, and rules, and regulations pertaining to a cremation, which he deliberately disobeyed" (R.p.183, lines 5-14).**31**

Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home violated the law by admittedly cremating the remains which they knew were as yet unidentified within the mandatory 30-day waiting period. (R.pp.22-23, para. 24; R.p.91, lines 3-6;

para. 41; R.pp.176-184; R.pp.36-38), were, understandably, still in shock and simply following Copeland's directions so they could bury their son before the impending Thanksgiving holiday.

31 See also generally S.C. Code Ann. Regulation 61-19, § 23(e) (Thomson West 2007) ("In any case where final disposition is to be by cremation . . . , the burial-transit permit must be accompanied by a certified copy of the death certificate . . . "). In this case, Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home knew that the DHEC Burial Transport Permit (R.p.282) was invalid because the Beaufort County Coroner's Office had not lawfully issued the form. Connie Herman, a Copeland Funeral Home employee, and not a legally "authorized issuing officer" of the Beaufort County Coroner's Office signed the DHEC Burial Transport Form on 22 November 2005 (R.p.282), even though Paul Trask III's non-certified death certificate was not signed until 23 November 2005, well after the cremation had taken place. Ms. Herman prepared the additional Beaufort County Coroner form on 22 November 2005, and stamped Copeland's signature and wrote his license number thereon - also before the death certificate was signed. (R.p.35, R.pp.281-283).

R.p.166, lines 2-13; R.p.217, lines 15-24).³² Copeland knew the law required the body to be forwarded to MUSC or some other suitable place for preservation during the required 30-day waiting period. Instead, Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home obtained a fraudulently issued cremation permit the very day of the accident and cremated the remains the next day all within 24 hours of the death.

Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home improperly and illegally forged ahead with the illegal cremation knowing fully well that the Beaufort County Coroner's Office had violated the law by failing to have a toxicology test performed on the remains.³³ While the law required Copeland to, as he did, "examine the body within eight hours of death of any driver . . . , [16] years old or older, who dies within four hours of a motor vehicle accident",³⁴ that was where Copeland's compliance with the law ended. Copeland admittedly did not "take or cause to have taken by a qualified person such blood or other fluids of the victim as [were] necessary to a determination of the presence and percentages of alcohol or drugs."³⁵ Even though Copeland specifically acknowledged that he knew about the requirements of S.C. Code Ann. § 17-7-80 (R.p.219, lines 19-23), he still failed to have a toxicology test performed. (R.p.219, line 19 – R.p.220, line 2). Copeland (individually and as owner

³² See S.C. Code Ann. §§ 17-5-570(A)-(B) (Thomson West 2003 rev.) Copeland admittedly did not make any real scientific and/or medical effort to identify the remains. (R.pp.22-23, para. 24; R.p.217, lines 15-24).

³³ See S.C. Code Ann. § 17-7-80 (West Group 2003 rev.). See also 14 S.C. Juris., Coroners, § 13 (Thomson Reuters West Supp. 2008).

³⁴ S.C. Code Ann. § 17-7-80.

³⁵ S.C. Code Ann. § 17-7-80.

and operator of both Coastal Cremation Services and Copeland Funeral Home) admitted he “was wrong” (R.p.219, line 25). Equally important, Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home, knew he (Copeland) was wrong and should not have heedlessly proceeded with the irreversible cremation.**36**

Furthermore, Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home admittedly destroyed evidence relating to the investigation of Paul Trask III’s death, including destroying all of the investigative notes from the witness interviews. (R.p.247, line 1 – R.p.248, line 24; R.p.249, line 17 – R.p.250, line 25).**37** Additionally, Copeland double deleted**38** all of the e-mails from his computer - *business related e-mails or otherwise*. (R.p.251, line 1 – R.p.254, line 1).**39** In fact, Ms. Herman admitted “all

36 With the remains in such dire shape the only means with which to accurately determine the true identity of the body was necessarily through scientific and invasive physical methods. Copeland’s “assumptions”, based on a mere exterior view, were reckless at best.

37 The Coroner’s Office’s assigned death investigator, Captain Robert Bromage of the Beaufort County Sheriff’s Office, admittedly shredded all of his handwritten notes made during his investigation of Paul Trask III’s tragic death. (R.p.301, line 1 – R.p.302, line 3).

38 “Double-deleting” e-mails involves deleting an e-mail from the e-mail service mailbox which, in turn, moves the electronic document to the e-mail “deleted items’ folder and then purposively deleting the document from the “deleted items’ folder. (R.p.251, line 14 – R.p.252, line 7). Captain Bromage double deleted his e-mails from his county-owned computer. (R.p.294, line 2 – R.p.296, line 23; R.p.297, line 7 – R.p.300, line 20).

39 Copeland, for all practical purposes, “operated” the Beaufort County Coroner’s Office (same employees, same official vehicle, same cell phones, same computers, *etc.*) out of his funeral home business (*i.e.*; Copeland Funeral Home). He refused, despite a court order (issued in a related case – Trask v. S.C. Dep’t. of Pub. Safety, 2012-UP-623 (Ct.App., filed 21 November 2012)), to produce the computer hard drive from his “office” computer on the grounds that he had sold the Copeland Funeral Home and the computers, admittedly containing records involving Paul Trask III’s accident to third-parties and had erased the hard drive prior to the sale. (R.p.253, line 6 – R.p.254, line 1). Clearly, Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home, whether intentionally, negligently, idiotically, or otherwise, destroyed important evidence which the Trasks and Paul Trask III’s Estate could have used in litigation against the Xpress Lane, *etc.*

handwritten notes and reports [were] destroyed after they [were] transcribed. . . . [on the pretext] they may contain notes on other cases that [were] unrelated to one another” (R.p.291, para. 1), including all of the investigators’ handwritten notes for Paul Trask III’s case. (R.p.291, paras. 4-5).

Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home consistently violated statutory mandates and/or prohibitions. Inexplicably, the Court of Appeals generally, except in some minor respects regarding Copeland, completely ignored this evidence. This Supreme Court should and, indeed, must reverse the Court of Appeals’ decision and remand the matter back to the Circuit Court for a trial on the merits.

B. The Copeland Respondents’ Actions Constituted Negligence Per Se Which Precluded Summary Judgment

The Court of Appeals concluded that a violation of S.C. Code Ann. § 16-17-600⁴⁰ did not offer the Trasks a remedy as the provision failed to give rise to any type of private cause of action.⁴¹ Nevertheless, a cursory reading of the statute demonstrates that, by its very wording, the Legislature explicitly contemplated the possibility of the imposition of civil and, indeed, criminal liability against persons and/or entities, such as Copeland and the Copeland Funeral Home, under an appropriate set of circumstances.

