THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BEAUFORT COUNTY
Doyet A. Early, III, Circuit Judge

Op. No. 4799
(S.C. Ct. App. Filed March 2, 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 R. Copeland, as Personal Representative of the Estate of Curtis M. Copeland; and Copeland Company of Beaufort, LLC, ... Defendants,

Of Whom, Judy R. Copeland, as Personal Representative of the Estate of Curtis M. Copeland and Copeland Company of Beaufort, LLC, are, ... Respondents.

BRIEF OF RESPONDENTS

Andrew F. Lindemann
DAVIDSON & LINDEMANN, P.A.
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

Counsel for Respondents

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes and Rules

STATEMENT OF THE CASE

This is an action brought by the Petitioners L. Paul Trask, Jr., individually and as Personal Representative of the Estate of L. Paul Trask, III, and Meredith C. Trask (hereafter collectively referred to as "Trasks") against the Respondents Curtis Copeland individually and the Copeland Company of Beaufort, LLC.[1] While the appeal was pending in the Court of Appeals, Curtis Copeland died on December 4, 2010. Judy R. Copeland, the personal representative of his estate, was substituted for Copeland in his individual capacity.

Based upon the allegations of the Complaint, it is claimed that on November 21, 2005, L. Paul Trask, III was at his parents' home in Beaufort, South Carolina, on Thanksgiving recess from The Citadel, where he was a second-year student. At approximately 11:20 p.m., he drove a 1999 Isuzu Trooper owned by his father to the Xpress Lane convenience store on Boundary Street in Beaufort, withdrew money from the ATM and purchased two 24-ounce cans of beer. The Xpress Mart sales clerk took no action to determine whether Trask was of legal age to purchase alcohol or whether he was possibly already impaired by the consumption of alcohol. (R. 20-21).

Between midnight and 1:00 a.m., L. Paul Trask, III drove to Fripp Island where he requested an entry pass. Denied a pass, Trask reversed direction and drove north on Sea Island Parkway for 3.8 miles until he lost control of the vehicle, left the highway, and collided with

---

[1] Beaufort County and Curtis Copeland in his official capacity as Coroner of Beaufort County were Defendants in the lower court and Respondents in the Court of Appeals. In this Court's October 3, 2012 order granting a partial writ of certiorari, certiorari was denied as to the County and Copeland in his official capacity as Coroner, and as a result, the summary judgment for the governmental Defendants has been affirmed.

large trees. The vehicle ignited and burst into flames, and L. Paul Trask, III tragically died from the injuries he sustained. (R. 21-22).

At approximately 1:16 a.m. on that night, a passing motorist noticed the burning vehicle and notified the Fripp Island security gate of the accident. At approximately 1:22 a.m., the security guard called Beaufort County non-emergency dispatch and reported the auto fire. At some time after 1:00 a.m., Beaufort County Central Dispatch called Beaufort County Coroner Curtis Copeland to notify him of the fatality. (R. 22).

At the scene of the fire, Coroner Copeland learned through investigating officers that the vehicle's owner was L. Paul Trask, Jr. Copeland went to the Fripp Island security gate and learned that a member of the Trask family requested a pass earlier that night and was refused entry. Copeland then asked Reverend Andrew Chaney, pastor of Beaufort Presbyterian Church, and Beaufort Police Officer Raymond Heroux to accompany him to the Trask home. (R. 22-23).

Upon learning of the accident, L. Paul Trask, Jr. and his wife searched their home and discovered that their son, L. Paul Trask, III, was the only family member not present. Copeland and the Trasks then discussed an autopsy and funeral arrangements. No autopsy was performed. In addition, no toxicology examination was performed on the decedent's body. (R. 23-24).

Later, on November 22, 2005, Copeland acting in his capacity as a funeral director met with the Trasks to further discuss funeral arrangements. At that time, the Trasks signed an "Authorization for Cremation, Processing, and Disposition of the Remains of Leith Paul Trask, III." The Trasks claim that Copeland had them write the time that they signed the authorization as 9:15 a.m. although the form was actually signed around noon. The body was cremated on the following day, November 23, 2005, at 1:40 a.m. (R. 25, 72-73, 92-94, 287).

On May 22, 2006, L. Paul Trask, Jr., as the next of kin and as the duly appointed personal representative of his son's estate, filed a wrongful death and survival action, Civil Action No. 2006-CP-07-1276, seeking money damages from Hess Corporation and Xpress Lane, Inc. In January 2008, that suit was settled for $750,000.00, and the settlement was court approved. (R. 95-103).

On April 11, 2007, the Trasks filed the present lawsuit. They allege six causes of action. The Trasks sued Beaufort County and Copeland in his official capacity as Beaufort County Coroner for negligence, negligent training and supervision, and negligent spoliation. Those negligence claims are governed by the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, *et seq.* The Trasks also sued Curtis Copeland in his individual capacity and Copeland Company of Beaufort, LLC. Copeland Company owned and operated several businesses including Copeland Funeral Home and Coastal Cremation Services which performed the cremation of the decedent. The Trasks have alleged causes of action against Copeland individually as a funeral director and his business for negligence, the tort of outrage, and negligent and/or intentional spoliation.

Following extensive discovery, each of the Defendants including the Copeland Company and Copeland individually filed motions for summary judgment. Those motions were heard by Circuit Court Judge Doyet A. Early, III. By order filed January 2, 2009, Judge Early granted summary judgment to each of the Defendants based on a number of separate and independent grounds. (R. 2-18).

Thereafter, the Trasks filed a Rule 59(e) motion to alter or amend judgment. (R. 150-164). Judge Early denied that motion by form order filed January 15, 2009. (R. 1).

The Trasks then filed an appeal to the South Carolina Court of Appeals which issued an opinion on March 2, 2011, affirming the summary judgment entered in the Circuit Court. A subsequent petition for rehearing was denied.

ARGUMENTS

I. The partial writ of certiorari issued by the Supreme Court as well as the law of this case recognizes that Curtis Copeland in his individual capacity and the Copeland Company are not liable for any alleged acts or omissions by the Coroner of Beaufort County or his office or Beaufort County.

