



Burr Files Amici Curiae Brief with State Supreme Court to Help Protect the South Carolina Business Community

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Burr Forman McNair has filed an Amici Curiae Brief with the South Carolina Supreme Court on behalf of 16 business organizations across the state, including state and local Chambers of Commerce and industry associations.

The brief urges the Supreme Court to take up a case in which the State Court of Appeals reinstated a punitive damages award against a major retailer for \$4.5 million dollars.

“Punitive” damages are often requested in a lawsuit. They can be awarded only when a defendant’s actions were malicious, fraudulent, or grossly reckless, and they serve as a punishment and deterrent. In South Carolina, punitive damages are capped by a state statute.

The Court of Appeals held that a defendant waives this cap on punitive damages if the defendant does not include the statute as a defense in its answer. As the amicus curiae brief explains, this holding has multiple flaws. For one, it ignores how the statutory cap on punitive damages limited the power of courts under the South Carolina Constitution to award punitive damages in excess of this cap. For another, it misapplies the rules of statutory construction. And finally, the Court of Appeals’ reasoning disregards the realities of litigation.

If the Supreme Court does decide to consider this case and reverses the Court of Appeals’ decision, this would protect South Carolina’s retail and business community. During an already tough year for retail, it would alleviate the fear of a company paying excessive punitive damages and being bankrupted should they find themselves in a potential lawsuit.

Columbia partner Grayson Lambert led the creation and filing of the Amici Curiae Brief. At Burr, Grayson focuses his practice on appellate proceedings and major trial court motions. He represents both private and public entities in cases involving novel or complicated legal questions and complex procedural issues.