⁴⁰ S.C. Code Ann. § 16-17-600 (Thomson Reuters West 2007). Under this statute “[i]t is unlawful for a person wilfully and knowingly, and without proper legal authority to . . . destroy or damage the remains of a deceased human being . . . [or] desecrate human remains.” S.C. Code Ann. §§ 16-17-600(A)(1), (3) (Thomson Reuters West 2007). In addition, S.C. Code Ann. § 16-17-600 must be read in conjunction with S.C. Code Ann. § 32-8-325(D) (Thomson West 2007) which provides that “[n]o crematory authority which cremated, released, or disposed of human remains is liable if the authority acted in accordance with [the applicable law] unless the crematory authority’s actions were grossly negligent.”

⁴¹ Trask v. Beaufort County, 392 S.C. 560, 568-570, 709 S.E.2d 536, 540-541. The Court of Appeals, apparently concluded there was no private cause of action since the statute was located in Title 16 – Crimes and Offenses. Nevertheless, crimes such as battery, criminal sexual conduct, and assault all also appear in this same title and routinely form the basis of civil liability.

The statute's specific reference to a crematory operator's (*i.e.*; Copeland's and Copeland Funeral Home's) immunity for civil liability in certain circumstances clearly demonstrates our Legislature contemplated that a violation of S.C. Code Ann. § 16-17-600(A) could serve as the basis for civil liability.⁴² Had that not been the case, the statute's reference to civil liability would be impermissible surplusage.⁴³ In fact, in accord with S.C. Code Ann. § 32-8-325(D), Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home explicitly recognized in its own company Cremation Authorization Form that, under certain circumstances, Copeland Funeral Home could suffer civil liability for its wrongful acts. (R.p.38, para. 8). The Cremation Authorization Form which Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home had the Trasks sign on 22 November 2005, specifically stated:

By signing this Cremation Authorization [F]orm, [the Trasks] as agent[s] for the Deceased, agree that **Copeland Funeral Home** and **Coastal Cremation Services** and their respective agents, employees, and assigns shall be held harmless in regard to any and all loss, damage, liability, or causes of action in connection with the cremation, processing, and disposition of the Deceased's remains. . . . However, **Copeland Funeral Home** and **Coastal**

⁴² The statute provides that "[a] crematory operator is neither civilly nor criminally liable for cremating a body which (1) has been incorrectly identified by the funeral director, coroner, medical examiner, or person authorized by law to bring the deceased to the crematory; or (2) the funeral director has obtained invalid authorization to cremate." (Emphasis added). Our Legislature's specific reference to a limitation of civil and/or criminal liability for a crematory operator necessarily requires that civil and/or criminal liability exist in the first instance before there may be a limitation imposed upon such liability - either civil or criminal. In other words, why would there be any need for a specific limitation if the liability never existed in the first place.

⁴³ See State v. Sweat, 379 S.C. 367, 376, 665 S.E.2d 645, 651 (Ct.App. 2008) (citing Matter of Decker, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995) (citing 82 C.J.S., Statutes, § 346 (West Group 1992) ("A statute should be so construed that no word, clause, sentence, provision[,] or part shall be rendered surplusage, or superfluous. . . ."))).

Cremation Services and their respective agents, employees, and assigns **shall not be held harmless for any acts in regard to the cremation, processing, and disposition of the Deceased's remains if said acts are performed in a grossly negligent manner.**

(R.p.38, para. 8) (Last emphasis added).⁴⁴

Furthermore, S.C. Code Ann. § 16-17-600(A) provides that, generally, a “crematory operator is neither civilly nor criminally liable for cremating a body which (1) has been incorrectly identified by the funeral director, coroner, medical examiner, or person authorized by law to bring the deceased to the crematory; or (2) the funeral director has obtained invalid authorization to cremate.”⁴⁵ Nevertheless, and particularly *apropos* to this case, S.C. Code Ann. § 16-17-600(A) further specifically provides that any “immunity [from either criminal or civil liability] does not apply to a crematory operator who knew or should have known that the body was incorrectly identified.”

⁴⁴ This contractual language, of course, tracks S.C. Code Ann. § 32-8-325(D). Moreover, both case law and the acknowledged legal authorities recognize that a funeral operator, crematory operator, *etc.* may be held liable for wrongful, illegal, and/or unauthorized cremation. See 6 S.C. Juris., Dead Bodies, § 22 (Thomson Reuters West 2012) (*citing* 22 Am.Jur.2d, Dead Bodies, § 47 (Thomson Reuters West 2012) (“[C]ivil liability may exist for a cremation performed in an offensive or improper manner.”)); 22 Am.Jur.2d, Dead Bodies, § 31 (Thomson Reuters West 2012); 22 Am.Jur.2d, Dead Bodies, § 115 (Thomson Reuters West 2012) (*citing cases*) (“[C]ompensatory damages for mental anguish and suffering may be recovered if the misconduct consists of a willful, wanton, or malicious act, and the damages result proximately from the willful and intentional invasion of the right of burial or the act of indignity committed in and . . . upon a dead body.”); Akins Funeral Home, Inc. v. Miller, 878 So.2d 267 (Ala. 2003) (Award of actual and punitive damages affirmed against funeral home for unauthorized cremation); Kohn v. United States, 591 F.Supp.568 (E.D.N.Y. 1984) (\$150,000.00 awarded to decedent’s survivors for mental distress claim arising from U.S. Army’s wrongful cremation); Seals v. H&F, Inc., 301 S.W.3d 237 (Tenn. 2010) (discussing what may constitute reckless conduct by a crematory operator); Contrerez v. Michelotti-Sawyers, 271 Mont. 300, 896 P.2d 1118 (1995) (*citing* Sacco v. High Country Independent Press, Inc., 271 Mont. 209, 896 P.2d 411 (1995)) (“[W]e are applying our decision in Sacco to include negligent infliction of emotional distress in situations where the emotional distress resulted from negligent treatment of a dead body.”); Restatement (Second) of Torts § 868 (Amer. Law Institute 2007) (“One who intentionally, recklessly or negligently removes, withholds, mutilates or operates upon the body of a dead person or prevents its proper interment or cremation is subject to liability to a member of the family of the deceased who is entitled to the disposition of the body.”).

⁴⁵ S.C. Code Ann. § 16-17-600(A).

(Emphasis added). As already noted, Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home knew that no conclusive identification ***had ever been made*** of the remains as Paul Trask III (R.pp.22-24, para. 24; R.p.404, lines 10-17) and, in fact, Copeland had originally assumed the remains to be that of Mr. Trask himself. (R.p.22, paras. 21-23; R.p.43, para. 23).**46**

As this Supreme Court is aware, the “ ‘legislative intent to grant or withhold a private right of action for violation of a statute or the failure to perform a statutory duty, is determined primarily from the [very] language of the statute’ ”**47** This is particularly true since the “cardinal rule of statutory construction is for [this Supreme] Court to ascertain and effectuate the intent of the [L]egislature.”**48** Our Legislature’s specific reference to a limitation of civil and/or criminal liability for a crematory operator under specified circumstances necessarily requires that civil and/or criminal liability exist in the first instance before there may be a limitation imposed upon such liability. In other words, why would the South Carolina Legislature impose a limitation on civil liability if civil liability did not exist at all under any circumstances in the first instance? The Court of Appeals’ rationale was, at best, illogical.

