



bookkeeper had prepared for the rehearing request. Unbeknownst to the bookkeeper, the petition was filed on Monday.

Petitioners filed a Motion to File Out of Time for the purpose of filing their Petition for Rehearing on Friday, November 18, 2022. Petitioners filed their Petition for Rehearing on Monday, November 21, 2022. The Court sent a deficiency letter due to lack of payment on Tuesday, November 22, 2022. (Exhibit 2-Deficiency Letter). Upon inquiry, the bookkeeper said a \$50.00 check was prepared for the Petition. It was believed the deficiency related to the fact the payment was not associated with the email filing; and the check would get there when the petition arrived in Columbia.

On December 12, 2022, it was learned the Court of Appeals received the Monday mailing of the petition from Anderson on Tuesday in Columbia. The Petitioners learned the payment had never been received by the Court for the petition. (Exhibit 3-Failure to Cure Letter). Petitioners immediately sent a Motion to File Out of Time, along with two checks (one for the motion, #2093, and one for the petition, #2094).

The deficiency letter, which was emailed on November 22, 2022, said the following: “Upon reviewing your petition for rehearing, the following deficiency has been noted...” (Exhibit 2, Deficiency Letter). Upon reviewing your petition means reviewing the actual document. The Petition for Rehearing was a document that had been emailed and mailed to the Court the day before. Based on the fact it was understood a payment had not been made when petition was electronically filed, the deficiency letter received via email the next day was considered protocol based on the payment not accompanying the electronic filing. This thought was corroborated by the bookkeeper’s affirmation she had written the check. (Exhibit 4-Affidavit).

If the Court's deficiency letter had said, "Upon receiving Petitioners' Petition for Rehearing, the Court was unable to locate the \$50.00 payment for the Petition. If this deficiency is not addressed within the next ten days...", it would have been understood the money had not been in the envelope with the petition. Very simply, Petitioners were unaware payment had not been received once the petition was physically received. This mistake was based on the review of the petition, not receipt of the petition, language. Having Petitioners' petition be dismissed, when it had been filed and clocked, because of the inadvertent reading of the deficiency letter is an inequitable result. Petitioners believe that based on the circumstances they are deserving of having their appeal reheard.

### **MOTION TO CONSOLIDATE APPEALS**

Petitioners make their request to enlarge time to provide the opportunity to merge the two appeals. Petitioners filed a Motion to Consolidate (Appellate Case No. 2020-001110 (2022-UP-397)) and (Appellate Case No.: 2021-000269 (2022-UP-429)) pursuant to Rule 214. (Exhibit 5-Motion to Consolidate). The Court of Appeals denied the motion because the appeals were at different stages. (Exhibit 6-Order Denying Consolidation). Petitioners believe that this situation was the epitome of cases that should be consolidated.

Rule 214 of the South Carolina Rules of Civil Procedure addresses the process of consolidating appeals. "Where there is more than one appeal from the same order, judgment, decision or decree, or where the same question is involved in two or more appeals in different cases, the appellate court may, in its discretion, order the appeal to be consolidated." In the two appeals sought to be consolidated, the same wreck was the underlying basis for the filing of the appealed complaints.

Both appeals relate to a wreck involving a tractor trailer in Spartanburg County. Both

appeals contain the same three (3) damaged individuals from Cherokee County. Both appeals have the same Respondent driver. Both appeals involve complaints which were not served within 120 days following the expiration of the statute of limitations. Both appeals include the failure to raise the issue of service or the statute of limitation within thirty (30) days of service of the complaint pursuant to Rule 12(b). Defense counsel was not opposed to the consolidation. (Exhibit 7-Lack of Opposition Letter).

Petitioners believe the aforementioned facts regarding the appeals make them ripe for consolidation. Both cases involved the Court disregarding Respondent's condition of default. In doing so, the Court allowed Respondent to use defenses which are affirmative in nature and, therefore, must be pled. Respondents failed to affirmatively defend within the required time. They should not have been afforded the protections involved with the defenses when they failed to adhere to the rule regarding their affirmative nature.

### CONCLUSION

Petitioners believe the appeals surrounding the tractor trailer wreck in 2016 are deserving of consolidation. Thus, they pray for the opportunity to await the Court's response to their Petition to Recall Remittitur. Petitioners do not ask for this courtesy for the purpose of delay. It is believed the consolidation will provide the Court with the ability to render uniform decision.

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