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SC Court of Appeals

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SC Court of Appeals

STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

The Honorable Walton J. McLeod, IV, Circuit Court Judge

Appellate Case No. 2019-001950

Clayton Construction Company, Inc..... Appellant,

v.

J&H Grading & Paving, Inc.....Respondent.

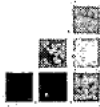
**PETITION FOR REHEARING  
AND  
SUGGESTION FOR REHEARING EN BANC**

Pursuant to Rules 219(b) and 221(a) SCACR, Appellant Clayton Construction Company, Inc. hereby petitions this Court for rehearing of its August 30, 2023 Opinion further suggests for rehearing en banc.

**GROUNDS FOR REHEARING**

**I. THE PURPOSE OF THE SUBCONTRACTORS' AND SUPPLIERS' PAYMENT PROTECTION ACT WAS TO MAKE "PAY IF PAID" PROVISIONS UNENFORCEABLE, NOT "PAY WHEN PAID" PROVISIONS.**

In 1976, the South Carolina Supreme Court determined that "pay when paid" provisions, such as the provision at issue in this matter, do not create conditions precedent. *See e.g. Elk & Jacobs Drywall v. Town Contractors, Inc.*, 267 S.C. 412, 229 S.E.2d 260 (1976) (reversing and remanding the Circuit Court's ruling that the a "pay when paid" provision created a conditions



# TOWNES B. JOHNSON III, LLC

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## TRANSMITTAL

DATE: September 26, 2023

TO: SC Court of Appeals  
1220 Senate St.  
Columbia, SC 29201

FROM: Michelle Morgan  
[mmorgan@sc.legal](mailto:mmorgan@sc.legal)

RE: Filing Fees

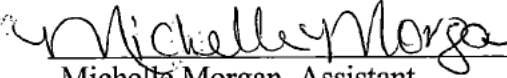
ENCLOSED: Filing Fees

- For filing
- For service
- For your information and the benefit of your files
- For your review
- In accordance with your request
- Please sign where indicated
- Please return to me in the enclosed envelope

ADDITIONAL INFORMATION:

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Sincerely,

A handwritten signature in cursive script that reads "Michelle Morgan". The signature is written in black ink and is positioned above a horizontal line.

Michelle Morgan, Assistant  
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Greenville, South Carolina 29604  
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*Attorneys for Plaintiffs*