The Trasks have exceeded the writ of certiorari that was issued by this Court. In issuing a writ of certiorari, this Court "grant[ed] the petition as to Questions III (A), (C), (D), (E) and (F), *but only insofar as the portions of the above questions involve allegations against Curtis Copeland Individually (or against his personal representative) and Copeland Company of Beaufort, LLC.*" *See*, Order filed October 3, 2012. (Emphasis added). This Court likewise made it abundantly clear that it was not issuing a writ of certiorari with respect to "any other claims involving Beaufort County or Curtis Copeland in his Official Capacity as Coroner of Beaufort County." *See*, Order filed October 3, 2012.

The Trasks, however, have not limited their arguments to those claims asserted against Copeland individually or the Copeland Company. They have deliberately disregarded this Court's partial writ of certiorari and have attempted to attribute all claims and allegations of spoliation and negligence that were brought against Copeland as the Beaufort County Coroner to Copeland individually and the funeral home, including the alleged breach of statutory duties owed by Copeland as Coroner. The Court is urged to hold the Trasks to the partial writ of certiorari as issued and not permit this expansion of the claims that were brought against Copeland individually and the Copeland Company.

Furthermore, this Court is urged to give effect to the law of this case. The Circuit Court recognized that the Trasks "asserted causes of action against the Defendant Curtis Copeland in

two separate and distinct capacities -- in his official capacity as the Coroner of Beaufort County and in his individual capacity as a funeral director, crematory operator, and owner of Copeland Company." (R. 5). Judge Early ruled that Copeland individually and Copeland Company "cannot be held liable for any duties or responsibilities owed by Copeland in his capacity as the Coroner of Beaufort County." (R. 5). Judge Early further ruled that Copeland individually and Copeland Company "are not liable for acts or omissions committed by any persons while fulfilling or attempting to fulfill any duties or responsibilities owed by the Coroner or his office" and "cannot be held liability for any alleged failure of the Coroner to order a toxicology examination or the alleged failure of the Coroner to perform an autopsy or any other acts or omissions attributable to the Coroner and his office." (R. 5).

Importantly, the Trasks never appealed those rulings, and thus, those rulings are the law of the case. *See*, *Folkens v. Hunt*, 290 S.C. 194, 348 S.E.2d 839 (Ct. App. 1986); *Eagles v. South Carolina National Bank*, 301 S.C. 402, 392 S.E.2d 187 (Ct. App. 1990).[2] This is important to raise to this Court particularly in light of the Trasks' attempt to disregard this Court's partial writ of certiorari. Suffice it to say, the law of this case clearly provides that Copeland individually as well as the Copeland Company cannot be held liable for any alleged violations of statutes that set forth the duties of care owed by the Beaufort County Coroner or his office or the County. That same conclusion is explicit in this Court's partial writ of certiorari as well.

Specifically, the Trasks have argued that Copeland failed to order an autopsy to be conducted to ascertain the identity of the body or the cause of death in violation of Section 17-7-10. They further argue that Copeland refused to perform an autopsy despite a request for an

---

[2] This very point was raised in the Copeland Respondents' brief to the Court of Appeals, although that Court did not rely on the law of the case doctrine in its opinion.

autopsy by Mrs. Trask. *See*, Petitioner's Brief, pp. 12-13. They also claim that Copeland failed to have a toxicology test performed which was in violation of Section 17-7-80. *See*, Petitioner's Brief, pp. 17-18. These are clearly alleged violations of statutes governing the conduct of coroners. Moreover, the Trasks argue that Copeland individually and Copeland Company "destroyed evidence relating to the investigation of Paul Trask, III's death" including investigative notes from witness interviews and double-deleting emails from his computer. *See*, Petitioner's Brief, pp. 18-19. Clearly, Copeland individually and the Copeland Company did not have authority to nor did they investigate the death, conduct witness interviews, nor have any duty under the Freedom of Information Act or otherwise to retain emails. This is another example of the Trask's deliberate disregard for this Court's partial writ of certiorari.

Further, in their attempt to expand on the Court's partial writ of certiorari, the Trasks have made new arguments that were not made in their petition for writ of certiorari or, for that matter, earlier in the litigation. The Court is urged to compare the arguments made in the petition to the arguments now made in the Trasks' brief. Such arguments as those contained on page 13 of the Trasks' opening brief are nowhere to be found in their petition. They are arguing for the first time at this late stage of the appeal that Copeland individually and the Copeland Company should be charged with knowledge of the alleged "statutory failures" of Copeland as Coroner and may be held liable for those "statutory failures."[3]

---

[3] The Trasks should be judicially bound by their pleadings. *See*, *Towles v. United HealthCare Corp.*, 338 S.C. 29, 524 S.E.2d 839, 841, n.1 (Ct. App. 1999) ("It is well settled that parties are judicially bound by their pleadings unless withdrawn, altered or stricken by amendment or otherwise"). Count IV of the Trasks' Complaint alleges a negligence claim against Curtis Copeland in his individual capacity and the Copeland Company for "unlawfully destroying the body now believed to be that of L. Paul Trask, III by cremation in violation of S.C. Code § 16-17-600." *See*, Complaint, para. 73. (R. 31). *That is the only allegation of negligence against Copeland individually and the Copeland Company.* Yet, given this Court's partial writ of certiorari and the dismissal of all claims against the governmental Defendants, the

In sum, this Court denied a writ of certiorari to review the rulings of the Court of Appeals and the Circuit Court pertaining to the liability of Copeland as Coroner and Beaufort County. In addition, in an unappealed ruling, Judge Early had already ruled that Copeland individually and the Copeland Company are not liable for any acts or omissions by the Coroner or his office, which is inclusive of the statutes that govern the duties owed by a coroner. The Trasks' attempt to circumvent those definitive and final rulings should not be permitted.

II. The Court of Appeals was correct in affirming summary judgment on the Trasks' third-party spoliation of evidence claims.

Before addressing specific causes of action, it is instructive to analyze the exact nature of the Trasks' lawsuit because it is certainly unusual. The Trasks are seeking in their Complaint to recover damages for the survival and wrongful death of their son, L. Paul Trask, III. However, Judge Early ruled that the Respondents are entitled to summary judgment on any such claims for survival and wrongful death. (R. 6). He found that the Trasks presented no evidence that any act or omission by the Respondents contributed to the death of L. Paul Trask, III, a fact which was also admitted by L. Paul Trask, Jr., when he testified that his son's death was not caused by the Respondents. (R. 6, 107-108). The Trasks' counsel even conceded at the summary judgment hearing that they were not alleging a wrongful death or survival action against the Respondents. (R. 6).