46 With the remains in such dire shape the only means with which to accurately determine the true identity of the body was necessarily through scientific and invasive physical methods. Copeland’s “assumptions”, based on a mere exterior view, were reckless at best.

47 Dorman v. Aiken Communications, Inc., 303 S.C. 63, 67, 398 S.E.2d 687, 689 (1990) (quoting Whitworth v. Fast Fare Markets of South Carolina, Inc., 289 S.C. 418, 420, 338 S.E.2d 155, 156 (1985)).

48 See Grant v. City of Folly Beach, 346 S.C. 74, 79, 551 S.E.2d 229, 232 (2001). Additionally, as herein, where the terms of the statute are so very clear, this Supreme Court must apply those terms according to their literal meaning.” Wimberly v. Barr, 359 S.C. 414, 420, 597 S.E.2d 853, 856 (Ct. App. 2004) (citing Hawkins v. Bruno Yacht Sales, Inc., 353 S.C. 31, 39, 577 S.E.2d 202, 207 (2003); Paschal v. State Election Commission, 317 S.C. 434, 436, 454 S.E.2d 890, 892 (1995)).

Even though part of the Trasks' "harm . . . suffered was a loss of settlement value of the Xpress Lane suit because Paul [Trask III's] body was no longer available,"⁴⁹ the Court of Appeals ignored the plain harm to the Trasks of not having that evidence. Moreover, the Court of Appeals ignored the overwhelming emotional harm to the Trasks of not being able to determine (a) if the remains were, indeed, Paul Trask III, (b) the possible physical reason or reasons for the accident, and (c) the ultimate cause of Paul Trask III's death.

Furthermore, Copeland's (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home's repeated violations of S.C. Code Ann. § 16-17-600(A) constituted negligence *per se*. As this Supreme Court noted, in Whitlaw v. Kroger Co.,⁵⁰ in order " 'to show [Copeland and Copeland Funeral Home] owe[d] [them] a duty of care arising from a statute, [the Trasks had to] show two things: (1) . . . the essential purpose of the statute [wa]s to protect from the kind of harm the [Trasks actually] suffered; and (2) [they were] member[s] of the class of persons the statute [wa]s intended to protect.' "⁵¹

The Trasks satisfied both elements. In turn, S. C. Code Ann. § 16-17-600(A) created a duty flowing from Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home to the Trasks. Firstly, the essential and imminently important purpose of S. C. Code Ann. § 16-17-600 is to ensure that deceased bodies are not destroyed ***without***

⁴⁹ Trask v. Beaufort County, 392 S.C. 560, 569, 709 S.E.2d 536, 540.

⁵⁰ Whitlaw v. Kroger Co., 306 S.C. 51, 410 S.E.2d 251 (1991) (*per curiam*).

⁵¹ Whitlaw v. Kroger Co., 306 S.C. 51, 53, 410 S.E.2d 251, 252 (*citing* Rayfield v. South Carolina Dept. of Corrections, 297 S.C. 95, 103-104, 374 S.E.2d 910, 914 (Ct.App. 1988)).

proper authority and without proper identification.⁵² This was the precise harm which Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home unnecessarily inflicted upon the Trasks by cremating the remains **without proper legal authority** before they were conclusively identified (via physical and/or medical means) as those of Paul Trask III. Lastly, the protected class necessarily includes the estate of the deceased person and his or her family members (*i.e.*; those who regard the remains of loved ones with the highest degree of sanctity). The Trasks fall squarely within this class. Importantly, given Copeland's (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home's undisputed statutory deficiencies, "[t]he causative violation of a statute constitutes negligence *per se* and is evidence of recklessness and willfulness, requiring the submission of the issue of punitive damages to the jury."⁵³

At a minimum, the Trasks were entitled to present their case to a jury on Copeland's and Copeland Funeral Home's statutory violations. The Court of Appeals incorrectly and improperly eliminated this right by affirming the Circuit Court's grant of summary judgment. This Supreme Court should reverse the Court of Appeals and remand this matter to the Circuit Court for a trial on the merits.

⁵² With the remains in such dire shape the only means with which to accurately determine the true identity of the body was necessarily through scientific and invasive physical methods. Copeland's "assumptions", based on a mere exterior view, were reckless at best.

⁵³ Austin v. Specialty Transportation Services, Inc., 358 S.C. 298, 314-315, 594 S.E.2d 867, 875 (citing Wise v. Broadway, 315 S.C. 273, 276, 433 S.E.2d 857, 859 (1993)).

C. The Trasks Presented Substantial Evidence To Prevent Summary Judgment On Their Claim Against The Copeland Respondents For Intentional Infliction Of Emotional Distress

The Court of Appeals concluded the outrageous statements Copeland made to the Trasks were made in his “official capacity” alone and, therefore, he was absolutely immune from liability due to the protections afforded him by the South Carolina Tort Claims Act.⁵⁴ The Court of Appeals misinterpreted the facts herein as the offending statements could easily have been and, indeed, most likely were made to the Trasks by Copeland - individually and as owner and operator of both Coastal Cremation Services and the Copeland Funeral Home. The South Carolina Tort Claims Act therefore, did not shield Copeland or the Copeland Funeral Home⁵⁵ from civil liability for their actions.⁵⁶ The Trasks’ intentional infliction of emotional distress claims should be permitted to proceed to trial.⁵⁷

⁵⁴ Trask v. Beaufort County, 392 S.C. 560, 573, 709 S.E.2d 536, 542 (citing S.C. Code Ann. §§ 15-78-30, 50 (Thomson Reuters West 2005)).

⁵⁵ Copeland, for all practical purposes, “operated” the Beaufort County Coroner’s Office (same employees, same official vehicle, same cell phones, same computers, *etc.*) out of his funeral home business (*i.e.*; Copeland Funeral Home).

⁵⁶ While it is clear the “Legislature clearly intended to limit government liability through the [South Carolina] Tort Claims Act, and at no time did the Legislature intend government liability to exceed that of a private entity.” Kerr v. Richland Memorial Hospital, 383 S.C. 146, 149, 678 S.E.2d 809, 811 (2009).

⁵⁷ Under S.C. Code Ann. § 15-78-30(f) (Thomson Reuters West 2007), Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home were only possibly immune from liability for intentional infliction of emotional distress if the their actions were done in the context of Copeland’s official capacity as the Beaufort County Coroner. Given the circumstances of this case and the fact Copeland was constantly “changing hats” from his official “coroner” position to his unofficial “funeral home director” and “cremation operator” positions, the offending statements must be presumed to have been made in his “funeral home director” (and “cremation operator” positions and, therefore, not cloaked with any type of governmental immunity whatsoever. *See generally* Marjorie A. Shields, J.D., *Civil Liability in Conjunction with Autopsy*, 97 A.L.R.5th 419 (Thomson Reuters West 2011). *See also* Dunbar v. Strimas, 632 S.W.2d 558, 34 A.L.R.4th 681 (Tenn. Ct. App. 1981) (Claim for emotional distress survived summary judgment).

