

**RECEIVED**

**Jul 07 2022**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

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W.C.C. 1302588  
Appellate Case No. 2017-001732  
Opinion No. 2022-UP-002  
(Submitted October 1, 2021 – Filed January 5, 2022  
Withdrawn, Substituted, and Refiled June 21, 2022)

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Timothy Causey,.....Appellant,

v.

Horry County, Self-Insured  
through S.C. Counties Workers' Compensation Trust,.....Respondents.

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**MOTION FOR ADDITIONAL RELIEF FROM JUDGMENT**

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Pursuant to Rule 240, S.C.A.C.R., Rule 57 and 60(b), S.C.R.C.P., and S.C. Code Ann. § 15-53-20, *et seq.*, the Respondents, Horry County and the South Carolina Counties Workers' Compensation Trust seek additional relief from the May 11, 2022, judgment of the Court of Appeals. While the Court has informed the parties that their May 11, 2022, judgment and subsequent Remittitur were issued as a result of an inadvertent clerical mistake, and while the Court has already recalled the Remittitur and issued a corrected, substitute opinion on June 21, 2022, correcting this clerical mistake, this relief alone does not fully address the effects of the

clerical mistake on the Respondents or return the parties to their rightful positions. Accordingly, the Respondents now seek a declaratory judgment by the Court of Appeals and an order compelling equitable restitution on the theory of unjust enrichment based on the following:

1. On January 5, 2022, the Court of Appeals issued a judgment reinstating the award of Hearing Commissioner R. Michael Campbell, II, to the Appellant's "estate ... in the amount of \$283,190.00."
2. The Respondents filed a Petition for Rehearing on January 20, 2022, arguing, *inter alia*, that the Court of Appeals was without authority to make findings of facts based on disputed evidence, such that a remand would be required if the Appellate Panel's Decision was not simply affirmed.
3. By Order dated May 11, 2022, the Court of Appeals granted the Petition for Rehearing "in part," withdrew the January 5, 2022, judgement, and (purportedly) filed a substituted opinion. However, the opinion actually filed on May 11, 2022, was (virtually) identical to the prior judgment issued on January 5, 2022.
4. On May 31, 2022, the Respondents complied with the Court's May 11, 2022, judgment and paid \$283,190.00 to Donna Causey as Personal Representative of the Estate of Timothy Causey, by and through Donna Causey's attorneys of record, to satisfy the terms of the January 5, 2022, and May 11, 2022, judgments of the Court of Appeals. (*See Exhibit 1*).
5. By correspondence and Order dated June 21, 2022, the Court of Appeals informed the parties that the May 11, 2022, judgment was filed and subsequently remitted to the Workers' Compensation Commission as a result of a clerical mistake. (*See Exhibit 2*).

6. On June 21, 2022, upon discovery of said clerical mistake, the Court of Appeals issued an order recalling the Remittitur, withdrew the May 11, 2022, judgment, and issued the Order that the Court of Appeals originally intended to file on May 11, 2022 (as a result of the partial grant of the Respondent's Petition for Rehearing).

7. The Court's corrected, substitute Order dated June 21, 2022, is not a final judgment and does not award any benefits to the Estate of Timothy Causey, but instead remands the claim to the Workers' Compensation Commission.

8. Following receipt of the Court's June 21, 2022, correspondence regarding the existence of the clerical mistake and after issuance of the Court's June 21, 2022, Order remanding the claim to the Workers' Compensation Commission, the Respondents formally requested that the Appellant return the previous payment of \$283,190.00 to Horry County and the South Carolina Association of Counties because the payment was made, not voluntarily or gratuitously, but in reliance on, and as a direct result of, the inadvertent clerical mistake of the Court of Appeals that resulted in the May 11, 2022, judgment mandating said payment. (*See Exhibit 3*).

9. By correspondence dated June 28, 2022, the Appellant refused the Respondents' demand for the return of the \$283,190.00 payment made in reliance on, and as a result of, the May 11, 2022, judgment, despite the fact that the judgment has been vacated effective June 21, 2022. (*See Exhibit 4*).

10. Prior to the Court's and the Respondents' discovery of the clerical mistake, the Respondents acted in good faith and reasonably relied upon the Court's May 11, 2022, judgment by tendering payment of \$283,190.000 to the Estate of the Appellant as required by that judgment, and, as a result, require additional relief from the May 11, 2022, judgment because the Appellant refuses to return the mistaken payment voluntary.

11. Specifically, the Respondents request that the Court issue a declaratory judgment that the Estate of Timothy Causey, Donna Causey as Personal Representative of the Estate, and/or attorneys representing Donna Causey or the Estate, have no legal or equitable right to retain the \$283,190.00 payment made by the Respondents as a result of their reasonable reliance on the Court's clerical mistake and judgement of May 11, 2022, which has now been vacated and rendered void.

12. The Respondent further request that the Court order restitution in the amount of \$283,190.00 and such other appropriate relief to include an order of attorneys' fees and costs in accordance with the Declaratory Judgements Act.

THEREFORE, the Respondents respectfully request an additional Order of the Court of Appeals declaring that the May 11, 2022, judgment and subsequent Remittitur were issued as a result of a clerical mistake; that the May 11, 2022, judgment has been withdrawn and vacated as a result of said clerical mistake following proper recall of the Remittitur; that the Respondents' payment to the Appellant in the amount of \$283,190.00 was not gratuitous, but made in reasonable reliance upon, and as a direct result of, the Court's clerical mistake and in accordance with the Court's May 11, 2022, judgment that has now been withdrawn and vacated; that the Appellant is not currently entitled to (and the Respondents are not currently liable for) any payment pursuant to the terms of the Court's June 21, 2022 substitute Order; that the Respondents are entitled to restitution from the Appellant and/or the Appellant's attorneys in the amount of \$283,190.00, so as to avoid their unjust enrichment; as well as such other and further relief as the Court deems just and proper, including attorneys' fees and costs, based on the arguments stated herein and in the attached Memorandum of Law.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "K. Barr", is written over a horizontal line.

Kirsten Leslie Barr, S.C. Bar #15525

Roy A. Howell, III, S.C. Bar #11888

Trask & Howell, L.L.C.

P.O. Box 2167

Mt. Pleasant, SC 29465

(843) 881-4228

Attorneys for Respondents

July 7, 2022

# **EXHIBIT 1**

TRASK  
HOWELL  
WORKERS' COMPENSATION DEFENSE

*Reply to*  
Roy A. Howell, III  
(843) 881-2236  
rhowell@trask-howell.com

May 31, 2022

Via FedEx

Marti Bluestein, Esq.  
Bluestein and Nichols  
1614 Taylor Street  
Columbia, SC 29201

Re: Timothy Causey (dec.) v. Horry County  
W.C.C. File No.: 1302588  
Carrier File No.: 2013058409  
Date of Accident: March 16, 2013

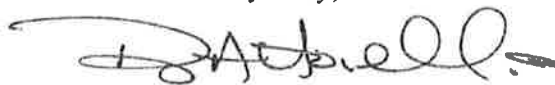
Dear Marti:

In accordance with the Court of Appeals Opinion dated May 11, 2022, which reinstated Commissioner Campbell's Decision and Order dated January 12, 2017, I am enclosing the following:

1. Draft No. 997350 made payable to Donna Causey as Personal Representative of the Estate of Timothy Causey in the sum of \$283,190.00;
2. Status Report and Compensation Receipt (W.C.C. Form 19), to be signed and dated by your client.

Thank you for your assistance.

Yours very truly,



Roy A. Howell, III

RAHIII/mec/lth

Enc.