Instead of asserting a traditional wrongful death and survival action, the Trasks have alleged, as the Circuit Court recognized, that "certain acts or omissions by the Defendants caused

---

Trasks are deliberately and impermissibly trying to expand their negligence and spoliation claims to impute liability for the negligence and spoliation alleged originally against only the Coroner.

the Plaintiffs to accept a lesser settlement in their litigation with Hess Corporation and Xpress Lane, Inc. which was settled for $750,000.00." (R. 6). Thus, Judge Early concluded that "the Plaintiffs' entire action against these Defendants, with the possible exception of the tort of outrage claim, is actually premised on some theory of spoliation." (R. 6). He found that "a fair reading of the entire Complaint, particularly in light of the Plaintiffs' concession that they are not alleging a wrongful death and survival action directly against these Defendants, suggests that the entire action brought on behalf of the Estate of L. Paul Trask, III is literally a spoliation claim." (R. 7). On appeal, the Trasks did not challenge Judge Early's characterization of the case, with the exception of the outrage claim, as a third-party spoliation of evidence suit.[4]

For that reason, it is entirely appropriate for this Court to focus on the spoliation claims. The Circuit Court disposed of the spoliation claims on two alternative bases. First, Judge Early ruled that South Carolina law does not recognize the tort of third party spoliation of evidence. Second, he applied the elements of the potential causes of action for negligent and intentional spoliation, as described in *Austin v. Beaufort County Sheriff's Office*, 377 S.C. 31, 659 S.E.2d 122 (2008), and found that the Trasks did not plead or present evidence to prove each element of a

---

[4] As the Circuit Court recognized, its reading of the Complaint is supported by reference to the allegations in each of the causes of action brought on behalf of the Estate of L. Paul Trask, III. For instance, in Count II which is asserted against Beaufort County and Coroner Copeland for negligent training and supervision, the Trasks allege that "Deputy Coroner Herman's unauthorized acts that were beyond the scope of her employment *resulted in the destruction of evidence* and the *Trasks have been damaged by the destruction of that evidence* in potential claims that exist against various parties." *See*, Complaint, para. 61. (R. 29). (Emphasis added). Similarly, in one of their legal memoranda, the Trasks wrote: "Defendants engaged in a series of inexcusable violations of the law, acted recklessly, willfully and wantonly, in complete disregard for Plaintiffs' rights, and, as a result, *harmed Plaintiffs' ability to seek legal redress from those responsible.*" (R. 7). (Emphasis added). The highlighted language reflects that the crux of each of the Trasks' claims is indeed third-party spoliation of evidence as Judge Early recognized.

cause of action for intentional or negligent spoliation of evidence. Both of the Circuit Court's alternative rulings were correct and provide a separate and independent basis for affirmance.

On appeal, the Court of Appeals did affirm the dismissal of the spoliation claims. Like the Circuit Court, the Court of Appeals ruled first and foremost that South Carolina law does not recognize the tort of third-party spoliation. In *Austin v. Beaufort County Sheriff's Office*, 377 S.C. 31, 659 S.E.2d 122 (2008), this Court declined to recognize the tort of third-party spoliation of evidence. But this Court in *Austin* did appear to leave open the possibility that South Carolina may recognize a third-party spoliation of evidence cause of action "under other factual circumstances" although this Court did not explain what such factual circumstances would be. *Austin*, 659 S.E.2d at 124. The potential opening in *Austin*, however, was clearly shut by this Court's subsequent decision in *Cole Vision Corp. v. Hobbs*, 394 S.C. 144, 714 S.E.2d 537 (2011).[5] In that case, this Court held definitively that "South Carolina does not recognize an independent tort for the negligent spoliation of evidence, third-party or otherwise." 714 S.E.2d at 541. This Court explained that "public policy considerations weigh heavily against adopting the tort in this State." *Id.* The Court outlined three public policy considerations. "First, other remedies are already available with respect to first-party claims. For example, the court of appeals has struck a party's pleadings or approved the use of adverse jury instructions against a party found to have lost or destroyed relevant evidence in the case where the evidence was to be presented." *Id.* Second, "[t]he speculative nature of the damages calculation also militates against recognizing a negligent spoliation cause of action." *Id.* Third, "[t]he final policy consideration which weighs against adoption of the tort of negligent spoliation concerns the

[5] The *Cole Vision* case was decided by this Court after the Court of Appeals issued its opinion in the present case.

potential for duplicative and inconsistent litigation." 714 S.E.2d at 542.

In their petition for writ of certiorari, the Trasks did not challenge that ruling nor did they request that this Court reconsider or overrule its decision in *Austin* or *Cole Vision*.[6] Yet, as another example of how the Trasks have ignored the partial writ of certiorari issued by this Court, the Trasks now argue in their brief *for the first time* that this Court should overrule its rulings in those two cases and recognize an "offensive" use of spoliation, which of course is only another way of arguing that an independent tort for the negligent spoliation of evidence should be recognized. Nonetheless, even if this Court were to now consider that new argument, the Trasks have offered no basis for overruling the recent precedent established by the *Austin* case and in particular the *Cole Vision* case.

At any rate, even if this Court were inclined to reverse the *Austin* and *Cole Vision* cases, the Trasks have not produced even a scintilla of evidence to support each of the elements of their intentional or negligent spoliation claims. This Court in *Austin* did set out the elements that would need to be proven in order to prevail on spoliation of evidence causes of action if recognized. This Court examined these elements, which were adopted from the West Virginia case of *Hannah v. Heeter*, 213 W.Va. 704, 584 S.E.2d 560 (2003), and concluded that the plaintiff in *Austin* had failed to state a claim even if the tort was recognized in South Carolina. Following that same approach in the case at bar, Judge Early found that the Trasks "failed to plead or present evidence to prove each element of a cause of action for intentional or negligent spoliation of evidence." (R. 9). The

---

[6] It is difficult to determine what questions the Trasks actually presented for review by this Court on certiorari because, in contravention to Rule 242(d)(2), SCACR, the Trasks' petition for writ of certiorari did not include a statement of the questions presented for review. That caused the Court in its order partially granting the Trasks' petition to refer to the sections of the Trasks' brief rather than the questions presented to identify the issues on which a writ of certiorari was issued. *See*, Order filed October 3, 2012.