The Trasks alleged that “at approximately 4:00 a.m. on [22 November 2005], in response to an inquiry for an autopsy by [Mrs.] Trask, Copeland stated ‘an autopsy [wa]s not necessary; [since] the cause of death [wa]s obvious.’ ” (R.p.175, lines 18-20). Copeland also assured the Trasks the collision had killed Paul Trask III **before** the car caught on fire. (R.p.192). Nevertheless, **several months later**, Copeland finally told the Trasks **he did not know** whether the crash **or** the fire was the cause of Paul Trask III’s death. (R.p.192).**58** Consequently, a mere three hours or so after the accident, Copeland intentionally concealed from the Trasks the fact the body which was “believed” to be that of their son had been burned beyond recognition. (R.p.192, lines 14-18).**59** Even more appalling, in February 2006, months later, when the Trasks inquired about the extent of the burns to Paul Trask III, Copeland, albeit cavalierly, finally confessed **“there was no skin and you couldn’t tell if the body was black, white[,] or Mexican.”** (R.p:192, lines 14-18) (Emphasis added).**60**

58 The Court of Appeals inexplicably concluded “[t]he statements [of Copeland] were made in response to question from the Trasks about . . .an autopsy and the details of the accident. These [were] questions **properly addressed to a coroner, not a funeral home owner.**” *Trask v. Beaufort County*, 392 S.C. 560, 573, 709 S.E.2d 536, 542 (Emphasis added).

59 With the remains in such dire shape the only means with which to accurately determine the true identity of the body was necessarily through scientific and invasive physical methods. Copeland’s “assumptions”, based on a mere exterior view, were reckless at best.

60 Even if the Court of Appeals’ position was marginally correct for Copeland’s initial statements, clearly this final and most offensive statement concerning the ethnicity of Paul Trask’s remains could have only been made by Copeland in his private funeral home capacity as he was the last person to view the remains for a lengthy period of time while he was preparing them for cremation at the Coastal Cremation Services/Copeland Funeral Home. Furthermore, With the remains in such dire shape the only means with which to accurately determine the true identity of the body was necessarily through scientific and invasive physical methods. Copeland’s “assumptions”, based on a mere exterior view, were reckless at best.

It is bad enough that the Trasks had to endure their son's untimely demise, but to also have to experience Copeland's (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home's intolerable and unlawful actions and inactions in the face of Paul Trask III's passing was simply unpardonable. Parents, such as the Trasks, who regrettably find themselves faced with burying a child are absolutely entitled to the truth about how and why their child died. Anything less, especially when Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home clearly had the available means and methods to determine the truth easily within their immediate reach, constitutes an affront to moral decency. Mr. Trask testified he was emotionally damaged due to the fact Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) chose "to disobey the law in a convoluted way, to deny us the truth . . . what a parent wants is to know the exact truth of what happened to their child." (R.p.188, lines 7-17). Due to Copeland's (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home's abject failures to perform their assumed duties, Mr. Trask has had "dreams where Paul [Trask III] is still alive and it's like a miracle and I think in a — in an intellectual manner, I know that Paul is dead, but on an emotional level, that there is part of me that thinks that somehow, maybe he might walk through a door, you know. So it's - it's very difficult." (R.p.166, line 5 - R.p.170, line 1; R.p.193, lines 7-15).

Copeland's (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home's callous and entirely unjustified, unwarranted, and inexcusable conduct inflicted severe emotional distress upon the Trasks. A reasonable jury, presented with this set of facts, could easily conclude the conduct of Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home was so extreme and outrageous as to exceed all possible bounds of decency and, furthermore, such conduct should be regarded as atrocious and utterly intolerable in a civilized community such as Beaufort.

The South Carolina Tort Claim Act does not and did not shield Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home from the outrageous statements Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) made to the Trasks.⁶¹ His statements can easily be seen to have been made in his private, non-governmental capacity.

The Trasks are entitled to seek redress against Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home before a jury. This Supreme Court should reverse the Court of Appeals and remand this matter to the Circuit Court for a trial on the merits.

⁶¹ Copeland, for all practical purposes, "operated" the Beaufort County Coroner's Office (same employees, same official vehicle, same cell phones, same computers, *etc.*) out of his funeral home business (*i.e.*; Copeland Funeral Home).

D. **The Copeland Respondents Committed Third-Party Spoliation Of Evidence By Destroying Relevant Evidence Associated With Paul Trask III's Accident**

The Court of Appeals stated the Trasks failed to meet all of the elements of negligent and/or intentional third party spoliation of evidence.⁶² The Court of Appeals misinterpreted the facts herein which properly demonstrated Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home unquestionably committed the tort of spoliation of evidence as envisioned by this Supreme Court in Austin v. Beaufort County Sheriff's Office.⁶³

In this case, contrary to the Court of Appeals' decision, the Trasks presented substantial evidence satisfying all of the elements of a third-party spoliation claim. While the Court of Appeals' position apparently centered solely on the destruction of the charred remains by Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home,⁶⁴

⁶² As this Supreme Court is aware, the tort of intentional and/or negligent spoliation of evidence is a newly developing area of the law. Many other jurisdictions have recognized spoliation or destruction of evidence claims against third parties – some recognizing intentional spoliation claims, while others have recognized negligent spoliation claims. See, e.g., Ortega v. City of New York, 11 Misc. 3d 848, 809 N.Y.S.2d 884 (Sup 2006); Oliver v. Stimson Lumber Co., 297 Mont. 336, 993 P.2d 11 (1999); Thompson v. Owensby, 704 N.E.2d 134 (Ind.Ct.App. 1998); Kimball v. Publix Super Markets, Inc., 901 So.2d 293 (Fla. 2d DCA 2005); Hannah v. Heeter, 213 W.Va. 704, 584 S.E.2d 560 (W.Va. 2003); Nichols v. State Farm Fire & Casualty Co., 6 P.3d 300 (Alaska 2000); Holmes v. Amerex Rent-A-Car, 180 F.3d 294 (D.C.Cir.1999); Boyd v. Travelers Insurance Co., 166 Ill.2d 188, 652 N.E.2d 267 (1995); Coleman v. Eddy Potash, Inc., 120 N.M. 645, 905 P.2d 185 (1995); Smith v. Howard Johnson Co., 615 N.E.2d 1037 (Ohio 1993).

⁶³ Austin v. Beaufort County Sheriffs Office, 377 S.C. 31, 659 S.E.2d 122 (2008).