Cc: Janet Cook, SC Association of Counties (via email only)  
Lang Kelly, SC Association of Counties (via email only)





Claimant's Name: TIMOTHY CAUSEY

Address: 2746 MT. OLIVE CHURCH ROAD

City: NICHOLS State: SC Zip: 29581

Home Phone: \_\_\_\_\_ Work Phone: ( )

Preparer's Name: JANET COOK Law Firm: \_\_\_\_\_

Employer's Name: HORRY COUNTY

Address: PO BOX 997

City: CONWAY State: SC Zip: 29526

Insurance Carrier: SC ASSOCIATION OF COUNTIES

Preparer's Phone #: (803) 771 - 2529

Compensation Paid:	Number of Weeks	From (m/d/yyyy)	To (m/d/yyyy)	Amount
1. Number of Weeks T.T.	_____	_____	_____	\$ _____
2. Number of Weeks T.P.	_____	_____	_____	\$ _____
3. Number of Weeks P.P.	_____	_____	_____	\$ _____
4. Disfigurement	_____	_____	_____	\$ _____
5. Agreement and Final Release	DEATH BENEFIT			\$ <u>283190.00</u>
<b>Total Compensation Paid</b>				\$ <u>283190.00</u>
6. Total Medical Benefits* Paid	_____	_____	_____	\$ <u>4946.25</u>
7. Funeral Benefits	_____	_____	_____	\$ _____

Case Denied

Date of Injury: 3/16/2013  
(m/d/yyyy)

By signing this receipt, I acknowledge that I have received the compensation shown above.

By: N/A (deceased)  
Claimant

By: \_\_\_\_\_  
Employer's Representative

\_\_\_\_\_  
Date (m/d/yyyy)

Donna Causey, in her capacity as Personal Representative of the Estate of Timothy Causey per Order of the South Carolina Court of Appeals  
 Print or type the name of the person, other than the claimant, receiving benefits and sign below.

By: \_\_\_\_\_

**Report of Additional Fees and Recoupment**

A. Carrier Reimbursement by Third Party	_____	\$ _____
B. Attorney's Fee Paid by Employer	_____	\$ _____
C. Attorney's Fee Paid by Claimant	_____	\$ _____

File this form with the Claims Department according to R.67-414 and R.67-1204. A person, other than the claimant, receiving benefits should sign on the line provided. \* Do not include as medical costs fees paid for expert testimony, fees for determining carrier's liability, costs of autopsy, birth and death certificates and impartial examination. Form 19 must be filed within 16 days of final payment of compensation. Form 19 must be filed when a claim is denied.

# South Carolina Counties Workers' Compensation Trust

Check # 997350

Claim #	Date of Loss	Claimant	Adjuster	Reference	Description	Service Dates	Billed	Paid
2013058409 0001	3/16/2013	TIMOTHY CAUSEY	Janet Cook		IND- Death Benefit	5/16/2022- 5/16/2022	283,190.00	283,190.00

## REMITTANCE STATEMENT-PLEASE DETACH BEFORE DEPOSITING

DOCUMENT CONTAINS INVISIBLE FLUORESCENT FIBERS AND CHEMICAL REACTIVE PROPERTIES. SECURITY. PAPER CONTAINS TONER ADHESION PROTECTION AND A METALLIC HOLOGRAM.

TRUE WATERMARKED PAPER - HOLD TO LIGHT TO VIEW

<b>South Carolina Counties Workers' Compensation Trust PO Box 8207 Columbia, SC 29202-8207</b>	<b>UNCOM CHECK SOLUTIONS</b>	<b>Synovus Bank Columbia, SC</b>
--	----------------------------------	--------------------------------------

67-548/532	
Date	Check No.
5/17/2022	997350
Amount	
**\$283,190.00**	

**PAY** Two Hundred Eighty Three Thousand One Hundred Ninety Dollars


Donna Causey as Personal Representative of the Estate of Timothy Causey

**TO THE ORDER OF**

Insured: Harry County  
Memo:

Void after 90 days

*Timothy Causey*



⑈997350⑈ ⑆053205483⑆

⑆1013536493⑈

## **EXHIBIT 2**



## The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1220 SENATE STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
[www.sccourts.org](http://www.sccourts.org)

June 21, 2022

Mr. Francis A. Humphries, Jr., Esquire  
1300 Professional Dr., Ste. 102  
Myrtle Beach SC 29577

Mr. Roy Allen Howell, III, Esquire  
PO Box 2167  
Mt. Pleasant SC 29465-2167

Ms. Kirsten Leslie Barr, Esquire  
PO Box 2167  
Mt. Pleasant SC 29465-2167

Mr. William Henry Monckton, VI, Esquire  
1300 Professional Dr., Ste.102  
Myrtle Beach SC 29577

Ms. Allison Paige Sullivan, Esquire  
PO Box 7965  
Columbia SC 29202

Re: Timothy Causey v. Horry County  
Appellate Case No. 2017-001732

Dear Counsel:

Upon review of the substituted opinion issued on May 11, 2022, the Court noted a clerical error. Rather than filing the updated substituted opinion approved by the

panel, the original version of the opinion was refiled. Enclosed please find the substituted refiled opinion which should have been filed on May 11, 2022. The time for the sending of remittitur begins on the date of this letter, as set forth in Rule 221(b) of the South Carolina Appellate Court Rules.

Very truly yours,

  
CLERK

cc: Amy Bracy

## **EXHIBIT 3**

TRASK  
HOWELL  
WORKERS' COMPENSATION DEFENSE

**Reply to**

Roy A. Howell, III  
(843) 881-2236

rhowell@trask-howell.com

June 23, 2022

**VIA EMAIL ONLY**

Marti Bluestein, Esq.  
Bluestein and Nichols  
1614 Taylor Street  
Columbia, SC 29201

Re: Timothy Causey (dec.) v. Horry County  
W.C.C. File No.: 1302588  
Carrier File No.: 2013058409  
Date of Accident: March 16, 2013

Dear Marti:

This will follow our conversation from yesterday. On May 31, 2022, we tendered payment in the amount of \$283,190.00 in accordance with the Court of Appeals order dated May 11, 2022. As you know, the Court of Appeals has now withdrawn that order and remanded the matter to the Workers' Compensation, indicating that the May 11, 2022, order was issued by mistake.

Given the Court's mistake and given the fact that the Estate is no longer entitled to this payment, we ask that draft number 997350 made payable to Donna Causey as Personal Representative of the Estate of Timothy Causey in the sum of \$283,190.00 be returned to our office. If this draft has already been negotiated, please issue a reimbursement check payable to the South Carolina Counties Workers' Compensation Trust in the amount of \$283,190.00 and forward the same to my attention.

Thank you for your assistance.

Yours very truly,



Roy A. Howell, III

RAHIII/mec/lth

Cc: Janet Cook, SC Association of Counties (via email only)  
Lang Kelly, SC Association of Counties (via email only)  
Francis A. Humphries, Jr., Esq. (via email only)



## **EXHIBIT 4**

**From:** Marti Bluestein <[marti@bluesteinattorneys.com](mailto:marti@bluesteinattorneys.com)>

**Sent:** Tuesday, June 28, 2022 1:57 PM

**To:** Roy Howell <[rhowell@trask-howell.com](mailto:rhowell@trask-howell.com)>

**Subject:** Timothy Causey v. Horry County

Dear Roy:

I have been able to consult with ethics counsel. According to my counsel, I can hold the funds as there is a legitimate, viable dispute.

As I mentioned last week, we are working on our Petition for Rehearing as it is our position that the Court of Appeals did not have the authority to issue the most recent opinion.

[REDACTED]

[REDACTED]

Yours truly,

Marti



[REDACTED]

**MARTI BLUESTEIN PARTNER**

1614 TAYLOR STREET | PO BOX 7965

COLUMBIA, SOUTH CAROLINA 29202

O: 803.779.7599 F: 803.771.8097

**MARTI@BLUESTEINATTORNEYS.COM**

**BLUESTEINATTORNEYS.COM**



**NOTICE:** This e-mail is confidential and may contain information which is legally privileged or otherwise exempt from disclosure. If you received this message in error, please notify the sender and delete this message from your device.