Court of Appeals applied the same analysis and concluded that "the Trasks failed to meet those elements." (App. 8).

This analysis by Judge Early and the Court of Appeals is correct and provides an additional basis for supporting the dismissal of the spoliation claims at summary judgment.[7] Just as they failed to do in the lower court, the Trasks fail to show even a scintilla of evidence in this record to support *each* of the elements of their spoliation claims.

For a negligent spoliation claim, this Court in *Austin* suggested that the elements would include:

> (1) the existence of a pending or potential civil action;
>
> (2) the alleged spoliator had actual knowledge of the pending or potential civil action;
>
> (3) a duty to preserve evidence arising from a contract, agreement, statute, administrative rule, voluntary assumption of duty, or other special circumstances;
>
> (4) spoliation of the evidence;
>
> (5) the spoliated evidence was vital to a party's ability to prevail in a pending or potential civil action; and
>
> (6) damages.

---

[7] It is well settled that under Rule 56(c), SCRCP, a party seeking summary judgment bears the initial burden of demonstrating the absence of a genuine issue of material fact. "With respect to an issue upon which the nonmoving party bears the burden of proof, this initial responsibility may be discharged by showing -- that is, point out to the trial court -- that there is an absence of evidence to support the nonmoving party's case." *Baughman v. American Telephone & Telegraph Co.*, 306 S.C. 101, 410 S.E.2d 537, 545 (1991), *citing Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). "The moving party need not support its motion with affidavits or other similar materials negating the opponent's claim." *Id.* "The trial court should grant summary judgment against a party who has failed to make a showing sufficient to establish the existence of an essential element of that party's case." *Harris v. Rose's Stores, Inc.*, 315 S.C. 344, 433 S.E.2d 905, 906 (Ct. App. 1993).

Austin, 659 S.E.2d at 124. Similarly, this Court suggested that the following elements would need to be shown for an intentional spoliation claim:

(1) a pending or potential civil action;

(2) knowledge of the spoliator of the pending or potential civil action;

(3) willful destruction of evidence;

(4) the spoliated evidence was vital to a party's ability to prevail in the pending or potential civil action;

(5) the intent of the spoliator to defeat a party's ability to prevail in the pending or potential civil action;

(6) the party's inability to prevail in the civil action; and

(7) damages.

Id.

Thus, both types of spoliation claims, if recognized, would require evidence that the spoliator had *actual* knowledge of a pending or potential civil action when the spoliation occurred. Not surprising, the Trasks do not address this element in their brief (nor in any prior briefs). The alleged spoliation by Curtis Copeland in his individual capacity and the Copeland Company was the cremation of the body which occurred on November 23, 2005, the day immediately after the accident. Clearly, there was not a pending civil action on that date. Moreover, there is no evidence in the record that Copeland or the Copeland Company knew of a potential civil action on November 23, 2005.[8]

---

[8] In their brief, the Trasks now argue that the Court of Appeals focused only on the destruction of the remains and not on other "important documentary and investigative evidence." Of course, in Count VI, which is the spoliation claim against the Copeland Respondents, the Trasks only pled the destruction of the decedent's remains as the basis for the spoliation claims. (R. 33). Moreover, there is no evidence that Copeland, as a funeral director, had any duty to collect and maintain "documentary and investigative evidence" including interview notes and

The Circuit Court also pointed out that there is no evidence that Copeland individually and the Copeland Company willfully destroyed any evidence. (R. 9). The Trasks do not refute this ruling. There is no evidence of any willful acts by the Copeland Respondents. Similarly, the Circuit Court ruled that "[t]here is no evidence that the Defendants intended to defeat the Plaintiffs' ability to prevail in a civil lawsuit." (R. 9). Again, that ruling has not been refuted by the Trasks in their appellate briefs. The Trasks have not and cannot point to any evidence of any intent to defeat (or even impede) a potential civil lawsuit.

In addition, L. Paul Trask, Jr. and Meredith Trask – as parents and individual plaintiffs – have not shown that they even had a potential civil lawsuit arising from the death of their son. Under South Carolina law, the only proper party-plaintiff who may institute a survival action or a wrongful death action is the personal representative of the decedent's estate. *See*, S.C. Code Ann. §§ 15-5-10, 15-51-20, and 15-78-170. The parents themselves had no potential civil action against Hess Corporation and Xpress Lane, Inc. or any other potential parties. *See, Doe v. Greenville County School District*, 375 S.C. 63, 651 S.E.2d 305 (2007) (South Carolina law does not recognize claims for loss of filial consortium).

Furthermore, as the Court of Appeals recognized, there is no evidence that, had the remains not been cremated for a period of thirty days or if an autopsy had been performed, any evidence

---

emails that Copeland's "minions," namely Captain Robert Bromage with the Sheriff's Department allegedly destroyed. *See*, Petitioners' Brief, p. 35. No showing has been made nor could be made that Captain Bromage, as a law enforcement officer, was working for Copeland individually or the Copeland Company. Likewise, Copeland, as a funeral director, had no duty to have an autopsy or toxicology test performed. These are just additional examples of how the Trasks have disregarded this Court's partial grant of certiorari. Once this Court upheld the dismissal of the claims against the governmental Defendants, including Copeland acting as Coroner, the Trasks have impermissibly tried to hold Copeland individually and the Copeland Company liable for the negligence and spoliation allegedly committed by the governmental Defendants.

vital to the Trasks' ability to prevail in a civil action could have been gathered or preserved. The Trasks presented no expert testimony, either by affidavit or deposition, that there were sufficient remains on which to perform a toxicology examination. Thus, there is no evidence that a toxicology test or autopsy could have even been useful, let alone, vital to their civil action against Hess Corporation and Xpress Lane, Inc. which they did settle for $750,000.

Finally, the Circuit Court was correct that there is no evidence that the Trasks suffered damages proximately caused by the alleged spoliation. (R. 10). As Judge Early explained, "the Plaintiffs have not demonstrated what evidence was spoliated and how that evidence, presumably the level of their son's intoxication, detrimentally impacted their pursuit of the civil action against Hess Corporation and Xpress Lane, Inc." (R. 10). The Trasks do not refute this ruling on appeal. Instead, in a conclusory manner, the Trasks maintain only that "there was an undeniable causal relationship." *See,* Petitioners' Brief, p. 36. Such conclusory allegations – without supporting evidence – may not be used to withstand a summary judgment motion.

