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Jun 27 2022

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

Appellate Case No: 2021-633

Rachel J. Turner, Claimant,.....Appellant-Respondent,

v.

Medustrial Healthcare Staffing Service and Condustrual, Inc.; Guarantee Insurance Company;
Countrywide Staffing Solutions Group, Inc.; South Carolina Department of Corrections; State
Accident Fund; and South Carolina Uninsured Employer's FundRespondents.

of which Condustrual. Inc. f/k/a Medustrial Healthcare Staffing Service, Employer, is the
Respondent-Appellant.

**RESPONDENTS SOUTH CAROLINA DEPARTMENT OF CORRECTIONS AND
STATE ACCIDENT FUND'S REPLY TO APPELLANT-RESPONDENT'S RETURN TO
RESPONDENTS' MOTION TO STRIKE PORTIONS OF INITIAL RESPONDENT'S
BRIEF OF APPELLANT-RESPONDENT**

Respondents South Carolina Department of Corrections ("SCDC") and State Accident
Fund ("SAF"), by and through its undersigned counsel, hereby replies to Appellant-Respondent
Turner's Return to their Motion to Strike.

In her Return to Respondents' Motion to Strike, Appellant-Respondent Turner admits that
the legal basis for Argument II of her Respondent's Brief, that the Appellate Panel held in the
alternative that Turner was a direct employee of SCDC and that it is now the law of the case, is a
misstatement of fact. However, Appellant-Respondent requests that this Court not strike

Argument II of her brief, but instead allow her to file an amended brief¹, asserting the argument as an additional sustaining ground rather than as the law of the case.² However, Argument II does not represent an additional sustaining ground, but an alternative theory of law that would entirely alter the finding of the Workers' Compensation Commission, and would require this Court to make new findings of fact.³ To allow the Appellant-Respondent to make this argument in this manner and at this point, after all initial briefs have been filed⁴, would unduly prejudice Respondents SCDC and SAF, who are not Appellants in this matter and have no right under the Court Rules to file a Reply to Appellant-Respondent's Initial Brief of Respondent. Even should Respondents be permitted to file a responsive brief to this argument, it would serve to further delay this matter, which concerns a 2015 date of accident.

WHEREFORE, Respondents again request this Court strike Argument II from Appellant-Respondent's Initial Respondent's Brief, beginning on page 39 of her brief, and Order Appellant-Respondent to file an amended Brief omitting such argument and references thereto, and for such other and further relief as the Court may deem just and proper. In the alternative, should this Court

¹ Appellant-Respondent has not filed a Motion with this Court seeking leave to file an amended brief.

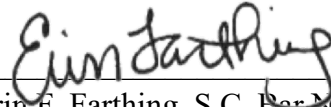
² As set forth in Respondents' Motion to Strike, this argument was not raised by Appellant-Respondent Turner to the Appellate Panel.

³ The Court in I'On, LLC. v. Town of Mt. Pleasant, 338 S.C. 406, 526 S.E.2d 716 (2000) found that a respondent "may raise on appeal any additional reasons the appellate court should affirm the lower court's ruling." However, the argument set forth in Appellant-Respondent's Argument II would not support an affirmance of the lower court's ruling. The Appellate Panel found that Appellant-Respondent is the direct employee of Condustrial, which is the finding appealed by Respondent-Appellant Condustrial. A finding by this Court that Respondent SCDC, rather than Condustrial, is the direct employer of Appellant-Respondent would not serve to affirm the decision of the Appellate Panel, but would instead reverse that decision and find an entirely different party, who is not the Appellant in this appeal, to be the direct employer without any findings from the lower court to support such a ruling.

⁴ Since the filing of Appellant-Respondent's Return, Appellant-Respondent filed the Record on Appeal, meaning Final Briefs will be due shortly.

grant Appellant-Respondent leave to file her amended brief, Respondents request leave to respond to Argument II of that brief. Respondents further request that this Court hold the time period for service and filing of the final briefs in abeyance pending a decision on their Motion.

Respectfully Submitted,



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Lexington, South Carolina
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of which Condustrual. Inc. f/k/a Medustrial Healthcare Staffing Service, Employer, is the
Respondent-Appellant.

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing Respondents South Carolina Department
of Corrections and State Accident Fund's Reply to Appellant-Respondent's Return to
Respondents' Motion to Strike Portions of Initial Respondent's Brief of Appellant-Respondents
on this 27th day of June 2022 via e-mail, to the following attorneys of record:

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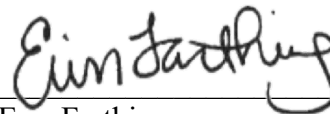
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Subject: 2021-000633 Rachel Turner v. Condustrial Reply to Response to Motion to Strike
Date: Monday, June 27, 2022 10:28:00 AM
Attachments: [image001.png](#)
[Turner Reply to Response to Motion to Strike.pdf](#)

Attached for service upon you is a copy of Respondents SCDC and SAF's Reply to Appellant-Respondent's Response to Respondents' Motion to Strike Portions of Initial Respondent's Brief of Appellant-Respondent in the above claim. This Reply is being filed with the Court via e-file today. Thank you.
Erin



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***** Please be advised that we have moved our location. Please send all mail to PO Box 1166, Lexington, SC 29071.*****

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