⁶⁴ Trask v. Beaufort County, 392 S.C. 560, 572-573, 709 S.E.2d 536, 542. The Court of Appeals stated the "Trasks have not presented any evidence that Copeland . . . had knowledge two days after Paul[Trask III]'s death of a potential civil action against Hess Corporation and Xpress Lane, or that Paul[Trask III]'s body would be considered evidence in such a lawsuit." Trask v. Beaufort County, 392 S.C. 560, 572-573, 709 S.E.2d 536, 542. In addition, the Court of Appeals found it important that "the Trasks authorized the cremation of Paul[Trask III]'s body[,] failed to show it was possible to obtain a

this “emphasis”, white in and of itself misguided, completely ignored the other documentary and investigative evidence which Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home destroyed,⁶⁵ as well as, equally importantly, the evidence which Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home could have and should have gathered, but, instead destroyed.

In Austin v. Beaufort County Sheriff's Office, this Supreme Court did not foreclose the possibility that it could ultimately recognize the tort of spoliation of evidence, but merely reserved judgment on whether it would, under an appropriate set of circumstances, adopt such a claim. This Supreme Court stated that since Austin v. Beaufort County Sheriff's Office plaintiff failed to meet the proof requirements for a third-party spoliation of evidence tort, this Supreme Court “decline[d] to address whether [it] would, under other factual circumstances, adopt the tort of third party spoliation of evidence.”⁶⁶

toxicology test, and did not show how the results of that test would be vital to their ability to prevail in a civil action.” Trask v. Beaufort County, 392 S.C. 560, 572-573, 709 S.E.2d 536, 542.

⁶⁵ Copeland, for all practical purposes, “operated” the Beaufort County Coroner’s Office (same employees, same official vehicle, same cell phones, same computers, *etc.*) out of his funeral home business (*i.e.*; Copeland Funeral Home). He refused, despite a court order (issued in a related case - Trask v. S.C. Dep’t. of Pub. Safety, 2012-UP-623 (Ct.App., filed 21 November 2012)), to produce the computer hard drive from his “office” computer on the grounds that he had sold the Copeland Funeral Home and the computers, admittedly containing records involving Paul Trask III’s accident to third-parties and had erased the hard drive prior to the sale. (R.p.253, line 6 - R.p.254, line 1). Clearly, Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home, whether intentionally, negligently, idiotically, or otherwise, destroyed important evidence which the Trasks and Paul Trask III’s Estate could have used in litigation against the Xpress Lane, *etc.*

⁶⁶ Austin v. Beaufort County Sheriff's Office, 377 S.C. 31, 36, 659 S.E.2d 122, 124 (Emphasis added).

Subsequently, this Supreme Court, in Cole Vision Corp. v. Hobbs,⁶⁷ again addressed the issue of an independent tort of spoliation of evidence. In Hobbs, this Supreme Court, while acknowledging that “some states ha[d] adopted an independent action for spoliation of evidence”,⁶⁸ however, “decline[d] to adopt the tort of negligent spoliation in this State”⁶⁹ citing the “public policy considerations” consisting of (a) the availability of other presently existing remedies, (b) the “speculative nature of the damages calculation” and (c) the “potential for duplicative and inconsistent litigation.”⁷⁰ Nevertheless, this Supreme Court did recognize that even if a litigant was “unable to bring an independent claim [for spoliation of evidence, that fact did] not preclude [the litigant] from asserting spoliation as a defense to [an action against the litigant].”⁷¹ Since spoliation of evidence may be used defensively, there is no reason it should not be able to be similarly used offensively.

Given this scenario, there is no reason that the Trasks should not be afforded the opportunity to assert Copeland’s (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home’s admitted and undisputed spoliation of evidence as an offensive weapon against

67 Cole Vision Corp. v. Hobbs, 394 S.C. 144, 714 S.E.2d 537 (2011).

68 Cole Vision Corp. v. Hobbs, 394 S.C. 144, 151, 714 S.E.2d 537, 541.

69 Cole Vision Corp. v. Hobbs, 394 S.C. 144, 150-152, 714 S.E.2d 537, 540-541.

70 Cole Vision Corp. v. Hobbs, 394 S.C. 144, 152-153, 714 S.E.2d 537, 541-542.

71 Cole Vision Corp. v. Hobbs, 394 S.C. 144, 153, 714 S.E.2d 537, 542 (citing Robert L. Tucker, *The Flexible Doctrine of Spoliation of Evidence: Cause of Action, Defense, Evidentiary Presumption, and Discovery Sanction*, 27 U. Toledo Law Rev. 67, 75 (1995) (“[T]he effect of the doctrine of spoliation, when applied in a defensive manner, is to allow a defendant to exculpate itself from liability because the plaintiff has barred it from obtaining evidence”); Hirsch v. General Motors Corp., 266 N.J.Super. 222, 628 A.2d 1108, 1118-19 (N.J.Super. Ct. Law Div.1993)).

Copeland's (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home's assertions that they acted properly.⁷²

Furthermore, the fact this Supreme Court declined to adopt the independent tort of spoliation of evidence in Cole Vision Corp. v. Hobbs, certainly does not preclude this Supreme Court from altering its position and adopting such a cause of action given, as existing in this case, the proper set of facts and circumstances – especially considering the critical evidence in this case was irreversibly destroyed within 24 hours of the accident.⁷³ In fact, the Court of Appeals, impliedly acknowledging that a scenario might occur which would justify adoption of the tort, simply concluded below that the Trasks had failed in their evidentiary proof.⁷⁴

⁷² In fact, this Supreme Court effectively acknowledged the offensive use of spoliation of evidence – albeit somewhat couched in other existing remedies. See Cole Vision Corp. v. Hobbs, 394 S.C. 144, 152, 714 S.E.2d 537, 541 (citing Stokes v. Spartanburg Regional Med. Ctr., 368 S.C. 515, 522, 629 S.E.2d 675, 679 (Ct.App. 2006) (ordering a new trial for failure to give a jury instruction on the adverse inference of the import of evidence lost or destroyed by the defendant); QZO, Inc. v. Moyer, 358 S.C. 246, 258, 594 S.E.2d 541, 548 (Ct.App. 2004) (affirming the circuit court's decision to strike appellant's pleadings after appellant destroyed relevant evidence)).