In sum, the Circuit Court, as affirmed by the Court of Appeals, ruled correctly in determining as a matter of law that the Trasks cannot prevail on any claims for negligent and/or intentional spoliation – causes of action which this Court has specifically declined to recognize.

III. The Court of Appeals was correct in affirming summary judgment on the Trasks' negligence claim.

As noted above, Count IV of the Trasks' Complaint alleges a negligence claim against Curtis Copeland in his individual capacity and the Copeland Company for "unlawfully destroying the body now believed to be that of L. Paul Trask, III by cremation in violation of S.C. Code § 16-17-600." *See*, Complaint, para. 73. (R. 31). That is the only allegation of negligence against

Copeland individually and the Copeland Company. Even if this Court disagrees with Judge Early and does not view the separate negligence count as alleging in essence a spoliation claim, the summary judgment on Count IV should still be affirmed as a matter of law.

The Court of Appeals affirmed summary judgment on the negligence claim having concluded that "section 16-17-600 does not create a duty of due care owed by Copeland or Copeland Company to the Trasks, and therefore they do not have a private right of action for its breach." (App. 6). The Trasks now argue that the essential purpose of the statute is "to ensure deceased bodies are not destroyed without proper authority and without proper identification." *See,* Petitioners' Brief, pp. 23-24.[9] The Trasks claim that was the harm which they suffered. The Court of Appeals, however, was correct in rejecting that argument. As the Court of Appeals recognized, "[a]t oral argument, the Trasks' counsel stated the harm they suffered was a loss of settlement value of the Xpress Lane suit because Paul's body was no longer available." (App. 6). Nonetheless, as the Court of Appeals concluded, the essential purpose of Section 16-17-600 is not to preserve a body as evidence for a civil action. Instead, Section 16-17-600 is a criminal statute.

The Trasks claim that they have been harmed because they were unable to confirm with certainty that the body was their son, i.e., they were unable to "positively identify" the body. The Court of Appeals correctly rejected that argument as well. First, that claim alleges no damage to

---

[9] This is another of many examples where the Trasks have altered their arguments from the petition for writ of certiorari (and in the Court of Appeals) in an attempt to circumvent this Court's partial writ of certiorari. In their petition, the Trasks argued that the purpose of Section 16-17-600 was "to ensure deceased bodies are not destroyed without proper authority." *See*, Petition for Writ of Certiorari, p. 14. There was no mention of "without proper identification." The same is true as to the Trasks' position before the Court of Appeals. That Court's opinion provides: "Specifically, [the Trasks] argue the statute's essential purpose 'is to ensure deceased bodies are not destroyed without proper authority.'" (App. 6). Thus, the Trasks have impermissibly altered their position at this late stage of the appeal.

the estate. No argument was made that the estate suffered any loss because the body was not "positively identified." There is no evidence that Hess Corporation or Xpress Lane, Inc. ever disputed that the deceased was L. Paul Trask, III.

Further, even if a private right of action were cognizable, the parents cannot claim damages on this basis. Paul Trask testified that there is no doubt that the decedent was their son. (R. 89). In addition, as Judge Early also concluded, which has not been challenged on appeal, the Trasks are judicially estopped from claiming that their son may not be deceased. (R. 12).[10] They both petitioned the Circuit Court for approval of a death settlement where they represented to the court that their son was dead and was indeed killed in the November 22, 2005 motor vehicle accident. (R. 95-100). Thus, the Trasks as a matter of law cannot and have not questioned the identity of the body that was cremated. Consequently, the Trasks have not shown any damage or harm that was proximately caused by the cremation of their son's remains.

From an issue preservation standpoint, it is also important to focus on what the Trasks appealed to the Court of Appeals. The appeal to this Court is substantially different from what the Trasks presented to the Court of Appeals. Of significance, the Trasks did not appeal to the Court of Appeals from the *actual* rulings made by Judge Early in dismissing Count IV of their Complaint, with the exception of one.[11] For instance, Judge Early ruled that "[t]he Plaintiffs have not shown that the Defendants unlawfully destroyed the body of L. Paul Trask, III in

---

[10] The doctrine of judicial estoppel prohibits the Trasks from asserting any different position in the present litigation. "Judicial estoppel is an equitable concept that prevents a litigant from asserting a position inconsistent with, or in conflict with, one the litigant has previously asserted in the same or related proceeding." *Wright v. Craft*, 372 S.C. 1, 640 S.E.2d 486, 506 (Ct. App. 2006).

[11] In the Court of Appeals, the Trasks only appealed the finding of immunity under Section 32-8-350(A) of the Safe Cremation Act, which is discussed below in Section V of this brief.

violation of Section 16-17-600." (R. 11). He also ruled that "[t]he cremation was carried out in accordance with the Safe Cremation Act, S.C. Code Ann. § 32-8-300, *et al.*" (R. 11). Further, Judge Early ruled that "the Plaintiffs have made no showing of causation or damages. The cremation of the decedent's body -- which was authorized by the Plaintiffs -- did not proximately cause any injury or damage to the Plaintiffs L. Paul Trask, Jr. and Meredith Trask." (R. 12). Each of these rulings are separate and alternative bases supporting summary judgment on Count IV, in addition to the dismissal of all spoliation/negligence claims as discussed in Section II.B of Judge Early's order.

In *Jones v. Lott*, 387 S.C. 339, 692 S.E.2d 900 (2010), this Court addressed the application of the "two-issue" rule to matters of law decided by a trial judge. The Court explained that "where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case." 692 S.E.2d at 903, *citing Anderson v. Short*, 323 S.C. 522, 476 S.E.2d 475 (1996). Likewise, in *Folkens v. Hunt*, 290 S.C. 194, 348 S.E.2d 839 (Ct. App. 1986), the Court of Appeals held that "[a]n alternative ruling of a lower court that is not excepted to constitutes a basis for affirming the lower court and is not reviewable on appeal." 348 S.E.2d at 845. Such a ruling becomes the law of the case. *Id.* Here, each of the separate and independent bases cited by Judge Early for dismissing Count IV have not been challenged on appeal. Hence, like in *Jones*, any one of those unappealed rulings provides a sufficient basis for affirmance.