**RECEIVED**

**Jul 07 2022**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
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Timothy Causey,.....Appellant,

v.

Horry County, Self-Insured  
through S.C. Counties Workers' Compensation Trust,.....Respondents.

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**AFFIDAVIT IN SUPPORT OF  
MOTION FOR ADDITIONAL RELIEF FROM JUDGMENT**

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**PERSONALLY APPEARED BEFORE ME**, this 7<sup>th</sup> day of July 2022, in Mount Pleasant,  
South Carolina, Roy A. Howell, III, who doth depose and state that:

1. He is an attorney of record for the Respondents in the above-referenced case, Horry County and the South Carolina Counties Workers' Compensation Trust.
2. That the Respondents were served with the January 5, 2022, judgement of the Court of Appeals reinstating the award of Hearing Commissioner R. Michael Campbell, II, to the Appellant's "estate ... in the amount of \$283,190.00."
3. That the Respondents filed a Petition for Rehearing on January 20, 2022, arguing, *inter alia*, that the Court of Appeals was without authority to make findings of facts based on

disputed evidence, such that a remand would be required if the Appellate Panel's Decision was not simply affirmed.


4. That the Respondents were then served with the Order of the Court of Appeals dated May 11, 2022, which granted the Petition for Rehearing "in part," withdrew the January 5, 2022, judgement, and (purportedly) filed a substituted opinion. However, the opinion actually filed on May 11, 2022, appeared (virtually) identical to the prior judgment issued on January 5, 2022, and also awarded \$283,190.00 to the Appellant's Estate.
5. That on May 31, 2022, the Respondents complied with the May 11, 2022, judgment of the Court of Appeals and paid \$283,190.00 to Donna Causey as Personal Representative of the Estate of Timothy Causey, by and through Donna Causey's attorneys of record, to satisfy the terms of the January 5, 2022, and May 11, 2022, judgments of the Court of Appeals.
6. That the payment of \$283,190.00 to Donna Causey as Personal Representative of the Estate of Timothy Causey was not a gratuitous benefit but was tendered in reliance on, and in satisfaction of, what was believed to be a final judgment of the Court of Appeals mandating said payment.
7. That on June 21, 2022, the Respondents received correspondence from the Court of Appeals informing them for the first time that the May 11, 2022, judgment awarding \$283,190.00 to the Appellant's Estate was filed as a result of a clerical mistake. Accompanying that correspondence was the Court's Order recalling the Remittitur and a corrected, substitute Order dated June 21, 2022, remanding the claim to the Workers' Compensation Commission.

8. That upon learning of the Court's inadvertent clerical mistake and having received the Court's corrected, substitute order dated June 21, 2022, the Respondents wish to exercise their rights under the June 21, 2022, Order and do not wish to waive any defense or argument previously raised and preserved.
9. That but for the Court's inadvertent mistake, the Respondents would not have paid \$283,190.00 to the Appellant on May 31, 2022, because the Respondents would have had no legal obligation to tender any such payment pending further consideration by the Workers' Compensation Commission on remand and the conclusion of any subsequent appeals
10. That immediately upon receipt of the Court's June 21, 2022, correspondence regarding the existence of the clerical mistake and after issuance of the Court's June 21, 2022, Order remanding the claim to the Workers' Compensation Commission, the Respondents formally requested, in writing, that the Appellant return the previous payment of \$283,190.00 to Horry County and the South Carolina Association of Counties because the payment was made as a result of a mistake.
11. That by correspondence dated June 28, 2022, the Appellant declined the Respondents' request to return the \$283,190.00 payment, though attorneys for the Appellant indicated that they would hold the \$283,190.00 in one of their trust accounts.


**FURTHER AFFIANT SAYETH NOT!**

Sworn before me this 7th day of July 2022

Signature of Affiant:

  
Linda E. Sanchez  
Notary Public for South Carolina  
My Commission expires: 7-1-26



  
Roy A. Howell, III

**RECEIVED**

**Jul 07 2022**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

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W.C.C. 1302588  
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(Submitted October 1, 2021 – Filed January 5, 2022  
Withdrawn, Substituted, and Refiled June 21, 2022)

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Timothy Causey,.....Appellant,

v.

Horry County, Self-Insured  
through S.C. Counties Workers' Compensation Trust,.....Respondents.

---

**MEMORANDUM OF LAW IN SUPPORT OF  
MOTION FOR ADDITIONAL RELIEF FROM JUDGMENT**

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Pursuant to Rule 240, S.C.A.C.R., Rule 57 and 60(b), S.C.R.C.P., and S.C. Code Ann. § 15-53-20, *et seq.*, the Respondents, Horry County and the South Carolina Counties Workers' Compensation Trust seek additional relief from the May 11, 2022, judgment of the Court of Appeals. While the Court has informed the parties that their May 11, 2022, judgment and subsequent Remittitur were issued as a result of an inadvertent clerical mistake, and while the Court has already recalled the Remittitur and issued a corrected, substitute opinion on June 21, 2022, correcting the clerical mistake, this relief alone does not fully address the effects of the

clerical mistake on the Respondents or return the parties to their rightful positions. Accordingly, the Respondents now seek a declaratory judgment by the Court of Appeals and an order compelling equitable restitution on the theory of unjust enrichment.

### **Procedural History**

On January 5, 2022, the Court of Appeals issued a judgment reinstating the award of Hearing Commissioner R. Michael Campbell, II, to the Appellant's "estate ... in the amount of \$283,190.00." (R.p.9). The Respondents filed a Petition for Rehearing on January 20, 2022, arguing, *inter alia*, that the Court of Appeals was without authority to make findings of facts based on disputed evidence, such that a remand would be required if the Appellate Panel's Decision was not simply affirmed. By Order dated May 11, 2022, the Court of Appeals granted the Petition for Rehearing "in part," withdrew the January 5, 2022, judgement, and (purportedly) filed a substituted opinion. However, the opinion actually filed on May 11, 2022, was virtually identical to the prior judgment issued on January 5, 2022. On May 31, 2022, the Respondents complied with the Court's May 11, 2022, judgment and paid \$283,190.00 to Donna Causey as Personal Representative of the Estate of Timothy Causey, by and through Donna Causey's attorneys of record, to satisfy the terms of the January 5, 2022, and May 11, 2022, judgments of the Court of Appeals. (*See* Exhibit 1).

By correspondence and Order dated June 21, 2022, the Court of Appeals informed the parties that the May 11, 2022, judgment was filed as a result of a clerical mistake (*See* Exhibit 2) and the wrong judgment had been remitted to the Workers' Compensation Commission. On June 21, 2022, upon discovery of said clerical mistake, the Court of Appeals recalled the Remittitur, withdrew the May 11, 2022, judgment, and issued the Order that the Court of

Appeals originally intended to be filed on May 11, 2022 (as a result of the Court granting, in part, the Respondent's Petition for Rehearing). The Court's corrected, substitute Order dated June 21, 2022, does not award any benefits to the Estate of Timothy Causey at this time, but instead remands the claim to the Workers' Compensation Commission. The Respondents wish to exercise their rights under the June 21, 2022, Order and do not waive any defense or argument previously raised and preserved.