⁷³ In Austin v. Beaufort County Sheriff's Office, the incident in question occurred on July 25, 2001, the Beaufort County Sheriff's Office destroyed the allegedly important evidence on July 2002, and the claimant did not discover the destruction until July 2004. Austin v. Beaufort County Sheriff's Office, 377 S.C. 31, 33, 659 S.E.2d 122, 123. Consequently, there was a 12 month or so time lag between the creation and destruction of the evidence. As noted herein, there was only 24 or so hours. In Stokes v. Spartanburg Regional Medical Center, 368 S.C. 515, 520-522, 629 S.E.2d 675, 678-679, the Court of Appeals stated a spoliation of evidence jury charge should have been given. Therein, the “missing” evidence was certain critical pages from a decedent's medical file, but there was no indication the pages went “missing” within a few hours of the death at issue. In Nucor Corp. v. Bell, 251 F.R.D. 191 (D.S.C. 2008), the United States District Court for the District of South Carolina addressed a spoliation of evidence claim. In that trade secrets case, the evidence (a flash drive containing critical documents) was destroyed some five or so months after the employee left Nucor for another company. In Pringle v. SLR, Inc. of Summerton, 382 S.C. 397, 399-402, 675 S.E.2d 783, 784-786 (Ct.App. 2009), this Court of Appeals addresses a spoliation claim noting the evidence was destroyed some undetermined time after the accident – although not contemporaneously.

⁷⁴ Trask v. Beaufort County, 392 S.C. 560, 572-573, 709 S.E.2d 536, 542. Admittedly, the Court of Appeals issued its opinion in this case several months before this Supreme Court issued Hobbs and, therefore did not have the benefit of that later decision.

At worst, the set of facts and circumstances in this case clearly justify the Trasks' use of "offensive" spoliation of evidence given Copeland's (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home's broad-based destruction of evidence. Moreover, at best, the facts and circumstances of this case would warrant this Supreme Court revisiting its declination to adopt spoliation of evidence as an independent tort – even to the extent of limiting its use to egregious cases such as this one.

The record shows the Trasks presented proof that when Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home cremated and destroyed the body now believed to have been Paul Trask III, a potential and likely civil action clearly existed in, *inter alia*, the Trask's favor against the Xpress Lane, Hess Corporation, and possibly other third parties. Given the nature of Paul Trask III's single-car accident there were numerous potential claims which the Trasks and Paul Trask III's Estate could have initiated against any number of different parties depending on the available evidence. For example there were claims for (a) products liability arising from faulty/defective vehicle equipment, tires, *etc.*, (b) improper road design, signage, markings, *etc.*; and (c) wrongful death, survival, and negligence actions for illegal sale of alcohol if age, toxicology, and participation proof had been preserved, *etc.*, *etc.*, *etc.* **75**

In any case, contrary to the Court of Appeals' conclusion, Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home knew or certainly reasonably should have

75 This does not even contemplate the existence of any possible criminal actions if the evidence showed that Paul Trask, III's accident was other than simply an accident.

known that either civil litigation and/or criminal prosecutions were possible and, at best, very likely. In fact, given his statutory obligations, Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home should have operated on the basis that such civil and/or criminal actions were presumed. Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home⁷⁶ were required to and should have preserved all of the evidence associated with Paul Trask III's accident, including, but not limited to, having (a) the required autopsy performed, (b) the toxicology test administered, (c) DNA testing performed, and (d) dental records compared.⁷⁷ Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home had statutory legal duties to preserve evidence relevant to the potential civil action. (R.p.33, para. 85).⁷⁸ Admittedly, neither Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) nor the Copeland Funeral Home made any effort to comply with those mandatory duties.

Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home admittedly destroyed evidence by personally destroying the, then as yet unidentified, body of Paul

⁷⁶ Both Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home knew that the Beaufort County Coroner's Office - *i.e.*; Copeland who operated his "office" out of the Copeland Funeral Home - was required to keep and preserve all of the evidence obtained in the investigation of Paul Trask III's accident.

⁷⁷ With the remains in such dire shape the only means with which to accurately determine the true identity of the body was necessarily through scientific and invasive physical methods. Copeland's "assumptions", based on a mere exterior view, were reckless at best.

⁷⁸ See S.C. Code Ann. § 16-17-600.

Trask III through cremation of the remains within 24 hours of his death in violation of S.C. Code Ann. § 16-17-600(A). (R.p.33, para. 86; R.p.412, line 25 – R.p.413, line 24).**79**

Over and above Copeland's (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home's destruction of the remains, their evidence destruction also included Copeland destroying all of the investigative notes from the interviews with, among others, the Fripp Island Security Gate Attendant, James Irby, arguably the last person to see Paul Trask alive. (R.p.247, line 1 – R.p.248, line 24; R.p.249, line 17 – R.p.250, line 25).**80** Copeland and his minions also routinely double deleted**81** all of the e-mails from their respective computers, whether such e-mails were of a business-related (*i.e.*; involved death investigations, *etc.*) and/or personal nature. (R.p.251, line 1 – R.p.252, line 1).**82**

79 See generally Oliver v. Stimson Lumber Co., 297 Mont. 336, 349, 993 P.2d 11, 20 (a duty to preserve evidence arises, *inter alia*, where "there is a duty to do so based upon a contract, statute, regulation, or some other special circumstance/relationship).

80 Captain Bromage admitted to shredding all of his handwritten notes made during his investigation of the circumstances surrounding Paul Trask's death. (R.p.301, line 1 – R.p.202, line 3).

81 Captain Bromage also double deleted his e-mails from his county-owned computer even though some of the e-mails involved his investigations for the Coroner's Office – including specifically the investigation of Paul Trask's death. (R.p.294, line 2 – R.p.296, line 23; R.p.296, line 7 – R.p.300, line 20).

82 Copeland admitted he should not have double deleted the "official business" e-mails, especially if they involved anything to do with a coroner's inquest as the Beaufort County record retention policy (Section 12-518.3) required him to maintain those records. (R.p.252, line 8 – R.p.253, line 12). In fact, Copeland specifically stated he "wish[ed] [he] hadn't [done so]." (R.p.253, lines 3-6). "Deputy Coroner" Herman admitted that "[a]ny and all handwritten notes and reports are destroyed after they are transcribed. . . [on the pretext] they may contain notes on other cases that are unrelated to one another." (R.p.291, para. 1). She frequently reiterated the fact that all of the investigators' handwritten notes had been destroyed. (R.p.291, paras. 4-5). Furthermore, it is undisputed that the e-mail and records which Copeland (as coroner) was required to maintain were kept on Copeland's individual company computer located in the Copeland Funeral Home. Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home kept and, in turn, were responsible for the "coroner's records" which Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home later refused to produce and instead "destroyed". This was

Copeland's (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home's unwarranted and illegal destruction of the evidence surrounding Paul Trask III's accident, the accident investigation, and the cremation process significantly added to the Trasks' grief and the pain they felt and continue to feel from their son's tragic and untimely death. These recklessness also significantly impaired Mr. Trask's ability to prosecute the Estate's and his family's claims for wrongful death/survival/negligence against the Xpress Lane, Hess Corporation, and other responsible parties. (R.p.33, para. 87; R.p.185, line 20 – R.p.190, line 20). There was an undeniable causal relationship between Copeland's (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home's unwarranted and illegal destruction of the evidence alleged by the Trasks and described herein and the Trasks' pain and uncertainty, as well as, the impairment of their ability to prove the lawsuit against Xpress Lane and others. (R.p.33, paras. 87-88; R.p.185, line 20 – R.p.190, line 20). The Trasks were clearly damaged due to Copeland's (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home's unjustified, unwarranted, and illegal destruction of critical evidence related to Paul Trask III's accident. (R.p.33, paras. 87-89; R.p.185, line 20 – R.p.190, line 20).

done even though Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home were under a court order (issued in a related case - Trask v. S.C. Dep't. of Pub. Safety, 2012-UP-623 (Ct.App., filed 21 November 2012)), to produce the computer for inspection. Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home refused and instead sold the computer containing the "coroner's records" to another private third-party.