Nonetheless, even if this Court concludes that the Trasks have appealed each of the lower court's bases for dismissing Count IV, this Court should still affirm because Judge Early's reasoning was correct. Section 16-17-600(A)(1) provides that "[i]t is unlawful for a person willfully and knowingly, and without proper legal authority, to destroy or damage the remains of

a deceased human being." S.C. Code Ann. § 16-17-600(A)(1). The Trasks have not shown, however, that Copeland individually and the Copeland Company unlawfully destroyed the body of their son in violation of Section 16-17-600. As Judge Early ruled, the cremation was carried out in accordance with the Safe Cremation Act. (R. 11). It is undisputed that the cremation was authorized by the Trasks, who were the parents of the decedent. (R. 70-71, 92-94). The record includes a cremation authorization form which was entitled "Authorization for Cremation, Processing, and Disposition of the Remains of Leith Paul Trask, III," which was indisputably signed by both parents. (R. 92-94).[12]

Moreover, Section 16-17-600 requires that the destruction or damage to the human remains must have been "without proper legal authority" in order for any liability to be imposed. There is no claim that Copeland individually and the Copeland Company, as the "crematory authority," did not have proper legal authority. As the lower court determined, the Trasks did not allege nor show that the requirements of Section 32-8-325(A) were not satisfied. Clearly, a

---

[12] The Trasks now contend that Copeland individually and the Copeland Company "illegally cremated" the body "at an earlier time than would have legally been allowed." *See*, Petitioners' Brief, p. 16. The Trasks take that erroneous position based on their claim that they were instructed to "backdate" the cremation authorization form. (R. 92-94). They contend that they met with Copeland at about noon on the date of the accident and that the form shows 9:15 a.m. for the time it was signed on that same date. The form was not backdated; at best, they maintain the time given is a few hours earlier. That allegation is immaterial to the legality of the cremation and certainly does not invalidate the fact that the Trasks both signed the authorization form and agreed to the cremation of their son's remains. Moreover, the cremation did not occur earlier than was legally permitted. Section 32-8-325(E) of the Safe Cremation Act provides: "After an agent has executed a cremation authorization form, the agent may revoke the authorization within twelve hours of its execution and instruct the funeral establishment to instruct the crematory authority to cancel the cremation." S.C. Code Ann. § 32-8-325(E). The body, however, was not cremated until 1:40 a.m. on November 23, 2005, which was more than twelve hours after the Trasks contend they executed the form. (R. 289). Thus, the Trasks were not denied the twelve hours required by the Act to revoke the authorization and cancel the cremation, and it is immaterial because there never was any request by the Trasks to revoke the authorization. In short, the cremation did not occur earlier than allowed by the Safe Cremation Act.

cremation permit had been issued. (R. 281). To the extent that the Trasks complain that the Coroner should not have issued a cremation permit because the body was unidentifiable, the fact that a cremation permit may have been improperly issued by the Coroner, even if true, cannot be imputed to the crematory authority.

Furthermore, as Judge Early also recognized, Section 17-5-590, on which the Trasks rely in maintaining that the cremation should not have occurred for thirty days from the death, is contained in Article 7 of Chapter 5 of Title 17 which is entitled "Duties of Coroners and Medical Examiners." That statute does not create any legal duty or civil liability for a crematory operator. No similar prohibition is contained in the Safe Cremation Act. Therefore, to the extent the Trasks can claim any harm from a violation of Section 17-5-590, that claim may not be asserted against Curtis Copeland individually or the Copeland Company.

For each of these reasons, the lower court, as affirmed by the Court of Appeals, was correct in granting summary judgment to Curtis Copeland individually and the Copeland Company on the negligence count.

IV. The Court of Appeals was correct in affirming summary judgment on the Trasks' outrage claim.

The Court of Appeals affirmed summary judgment for Curtis Copeland individually on the Trasks' tort of outrage claim.[13] The Court noted that the Trasks claim that Copeland was

[13] The Trasks should be judicially bound by their pleadings. *See, Towles v. United HealthCare Corp.*, 338 S.C. 29, 524 S.E.2d 839, 841, n.1 (Ct. App. 1999) ("It is well settled that parties are judicially bound by their pleadings unless withdrawn, altered or stricken by amendment or otherwise"). In their brief to this Court, the Trasks now argue that the Copeland Company committed the tort of outrage. However, in their Complaint, specifically in the caption to Count V, the Trasks made clear that the outrage claim is alleged only against Curtis Copeland individually. (R. 31-32).

outrageous in informing them that "an autopsy is not necessary" and that "the cause of death is obvious." *See*, Complaint, para. 77. (R. 31). The Trasks further allege that Copeland assured them that their son was killed before the car caught fire and that later he discussed with them the extent of the burns in an apparently inconsistent manner. *See*, Complaint, paras. 78-79. (R. 32). With respect to those claims, Judge Early ruled as follows:

> There is no evidence nor even a suggestion that Copeland was having these discussions with the Plaintiffs in his capacity as a funeral director. The need or availability of an autopsy as well as the cause of death are subjects to be addressed by the Coroner, not by the funeral director. The Court thus concludes as a matter of law that the Defendant Copeland in his individual capacity cannot be liable for these allegations.

(R. 13). The Court of Appeals correctly affirmed on the same basis.

In the Court of Appeals, the Trasks did not contest Judge Early's ruling that the need or availability of an autopsy as well as the cause of death are not subjects addressed by the funeral director. They did not dispute on appeal that Copeland was acting solely in his capacity as Coroner when the alleged outrageous acts occurred.[14] However, now for the first time, the Trasks contend that the "offending statements" were made by Copeland in his capacity as funeral director. There is no basis for such a conclusion or the change in position. As the Court of Appeals concluded, the performance of an autopsy and the details of the accident "are questions properly addressed to the coroner, not a funeral home owner." (App. 8).

Nonetheless, even if this Court were to analyze each of the elements of the outrage claim, it is clear that summary judgment was appropriately granted by Judge Early. To recover for the

---

[14] In fact, in the specific allegations of the Complaint, the Trasks identify Copeland as "Coroner Copeland" which demonstrates that the conduct was in his capacity as Coroner. They claim that Coroner Copeland informed them that "an autopsy is not necessary" and that "the cause of death is obvious." *See*, Complaint, para. 77. (R. 31).

tort of outrage, which is also referred to as intentional infliction of emotional distress, a plaintiff must prove the following elements: (1) the defendant intentionally or recklessly inflicted severe emotional distress or was certain or substantially certain that such distress would result from his conduct; (2) the defendant's conduct was so extreme and outrageous that it exceeded all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community; (3) the actions of the defendant caused the plaintiff's emotional distress; and (4) the emotional distress suffered by the plaintiff was so severe that no reasonable person could be expected to endure it. *Ford v. Hutson*, 276 S.C. 157, 276 S.E.2d 776, 778 (1981).