Following receipt of the Court's June 21, 2022, correspondence regarding the existence of the clerical mistake and after issuance of the Court's June 21, 2022, Order remanding the claim to the Workers' Compensation Commission, the Respondents formally requested that the Appellant return the previous payment of \$283,190.00 to Horry County and the South Carolina Association of Counties because the payment was made, not gratuitously, but in reliance on, and as a direct result of, the inadvertent clerical mistake of the Court of Appeals, which resulted in the January 5, 2022, judgment mandating said payment being refiled on May 11, 2022. (*See* Exhibit 3). By correspondence dated June 28, 2022, the Appellant refused the Respondents' demand to return the \$283,190.00 payment. (*See* Exhibit 4).<sup>1</sup>

The Respondents respectfully request that the Court issue a declaratory judgment that the Estate of Timothy Causey, Donna Causey as Personal Representative of the Estate, and attorneys representing Donna Causey and/or the Estate, have no legal or equitable right to retain the \$283,190.00 payment made by the Respondents as a result of their reasonable reliance on the

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<sup>1</sup> The Appellant's attorneys also claim they are entitled to retain the \$283,190.00 mistaken payment in a trust account pursuant to Rule 1.15(e), R.P.C., Rule 407, S.C.A.C.R.. However, that rule, which governs the ethical safekeeping of property in which two or more persons claim interest, does not, in and of itself, give the Appellant any valid legal or equitable interest in the \$283,190.00 payment made by the Respondents in reliance on a clerical mistake and a now void judgment, or otherwise permit the Appellant's unjust enrichment.

Court's inadvertent clerical mistake and now void judgement of May 11, 2022. The Respondent further request that the Court grant such other appropriate relief to include an order of restitution as a remedy for unjust enrichment, as well as attorneys' fees, and costs in accordance with the Declaratory Judgements Act.

### Arguments

#### **I. The Court of Appeals properly recalled the Remittitur and issued a substitute opinion on June 21, 2022, to correct a clerical mistake.**

The Appellant refuses to return the \$283,190.00 payment mistakenly made as a result of a now void judgment based on an allegation that the Court of Appeals did “not have authority” or jurisdiction<sup>2</sup> to correct a clerical mistake or issue the corrected, substitute Order dated June 21, 2022. (See Exhibit 4). Respectfully, the Respondents contend that the Court of Appeals properly exercised its inherent authority to recall the Remittitur and committed no abuse of discretion by filing a substitute opinion to correct the inadvertent clerical mistake.

##### **A. Authority to recall the remittitur**

The Court's authority and jurisdiction to correct a clerical mistake, even after a remittitur is sent, is well-established by more than a century of jurisprudence in South Carolina. In Wise v.

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<sup>2</sup> Respectfully, there is no jurisdictional impediment to the Court's decision to recall the Remittitur for the purpose of correcting a clerical mistake. “By recalling the remittitur, an appellate court reasserts jurisdiction on the basis that the remittitur, or more often the judgment it transmitted, was procured by some improper or defective means. Technically the court does not reclaim a jurisdiction it has lost, but disregards a relinquishment of jurisdiction that is shown to have been vitiated. In re Grunau, 169 Ca. App. 4th 997 (Cal. Ct. App. 2008). *See also*, In re Rothrock, 14 Cal. 2d 34 (Cal. 1939) (holding that appellate courts “will afford relief after the adjournment of the term; and will, if necessary recall a remittitur ... This is not done; however, upon the principle of resumption of jurisdiction, but upon the ground that the jurisdiction of the court cannot be divested by an irregular or improvident order.”

S.C.D.C., 372 S.C. 173, 642 S.E.2d 551 (2007), the Supreme Court explained that “[w]hen the remittitur has been properly sent, the appellate court no longer has jurisdiction over the matter and no motion can be heard thereafter ... The only *exception to this rule* is when the remittitur is sent down by mistake, error or inadvertence of the Court.” (citing State v. Keels, 39 S.C. 553, 17 S.E. 802 (1893) (emphasis added). In State v. Keels, the Supreme Court established that an appellate court is justified in “in exercising the unusual power of recalling the remittitur after it has been sent down” upon a showing that the remittitur “was sent down through some *mistake or inadvertence on the part of this court* or its officer.” (emphasis added); (cited with approval, State v. Barnes, 413 S.C. 1, 774, S.E.2d 454 (2015)). Accordingly, “a very strong showing is required that the remittitur was sent down through some mistake or inadvertence on the part of the appellate court.” Toal, Jean H., *et al.*, APPELLATE PRACTICE IN SOUTH CAROLINA (1999) at p.310.

Here, the Court of Appeals clearly made “a very strong showing” that, due to a “clerical error,” the remittitur was mistakenly sent down with the wrong order attached and before the actual corrected, substituted Order of the Court was filed:

“Upon review of the substituted opinion issued on May 11, 2022, the Court noted a clerical error. Rather than filing the updated substituted opinion approved by the panel, the original version of the opinion was refiled.” (*See* Exhibit 2).

Upon information and belief, there exists no evidence that the Remittitur was recalled, or the corrected, substituted Opinion was filed, for any reason other than as stated by the Court of

Appeals: “a clerical error.” As such, the Remittitur was properly recalled in accordance with established precedent.

Furthermore, it is widely held that the authority to recall a remittitur or mandate to correct a clerical mistake is an “inherent power” of the judiciary<sup>3</sup>, which the Court of Appeals properly exercised on June 21, 2022. Sound policy considerations also support the exercise of the Court’s inherent power to recall a remittitur and correct a clerical mistake by filing a substituted opinion. Such policy considerations are perhaps best explained by the Cornell Law Review:

“A motion to recall finds support in the desire to reach a just result. The recall of an appellate mandate to avoid injustice is a continuation, in the appellate sphere, of a deeply rooted equity jurisprudence. To say that courts exist to resolve disputes tells only half the story, for courts exist to resolve disputes correctly.

Denying relief to meritorious litigants is unfair, especially when the denial stems

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<sup>3</sup> Flannagan, James F., *SOUTH CAROLINA CIVIL PROCEDURE* (2d Ed. 1996) at p.479; *accord Hawaii Housing Authority v. Midkiff*, 463 U.S. 1323, 1324, 104 S.Ct. 7,8, 77 L.Ed. 1426, 1428 (Rehnquist, Circuit Justice 9<sup>th</sup> Cir. 1983) (stating that “[a]lthough recalling a mandate is an extraordinary remedy, I think it probably lies within the inherent power of the Court of Appeals and is reviewable only for abuse of discretion.”); *Nelson v. James*, 722 F.2d 207, 208 (5<sup>th</sup> Cir. 1984) (holding that “a court of appeal has inherent power to recall its mandate”); *American Iron and Steel Institute v. Environmental Protection Agency*, 560 F.2d 589, 592-95 (3d Cir. 1977) (holding that despite the interest in finality, “no court now takes the position that a federal tribunal lacks authority to recall its own mandate”), *Aerojet-General Corp. v. American Arbitration Association*, 478 F.2d 248, 253-54 (9<sup>th</sup> Cir. 1973) (holding that the “authority of a Court of Appeals to recall its mandate is not conferred by statute, but its existence cannot be questioned”); *Powers v. Bethlehem Steel Corp.*, 483 F.2d 963, 964 (1st Cir. 1973) (noting that “[r]ecall of mandate is an inherent power”); *Greater Boston Television Corp. v. FCC*, 463 F.2d 268, 277 (D.C. Cir. 1971) (holding that “the authority of the appellate court to recall a mandate to prevent injustice” is an “inherent power of a court”); *see also* 5 Am. Jur.2d APPELLATE REVIEW §§ 797, 798, at 463 (1995).

from a court-made policy of finality rather than from substantive law. Allowing manifestly unjust results to stand uncorrected also erodes public faith in the judicial process.

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Courts should grant recalls of mandates flawed by clerical errors without balancing the conflicting policies embodied in the general doctrine of recalls. The desire for correctness will always be strong in this situation because the harm arises not from any fault of the party, but from the type of error inherent in any humanly-operated system. In contrast, the justification for finality will be weak in these circumstances ...certainty in knowing that a simple, needless error will stand uncorrected is more unsettling than uncertainty over whether the lawsuit has ended ... In this situation, then, a balancing of the policies is unnecessary because the policy considerations in favor of recall should always prevail.” David G. Seykora, *Recall of Appellate Mandates in Federal Civil Litigation*, 64 Cornell Law Review 4 (1979) (internal citations omitted).