The Trasks presented more than sufficient factual evidence to overcome summary judgment regarding their spoliation claim against Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home. This Supreme Court should reverse the Court of Appeals and remand this matter to the Circuit Court for a trial on the merits.

E. Neither Copeland Nor Copeland Funeral Home Were Immune From Liability Pursuant To S.C. Code Ann. § 32-8-350(A).

The Court of Appeals failed to address whether S.C. Code Ann. § 32-8-350(A) provided statutory immunity to Copeland, as operator of Coastal Cremation Services, and the Copeland Funeral Home on the grounds “[S.C. Code Ann. § 16-17-600 created no duty owed by . . . Copeland to the Trasks”⁸³ The Court of Appeals should have and, in fact, could have easily reached and determined this issue as Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home owed several important duties and obligations to the Trasks.

The Cremation Authorization Form (R.pp.37-39) “granting” Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home the alleged “authority” to cremate the unidentified remains did not comply with S.C. Code Ann. § 32-8-325. The Cremation Authorization Form was legally void due to numerous deficiencies. (R.pp.36-38). Most important among the failings, South Carolina law required the Cremation Authorization

⁸³ See S.C. Code Ann. § 32-8-350(A) (Thomson West 2007). Trask v. Beaufort County, 392 S.C. 560, 570 n.7, 709 S.E.2d 536, 541 n.7.

Form contain "the identity of the human remains and the date and time of death".⁸⁴ Even though the form contained the name of "Leith Paul Trask III", it is undisputed that no positive identification of the remains was ever made. (R.p.217, lines 15-24).⁸⁵ In addition, the Cremation Authorization Form had to contain "the name, address, and phone number of the agent. . . ." statutorily authorized to consent to the cremation.⁸⁶ The form did not contain the addresses and/or telephone number(s) of the agents (i.e.; the Trasks). (R.p.39). Lastly, the Cremation Authorization Form was legally void since Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home improperly instructed the Trasks to "backdate"⁸⁷ the document so he could cremate the remains at a time much earlier than legally permitted. (R.p.178, line 24 – R.p.182, line 13; R.p.217, lines 1-14). This "backdating" showed Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home "knew full well that there were laws, and rules, and regulations pertaining to a cremation, which [Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home] deliberately disobeyed" (R.p.183, lines 5-14).

⁸⁴ See S.C. Code Ann. § 32-8-325(A)(2)(a) (Thomson West 2007) (Emphasis added).

⁸⁵ With the remains in such dire shape the only means with which to accurately determine the true identity of the body was necessarily through scientific and invasive physical methods. Copeland's "assumptions", based on a mere exterior view, were reckless at best.

⁸⁶ See S.C. Code Ann. §§ 32-8-325(A)(2)(d)-(e) (Thomson West 2007); S.C. Code Ann. §§ 32-8-320(A) (Thomson West 2007) (listing people who may be a decedent's approving agent).

⁸⁷ The term "backdate" is "used to identify [Coroner Copeland's direction to the Trasks to indicate] that the transaction be effective at a date earlier than the date the [cremation authorization form] was signed." Parker v. Byrd, 309 S.C. 190, 191 n.1, 420 S.E.2d 850, 851 n.1 (1992).

Furthermore, there can be no immunity for Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home since S.C. Code Ann. § 32-8-325(A)(3) contains a specific condition precedent to cremation. The law requires a crematory authority to obtain a cremation permit pursuant to either S. C. Code Ann. § 17-5-600 or S. C. Code Ann. § 17-5-610.⁸⁸ The Coroner's Cremation Permit Request herein was inherently and facially invalid. (R.p.35). Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home knew that the Coroner's Cremation Permit Request was void.

On the morning after Paul Trask III's accident, Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home submitted a Cremation Permit Request form to his own Beaufort County Coroner's office requesting that the same Beaufort County Coroner's Office issue Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home a Coroner's Cremation Permit authorizing him to cremate the still yet unidentified body. (R.pp.24-25, para. 36; R.p.35).⁸⁹ Ms. Herman,⁹⁰ a Copeland Funeral Home employee and "allegedly" one of the, albeit illegal, "Deputy" Coroners (R.p.213, lines 2-18; R.p.222, line 1 – R.p.223, line 22), signed the Coroner's Cremation Permit on behalf

⁸⁸ See S.C. Code Ann. § 17-5-600 (Thomson West 2003 rev.); S.C. Code Ann. § 17-5-610 (Thomson West 2003 rev.).

⁸⁹ With the remains in such dire shape the only means with which to accurately determine the true identity of the body was necessarily through scientific and invasive physical methods. Copeland's "assumptions", based on a mere exterior view, were reckless at best.

⁹⁰ "Deputy Coroner" Herman never attended the statutorily-mandated annual training (R.p.213, lines 2-20) nor was she ever administered the oath of office by a Circuit Court Judge. (R.p.213, p.37, lines 2-22; R.p.222, line 1 – R.p.223, line 22).

of the Beaufort County Coroner's Office (R.pp.24-25, para. 36; R.p.35), even though she was not statutorily qualified to serve as a "deputy coroner".⁹¹ Ms. Herman, therefore, signed the Coroner's Cremation Permit, not as an official of Beaufort County, but as both a private citizen and a Copeland Funeral Home employee.⁹²

Since Ms. Herman was not a legally qualified "deputy coroner" authorized by law to execute the Coroner's Permit to Cremate (R.p.214, lines 1-8), the cremation permit form was void as a matter of law. Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home undisputedly knew "Deputy Coroner" Herman was not qualified to act as a "deputy coroner". (R.p.213, lines 2-22; R.p.222, line 1 – R.p.223, line 22). The Beaufort County Coroner's Office illegally issued the Coroner's Cremation Permit and both Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home knew the permit was invalid. Both Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home forfeited any possibility of immunity under S.C. Code Ann. § 32-8-350(A).

⁹¹ Copeland admitted Ms. Herman signed the Cremation Permit "under the auspices of the [C]oroner's [O]ffice . . ." (R.p.214, lines 1-8). He noted if Ms. Herman was not a "deputy coroner" when she signed the form she would not have had authority to do so. (R.p.214, lines 9-16).