Under South Carolina law, a trial judge serves a "gatekeeper" function with respect to outrage claims. The trial court is required to first determine as a matter of law "whether on the evidence before it, the defendant's conduct may reasonably constitute outrageous conduct." *Todd v. South Carolina Farm Bureau Mut. Ins. Co.*, 283 S.C. 155, 321 S.E.2d 602, 609 (Ct. App. 1984), *quashed on other grounds*, 287 S.C. 190, 336 S.E.2d 472 (1985). In other words, "the question of whether a defendant's conduct may be reasonably regarded as so extreme and outrageous as to permit recovery is one for the court, and only where reasonable persons might differ is the question one for the jury." *Hawkins v. Greene*, 311 S.C. 88, 427 S.E.2d 692, 693 (Ct. App. 1993). In a majority of cases, the South Carolina appellate courts have found that a variety of conduct does not give rise as a matter of law to the tort of outrage. A survey of appellate rulings is set forth in the Court of Appeals' decision in *Gattison v. South Carolina State College*, 318 S.C. 148, 456 S.E.2d 414 (Ct. App. 1995). The survey clearly reflects that the tort of outrage is not favored by the South Carolina appellate courts and should be reserved for only the most atrocious conduct.

In the Trasks' Complaint, as outlined above, the conduct alleged against Copeland is not so extreme and outrageous that it exceeded all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community. In assessing this element of the proof, it is helpful to examine the case of *Hawkins v. Greene*, 311 S.C. 88, 427 S.E.2d 692 (Ct. App. 1993), where a parent brought an outrage claim against a physician for informing her that her baby had died. In affirming summary judgment for the defendant physician, the Court of Appeals explained:

> There is no evidence in the case at hand that the respondent acted intentionally or recklessly to inflict severe emotional distress upon the appellant. Appellant put forth no evidence that respondent's actions in indicating the baby was dead under the circumstances were intentional or reckless and, in fact, from the record, appear to be reasonable. Further, his actions do not appear to have been "so extreme and outrageous as to exceed all possible bounds of decency and regarded as atrocious and utterly intolerable in a civilized community."

427 S.E.2d at 694.

The same is true in the present case. The Trasks have not shown that Copeland acted intentionally or recklessly to inflict severe emotional distress on L. Paul Trask, Jr. and Meredith Trask.[15] Moreover, there is no evidence that Copeland's decision (as the Coroner) not to seek an autopsy or his telling the parents that their son was killed by the impact and not the fire was so extreme and outrageous that it exceeded all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community. To the contrary, assuring grieving parents that their child was dead on impact and did not suffer a horrible death by burning may

---

[15] As Judge Early recognized and the Trasks do not contest, the Estate of L. Paul Trask, III has no viable claim for the tort of outrage. The conduct raised in the Complaint was not directed at nor affected L. Paul Trask, III, who was deceased at the time. L. Paul Trask, III did not suffer severe emotional distress based on any alleged conduct by Copeland or the Copeland Company. (R. 15).

only be viewed as an attempt to comfort the parents and not to harm or upset them. In short, as in *Hawkins* and a majority of appellate decisions in outrage claims, summary judgment was appropriately granted in this case.

In addition, Judge Early was correct in concluding that the Trasks did not satisfy the fourth element of the cause of action. While the death of their son obviously caused severe emotional distress, the Trasks have not shown that the emotional distress *actually suffered as a result of the alleged atrocious conduct of Copeland* was so severe that no reasonable person could be expected to endure it. The emotional harm cited by the Trasks does not meet this high standard.

In sum, the Trasks have not demonstrated any error by the lower court or the Court of Appeals. Summary judgment on the outrage claim should be affirmed.

V. Although the Court of Appeals did not reach the issue, the Circuit Court did correctly rule that Curtis Copeland individually and the Copeland Company are entitled to immunity under Section 32-8-350(A).

In granting summary judgment, Judge Early, among several separate and independent bases for summary judgment on the negligence claim, concluded that Curtis Copeland individually and the Copeland Company are entitled to immunity under Section 32-8-350(A). (R. 11). Section 32-8-350(A) provides that "[a] crematory authority is not liable for damages arising from cremating the human remains designated by a cremation authorization form if the form complies with Section 32-8-325 and if the cremation is performed in accordance with this chapter." S.C. Code Ann. § 32-8-350(A).

The Trasks contend that the Court of Appeals erred in failing to address Copeland's immunity defense under the Safe Cremation Act. However, the Court of Appeals did not find it

necessary to reach this issue. In footnote #7, the Court wrote: "Because we find section 16-17-600 created no duty owed by Copeland to the Trasks, we do not reach the issue of whether the coroner could be immune from liability under the Safe Cremations Act." (App. 6).

Nonetheless, even if this Court reaches this issue, summary judgment on this additional basis was appropriate and should be affirmed. The record includes a cremation authorization form, specifically the "Authorization for Cremation, Processing, and Disposition of the Remains of Leith Paul Trask, III." (R. 92-94). As discussed above, the Trasks attempt to take issue with the authorization form. That attempt only elevates form over substance. For instance, the authorization form is not invalid because the Trasks' address was not included or the time written onto the form may have been wrong by three hours. Judge Early was correct in concluding that the "form includes all of the information required by Section 32-8-325(A)(2)." (R. 11). In addition, the form was signed by both of the Trasks. There is no dispute that the Trasks themselves authorized and wanted the cremation to take place. (R. 70-71).