Therefore, the Court of Appeals properly recalled the Remittitur based on sound policy considerations, as well as authority and jurisdiction recognized by more than a century of jurisprudence in this state, and the Appellant has neither any right to rely on the Court’s prior judgment, which has been withdrawn and vacated, nor will suffer any actual prejudice by virtue of the corrected, substitute order being issued.

**B. Authority to correct clerical mistake.**

The Respondents further contend that substitution of the correct opinion on June 21, 2022, for the one filed as a result of a “clerical mistake” on May 11, 2022, was also within the Court’s authority. While the Rules of Civil Procedure may not technically apply in the appellate context, they are persuasive with respect to the definition of a “clerical mistake” and comport with the authority exercised by the Court of Appeals in the instant case. Specifically, Rule 60(a), S.C.R.C.P., “enables the court on its own initiative or on a party’s motion to correct clerical mistakes ‘arising from oversight or omission’” and the correction of such a mistake will not be overturned absent an abuse of discretion. Landry v. Landry, 430 S.C. 153, 843 S.E.2d 491 (2020).

Because Rule 60(a) of the Federal Rules of Civil Procedure is essentially identical to our State Rule, the Fourth Circuit’s pronouncements on this issue are persuasive. For example, Landry v. Landry, *supra*, the South Carolina Supreme Court looked to the Fourth Circuit Court of Appeals to determine whether a family court had jurisdiction to correct a clerical mistake under Rule 60, S.C.R.C.P., after a case was finally decided. In concluding that there was no jurisdictional impediment and in analyzing the proper scope of authority to correct “clerical mistakes” after a final judgment, the Supreme court relied heavily on the Fourth Circuit’s analysis in Sartin v. McNair Law Firm, 756 F.3d 259 (4<sup>th</sup> Cir. 2014). According to our Supreme Court in Landry,

“for Rule 60(a) to apply, the ‘mistake’ must be one where ‘there is an inconsistency between the text of an order or judgment and the ... court’s intent

when it entered the order or judgment...” (Landry, *supra*, citing Sartin, *supra*, at pp.265—266).<sup>4</sup>

In the case *sub judice*, the Court of Appeals explained there was an inconsistency between the text of the January 5, 2022, judgment that was inadvertently refiled on May 11, 2022, and the Court’s intent to remand the case to the Commission by issuing a substitute opinion on that date after granting, in part, the Petition for Rehearing. (*See* Exhibit 2). Therefore, the Respondents respectfully contend that the Court’s actions on June 21, 2022, including the issuance of the corrected, substitute Order, were permitted as part of the Court’s inherent authority correct a “clerical mistake,” as defined by the South Carolina Supreme Court and the Fourth Circuit Court of Appeals.

In addition, the Respondents respectfully contend that there is no evidence that the corrected, substitute Order of June 21, 2022, was issued for any reason other than to correct a “clerical mistake.” As explained by the South Carolina Supreme Court in Landry,

“The basic distinction between clerical mistakes and mistakes that cannot be corrected pursuant to Rule 60(a) is that the former consist of blunders in execution whereas the latter consist of instances where the court changes its mind...” (emphasis original) (citing Sartin, 756 F.3d 259, 265).

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<sup>4</sup> The full quote from the Sartin opinion reads:

“Rule 60(a) is not confined just to fixing typographical and other clerical errors. The Rule’s text also authorizes a court to correct ‘a mistake arising from oversight or omission.’ Such a mistake occurs when there is an inconsistency between the text of an order or judgment and the district court’s intent when it entered the order or judgment.” 756 F.3d 259, 265—266.

Here, the Court of Appeals clearly intended to file the June 21, 2022, opinion remanding the claim to the Commission on May 11, 2022, but instead, mistakenly refiled the prior January 5, 2022, judgment awarding a lump sum to the Appellant. The Court's intent is evinced, not only by the Court's own written statements on June 21, 2022, but also by the Court's May 11, 2022, Order itself, which states that "[a]fter careful consideration of the petition for rehearing, we grant the petition in part ... and substitute the attached opinion for the original opinion, which is withdrawn."<sup>5</sup>

To suggest that the Court did not intend to file the June 21, 2022, Order on May 11, 2022,

“would call into question the veracity of a declaration made by the ... court ... about its own intent. In order to find the ... court's explanation of its intent suspect, the contrary evidence would have to be especially clear.” *Sartin, supra.*

Respectfully, no such contrary evidence exists and the Court of Appeals neither exceeded its authority, nor abused its discretion, in recalling the Remittitur and correcting the inadvertent clerical mistake by substituting the opinion that it had originally intended to file on May 11, 2022.

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<sup>5</sup> Despite the inconsistency in the Court's Order stating the Petition for Rehearing was granted in part and the refiled judgement on that same date, the Respondents had absolutely no reason to believe that the Court of Appeals had actually intended to file a new order remanding the claim to the Workers' Compensation Commission on May 11, 2022. Therefore, any suggestion that it was incumbent on the Respondents to request rehearing or reconsideration or clarification of the Court's May 11, 2022, orders is specious. Only the Court of Appeals could have known of the inadvertent clerical mistake, or of the Court's intent, prior to June 21, 2022.

Furthermore, Rule 60(a) has no time limit and clearly permits the Court to correct a clerical mistake “at any time.” Therefore, under this general principle it matters not that the May 11, 2022, judgment was a final judgment or that the Respondents had complied with that final judgment prior to notice of the clerical mistake rendering it void. Indeed, as the Sartin court explained,

“[t]he Rule would lose much of its vitality if it were not available to correct mistakes in final judgments, and nothing in the language of the Rule suggests such a limitation. Courts have frequently issued Rule 60(a) clarifications after litigation has been finally concluded.” (internal citations omitted); *accord* Landry v. Landry, supra (holding that “Rule 60(a) provides a mechanism to modify an order that may be non-modifiable under ... general principles.”); Rule 60(a), S.C.A.C.R. (permitting the correction of clerical mistakes “by the court at any time”).

Moreover, while public policy favors finality, this is not an impediment to correcting clerical mistakes, because “[a]nother important policy which must be weighed against the interest in finality is the policy favoring fair and correct results in litigation.” Steven D. McLamb, *Federal Appellate Procedure – Recall of Mandate – Review of Judgements after Rehearing and Appeal Periods Expire*, 24 Vill. L. Rev. 157 (1978) (citing, *inter alia*, Bankers Mortgage Co v. United States, 423 F.2d 110, 113 (5<sup>th</sup> Cir. 1962) (holding that “the circumstances under which a party may obtain relief from final judgment ... must be carefully interpreted to preserve the delicate balance between the sanctity of final judgments...and the incessant

command of the court's conscience that justice be done in light of all the facts.""). According to the United States Supreme Court, the policy of finality (historically referred to as the "term rule") is not, and has never been, inviolable:

"This salutary general rule springs from the belief that in most instances society is best served by putting an end to litigation after a case has been tried and judgment entered. This has not meant, however, that a judgment finally entered has ever been regarded as completely immune from impeachment after the term. From the beginning there has existed along side the term rule a rule of equity to the effect that under certain circumstances ... relief will be granted against judgments regardless of the term of their entry. This equity rule, which was firmly established in English practice long before the foundation of our Republic, the courts have developed and fashioned to fulfill a universally recognized need for correcting injustices which, in certain instances, are deemed sufficiently gross to demand a departure from rigid adherence to the term rule ... where the occasion has demanded, where enforcement of the judgment is 'manifestly unconscionable' ... they have wielded the power without hesitation. ... whatever form the relief has taken in particular cases, the net result in every case has been the same: where the situation has required the court has, in some manner, devitalized the judgment even though the term at which it was entered had long since passed away." Hazel -Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238, 244 (1944) (internal citations omitted).