⁹² See S.C. Code Ann. § 17-5-70. Importantly, the statute requires to oath as a prerequisite to service as a deputy coroner: S.C. Code Ann. § 17-5-70. "Deputy Coroner" Herman had never been "sworn into" her office. (R.p.213, lines 2-22; R.p.222, line 1 – R.p.223, line 22). Even if she had been administered the oath of office, she never satisfied either the mandatory initial and/or annual training requirements. (R.p.213, lines 2-22; R.p.222, line 1 – R.p.223, line 22).

Finally, the law⁹³ expressly restricts the limitation of liability to the crematory authority's simple negligence. **Grossly negligent actions, such as the ones in this case, are not afforded any protection.** In fact, the Cremation Authorization Form which Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home had the Trasks sign on 22 November 2005, recognized this limitation of liability, specifically stating:

By signing this Cremation Authorization [F]orm, [the Trasks] as agent[s] for the Deceased, agree that **Copeland Funeral Home and Coastal Cremation Services** and their respective agents, employees, and assigns shall be held harmless in regard to any and all loss, damage, liability, or causes of action in connection with the cremation, processing, and disposition of the Deceased's remains. . . . However, **Copeland Funeral Home and Coastal Cremation Services** and their respective agents, employees, and assigns **shall not be held harmless for any acts in regard to the cremation, processing, and disposition of the Deceased's remains if said acts are performed in a grossly negligent manner.**

(R.p.38, para. 8) (Last emphasis added).⁹⁴

Any question as to whether Copeland's (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home's actions constituted gross negligence is explicitly excluded from immunity and constitutes an issue of fact to be submitted to the jury.⁹⁵

⁹³ S.C. Code Ann. § 32-8-325(D) (Thomson West 2007).

⁹⁴ This contractual language, of course, tracks S.C. Code Ann. § 32-8-325(D). Moreover, both case law and the acknowledged legal authorities recognize that a funeral operator, crematory operator, *etc.* may be held liable for wrongful, illegal, and/or unauthorized cremation. See 6 S.C. Juris., Dead Bodies, § 22 (*citing* 22 Am.Jur.2d, Dead Bodies, § 47); 22 Am.Jur.2d, Dead Bodies, § 31; 22 Am.Jur.2d, Dead Bodies, § 115; Akins Funeral Home, Inc. v. Miller, 878 So.2d 267; Kohn v. United States, 591 F.Supp.568; Seals v. H&F, Inc., 301 S.W.3d 237; Contrerez v. Michelotti-Sawyers, 271 Mont. 300, 896 P.2d 1118 (*citing* Sacco v. High Country Independent Press, Inc., 271 Mont. 209, 896 P.2d 411); Restatement (Second) of Torts § 868.

⁹⁵ See Madison ex rel. Bryant v. Babcock Center, Inc., 371 S.C. 123, 144, 638 S.E.2d 650, 661 (2006) (The determination of gross negligence is generally best left to a jury.).

The Trasks are entitled to seek redress against Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home before a jury. This Supreme Court should reverse the Court of Appeals and remand this matter to the Circuit Court for a trial on the merits.

V. CONCLUSION

Based upon the foregoing arguments and citation of authority, the Petitioners, L. Paul Trask, Jr., Personally, and as Next of Kin and as the Duly Appointed Personal Representative of the Estate of L. Paul Trask, III, deceased, and Meredith C. Trask, respectfully request this Supreme Court to reverse the decision of the Court of Appeals and remand this matter to the Circuit Court for a trial on the merits.

Respectfully submitted:

NEXSEN PRUET, LLC

By: 

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Attorneys for the Petitioners

Charleston, South Carolina

2 January 2013

NPCHAR1:1050126.1-BR-(SPG) 038981-00003

2 January 2013

The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
1231 Gervais Street
Columbia, South Carolina 29201

Re: L. Paul Trask, Jr., Personally and as Next of Kin and as the Duly Appointed Personal Representative of the Estate of L. Paul Trask, III, deceased, and Meredith C. Trask v. Beaufort County; Curtis Copeland, in his Official Capacity as Coroner of Beaufort County and Individually; and Copeland Company of Beaufort, LLC

Beaufort County Court of Common Pleas
Civil Action No.: 2007-CP-07-993
Court of Appeals Case No.: 2009114686
NP File No.: 038981-00003

Charleston

Charlotte

Columbia

Greensboro

Greenville

Hilton Head

Myrtle Beach

Dear Mr. Shearouse:

On behalf of the Petitioners, L. Paul Trask, Jr., Personally and as Next of Kin and as the Duly Appointed Personal Representative of the Estate of L. Paul Trask, III, deceased, and Meredith C. Trask, enclosed please find the following documents for filing with the Supreme Court:

- a. The original (unbound) and 15 copies of the Brief of the Petitioners; and
- b. One unbound and 15 bound copies of the Appendix.

The unbound versions of the documents are contained in the manila colored envelopes in Box One of Three. This same box also contains a copy of the Appendix and the bound copies of the Brief of the Petitioners. The other two boxes each solely contain seven copies of the Appendix.

I would appreciate you kindly returning a stamped copy of the Appendix and the Brief of the Petitioners to my attention at your convenience. To easily facilitate this return, I have enclosed a self-addressed and stamped envelope.

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JAN 3 - 2013

S.C. Supreme Court

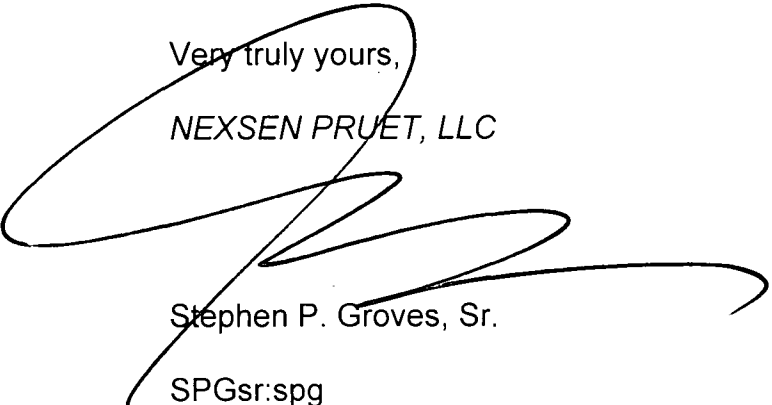
Hon. Daniel E. Shearouse
Clerk of Court
2 January 2013
Page 2

If you need anything else, or I may otherwise may be of any assistance to you or to the Supreme Court regarding this matter, please feel free to contact either Mr. Tisdale or myself at your convenience. My direct telephone number is 843.720.1725, the direct telecopier number is 843.414.8206, and the e-mail address is sgroves@nexsenpruet.com.

With kindest regards, I remain

Very truly yours,

NEXSEN PRUET, LLC



Stephen P. Groves, Sr.

SPGsr:spg

Enclosure

CC: Mr. L. Paul Trask, Jr.
Andrew F. Lindemann, Esquire

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