The Trasks again argue that they were instructed to "backdate" the cremation authorization form and suggest that that "legally voided" the form. That contention is meritless. As noted above, that allegation is immaterial to the legality of the cremation and certainly does not invalidate the fact that the Trasks both signed the authorization form and agreed to the cremation of their son's remains. In addition, the cremation did not occur earlier than was legally permitted. Section 32-8-325(E) of the Safe Cremation Act provides: "After an agent has executed a cremation authorization form, the agent may revoke the authorization within twelve hours of its execution and instruct the funeral establishment to instruct the crematory authority to cancel the cremation." S.C. Code Ann. § 32-8-325(E). The body, however, was not cremated until 1:40 a.m. on November 23, 2005, which was more than twelve hours after the Trasks

contend they executed the form. (R. 289). Thus, the Trasks were not denied the twelve hours required by the Act to revoke the authorization and cancel the cremation, and there was never a request by the Trasks to revoke the authorization. In short, the alleged "backdating" did not invalidate the authorization form nor cause the cremation to violate the Safe Cremation Act.

Indeed, the Trasks have not shown that the cremation was not performed in accordance with the Safe Cremation Act. Copeland individually and the Copeland Company obtained a cremation permit prior to the cremation. That is undisputed. The Trasks challenge the validity of the cremation permit. (R. 281). However, as Judge Early determined, if the cremation permit was improperly issued by the Coroner, that does not invalidate the cremation or subject the "crematory authority" to liability. Certainly, the cremation permit was not invalid on its face. It is the law of this case that Copeland individually and the Copeland Company may not be held liable for any acts or omissions by the Beaufort County Coroner and his office. (R. 5).

In sum, Judge Early ruled that "the Plaintiffs have not pled or offered any proof that the cremation was not performed in accordance with the Safe Cremation Act, and as a result, these Defendants may not be held liable under Section 32-8-350(A)." (R. 11). That ruling was correct and should be affirmed as an additional reason that summary judgment was correctly granted.

VI. As an additional sustaining ground, the Estate of L. Paul Trask, III discharged the liability of the Respondents Curtis Copeland in his individual capacity and Copeland Company of Beaufort, LLC by execution of the Release ending the litigation against Hess Corporation and Xpress Lane, Inc. which discharged the liability of "all other persons or corporations."

Copeland individually and the Copeland Company also moved for summary judgment on the ground that the Release executed by the Personal Representative of the Estate of L. Paul Trask, III ending the litigation against Hess Corporation and Xpress Lane, Inc. discharged the

liability of "all other persons or corporations," which would necessarily include the Copeland Respondents in this action. The lower court did not find it necessary to reach that issue nor did the Court of Appeals. (R. 17). Nonetheless, the Copeland Respondents reassert that issue on certiorari as an additional sustaining ground.[16]

As discussed above, the Estate of L. Paul Trask, III brought suit against Hess Corporation and Xpress Lane, Inc. and recovered $750,000.00 by settlement that was court approved. A Release that was executed by the Personal Representative of the Estate of L. Paul Trask, III confirmed that $750,000.00 fully compensated for the loss to the Estate and discharged the liability of the parties to that litigation as well as all "agents, servants, successors, heirs, executors, administrators *and all other persons, firms, corporations, associations or partnerships*." (R. 119B). (Emphasis added). The Estate therefore discharged the liability of Copeland individually and the Copeland Company who would be included as "all other persons or corporations."

This identical language in the Release was addressed by the Court of Appeals in the case of *Bowers v. South Carolina Dept. of Transportation*, 360 S.C. 149, 600 S.E.2d 543 (Ct. App. 2004). Finding that the terms of a release barred a subsequent action against SCDOT, this Court explained:

---

[16] In *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000), the Supreme Court explained that a respondent "may raise on appeal any additional reasons the appellate court should affirm the lower court's ruling, regardless of whether those reasons have been presented to or ruled on by the lower court." 526 S.E.2d at 723. "The appellate court may review respondent's additional reasons and, if convinced it is proper and fair to do so, rely on them or any other reason appearing in the record to affirm the lower court's judgment." *Id. See also*, Rule 220(c), SCACR ("[t]he appellate court may affirm any ruling, order, or judgment upon any ground(s) appearing in the record"); Rule 207(b)(2), SCACR ("[r]espondent's brief may also contain argument asking the court to affirm for any ground appearing on the record as provided by Rule 220(c)").

> The terms of the Release do not evince an intent to limit its scope to any specifically identified parties. Rather, the Release is general and all encompassing in its scope. It clearly states that the Appellants released the tort-feasor "and all other persons, firms or corporations liable, or who might be claimed to be liable." This language is a clear, explicit, and unequivocal indication of the parties' intent that *all* claims arising from the accident -- now and in the future -- are barred under the terms of the Release. Had Appellants intended a contrary result and desired to limit the operation of the Release to named persons only, the terms of the Release could have been easily tailored to that end. We are constrained by the plain, unambiguous language of the Release to find that Appellants' claims against SCDOT fall within the terms of the Release.

600 S.E.2d at 545-546. The same result should occur here. The Estate of L. Paul Trask, III previously released "all other persons or corporations" which includes the Copeland Respondents here, and on this additional basis, summary judgment should be affirmed.

CONCLUSION

Based on the foregoing discussion and analysis, the Respondents Judy R. Copeland, as Personal Representative of the Estate of Curtis M. Copeland, and Copeland Company of Beaufort, LLC respectfully request that this Court affirm the decision of the Court of Appeals and thereby affirm the orders of Judge Doyet A. Early, III granting summary judgment in their favor.

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

BY: _____

ANDREW F. LINDEMANN
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

Counsel for Respondents Judy R. Copeland, as Personal Representative of the Estate of Curtis M. Copeland, and Copeland Company of Beaufort, LLC

Columbia, South Carolina

April 16, 2013

CERTIFICATE OF COMPLIANCE

The undersigned counsel for the Respondents that the Brief of Respondents complies with the Supreme Court's Order of August 13, 2007, regarding personal identifiers and sensitive information.

DAVIDSON & LINDEMANN, P.A.

BY: _____

ANDREW F. LINDEMANN
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

Counsel for Respondents Judy R. Copeland, as Personal Representative of the Estate of Curtis M. Copeland, and Copeland Company of Beaufort, LLC

Columbia, South Carolina

April 16, 2013

CERTIFICATE OF SERVICE

The undersigned employee of Davidson & Lindemann, P.A., attorneys for the Respondents, does hereby certify that service of the **Brief of Respondents** was made upon counsel for the Petitioners by placing a copy in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 17th day of April 2013:

Thomas S. Tisdale, Jr., Esquire
Jeffrey S. Tibbals, Esquire
Stephen P. Groves, Sr., Esquire
Nexsen Pruet, LLC
Post Office Box 486
Charleston, South Carolina 29402