Therefore, the Respondents respectfully contend that the Court of Appeals properly remedied a clerical mistake upon its discovery by recalling the Remittitur and issuing a corrected, substitute opinion that comported with the Court's original intent. Indeed, to fail to issue a corrected, substitute opinion after discovery of the Court's inadvertent clerical error, or to allow the Appellant to enforce a judgement issued as a result of a clerical mistake, would be "manifestly unconscionable." As such, there is no merit to the Appellant's refusal to reimburse the non-gratuitous \$283,190.00 payment made in reliance on the Court's inadvertent clerical mistake and now void judgement of May 11, 2022.

**II. The Court has authority to grant additional relief from judgment in the form of a declaratory judgment and order of restitution.**

Equity necessitates additional relief from the May 11, 2022, judgment because the Respondents, prior to learning of the Court's inadvertent clerical mistake, complied with that now void judgment by tendering \$283,190.00 to Donna Causey as the Personal Representative of the Estate of Timothy Causey, as the Court previously ordered. The Appellant now refuses to return this payment, alleging that the Court of Appeals "did not have the authority to issue the most recent opinion." (*See* Exhibit 4). Therefore, merely issuing a corrected, substitute Order dated June 21, 2022, does not prevent the Appellant's unjust enrichment and is not adequate relief for the Respondents, who now move before the Court of Appeals for a remedy that is just and proper and so as to otherwise preserve the Respondents' rights under the June 21, 2022, Order on remand.<sup>6</sup>

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<sup>6</sup> To the extent that the Respondents must make a *prima facie* showing of a meritorious defense under Rule 60 to be entitled to additional relief from the May 11, 2022, judgment, the Respondents would cite, not only the arguments raised in their Final Brief to the Court of

**A. Declaratory Judgment**

Under S.C. Code Ann. § 15-53-20, “Courts of record... shall have power to declare rights, status, and other legal relations.” Clearly, the South Carolina Court of Appeals is a “court of record” and possesses this authority under the Declaratory Judgments Act. The Court of Appeals is in the best position to declare the rights of the parties to this appeal following the Court’s recent discovery of a clerical mistake and judicial economy favors such a remedy over a new independent action against the Appellant for a declaratory judgment or equitable relief.

Specifically, the Appellant alleges entitlement to payment in the amount of \$283,190.00 pursuant to the Court’s May 11, 2022, judgment and entitlement to retain this payment despite the Court’s June 21, 2022, Order vacating the May 11, 2022, judgment that was issued as a result of a clerical error. The Respondents respectfully contend that the Appellant is no longer entitled to the \$283,190.00 mistakenly paid in compliance with the May 11, 2022, judgment because that judgment is now void and there currently exists no legal order entitling the Appellant to (or making the Respondents liable for) any payment of any amount. The Respondents further respectfully contend that the \$283,190.00 payment was tendered as a direct result of their reliance on the inadvertent clerical mistake of the Court of Appeals, which had not yet been discovered. The payment was not gratuitous but was commanded by a what appeared to be a final judgment of the Court of Appeals and would not have been made at all, but for the Court’s inadvertent clerical mistake.

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Appeals, but those in the Petition for Rehearing, which are *per se* meritorious to the extent that the Court actually granted the Petition in part and to the extent that the claim and all preserved defenses thereto have been remanded to the Workers’ Compensation Commission for reconsideration and clarification.

Therefore, the Respondents respectfully contend that the Appellant would be unjustly enriched if permitted to retain the pecuniary benefit of a judgment that has now been vacated and that was only paid as a result of a clerical mistake. Furthermore, the Respondents would be unjustly prejudiced, through no fault of their own, if the Appellant were to retain the \$283,190.00 payment, as it would eliminate the Respondents' right to any meaningful review following the remand that has now been ordered by the Court – a right that the Respondents did not knowingly relinquish. This prejudice would be further compounded if the Respondents are forced to bring an independent action against the Appellant to recover the \$283,190.00 payment, which was only tendered because of an error that was not their own. Accordingly, the Respondents request that the Court of Appeals issue a judgment declaring the relative rights of the parties so as to more fully relieve the Respondents from the effects of the Court's inadvertent clerical mistake.

**B. Restitution**

Under the Declaratory Judgments Act, the Court of Appeals has authority to grant “[f]urther relief based on a declaratory judgment ... whenever necessary or proper.” S.C. Code Ann. § 15-53-120. The Respondents respectfully contend that further relief in the form of equitable restitution is both necessary and proper to prevent the Appellant's unjust enrichment and; therefore, the Court of Appeals should require the Appellant “to show cause why further relief should not be granted.” S.C. Code Ann. § 15-53-120; *see also* Stanley Smith & Sons v. Limestone College, 238 S.C. 430, 435, 322 S.E.2d 474, 478 (Ct. App. 1984) (holding that restitution is a remedy designed to prevent unjust enrichment). As explained by this Court in Wachovia Bank v. Thomasko,

“[i]n 1879, our supreme court held, “There can be no doubt of the correctness of the legal proposition that, where money is paid under a mistake of fact, to a person who has no ground in conscience to claim it, the person paying it may recover it back.” 339 S.C. 592, 529 S.E.2d 554 (Ct. App. 2000) (quoting Glenn v. Shannon, 12 S.C. 570, 570 (1880) and citing Pilot Life Ins. Co. v. Cudd, 208 S.C. 6, 36 S.E.2d 860 (1945) (holding the general rule is that money paid to another under a mistake of fact may be recovered because the money belongs, in equity and good conscience, to the person who paid it)).

Here, the Respondents paid money to the Appellant under a mistaken belief that the May 11, 2022, judgment was, in fact, a valid judgment of the Court of Appeals requiring them to pay the Appellant \$283,190.00. As the Court has since explained, the May 11, 2022, judgment was filed as a result of the Court’s inadvertent clerical mistake and is void. Therefore, the Respondents respectfully contend that in equity and good conscience, the \$283,190.00 paid as a result of the Respondents’ reasonable reliance on the Court’s mistake should be repaid by the Appellant and/or the Appellant’s legal representatives.

Furthermore, the Respondents respectfully contend that this case meets all of the requirements for recovery under the theories of restitution and unjust enrichment. As explained by the South Carolina Supreme Court in Sauner v. Pub. Serv. Auth. of S.C.,

“[t]o recover on a theory of restitution, the plaintiff must show (1) that he conferred a non-gratuitous benefit on the defendant; (2) that the defendant realized some value from the benefit; and (3) that it would be inequitable for the defendant to retain the benefit without paying the plaintiff for its value.” 354 S.C.

397, 409, 581 S.E.2d 161, 167 (2003) (citing Niggel Assoc., Inc. v. Polos of North Myrtle Beach, Inc., 296 S.C. 530, 374 S.E.2d 507 (Ct. App. 1988)).

Here, the Respondents “conferred a non-gratuitous benefit” on the Appellant by tendering payment of \$283,190.00 to Donna Causey as Personal Representative of the Estate of Timothy Causey, by and through Donna Causey’s attorneys of record, as required by the terms of the May 11, 2022, judgment of the Court of Appeals prior to that judgment being vacated. (*See* Exhibit 1). As contemporaneous correspondence makes clear, the \$283,190.00 payment was not a gift or gratuity, but was required to satisfy a judgment the Respondents reasonably – albeit mistakenly – believed to be a final judgment. Secondly, it is clear that the Appellant has realized value from this “non-gratuitous benefit” in the form of Two Hundred Eighty-Three Thousand One Hundred Ninety American Dollars of legal tender.

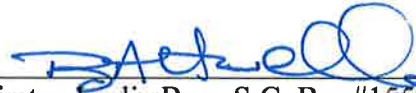
Thirdly, the Respondents contend that it would be “inequitable” for the Appellant to retain the \$283,190.00 because the judgment upon which that payment was made is now void and the Appellant is otherwise not currently entitled to (and the Respondents are not currently liable for) any payment in any amount pursuant to the Court’s June 21, 2022, Order remanding the claim to the Workers’ Compensation Commission. If the Appellant does not reimburse the \$283,190.00, it matters not what the Workers’ Compensation Commission decides on remand, or how a reviewing court might rule on a subsequent appeal, because the Appellant will have the full value of an award regardless – meaning the Respondents will have lost their constitutional and statutory right to meaningful review and the Appellant will have received a windfall as a result of the Court’s clerical mistake. But for this inadvertent mistake, the Respondents would not have paid \$283,190.00 to the Appellant on May 31, 2022, because it would have had no legal

obligation to tender any such payment pending further consideration by the Workers' Compensation Commission and the conclusion of any subsequent appeals. Respectfully, the Respondents should not be penalized for, nor should the Appellant be unjustly enriched by, the Court's inadvertent clerical mistake. Therefore, restitution in the amount of \$283,190.00 is the proper equitable remedy.

### **Conclusion**

THEREFORE, the Respondents respectfully request an additional Order of the Court of Appeals declaring that the May 11, 2022, judgment and subsequent Remittitur were issued as a result of a clerical mistake; that the May 11, 2022, judgment has been withdrawn and vacated as a result of said clerical mistake following proper recall of the Remittitur; that the Respondents' payment to the Appellant in the amount of \$283,190.00 was not gratuitous, but made in reasonable reliance upon, and as a direct result of, the Court's clerical mistake and in accordance with the Court's May 11, 2022, judgment that has now been withdrawn and vacated; that the Appellant is not currently entitled to (and the Respondents are not currently liable for) any payment pursuant to the terms of the Court's June 21, 2022 substitute Order; that the Respondents are entitled to restitution from the Appellant and/or the Appellant's attorneys in the amount of \$283,190.00, so as to avoid their unjust enrichment; as well as such other and further relief as the Court deems just and proper, including attorneys' fees and costs, based on the arguments stated herein, the terms of S.C. Code Ann. § 15-53-100, and well-established principles of equity.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "K. Barr", is written over a horizontal line.

Kirsten Leslie Barr, S.C. Bar #15525  
Roy A. Howell, III, S.C. Bar #11888  
Trask & Howell, L.L.C.  
P.O. Box 2167  
Mt. Pleasant, SC 29465  
(843) 881-4228  
Attorneys for Respondents

July 7, 2022

# **EXHIBIT 1**

TRASK  
HOWELL  
WORKERS' COMPENSATION DEFENSE

*Reply to*  
Roy A. Howell, III  
(843) 881-2236  
rhowell@trask-howell.com

May 31, 2022

**Via FedEx**

Marti Bluestein, Esq.  
Bluestein and Nichols  
1614 Taylor Street  
Columbia, SC 29201

Re: Timothy Causey (dec.) v. Horry County  
W.C.C. File No.: 1302588  
Carrier File No.: 2013058409  
Date of Accident: March 16, 2013

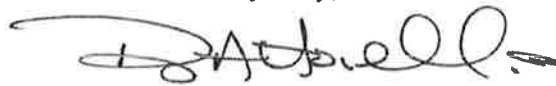
Dear Marti:

In accordance with the Court of Appeals Opinion dated May 11, 2022, which reinstated Commissioner Campbell's Decision and Order dated January 12, 2017, I am enclosing the following:

1. Draft No. 997350 made payable to Donna Causey as Personal Representative of the Estate of Timothy Causey in the sum of \$283,190.00;
2. Status Report and Compensation Receipt (W.C.C. Form 19), to be signed and dated by your client.

Thank you for your assistance.

Yours very truly,



Roy A. Howell, III

RAHIII/mec/lth

Enc.

Cc: Janet Cook, SC Association of Counties (via email only)  
Lang Kelly, SC Association of Counties (via email only)





Claimant's Name: TIMOTHY CAUSEY Employer's Name: HORRY COUNTY  
 Address: 2746 MT. OLIVE CHURCH ROAD Address: PO BOX 997  
 City: NICHOLS State: SC Zip: 29581 City: CONWAY State: SC Zip: 29526  
 Home Phone: \_\_\_\_\_ Work Phone: ( ) - \_\_\_\_\_ Insurance Carrier: SC ASSOCIATION OF COUNTIES  
 Preparer's Name: JANET COOK Law Firm: \_\_\_\_\_ Preparer's Phone #: ( 803 ) 771 - 2529

Compensation Paid:	Number of Weeks	From (m/d/yyyy)	To (m/d/yyyy)	Amount
1. Number of Weeks T.T.	_____	_____	_____	\$ _____
2. Number of Weeks T.P.	_____	_____	_____	\$ _____
3. Number of Weeks P.P.	_____	_____	_____	\$ _____
4. Disfigurement	_____	_____	_____	\$ _____
5. Agreement and Final Release	DEATH BENEFIT			\$ <u>283190.00</u>
<b>Total Compensation Paid</b>				\$ <u>283190.00</u>
6. Total Medical Benefits* Paid	_____	_____	_____	\$ <u>4946.25</u>
7. Funeral Benefits	_____	_____	_____	\$ _____

Case Denied Date of Injury: 3/16/2013  
 (m/d/yyyy)

By signing this receipt, I acknowledge that I have received the compensation shown above.

By: N/A (deceased) Claimant By: \_\_\_\_\_ Employer's Representative Date (m/d/yyyy) \_\_\_\_\_

Donna Causey, in her capacity as Personal Representative of the Estate of Timothy Causey per Order of the South Carolina Court of Appeals  
 Print or type the name of the person, other than the claimant, receiving benefits and sign below.

By: \_\_\_\_\_

Report of Additional Fees and Recoupment

A. Carrier Reimbursement by Third Party	_____	\$ _____
B. Attorney's Fee Paid by Employer	_____	\$ _____
C. Attorney's Fee Paid by Claimant	_____	\$ _____

File this form with the Claims Department according to R.67-414 and R.67-1204. A person, other than the claimant, receiving benefits should sign on the line provided. \* Do not include as medical costs fees paid for expert testimony, fees for determining carrier's liability, costs of autopsy, birth and death certificates and impartial examination. Form 19 must be filed within 16 days of final payment of compensation. Form 19 must be filed when a claim is denied.

# South Carolina Counties Workers' Compensation Trust

Check # 997350

Claim #	Date of Loss	Claimant	Adjuster	Reference	Description	Service Dates	Billed	Paid
2013058409 0001	3/16/2013	TIMOTHY CAUSEY	Janet Cook		IND- Death Benefit	5/16/2022- 5/16/2022	283,190.00	283,190.00

## REMITTANCE STATEMENT-PLEASE DETACH BEFORE DEPOSITING

DOCUMENT CONTAINS INVISIBLE FLUORESCENT FIBERS AND CHEMICAL REACTIVE PROPERTIES

UNCOM CHECK SOLUTIONS

67-548/532

DATE CONTAINS TONER ADHESION PROTECTION AND A METALLIC HOLOGRAM

TRUE WATERMARKED PAPER - HOLD TO LIGHT TO VIEW

South Carolina Counties  
Workers' Compensation Trust  
PO Box 8207  
Columbia, SC 29202-8207

Synovus Bank  
Columbia, SC

Date	Check No.
5/17/2022	997350
Amount	
**\$283,190.00**	

**PAY** Two Hundred Eighty Three Thousand One Hundred Ninety Dollars

TO THE ORDER OF

Donna Causey as Personal Representative of the Estate of Timothy Causey

Insured: Horry County  
Memo:

Void after 90 days

*Timothy Causey*

MADE IN THE USA

⑈997350⑈ ⑆053205483⑆ ⑆013536493⑆

## **EXHIBIT 2**



# The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1220 SENATE STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
[www.sccourts.org](http://www.sccourts.org)

June 21, 2022

Mr. Francis A. Humphries, Jr., Esquire  
1300 Professional Dr., Ste. 102  
Myrtle Beach SC 29577

Mr. Roy Allen Howell, III, Esquire  
PO Box 2167  
Mt. Pleasant SC 29465-2167

Ms. Kirsten Leslie Barr, Esquire  
PO Box 2167  
Mt. Pleasant SC 29465-2167

Mr. William Henry Monckton, VI, Esquire  
1300 Professional Dr., Ste.102  
Myrtle Beach SC 29577

Ms. Allison Paige Sullivan, Esquire  
PO Box 7965  
Columbia SC 29202

Re: Timothy Causey v. Horry County  
Appellate Case No. 2017-001732

Dear Counsel:

Upon review of the substituted opinion issued on May 11, 2022, the Court noted a clerical error. Rather than filing the updated substituted opinion approved by the

panel, the original version of the opinion was refiled. Enclosed please find the substituted refiled opinion which should have been filed on May 11, 2022. The time for the sending of remittitur begins on the date of this letter, as set forth in Rule 221(b) of the South Carolina Appellate Court Rules.

Very truly yours,

  
CLERK

cc: Amy Bracy

## **EXHIBIT 3**

TRASK  
HOWELL  
WORKERS' COMPENSATION DEFENSE

*Reply to*  
Roy A. Howell, III  
(843) 881-2236  
rhowell@trask-howell.com

June 23, 2022

**VIA EMAIL ONLY**

Marti Bluestein, Esq.  
Bluestein and Nichols  
1614 Taylor Street  
Columbia, SC 29201

Re: Timothy Causey (dec.) v. Horry County  
W.C.C. File No.: 1302588  
Carrier File No.: 2013058409  
Date of Accident: March 16, 2013

Dear Marti:

This will follow our conversation from yesterday. On May 31, 2022, we tendered payment in the amount of \$283,190.00 in accordance with the Court of Appeals order dated May 11, 2022. As you know, the Court of Appeals has now withdrawn that order and remanded the matter to the Workers' Compensation, indicating that the May 11, 2022, order was issued by mistake.

Given the Court's mistake and given the fact that the Estate is no longer entitled to this payment, we ask that draft number 997350 made payable to Donna Causey as Personal Representative of the Estate of Timothy Causey in the sum of \$283,190.00 be returned to our office. If this draft has already been negotiated, please issue a reimbursement check payable to the South Carolina Counties Workers' Compensation Trust in the amount of \$283,190.00 and forward the same to my attention.

Thank you for your assistance.

Yours very truly,



Roy A. Howell, III

RAHIII/mec/lth

Cc: Janet Cook, SC Association of Counties (via email only)  
Lang Kelly, SC Association of Counties (via email only)  
Francis A. Humphries, Jr., Esq. (via email only)

763 JOHNNIE DODDS BLVD. | P.O. BOX 2167  
P 843.881.4228 | F 843.881.8784



MT. PLEASANT, SOUTH CAROLINA 29465  
www.TRASK-HOWELL.com

## **EXHIBIT 4**

**From:** Marti Bluestein <[marti@bluesteinattorneys.com](mailto:marti@bluesteinattorneys.com)>

**Sent:** Tuesday, June 28, 2022 1:57 PM

**To:** Roy Howell <[rhowell@trask-howell.com](mailto:rhowell@trask-howell.com)>

**Subject:** Timothy Causey v. Horry County

Dear Roy:

I have been able to consult with ethics counsel. According to my counsel, I can hold the funds as there is a legitimate, viable dispute.

As I mentioned last week, we are working on our Petition for Rehearing as it is our position that the Court of Appeals did not have the authority to issue the most recent opinion.

[REDACTED]

[REDACTED]

Yours truly,

Marti



[REDACTED]

**MARTI BLUESTEIN PARTNER**

1614 TAYLOR STREET | PO BOX 7965

COLUMBIA, SOUTH CAROLINA 29202

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**Jul 07 2022**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

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W.C.C. 1302588  
Appellate Case No. 2017-001732  
Opinion No. 2022-UP-002  
(Submitted October 1, 2021 – Filed January 5, 2022  
Withdrawn, Substituted, and Refiled June 21, 2022)

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Timothy Causey,.....Appellant,

v.

Horry County, Self-Insured  
through S.C. Counties Workers' Compensation Trust,.....Respondents.

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**PROOF OF SERVICE**

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The undersigned hereby certifies that the above-named Appellant, Timothy Causey, was served with our Motion for Additional Relief From Judgment, Memorandum of Law in Support of Motion for Additional Relief From Judgment, and Affidavit in Support of Motion for Additional Relief From Judgment on behalf of the Respondents this 7<sup>th</sup> day of July 2022, by email and by depositing a copy of the same in the United States Mail, first class postage prepaid, addressed to the parties of record, as follows:

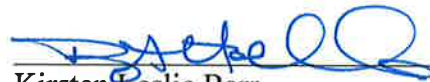
Francis A. Humphries, Jr., Esq  
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Myrtle Beach, SC 29577  
fhumphries@myrtlebeachlawfirm.net

William Henry Monckton, IV, Esq.  
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Allison Paige Sullivan, Esq.  
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Marti Bluestein, Esq.  
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July 7, 2022



Kirsten Leslie Barr  
Roy A. Howell, III  
Trask & Howell, L.L.C.  
P.O. Box 2167  
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(843) 881-4228  
Attorneys for Respondents

TRASK  
HOWELL  
WORKERS' COMPENSATION DEFENSE

*Reply to*  
Roy A. Howell, III  
(843) 881-2236  
rhowell@trask-howell.com

July 7, 2022

**Via Email-ctappfilings@sccourts.org and Regular Mail**

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
P. O. Box 11629  
Columbia, SC 29211

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**Jul 07 2022**

**SC Court of Appeals**

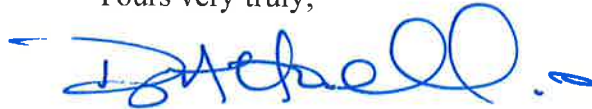
Re: Timothy Causey (dec.) v. Horry County  
W.C.C. File No.: 1302588  
Appellate Case No.: 2017-001732  
Carrier File No.: 2013058409  
Date of Accident: March 16, 2013

Dear Ms. Kitchings:

Enclosed herewith for filing, please find our Motion for Additional Relief From Judgment, Memorandum of Law in Support of Motion for Additional Relief From Judgment, and Affidavit in Support of Motion for Additional Relief from Judgment on behalf of Respondents, including our Proof of Service of the same in the above-referenced matter.

By a copy of this correspondence, I am serving counsel of record with a copy of these documents. Also enclosed, please find our check in the amount of \$50.00 for the filing fee.

Yours very truly,



Roy A. Howell, III

RAHIII/mec/les  
Enc.

cc: Janet Cook, SC Association of Counties (w/enc.) (email only)  
Allison Mackey, Horry County (w/enc.) (email only)  
Lang Kelly, SC Association of Counties (w/enc.) (email only)  
Francis A. Humphries, Jr., Esq. (w/enc.) (email/mail)  
William Henry Monckton, VI, Esq. (w/enc.) (email/mail)  
Allison Paige Sullivan, Esq. (w/enc.) (email/mail)  
Marti Bluestein, Esq. (w/enc.) (email/mail)  
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763 Johnnie Dodds Blvd.  
P.O. Box 2167  
Mt. Pleasant, SC 29465-2167

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**PAY**

TO THE ORDER OF: S. C. Court of Appeals  
P. O. Box 11629  
Columbia SC 29211

  
AUTHORIZED SIGNATURE

MEMO: (Case#2019-000560)

⑈064014⑈ ⑆053207766⑆ 2001006337185⑈

Trask & Howell, L.L.C.

Vendor: 325 S. C. Court of Appeals

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